AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

10-24-91
Vol. 56 No. 206
Pages 55051-55194

Federal Register

Thursday
October 24, 1991

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

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

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 56 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	512–2235
Problems with public subscriptions	512–2303

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	512–2235
Problems with public single copies	512–2457

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	512–2235
Problems with Federal agency subscriptions	523–5243

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

Contents

Federal Register

Vol. 56, No. 206

Thursday, October 24, 1991

Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

1 CFR
Proposed Rules:
305 55098

5 CFR
870 55051
871 55051
872 55051
873 55051
874 55051
Proposed Rules:
831 55099
843 55099
870 (2 documents) 55099, 55100

7 CFR
271 55052
272 55052
273 55052

10 CFR
715 55062

14 CFR
39 (2 documents) 55064, 55066
Proposed Rules:
71 55101

15 CFR
772 55068
773 55068
787 55068

19 CFR
111 55072
Proposed Rules:
101 55102

20 CFR
236 55072
240 55072
416 55073
Proposed Rules:
345 55102
404 55157
416 55157

21 CFR
1313 55076

22 CFR
42 55077

24 CFR
103 55077

27 CFR
70 55078

29 CFR
1952 55192

30 CFR
938 55080
Proposed Rules:
701 55103
773 55103
778 55103
840 55103
843 55103

32 CFR
292 55087
726 55088

33 CFR
Proposed Rules:
165 55104

39 CFR
233 55157

40 CFR
Proposed Rules:
268 55160

43 CFR
Proposed Rules:
4 55157

50 CFR
265 55090
285 55095
672 55096
675 55097
Proposed Rules:
17 55107

Rules and Regulations

Federal Register
Vol. 56, No. 206
Thursday, October 24, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870, 871, 872, 873 and 874

RIN 3206-AD50

Federal Employees' Group Life Insurance Program: Continuation of Life Insurance Into Retirement for Nonappropriated Fund Employees; Life Insurance for Judges; and Other Miscellaneous Changes

AGENCY: Office of Personnel Management.

ACTION: Final regulations implementing miscellaneous life insurance provisions.

SUMMARY: The Office of Personnel Management (OPM) is publishing final regulations to (1) allow former Nonappropriated Fund (NAF) employees who retire under a NAF retirement plan to retain their FEGLI coverage, (2) specify that certain retired judges are exempted from reduction of Family Optional FEGLI, (3) correct a reference citation in part 874, and (4) change "Associate Director for Compensation" to "Associate Director for Retirement and Insurance" in parts 870, 871, 872, and 873.

EFFECTIVE DATE: November 25, 1991.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606-0780 ext. 207.

SUPPLEMENTARY INFORMATION: The final regulations amend the FEGLI regulations to implement a provision of law which allows Nonappropriated Fund (NAF) retirees to continue their FEGLI coverage into retirement. The Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, provided for portability of benefits (including life insurance) for those NAF employees who move between NAF and civil service employment systems. This regulatory change is necessary to provide those employees who retire under a NAF retirement plan the same opportunity to retain their FEGLI coverage as now provided to Civil Service System retirees.

Further, we are clarifying FEGLI regulations concerning Family Optional insurance. 5 U.S.C. 8714(c)(1) provides that justices and judges of the U.S. described in 5 U.S.C. 8701(a)(5) (ii) and (iii) are deemed to continue in active employment for purposes of FEGLI coverage, and are therefore not subject to the post-retirement reduction of benefits under normal civil service provisions. This language repeats verbatim the language in other sections of chapter 87 related to retention of Basic, Standard Optional, and Additional Optional insurance by judges. While the implementing regulations for those other FEGLI coverages reflect this unique feature, the Family Optional regulations do not. We are correcting this oversight by adding implementing regulations for Family Optional coverage, since the clear meaning of the law is that judges will retain all four types of insurance as if they were still employed.

We are also updating the title of the OPM official who may order the correction of an error, mistake or omission in administration of the FEGLI program.

Finally, we are correcting a typographical error in part 874—Assignment of Life Insurance. In § 874.201(d), the citation to § 872.203(c) is changed to § 872.205 to reflect the correct reference.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. This notice is being waived because the regulatory changes either (1) simply incorporate a nondiscretionary provision of law allowing former NAF employees to retain their FEGLI coverage upon retirement or (2) correct oversights and errors in existing regulations. Delaying the implementation of these regulations would be contrary to the public interest and would serve no useful purpose.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations will only affect Federal employees.

List of Subjects in 5 CFR Parts 870, 871, 872, 873 and 874

Administrative practice and procedure, Government employees, Life insurance.

Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending title 5, Code of Federal Regulations, as follows:

PART 870—BASIC LIFE INSURANCE

1. The authority citation of part 870 continues to read as follows:

Authority: 5 U.S.C. 8716.

§ 870.102 Correction of an error, mistake or omission.

2. In § 870.102, the word "Compensation" is removed and the words "Retirement and Insurance" are added in its place.

3. In § 870.103, the definitions of "Annuitant" and "Service" are revised as set forth below.

§ 870.103 Definitions.

Annuitant means a former employee entitled to an annuity under a retirement system established for employees, including the retirement system of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard.

* * * * *

Service means civilian service which is creditable under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, including service under a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard for an individual who elected to remain subject to a retirement system established for employees described in section 2105(c) of title 5.

* * * * *

4. In § 870.601, paragraph (a)(1) is revised to read as follows:

§ 870.601 Eligibility for life insurance.

(a) * * *

(1) Is entitled to retirement on an immediate annuity under a retirement

system for civilian employees, including the retirement system of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard.

* * * * *

PART 871—STANDARD OPTIONAL LIFE INSURANCE

5. The authority citation for part 871 continues to read as follows:

Authority: 5 U.S.C. 8716.

§ 871.103 Correction of an error, mistake or omission.

6. In § 871.103, the word "Compensation" is removed and the words "Retirement and Insurance" are added in its place.

PART 872—ADDITIONAL OPTIONAL LIFE INSURANCE

7. The authority citation for part 872 continues to read as follows:

Authority: 5 U.S.C. 8716.

§ 872.103 Correction of an error, mistake or omission.

8. In § 872.103, the word "Compensation" is removed and the words "Retirement and Insurance" are added in its place.

PART 873—FAMILY OPTIONAL LIFE INSURANCE

9. The authority citation for part 873 continues to read as follows:

Authority: 5 U.S.C. 8716.

§ 873.103 Correction of an error, mistake, or omission.

10. In § 873.103, the word "Compensation" is removed and the words "Retirement and Insurance" are added in its place.

11. Section 873.601 text is redesignated as paragraph (a) and paragraph (b) is added to read as follows:

§ 873.601 Amount of insurance.

* * * * *

(b) Judges retiring under 28 U.S.C. 371 (a) and (b), 28 U.S.C. 372(a), and 26 U.S.C. 7447 are considered employees under the Federal Employees' Group Life Insurance law. Insurance for these judges continues without interruption or diminution upon retirement. The amount of family optional insurance for a judge who elects to receive compensation in lieu of annuity will be computed in accordance with paragraph (a) of this section.

PART 874—ASSIGNMENT OF LIFE INSURANCE

12. The authority citation for part 874 continues to read as follows:

Authority: 5 U.S.C. 8716.

§ 874.201 [Amended]

13. In § 874.201(d), the reference to "§ 872.203(c)" is revised to read "§ 872.205."

[FR Doc. 91-25642 Filed 10-23-91; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272 and 273

[Amendment No. 321]

Food Stamp Program; Employment and Training Requirements—Nondiscretionary Provisions From the Hunger Prevention Act of 1988

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This action puts into final regulatory form certain amendments made to the Food Stamp Act of 1977 by the Hunger Prevention Act of 1988 (Pub. L. 100-435). The provisions of Public Law 100-435 were intended to improve the operation of the Food Stamp Employment and Training (E&T) Program by: (1) Clarifying that educational programs or activities to improve basic skills or employability are allowable food stamp E&T activities; (2) establishing formal procedures to resolve disputes involving participation in the E&T program; (3) increasing the reimbursement for dependent care costs under the E&T program up to $160 per dependent per month; (4) excluding any payment made to an E&T participant for work, training or education related expenses or for dependent care from consideration as income under the Food Stamp Program; (5) clarifying that Federal funds made available to a State agency for an E&T educational component cannot be used to supplant nonfederal funds for existing services and activities that promote the purposes of that component; and (6) extending the current performance standards for the placement of E&T participants beyond Fiscal Year 1990 until new performance standards can be developed and issued in accordance with the provisions of Public Law 100-435. On June 22, 1990, the Department published a rulemaking which proposed amendments to the Food Stamp Program regulations in accordance with the provisions of Public Law 100-435 (55 FR 25611). This action addresses significant comments received from interested parties on the provisions of the proposed rule.

DATES: The provisions of dependent care reimbursements contained in §§ 273.7(d)(1)(ii), 273.9(c)(5) and 273.9(c)(15) of this final action which implement provisions of Pub. L. 100-435 are effective retroactively to July 1, 1989. State agencies were instructed through agency directive to implement the policy contained in those sections on July 1, 1989 without waiting for formal rulemaking. However, the extent that §§ 273.7(d)(1)(ii), 273.9(c)(5) and 273.9(c)(15) of this final action reflect new or different policy than that which the State agencies are currently operating under, the policy change shall be implemented no later than March 1, 1992. The remaining provisions of this final action are effective retroactively to October 1, 1988 and must be implemented no later than March 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ellen Henigan, Supervisor, Work Program Section, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 718, Alexandria, Virginia 22302, (703) 756-3762.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291 and Secretary's Memorandum 1512-1

This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified by the Department as nonmajor. The annual effect of this rule on the economy will be less than $100 million. This action will not result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. It will not have significant adverse effects on competition, investment, productivity and innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule will have a beneficial effect on employment in that it will serve to improve the operations of the Food Stamp E&T Program, thereby improving efforts to assist food stamp recipients obtain and retain employment.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the

reasons set forth in the final rule and related notice to 7 CFR part 3015, subpart V, the E&T program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be affected to the extent that they administer the E&T program. Those applicants and participants required to participate in an E&T program will be affected by this action to the extent that they have dependent care costs associated with E&T program participation or they require conciliation.

Paperwork Reduction Act

This rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Title: Notice of adverse action.

Description: The provision in §§ 273.7(c)(2) and 273.7(g)(1) of this final action regarding the need for State welfare agencies to issue a notice of adverse action (Form FNS–441) to reduce or terminate benefits for an individual or household, as appropriate, due to noncompliance with work registration requirements (including E&T) is currently approved by OMB under OMB No. 0584–0064. This action does not affect the burden estimates associated with Form FNS–441 as currently approved by OMB. Current burden estimates are based on a nationwide caseload of 7.2 million households and reflects an assumption that respondents (53 State welfare agencies) will generate Form FNS–441, at least once annually, for about 30 percent of the nationwide caseload (2.1 million households) due to such factors as noncompliance with work registration requirements (including E&T) or changes in household circumstances.

Description of Respondents: 53 State welfare agencies.

Estimated Annual Reporting and Recordkeeping Burden: The average completion time for Form FNS–441 is estimated to be .1666 hours per response for a total burden of 1,091,685 hours annually.

Title: Participant Reimbursements.

Description: This final action contains provisions in § 273.7(d)(1)(ii)(E) which require the State agencies to inform all volunteers that their allowable E&T expenses in excess of the reimbursable amount will not be reimbursed and to inform all mandatory E&T participants that they may be exempted from E&T participation if their monthly expenses that are reasonably necessary and directly related to participation in the E&T program exceed the allowable reimbursement amount. It is anticipated that the State agencies will choose to implement these requirements by advising individuals of these policies during the E&T assessment. The burden associated with these requirements is estimated to be minimal. Because the burden is expected to be minimal, it will be submitted to OMB for approval along with the Department's forthcoming revision to all burden associated with OMB No. 0584–0064, which expires in the near future.

Title: Revision to E&T plan.

Description: State welfare agencies are required pursuant to 7 CFR 272.2 to plan and budget program operations and establish objectives for the next year. The basic components of the State Plan of Operation are the Federal/State Agreement, the Budget Projection Statement, the Program Activity Statement, and certain attachments as specified at 7 CFR 272.2 (c) and (d). One such attachment to the Plan is the E&T plan (7 CFR 272.2(d)(v)). The requirement in § 273.7(c)(4) of this action that each State agency include a description of the conciliation procedures in the E&T plan does not alter or change current burden estimates approved under OMB No. 0584–0083 for the overall State Plan of Operation. Certain portions of the State Plan are required to be updated annually while others are required to be updated when a significant change occurs. Current burden approval for the State Plan of Operation estimates that State agencies will submit State Plan of Operation revisions or updates to various components of the State Plan of Operation at least once annually.

Description of Respondents: 53 State welfare agencies.

Estimated Annual Reporting and Recordkeeping Burden: Current burden estimates associated with the need for each of the 53 State welfare agencies to submit revisions/updates on various components of the State Plan of Operation at least once annually is estimated to average 10 hours, per respondent, for a total burden of 530 hours annually.

This final action amends § 271.8 by revising the paragraph designation and corresponding OMB Control Numbers for § 273.7, paragraph (c), to include OMB No. 0584–0064 and OMB No. 0584–0083.

These control numbers were inadvertently omitted from the reference to § 273.7(c).

Organizations and individuals desiring to submit comments regarding the burden estimates discussed above, or any aspects of these information collection requirements, including suggestions for reducing these burdens, should direct them to the Department of Agriculture, Food and Nutrition Service, Food Stamp Program, Program Development Division (address above); and to the Office of Information and Regulatory Affairs, OMB, room 3208, New Executive Office Building, Washington, DC 20503, Attn: Laura Oliven, Desk Officer for FNS.

Background

On June 22, 1990, the Department published a rulemaking (55 FR 25611) which proposed amendments to Food Stamp Program regulations in accordance with changes made to the Food Stamp Act of 1977 by the Hunger Prevention Act of 1988, Public Law 100–435, 102 Stat. 1645, September 19, 1988. This action puts into final regulatory form those amendments made by Public Law 100–435. For a full understanding of the provisions of this final action, the reader should refer to the preamble of the proposed rule which contains an explanation of the rationale of the rule.

Twenty comment letters were received from State and local welfare agencies and public interest groups. The Department appreciates the effort that went into the preparation and submission of these comments. All comments were reviewed and given full consideration for inclusion in this rulemaking.

In general, many of the commenters were supportive of the Department's efforts to conform the E&T program regulations with those of the Job Opportunities and Basic Skills Training (JOBS) Program. Additional recommendations for conformance on specific areas of the regulations were

also received. These comments are discussed below in more detail.

A number of comments recommended regulatory changes that are contrary to the provisions of Public Law 100–435. The Department has no discretion to impose such changes to the regulations, therefore, a discussion of these comments has not been included in the preamble except for specific cases where discussion would clarify the Department's position.

Conciliation—Section 273.7(c)(2); Section 273.7(g)(1)

The June 22, 1990 rulemaking proposed a change at § 273.7(c)(2) and § 273.7(g)(1) to require State agencies to establish conciliation procedures to resolve disputes that result when a food stamp work registrant fails or refuses to comply with an E&T program requirement. A large number of comments addressed these provisions. As proposed, the conciliation effort was intended to determine the reason(s) for the noncompliance and to provide an opportunity to resolve the problem so that the work registrant may participate in an E&T component and work toward self-sufficiency rather than be sanctioned. The proposed rule would have allowed State agencies to develop their own conciliation procedures which could conform to State practices under the JOBS program. At a minimum, however, it was proposed that the State agency contact the noncomplying household member to determine the reason(s) for the noncompliance and determine whether good cause for the noncompliance exists. If good cause did not exist, the State agency would have had to inform the household member of the pertinent E&T requirements and the consequences of failing to comply. The household member would have had to be informed of the action(s) necessary for compliance and the date by which compliance must occur to avoid the notice of adverse action. This date could not have exceeded the end of the conciliation period.

It was brought to the Department's attention that in proposing the addition of procedures for conciliation to 7 CFR 273.7(g)(1), the Department unintentionally deleted the provisions for determining good cause and issuing a notice of adverse action (when good cause does not exist) in cases where an individual refuses or fails to comply with any of the work requirements, other than the E&T requirements, imposed by 7 CFR 273.7. The Department has corrected this oversight in this final action. As a result of this correction, the structure of the proposed provisions at § 273.7(g)(1) has been reorganized.

Several commenters objected to the conciliation provisions as slowing down the sanction process or duplicating the State agency's notice provisions. Another commenter recommended that FNS adopt regulatory language similar to that used under the JOBS program which simply states that the State agency shall establish a conciliation process. The details of the process must then be described in the State agency's E&T plan.

The Secretary is required by section 404(b)(2) of Public Law 100–435 to issue regulations under which each State agency shall establish conciliation procedures for the resolution of disputes involving the participation of individuals in the E&T program. It is the Department's view that minimum standards are necessary to protect the rights of the individual participants. Therefore, the proposed amendments to 7 CFR 273.7(c)(2) and (g)(1) are adopted final by this action, subject to the changes discussed below.

One commenter recommended clarification on what actions should be taken by a State agency when it is unable to contact the noncomplying household member to determine whether or not good cause exists. Rather than regulate specific procedures that must be followed by all State agencies, it is the Department's view that each State agency should establish its own guidelines for handling these situations. For example, some State agencies may choose to make only one attempt to contact the noncomplying household member while other State agencies may choose to make at least two attempts. The method of contact may vary from State to State. Some State agencies may prefer a face-to-face interview, while others may choose to contact individuals by letter or by telephone. The Department suggests that the procedures developed by the State agencies include a provision that all attempts to contact the individual will be documented. If the attempt(s) to contact the individual are unsuccessful, the Department further suggests that the State agency proceed with a determination of good cause using the best information available to the State agency.

The proposed rule at § 273.7(g)(1)(ii) also contained a maximum time frame for the conciliation period during which the State agency would have to determine if good cause for the noncompliance exists and resolve the noncompliance. The proposal would have required the State agency to establish a conciliation period lasting no longer than 20 calendar days and which began the day following the date the State agency learned of the noncompliance. Several commenters recommended that the conciliation time frame conform with that of the JOBS program. The Administration for Children and Families (ACF), formerly the Family Support Administration, recommends, but does not require, that the conciliation period under the JOBS program be no more than 30 calendar days. The Department agrees with the commenters that the time frames for the two programs should conform but goes beyond merely recommending a time frame as did ACF. Section 273.7(g)(1)(ii) of this final rule requires a conciliation period that is limited to no more than 30 calendar days.

One commenter recommended that the length of the conciliation period be defined in terms of working days rather than calendar days. As stated above, the Department has chosen to conform with the JOBS program in defining the length of the conciliation program. Therefore, the final rule adopts the use of calendar days from the proposed rule in conformance with the JOBS program.

The proposed rule contained a provision at § 273.7(g)(1)(iii) allowing a ten-day period for the State agency to issue the notice of adverse action under the conciliation procedures. As discussed above, the time frame for the conciliation period has been expanded by this final action from the proposed period of up to 20 days to a period of up to 30 days. It is the Department's view that the imposition of a ten-day period for issuing the notice of adverse action immediately after the time limited conciliation period would be cumbersome for the State agencies to track. To simplify what would have been an awkward system for the State agencies, the Department has removed the reference to a separate ten-day period for issuing the notice of adverse action under the conciliation procedures. The final rule at § 273.7(c)(2) and § 273.7(g)(1)(iii) simply states that the State agency must issue the notice of adverse action by the last day of the conciliation period, thereby incorporating the period for the notice of adverse action with the conciliation period. The provision for a separate ten-day period remains under § 273.7(g)(1)(iv) of this final action in cases where an individual refuses or fails to comply with a work requirement other than E&T. The provisions at 7 CFR 273.7(c)(2) and (g)(1) are amended accordingly.

The proposed rule at § 273.7(g)(1)(iii) also stated that the notice of adverse action may be cancelled if the State agency is able to verify that compliance was achieved subsequent to the end of the conciliation period. It has been brought to the Department's attention that an unintentional miswriting of this provision has caused confusion over the Department's intent. The intent of this provision was to allow State agencies to cancel a notice of adverse action if the notice was issued prior to the end of the conciliation period and the individual was able to cure the noncompliance prior to the end of the conciliation. It was the Department's view that it would be unnecessary and costly to continue the adverse action process (i.e., the fair hearing) when the noncompliance was resolved prior to the end of the conciliation period. After all, the intent of the conciliation process is to resolve these conflicts early on and prevent the need for a fair hearing and/or a sanction. If the noncompliance is not cured prior to the end of the conciliation, the notice of adverse action would not be cancelled and the State agency would take appropriate action. Therefore, the language of this final rule is modified from the proposed language at §§ 273.7(c)(2) and (g)(1)(iii) to clarify that if the notice of adverse action was issued prior to the end of the conciliation period and the State agency verifies that compliance was achieved by the end of the conciliation period, the notice of adverse action may be cancelled. The regulations at 7 CFR 273.7(c)(2) and (g)(1) are amended by this action accordingly.

Another commenter recommended that the notice of adverse action be issued concurrently with the initiation of the conciliation process. The commenter believes this would ensure that a sanction is not delayed while securing an individual's right to conciliate. It is the Department's view that this recommendation is inconsistent with the purposes of the conciliation provision of Public Law 100–435. As described by Congress in the legislative history, the conciliation process is intended to begin prior to and, hopefully, prevent the need for the notice of adverse action by allowing the State agency the opportunity to work with the noncomplying individual to obtain compliance. If the noncompliant individual complies as a result of conciliation, then a notice of adverse action is no longer necessary. If, conversely, it becomes apparent that the individual will not comply, i.e., the individual refuses to comply and does not have good cause, the State agency may end the conciliation period and issue the notice of adverse action. 134 Cong. Rec. S22025 (statement of Sen. Leahy), S22028 (statement of Sen. Lugar), H22081 (statement of Rep. Panetta), H22082 (statement of Rep. Emerson). Therefore, the proposed amendments to 7 CFR 273.7(c)(2) and (g)(1) are adopted final by this action without incorporating this suggestion.

The proposed rule reiterated at § 273.7(g)(1)(iv) the current regulatory provision that each individual or household has a right to a fair hearing to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a State agency determination of failure to comply with the work registration or employment and training requirements. A commenter recommended a word change so that this paragraph would read "right to request a fair hearing" instead of "right to a fair hearing". The Department agrees with this change in wording since it better reflects the pertinent regulations on requesting a fair hearing at 7 CFR 271.7(f) and 273.15(f). Any household that has its allotment reduced, suspended or cancelled may request a fair hearing if it disagrees with the action. However, a State agency is not required to hold a fair hearing unless the request for the hearing is based on the household's belief that its benefit level was incorrectly computed or that program regulations were misapplied or misinterpreted. A fair hearing request shall be denied if the household is merely disputing that a reduction, suspension or cancellation was ordered. Accordingly, this final rule reflects this change in § 273.7(g)(1)(vi).

Another commenter recommended a clarification to the next to last sentence of § 273.7(g)(1)(iv) of the proposed rule which reads, "Information not released to a household may not be used by either party at the hearing." The commenter suggested that the word "confidential" be added at the beginning of the sentence. The Department agrees with the commenter since this sentence refers to the previous sentence which discusses the withholding of confidential information from the household. This clarification reinforces the concept that the information withheld is confidential information. Accordingly, the final rule reflects this change in § 273.7(g)(1)(vi).

Funding for Educational Programs or Activities—Section 273.7(d)(1)(i)(F)

The June 22, 1990 rule proposed an amendment to 7 CFR 273.7(d)(1)(i)(F) to specify that E&T funds may not be used to supplant State or local funds used for existing educational services and activities that promote the purposes of the E&T education component authorized under section 6(d)(4)(B)(v) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2015(d)(4)(B)(v)). Only one commenter addressed this provision of the proposed rule. The comment was in support of the proposed regulatory amendment. Therefore, the proposed language in § 273.7(d)(1)(i)(F) is adopted final without change by this final action and 7 CFR 273.7(d)(1)(i)(F) is amended accordingly.

Participant Reimbursement—Section 273.7(d)(1)(ii)

The proposed regulations at § 273.7(d)(1)(ii) would have required the reimbursement of expenses that are reasonably necessary and directly related to participation in the E&T program, including the conciliation process, with the following limitations: Up to $160 per dependent per month for dependent care and up to $25 per participant per month for transportation and other costs. The reimbursement amount (up to the statutory limit) would be determined by the amount of allowable expenses anticipated or incurred by the participant for each month of participation. The State agency may reimburse participants for expenditures beyond these amounts; however, only costs up to but not in excess of the specified amounts would be subject to Federal cost sharing.

The Department has made minor word changes and reorganized the structure of the proposed provisions on participant reimbursements at § 273.7(d)(1)(ii). These changes were made for the sake of clarity.

The proposed rule included a list of the types of allowable costs to be reimbursed under § 273.7(d)(1)(ii)(A). One commenter recommended that this list be deleted because it has the potential to limit State agency flexibility in determining reimbursable expenses. The Department does not agree. As stated in the preamble of the proposed rule, this list is intended as a guide for the State agencies and is not all inclusive. In light of the mandate to include educational activities as allowable E&T components, it is the Department's view that this is an opportune time to provide such guidance. Further, this list conforms to the list of allowable costs that are currently reimbursable under the participant reimbursement provision of the optional workfare program regulations at 7 CFR 273.22(f)(4). Therefore, the proposed list of allowable costs contained in § 273.7(d)(1)(ii)(A) of the proposed rule is adopted final

without change by this final action. This provision is now contained in the introductory paragraph to § 273.7(d)(1)(ii) of this final action.

Section 273.7(d)(1)(ii)(A) of the proposed rule also contained a provision that would prohibit the reimbursement of the cost of meals away from home. A commenter objected to this provision arguing that this policy is inconsistent with other employment and training programs administered by the Federal government. The proposed provision was adopted from the Optional Workfare Program regulations at 7 CFR 273.22(f)(4). It is based on the principle that the monthly food stamp allotment is intended to supplement the household's budget so that the household's monthly food needs are met. Since the E&T participant's monthly food needs have already been met, it is the Department's view that an additional reimbursement should not be provided for meals taken during participation in the E&T program. Therefore, the proposed amendment contained in § 273.7(d)(1)(ii)(A) of the proposed rule is adopted without change by this final action and appears in the introductory paragraph to § 273.7(d)(1)(ii).

Two commenters requested a clarification on the reimbursement of participant expenses associated with conciliation. This final action clarifies that all expenses (including dependent care) that are reasonably necessary and directly related to the noncompliant household member's participation in the conciliation process shall be reimbursed in accordance with the regulations at 7 CFR 273.7(d)(1)(ii). The conciliation process is an integral part of the E&T process. All costs necessary to an individual's participation in the E&T program are reimbursable, therefore, costs associated with conciliation are reimbursable. Accordingly, 7 CFR 273.7(d)(1)(ii) is amended to reflect this clarification in the introductory paragraph of § 273.7(d)(1)(ii) of this final rule.

The proposed rule also provided at § 273.7(d)(1)(ii)(A)(*1*) that an E&T participant would not be entitled to the dependent care reimbursement if a member of the E&T participant's food stamp household provided the dependent care services. Two comments were received on this provision. Both commenters believe this provision is unfair to these households and may force participants to seek less desirable child care arrangements outside of the home.

It is still the Department's view that in many instances the food stamp household does not incur an actual out-of-pocket expense when the child care is provided by a food stamp household member. In cases where one food stamp household member actually makes a payment to another member, the payment would not result in a net change in the household's income for food stamp purposes. However, the payment of an E&T dependent care reimbursement in this case would actually work against the household. The reimbursement would not count as income to the E&T participant since it is excluded from income as an reimbursement under 7 CFR 273.9(c)(5). As a payment for child care services, however, it would become income to the caretaker, thereby increasing the income of the household for food stamp purposes. Further, the payment for dependent care services would not qualify for a dependent care deduction under 7 CFR 273.10(d)(1)(i) since the dependent care expense to the E&T participant is covered by an excluded reimbursement. Given the reasons above, the Department is adopting the proposed amendment contained in § 273.7(d)(1)(ii)(A)(*1*) as final without change by this final action. This provision is now contained in § 273.7(d)(1)(ii)(A) of this final action.

Another commenter objected to the proposed amendment at § 273.7(d)(1)(ii)(A)(*1*) which prohibited the State agency from requiring E&T participants to use state-licensed dependent care facilities to be eligible for dependent care reimbursements. The commenter referred to the child care standards contained in the Department of Health and Human Services' final rulemaking of October 13, 1989 which implemented the JOBS program (54 FR 42146 (1989)). As stated in the preamble to that final rulemaking (54 FR 42235 (1989)), the language of the Family Support Act of 1988 reflects Congressional intent to ensure the health and well-being of the children for whom child care is being provided. Consistent with Congressional intent, the JOBS program requires that child care must meet current applicable standards of State and local law; however, the States are not required to develop new standards exclusively for the JOBS program. The Food Stamp Act and its amendments do not reflect similar instructions by Congress regarding licensing and child care standards. Nevertheless, it is the Department's view that the health and safety of the children of E&T participants is of vital concern. Consequently, the Department has revised the final rule at § 273.7(d)(1)(ii)(A) to be more in conformance with the JOBS program. The final rule requires State agencies to establish procedures to ensure that all dependent care meets applicable State and local laws, including requirements for health and safety protection, e.g., fire safety.

It has been the Department's objective to not restrict the options of the E&T participant in obtaining dependent care services by limiting the dependent care to state-licensed facilities. The Department recognizes the importance of parental choice in regard to dependent care. In many cases, informal care provided by trusted friends or family members is the parent's preferred source of care. It is the Department's view that households should be free to choose the dependent care arrangement that best suits their particular situation. The above requirement that dependent care meet all applicable State and local laws does not mean that all dependent care must be licensed. Many States regulate only center-based dependent care; family or in-home care is often not subject to licensing laws. Therefore, unlicensed dependent care may be used, at the option of the household.

Parental choice must not be undermined. This is particularly important in situations where the State agency provides the dependent care directly or arranges for the dependent care through vendors and licensed care is the only care offered. Thus, the final rule stipulates that in these situations an E&T participant may refuse the care offered by the State agency, if the E&T participant can arrange other dependent care or can show that such refusal will not prevent or interfere with participation in the E&T program as required by the State agency. 7 CFR 273.7(d)(1)(ii) is amended accordingly to incorporate the changes discussed above.

The June 22, 1990 proposed rule also contained a provision in § 273.7(d)(1)(ii)(A) that reiterates a long-standing policy under the Food Stamp Program at 7 CFR 273.10(d)(1)(i) whereby an expense covered by an excluded reimbursement shall not be deductible. This policy was established because there is no real expense to the household when a reimbursement is provided since the reimbursement covers the full cost of the expense. Moreover, the household's income has not been increased by the amount of the reimbursement since the reimbursement is not counted as income. A June 6, 1989 rulemaking (54 FR 24149 (1989)) clarified that reimbursements under the E&T program were considered excluded reimbursements and, therefore, were not deductible under 7 CFR 273.10(d)(1)(i) (54 FR 24152 (1989)). No comments were

received on this provision. Consequently, the amendment in § 273.7(d)(1)(ii)(A) of the proposed rule is adopted final without change by this final action.

However, one commenter expressed concern that current Food Stamp Program policy on the treatment of child care reimbursements issued under the JOBS program is inconsistent with the proposed provision at § 273.7(d)(1)(ii)(A). Policy Interpretation Response System (PIRS) Indexed Policy Memo 90–26, issued on September 5, 1990, states that child care and transitional child care payments or reimbursements made under the JOBS program are deductible under the Food Stamp Program. The policy reflected in PIRS Indexed Policy Memo 90–26 is under review by the Department.

The proposed rule also proposed, at § 273.7(d)(1)(ii)(A)(*1*), that the State agency advise the E&T participant that he or she may have Federal tax responsibilities under certain dependent care situations. These responsibilities may include the withholding of Social Security taxes and Federal income taxes from wages paid to a dependent care provider and notifying the Internal Revenue Service about these wages. Several comments were received on this issue; all of the commenters strongly objected to the requirement. The commenters believe this responsibility should not be placed on the State agency. One commenter pointed out that there is no similar requirement under the JOBS program. The Department concurs with the commenters and has deleted this requirement from the final rule. Nonetheless, the Department encourages State agencies to advise E&T participants of possible tax responsibilities.

The proposed rule also contained a provision at § 273.7(d)(1)(ii)(B) by which an individual may be exempted from participation in the E&T program if the individual's monthly allowable expenses exceed the reimbursement amount. One commenter recommended that the Department revise this provision by adopting a policy under the JOBS program whereby the lack of supportive services (i.e., child care) is considered good cause for noncompliance, not an exemption from participation. Current regulations at 7 CFR 273.7(m) already specify that lack of adequate child care would be good cause for noncompliance. The June 22, 1990 rule simply proposed a means for the State agency to exempt an individual if it is known from the onset that the monthly expenses necessary for participation (particularly dependent care) cannot be met by the reimbursement amount, thereby preventing the individual from participating. This would relieve the State agency from having to take unnecessary follow-up actions against an individual who fails to comply because of lack of dependent care. Given the differing regulations under the two programs for the provision of dependent care, it is the Department's view that the proposed provision is better suited to requirements of the E&T program. Moreover, Congress has given its support to this exemption policy in the legislative history accompanying Public Law 100–435. 134 Cong. Rec. S22025 (statement of Sen. Leahy) (1988). Therefore, the proposed amendment in § 273.7(d)(1)(ii)(B) is adopted final without change by this final rule at § 273.7(d)(1)(ii)(E).

Education Programs or Activities—Section 273.7(f)(1)

In accordance with section 404(a)(4) of Public Law 100–435, the Department proposed changes to 7 CFR 273.7(f)(1) by adding paragraph (f)(1)(vi) which specifies that educational programs or activities to improve basic skills or employability are allowable as E&T components. Comments received on this provision were in support of including educational activities as an E&T component. The proposed amendment in § 273.7(f)(1)(vi) is adopted final without change by this final rule.

One commenter wrote that although the regulations allow the State agencies to operate educational components in their E&T programs, no additional funding has been provided for educational costs such as tuition, fees, books, etc. In expanding the E&T program to include educational activities, Public Law 100–435 did not provide any additional funding for educational expenses. Therefore, the Department has no discretion in allocating additional funding to the State agencies for this purpose. Nevertheless, the expenses mentioned by the commenter are allowable expenses that may be covered under the current funding structure for the E&T program. Tuition and fees may be covered as part of the cost of the component. Federal funding for these expenses is available up to the State-specific grant amount and at a matching rate of 50 percent for all allowable expenses that exceed the grant amount. If it is necessary for participants to purchase books and other necessary equipment or supplies, the expense may be reimbursed up to $25 per month per participant as part of the participant reimbursement for transportation and other costs.

Another commenter expressed concern that the proposed rule did not exempt E&T participants from the student provisions under 7 CFR 273.5 which deny food stamp eligibility to persons enrolled at least half time in an institution of higher education. The Food Stamp program regulations echo section 6(e) of the Act on the issue of student eligibility. Public Law 100–435 did not amend the Food Stamp Act of 1977 to allow such a change. Therefore, the Department did not have discretion to propose such a change to the food stamp regulations in the absence of a legislative amendment. However, subsequent to the publication of the proposed rule, section 6(e) of the Food Stamp Act of 1977, was amended in section 1627 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624) to exempt individuals otherwise subject to the student provisions under 7 CFR 273.5 when assigned to or placed in an institution of higher education through or in compliance with the requirements of a Food Stamp E&T Program. A separate rulemaking must be promulgated to incorporate this amendment in the Food Stamp Program regulations. Public Law 101–624 requires the promulgation of final regulations to address this provision no later than October 1, 1991, however, the provision is not effective until February 1, 1992.

Performance Standards—Section 273.7(o)(7)

The proposed rule at § 273.7(o)(7) proposed to continue the current performance standard until the Department implements new standards in accordance with the provisions contained in Public Law 100–435. The current regulations require each State agency to place 50 percent of their mandatory E&T participants (plus volunteers who participate).

The proposed rule specified an implementation date of April 1, 1991 for the new standards which was the date established by Public Law 100–435. One commenter objected to the change in performance standards in the middle of the program year. This commenter recommended that such a change coincide with the beginning of the next program year and that State agencies be allowed ample time to modify their programs, retrain staff, and revise their data collection systems. As with all provisions carrying a mandated implementation time frame, the Department had no discretion in changing the April 1, 1991

implementation date; however, Public Law 101–624 moved the implementation date from April 1, 1991 to October 1, 1991. A separate rulemaking must be promulgated to implement this legislative amendment. In the interim, the Department has deleted the reference to a specific implementation date under § 273.7(o)(7). The proposed amendment contained in § 273.7(o)(7) is adopted final with this change by this final rule.

Income Exclusions for E&T Payments—Section 273.9(c)

In accordance with sections 403(a) and 404(c) of Public Law 100–435, the Department proposed a change at § 273.9(c)(15) to exclude from household income any payment made to a participant under the E&T program for costs that are reasonably necessary and directly related to participation in the E&T program. This would include such expenses as dependent care, transportation and any other expenses related to work, training or education under the E&T program. It was further proposed to exclude the value of any dependent care services provided or arranged for under the E&T program.

In addition, the Department proposed revisions to 7 CFR 273.9(c)(5)(i)(A) to specify that reimbursements to E&T participants for costs related to participation in the E&T program would similarly be excluded from household income. The amendments to § 273.9(c)(5)(i)(A) and (c)(15) of the proposed rule are adopted final by this final action.

In accordance with section 404(f) of Public Law 100–435, the Department also proposed a revision to 7 CFR 273.9(c) to exclude as income any payments or reimbursements for work related or child care expenses made under an employment, education or training program initiated under title IV–A of the Social Security Act after September 19, 1988. One commenter expressed confusion about which JOBS payments would be excluded. The Department interprets Public Law 100–435 to mean the exclusion of all payments and reimbursements made by the State IV–A agency, in accordance with 45 CFR part 255 of the JOBS program regulations, for work-related expenses, including transportation, and other supportive services, such as child care. The proposed amendment is adopted without change in the final rule at § 273.9(c)(5)(ii)(A).

Technical Corrections—Section 271.2

This final action amends 7 CFR 271.2 by adding the acronym "E&T" to the following definitions in that section: Employment and training component, Employment and training mandatory participant, Employment and training program, and Placed in an employment and training program. This technical correction allows the use of the acronym "E&T" throughout 7 CFR 273.7 and elsewhere in the Food Stamp Program regulations.

Implementation

The proposed rule specified an implementation time frame of no longer than 60 days following publication of the final rulemaking. Two commenters recommended that the implementation time frame be extended beyond the proposed 60-day implementation period. One commenter recommended a 90-day period and the other recommended a 180-day period. It is the Department's view that a 90-day time frame would not allow sufficient time for some State agencies to complete implementation, while a 180-day time frame would unduly delay the implementation of the provisions of this rule. Traditionally, the Department has allowed time frames of 60 to 120 days for the implementation of regulations, depending upon the complexity of the rule and the amount of effort needed for implementation. Since this rule will require the development of new procedures (conciliation) and the training of staff, the Department has decided to allow the maximum time frame traditionally allowed for the implementation of regulations. Therefore, the final rule contains an implementation date which is no later than the first day of the month following 120 days after the publication of this rule.

As required by Public Law 100–435, the provisions of that law on dependent care reimbursements as reflected in §§ 273.7(d)(1)(ii), 273.9(c)(5) and 273.9(c)(15) of this final action, which implement section 404(c) of the Hunger Prevention Act of 1988, were effective July 1, 1989. Since prior notice and comment rulemaking could not be completed before the statutory effective date of the law, the Department issued directives on February 15, 1989 and May 26, 1989 instructing the State agencies to implement the provisions on July 1, 1989. Any resulting changes contained in the final rule in §§ 273.7(d)(1)(ii), 273.9(c)(5) and 273.9(c)(15) are effective and must be implemented no later than the first of the month following 120 days after the publication of this final rulemaking.

Although Public Law 100–435 specified the October 1, 1988 effective date for the remaining provisions to be implemented by this rulemaking, the provisions do not require, for all practical purposes, any retroactive action on the part of the State agencies. These provisions are effective October 1, 1988 in accordance with the Act and must be implemented no later than the first day of the month following 120 days after publication of the final rulemaking.

One commenter requested clarification on retroactive implementation as it relates to conciliation. It is not the intent of the Department to require the retroactive implementation of conciliation as there is no practical way to provide retroactive conciliation. Moreover, it is the Department's view that the delay in implementation did not irreparably harm any affected households since they were afforded similar protection in terms of the right to request a fair hearing and continuation of benefits.

The State agencies shall develop and implement conciliation procedures in accordance with the guidelines contained in this final rulemaking. The State agencies may implement the conciliation procedures upon publication of this rulemaking. However, in no case shall these conciliation procedures be implemented any later than the first day of the month beginning 120 days after publication of this rulemaking. By implemented, the Department means that the State agency shall begin to use conciliation procedures in all cases where the State agency has determined on or after the above implementation date that an individual has refused or failed to comply with an E&T requirement.

The proposed rule provided a requirement at § 273.7(c)(4) that each State agency include a description of the conciliation procedures to be used by the State agency in the State E&T plan. This final action is being implemented at the start of Fiscal Year 1992, after the Fiscal Year 1992 State E&T plans have been submitted and approved. Therefore, the Department will require the State agencies to submit a modification to their Fiscal Year 1992 State E&T plans to incorporate a description of their conciliation procedures. The Department will provide the State agencies with separate instructions on the submission of these plan modifications.

One commenter recommended that the implementation of the conciliation provisions be delayed to coincide with the revisions to the performance standards. The commenter argues that implementation of the conciliation process under the existing performance measures could jeopardize a State agency's ability to meet the current standard because of the anticipated reduction in the issuance of notices of

adverse action. Public Law 100–435 does not allow the Department any discretion in postponing the implementation of the conciliation provisions once the final regulation is published. Therefore, the final rule does not adopt the commenter's suggestion.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food Stamps, Grant programs—social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR parts 271, 272 and 273 are amended as follows:

1. The authority citation for parts 271, 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2031.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. Section 271.2 is amended by adding the word "(E&T)" after the words "Employment and training" in the following definition headings: *Employment and training component, Employment and training mandatory participant, Employment and training program;* and by adding the word "(E&T)" after the words "employment and training" in the following definition heading: *Placed in an employment and training program.*

2a. In § 271.8:

a. The first reference to § 273.7 is revised;

b. A paragraph designation and corresponding OMB Control Number for 273.7, paragraph (c), is added in numerical order.

The revision and addition read as follows:

§ 271.8 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control No.
* * * * *	
273.7 (a), (d), (f)	0584–0339
273.7 (c)	0584–0064 0584–0083 0584–0339
* * * * *	

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1, a new paragraph (g)(118) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) * * *

(118) *Amendment No. 321.* (i) The provisions contained in § 273.7(d)(1)(ii)(A) and 273.9(c)(5)(i) (A) and (F) of Amendment No. 321, which implement section 404(c) of the Hunger Prevention Act of 1988, are effective and must be implemented retroactively to July 1, 1989.

(ii) The remaining provisions of Amendment No. 321 are effective October 1, 1988 and must be implemented no later than March 1, 1992. State agencies may implement the conciliation procedure provisions contained in § 273.7(g)(1)(ii) immediately upon publication of Amendment No. 321. However, in no case shall the conciliation procedures be implemented any later than March 1, 1992. By implemented, the Department means that the State agency shall begin to use conciliation procedures in all cases where the State agency has determined on or after the above implementation date that an individual has refused or failed to comply with an E&T requirement under § 273.7(f).

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.7:

a. Paragraph (c)(2) is amended by revising the third sentence and adding two new sentences between the third and fourth sentences;

b. A new paragraph (c)(4)(xii) is added;

c. Paragraph (d)(1)(i)(F) is amended by revising the first sentence;

d. New introductory text is added to paragraph (d)(1)(ii), paragraphs (d)(1)(ii) (A) and (B) are revised, and a new paragraph (d)(1)(ii)(E) is added;

e. Paragraph (d)(1)(ii)(D) is amended by removing the word "child" in the two places it appears and adding in its place the word "dependent";

f. Paragraph (f)(1)(ii) is amended by removing the words "Education components" in the third sentence and adding in their place the words "Job search training activities"; and removing the word "education" from the last sentence and adding in its place the words "job search training activities";

g. A new paragraph (f)(1)(vi) is added;

h. Paragraph (f)(2)(iii) is amended by removing the words "and the unavailability of child care" and adding in their place the words "the unavailability of dependent care, and monthly E&T expenses that exceed the allowable reimbursable amounts specified in paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section";

i. Paragraph (g)(1) is revised in its entirety; and

j. Paragraph (o)(7) is amended by revising the last sentence.

The additions and revisions read as follows:

§ 273.7 Work requirements.

* * * * *

(c) * * *

(2) * * * The State agency shall initiate conciliation procedures, pursuant to paragraph (g)(1)(ii) of this section, upon determining that an individual has not complied with E&T requirements. The State agency shall issue a notice of adverse action (Form FNS–441 or equivalent State-designed form) to the individual or household, as appropriate, no later than the last day of the conciliation period. If the notice of adverse action was issued prior to the end of the conciliation period and the State agency verifies that compliance was achieved by the end of the conciliation period, the notice of adverse action may be cancelled. * * *

* * * * *

(4) * * *

(xii) Beginning with the Fiscal Year 1992 State E&T plan, the procedures developed by the State agency under paragraph (g)(1)(ii) of this section for conciliation. To the extent possible, State agencies should design conciliation procedures for the E&T program that will be compatible with the conciliation process that State agencies that administer the Aid to Families with Dependent Children (AFDC) Program will establish for the Job Opportunities and Basic Skills Training (JOBS) Program as mandated by the Family Support Act of 1988.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(F) Federal funds made available to a State agency under this section to operate a component under paragraph (f)(1)(vi) of this section shall not be used to supplant nonfederal funds for existing educational services and activities that

promote the purposes of this component. * * *

(ii) *Participant reimbursements.* The State agency shall provide payments to participants in its E&T program, including applicants required to perform job search and volunteers, for expenses that are reasonably necessary and directly related to participation in the E&T program. These payments may be provided as a reimbursement for expenses incurred or in advance as payment for anticipated expenses in the coming month. The State agency shall inform each E&T participant that allowable expenses up to the amounts specified in paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section will be reimbursed by the State agency upon presentation of appropriate documentation. Reimbursable costs may include, but are not limited to, dependent care costs, transportation, and other work, training or education related expenses such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs shall not include the cost of meals away from home. Any allowable costs incurred by a noncompliant E&T participant that are reasonably necessary and directly related to participation in the conciliation process shall be reimbursable under paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section. The State agency may reimburse participants for expenses beyond the amounts specified in paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section, however, only costs which are up to but not in excess of those amounts shall be subject to Federal cost sharing. Reimbursement shall not be provided from E&T grants provided under paragraph (d)(1)(i) of this section. Any expense covered by a reimbursement under this section shall not be deductible under § 273.10(d)(1)(i). Reimbursements shall be provided as follows:

(A) The actual costs of such dependent care expenses that are determined by the State agency to be necessary for the participation of a household member in the E&T program up to $160 per dependent per month. A dependent care reimbursement shall be provided to an E&T participant for all dependents requiring dependent care unless otherwise prohibited by this section. A reimbursement shall not be provided for a dependent age 13 or older unless the dependent is physically and/or mentally incapable of caring for himself or herself or under court supervision. A reimbursement shall be provided for all dependents who are physically and/or mentally incapable of caring for themselves or who are under court supervision, regardless of age, if dependent care is necessary for the participation of a household member in the E&T program. Verification of the physical and/or mental incapacity shall be obtained for dependents age 13 or older if the physical and/or mental incapacity is questionable. Also, verification of a court imposed requirement for the supervision of a dependent age 13 or older is necessary if the need for dependent care is questionable. If more than one household member is required to participate in an E&T program, the household shall not receive more than the actual cost of dependent care expenses up to $160 per dependent per month (or the optional reimbursement amount above $160 to be paid by the State agency). An individual who is the caretaker relative of a dependent in a family receiving benefits under the AFDC program in a local area where an employment, training, or education program under the AFDC program is in operation, or was in operation on September 19, 1988, is not eligible for such reimbursement. An E&T participant is not entitled to the dependent care reimbursement if a member of the E&T participant's food stamp household provides the dependent care services. The State agency must verify the participant's need for dependent care and the cost of the dependent care prior to the issuance of the reimbursement. The verification must include the name and address of the dependent care provider, the cost and the hours of service, e.g., five hours per day, five days per week for two weeks. A participant may not be reimbursed for dependent care services beyond that which is required for participation in the E&T program. In lieu of providing reimbursements for dependent care expenses, a State agency may arrange for dependent care through providers by the use of purchase of service contracts, by providing vouchers to the household or by other means. A State agency may require that dependent care provided or arranged by the State agency meet all applicable standards of State and local law, including requirements designed to ensure basic health and safety protections, e.g., fire safety. An E&T participant may refuse available appropriate dependent care as provided or arranged by the State agency, if the participant can arrange other dependent care or can show that such refusal will not prevent or interfere with participation in the E&T program as required by the State agency. A State agency may claim 50 percent of actual costs for dependent care services provided or arranged for by the State agency up to $80 per dependent per month in Federal matching funds.

(B) The actual costs of transportation and other costs (excluding dependent care costs) that are determined by the State agency to be necessary and directly related to participation in the E&T program up to $25 per participant per month. Such costs shall be the actual costs of participation unless the State agency has a method approved in its State E&T plan for providing allowances to participants to reflect approximate costs of participation. If a State agency has an approved method to provide allowances rather than reimbursements, it must provide participants an opportunity to claim actual expenses which exceed the standard, up to $25 or such other maximum level of reimbursements which is established by the State agency.

* * * * *

(E) The State agency shall inform all mandatory E&T participants that they may be exempted from E&T participation if their monthly expenses that are reasonably necessary and directly related to participation in the E&T program exceed the allowable reimbursement amount. Persons for whom allowable monthly expenses in an E&T component exceed the amounts specified under paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section shall not be required to participate in that component. These individuals shall be placed, if possible, in another suitable component in which the individual's monthly E&T expenses would not exceed the allowable reimbursable amount paid by the State agency. If a suitable component is not available, these individuals shall be exempted from E&T participation until a suitable component is available or the individual's circumstances change and his/her monthly expenses do not exceed the allowable reimbursable amount paid by the State agency. Individuals exempted because their monthly expenses exceed the allowable reimbursable amounts specified under paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section may volunteer to participate in the E&T program. Volunteers must be informed that their allowable expenses in excess of the reimbursable amounts will not be reimbursed. Dependent care expenses incurred that are otherwise allowable but not reimbursed because they exceed the reimbursable amount specified under paragraph (d)(1)(ii)(B) shall be

considered in determining a dependent care deduction under 7 CFR 273.9(d)(4).

* * * * *

(f) * * *

(1) * * *

(vi) Educational programs or activities to improve basic skills or otherwise improve employability including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program as specified under paragraph (f) of this section. Allowable educational activities may include, but are not limited to, high school or equivalent educational programs, remedial education programs to achieve a basic literacy level, and instructional programs in English as a second language. Only educational components that directly enhance the employability of the participants are allowable. A direct link between the education and job-readiness must be established for a component to be approved.

* * * * *

(g) * * *

(1) *Noncompliance with Food Stamp Program work regulations.* (i) If the State agency determines that an individual other than the head of household as defined in § 273.1(d) has refused or failed without good cause to comply with the requirements imposed by this section and by the State agency, that individual shall be ineligible to participate in the Food Stamp Program for two months, as provided in this paragraph, and shall be considered an ineligible household member, pursuant to § 273.1(b)(2). If the head of household fails to comply, the entire household is ineligible to participate as provided in this paragraph. Ineligibility in both cases shall continue either until the member who caused the violation complies with the requirement as specified in paragraph (h) of this section, leaves the household, becomes exempt from work registration through paragraph (b) of this section, other than through the exemptions of paragraphs (b)(1)(iii) or (b)(1)(v), or for two months, whichever occurs earlier. A household determined to be ineligible due to failure to comply with the provisions of this section may reestablish eligibility if a new and eligible person joins the household as its head of household, as defined in § 273.1(d)(2). If any household member who failed to comply joins another household as head of the household, that entire new household is ineligible for the remainder of the disqualification period. If the member who failed to comply joins another household where he/she is not head of household, the individual shall be considered an ineligible household member pursuant to § 273.1(b)(2).

(ii) The State agency shall develop conciliation procedures to be used upon determining that an individual has refused or failed to comply with an E&T requirement. The purpose of the conciliation effort is to determine the reason(s) the work registrant did not comply with the E&T requirement and provide the noncomplying individual with an opportunity to comply prior to the issuance of the notice of adverse action. The conciliation period shall begin the day following the date the State agency learns of the noncompliance and shall continue for a period not to exceed 30 calendar days. Within this conciliation period, the State agency shall, at a minimum, contact the noncomplying household member to ascertain the reason(s) for the noncompliance and determine whether good cause for the noncompliance exists, as discussed in paragraph (m) of this section. If good cause does not exist, the State agency shall inform the household member of the pertinent E&T requirements and the consequences of failing to comply. The household member shall be informed of the action(s) necessary for compliance and the date by which compliance must be achieved to avoid the notice of adverse action. This date may not exceed the end of the conciliation period. To avoid the notice of adverse action, the noncomplying household member must perform a verifiable act of compliance, such as attending a job search training session or submitting a report of job contacts. Verbal commitment by the household member is not sufficient, unless the household member is prevented from complying by circumstances beyond the household member's control, such as the unavailability of a suitable component. If it is apparent that the individual will not comply (i.e., the individual refuses to comply and does not have good cause), the State agency may end the conciliation period early and proceed with the issuance of the notice of adverse action under paragraph (g)(1)(iii) of this section. The individual's refusal to comply shall be documented in the casefile.

(iii) If the work registrant does not comply during the conciliation period the State agency shall issue a notice of adverse action to the individual or household, as specified in § 273.13, no later than the last day of the conciliation period. If the notice of adverse action is issued prior to the end of the conciliation period, the notice may be cancelled if the State agency is able to verify that compliance was achieved by the end of the conciliation period.

(iv) If an individual refuses or fails to comply with any of the work requirements imposed by this section, other than the E&T requirements, the State agency shall determine whether good cause for the noncompliance exists, as discussed in paragraph (m) of this section. Within ten days of the State agency determining the noncompliance was without good cause, the State agency shall provide the individual or household with a notice of adverse action, as specified in § 273.13.

(v) The notice of adverse action shall contain the particular act of noncompliance committed, the proposed period of disqualification and shall specify that the individual or household may reapply at the end of the disqualification period. Information shall also be included on or with the notice describing the action which can be taken to end or avoid the sanction, and procedures contained in paragraph (h) of this section. The disqualification period shall begin with the first month following the expiration of the ten-day adverse notice period, unless a fair hearing is requested.

(vi) Each individual or household has a right to request a fair hearing, in accordance with § 273.15, to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a State agency determination of failure to comply with the work registration or employment and training requirements of this section. Individuals or households may appeal State agency actions such as exemption status, the type of requirement imposed, or State agency refusal to make a finding of good cause if the individual or household believes that a finding of failure to comply has resulted from improper decisions on these matters. The State agency or its designee operating the relevant component shall receive sufficient advance notice to either permit the attendance of a representative or ensure that a representative will be available for questioning over the phone during the hearing. A representative of the appropriate agency shall be available through one of these means. A household shall be allowed to examine its E&T component casefile at a reasonable time before the date of the fair hearing, except for confidential information (which may include test results) that the agency determines should be protected from release. Confidential information not released to a household may not be used by either party at the hearing. The results of the

fair hearing shall be binding on the State agency.

* * * * *

(o) * * *

(7) * * * The performance standards established for Fiscal Year 1990 shall remain in effect for each subsequent fiscal year until new performance standards are implemented in accordance with the Hunger Prevention Act of 1988 (Pub. L. 100–435).

* * * * *

5. In § 273.9:

a. Paragraph (c)(5)(i)(A) is amended by adding the words ", including reimbursements made to the household under § 273.7(d)(1)(ii)," after the words "flat allowances";

b. A new paragraph (c)(5)(i)(G) is added;

c. Paragraph (c)(5)(ii)(A) is revised; and

d. A new paragraph (c)(15) is added.

The additions and revisions read as follows:

§ 273.9 Income and deductions.

* * * * *

(c) * * *

(5) * * *

(i) * * *

(G) Reimbursements made to the household under § 273.7(d)(1)(ii) for expenses necessary for participation in an education component under the E&T program.

(ii) * * *

(A) No portion of benefits provided under title IV–A of the Social Security Act, to the extent such benefits are attributed to an adjustment for work-related or child care expenses (except for payments or reimbursements for such expenses made under an employment, education or training program initiated under such title after September 19, 1988), shall be considered excludable under this provision.

* * * * *

(15) Any payment made to an E&T participant under § 273.7(d)(1)(ii) for costs that are reasonably necessary and directly related to participation in the E&T program. These costs include, but are not limited to, dependent care costs, transportation, other expenses related to work, training or education, such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs shall not include the cost of meals away from home. Also, the value of any dependent care services provided for or arranged under § 273.7(d)(1)(ii)(A) would be excluded.

* * * * *

Dated: October 16, 1991.

Betty Jo Nelsen,

Administrator.

[FR Doc. 91–25369 Filed 10–23–91; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF ENERGY

10 CFR Part 715

[Docket No. GC-RM-91-101]

Clean Air Act Amendments of 1990; Definition of "Nonrecourse Project-Financed."

AGENCY: Office of the General Counsel, Department of Energy, (DOE).

ACTION: Final rule.

SUMMARY: The DOE today is publishing its final rule defining the term "nonrecourse project-financed" for purposes of section 416(a)(2)(B) of the Clean Air Act Amendments of 1990 ("CAA"). This definition will clarify which entities qualify as "independent power producers," eligible to participate, under title IV's Acid Deposition Control provisions, in the Direct Sale Subaccount and Contingency Guarantee plans. Section 416(a)(2)(B) requires that the Secretary of Energy publish a definition of "nonrecourse project-financed."

EFFECTIVE DATE: November 25, 1991.

FOR FURTHER INFORMATION CONTACT: Lee A. Casey, Office of the General Counsel, GC–15, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–3419.

SUPPLEMENTARY INFORMATION:

I. Background of the Requirement for a Definition of "Nonrecourse Project-Financed"

Title IV of the Clean Air Act Amendments of 1990, 42 U.S.C. 7651 *et seq.*, Acid Deposition Control, imposes a system of limits on the annual emissions of sulfur and nitrogen dioxides from electricity producing power plants. Each existing facility that is covered under title IV—referred to as an "affected unit"—is entitled to a certain number of emissions allowances, based on its baseline emissions and other factors prescribed by Congress. Generally, emissions limitations are phased in and can be met by existing facilities either through actual emissions reductions, or through the purchase of emissions allowances.

New facilities covered by the requirements of title IV generally must obtain the necessary emission allowances from pre-existing facilities to which allowances have been allocated. Congress also provided that the Administrator of the Environmental Protection Agency ("EPA") must establish a Special Reserve of Allowances, including a Direct Sale Subaccount. Allowances from this Direct Sale Subaccount must be periodically offered for sale at a fixed price by the EPA. Sales are to be on a first come, first served basis, except that independent power producers ("IPPs"), electricity producers other than traditional electric utilities, are to have guaranteed access to the special reserve through a priority system which allows IPPs an opportunity to purchase allowances before they are offered to others. This is done to ensure that IPPs are not closed out of the emission allowances market. 42 U.S.C. 7651o(c)(2).

In addition, an eligible IPP may qualify for a "contingency guarantee." New IPP projects are usually "project financed," that is, financing is arranged and based upon the expected returns from power sales from the project, as opposed to being financed on the strength of a company's balance sheet or with recourse to the assets of the company generally. In order to obtain this financing, IPPs ordinarily will have to demonstrate to their prospective lenders that they will have the necessary emission allowances under title IV's acid deposition provisions. An IPP which meets certain statutory requirements will be entitled, under section 416(c)(3), to a written guarantee from the Administrator of EPA, stating that it is eligible to purchase the necessary allowances from the Direct Sale Account at a guaranteed price. This is referred to as a "contingency guarantee." 42 U.S.C. 7651o(c)(3).

Congress intended that only genuine IPPs would be entitled to the benefits offered them under the Direct Sale Subaccount and Contingency Guarantee provisions of title IV. In order to exclude traditional utilities, for whom the best guarantee of their financing commitments is obtained through regulated rates, from the definition of IPP, that definition was expanded to include a requirement—characteristic of most non-utility generating facilities—that such facilities be "nonrecourse project financed." Accordingly, 416(a)(1) of the CAA, 42 U.S.C. 7651o(a)(1), defines "independent power producer" as "any person who owns or operates, in whole or in part, one or more new independent power production facilities," and a "new independent power production facility" is defined as a facility that:

(A) Is used for the generation of electric energy, 80 percent or more of which is sold at wholesale;

(B) Is *nonrecourse project-financed* (as such term is defined by the Secretary of Energy within 3 months of the date of the enactment of the Clean Air Act Amendments of 1990);

(C) Does not generate electric energy sold to any affiliate (as defined in section 2(a)(11) of the Public Utility Holding Company Act of 1935) of the facility's owner or operator unless the owner or operator of the facility demonstrates that it cannot obtain allowances from the affiliate; and

(D) Is a new unit required to hold allowances under this title.

42 U.S.C. 7651o(a)(2)(B) (emphasis added).

Recognizing that the term "nonrecourse project-financed" is a term used in financing projects in various evolving industries which attach various understandings and encompass a wide variety of transactions, Congress instructed the Secretary of Energy to provide a specific definition of "nonrecourse project-financed" for the independent power industry in the context of that industry acquiring allowances under the Act. The term "nonrecourse project-financed" encompasses two related concepts: "Project" and "nonrecourse" financing. The treatment of each concept in the DOE's definition is explained more fully below.

Two common characteristics of virtually all IPP project financing's are security to the lenders in the form of (i) the project assets and (ii) the primary revenue-producing contracts (which for IPPs are the power sale contracts). Accordingly, the definition of "nonrecourse project-financed" provides that an IPP project will qualify as "nonrecourse project-financed" if the project assets, and part or all of the revenues from one or more power sale contracts covering the affected facility, are used as security for the financing. In not requiring that all of a facility's revenues be used as security for the financing, the definition recognizes that not all of the revenues are necessarily used as security for a lender in a typical project financing situation, and that project suppliers, such as fuel transporters, may also use certain facility's revenues as security for the payment of project expenses.

Generally, all financings, even nonrecourse financings, involve recourse to one or more entities or to assets owned by one or more entities. In order to define properly the term "nonrecourse financing," it is therefore necessary to determine against whom the lender will not have recourse. Consistent with the Congress' intent to exclude facilities financed with the general credit available to traditional electric utilities, the definition expressly excludes financings which provide for recourse to an electric utility with a retail service territory or a public utility as defined in section 201(e) of the Federal Power Act if any of its facilities are financed with general credit. Whether a utility has a retail service territory can be determined by reference to state or local law. The definition makes clear, however, that an equity contribution, or a commitment to make an equity contribution, by a traditional utility in connection with a financing of a facility is not an obligation to repay debt, and thus would not disqualify a financing from being nonrecourse.

At the same time, the definition also would make clear that a project financed entirely through equity investment, without incurring "debt," would not on that account alone be disqualified from being "nonrecourse project-financed" for purposes of section 416, and thus excluded from the definition of independent power producer under section 416(a)(2)(B). While "nonrecourse project-financed" is not ordinarily understood to mean equity financed, the definition provides that a 100 percent equity financed project can be considered "nonrecourse project-financed" for section 416 purposes in order to effectuate Congress' intent that non-traditional power producers can obtain guaranteed access to the necessary allowances under title IV, even if the producer does not have to borrow funds to construct the facility.

In addition, the definition of "nonrecourse" also makes clear that limited undertakings by the facility's owners, or other project participants, such as commitments to pay cost overruns, limited guarantees, indemnity provisions and the like, will not disqualify a financing from being "nonrecourse," so long as at the time of a financing a borrower expects that the repayment of the principal debt incurred to finance the facility's construction, referred to as the "term debt" in the definition, will be made from revenues generated by the facility.

Finally, the definition would make clear that it is for purposes of section 416(a)(2)(B) only, and that it will not alter or impact the tax treatment of any IPP or IPP project under the Internal Revenue Code and regulations.

A public hearing on the DOE proposed rule defining "nonrecourse project-financed" was held on March 19, 1991, at 9:30 a.m., in room 1E, U.S. Department of Energy, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585. There were no requests to testify, and no oral statements were received from the public. The comment period for written comments on the proposed rule defining "nonrecourse project-financed" closed April 1, 1991. Only two written comments from the public were received. Both supported the proposed definition as published, and neither suggested any changes to be incorporated into the final rule. DOE also received a comment from the Federal Energy Regulatory Commission recommending some minor editorial changes and insertion of a cross-reference to the definition of "public utility" in section 201(e) of the Federal Power Act, as amended, 16 U.S.C. 824(e), in order to clarify which traditional utilities are excluded. DOE followed these recommendations because they were largely technical changes which did not substantively and significantly alter the proposed rule.

II. Environmental Review

Section 7(c)(1) of the Energy Supply and Environmental Coordination Act of 1974, Public Law No. 93–319 (codified at 15 U.S.C. 791 *et seq.*) provides: "No action taken under the Clean Air Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969." Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required for the final rule.

III. Review Under Executive Order 12291

The final rule has been reviewed in accordance with Executive Order 12291, which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments. The Executive Order also requires that regulatory impact analyses be prepared for "major rules." The Executive Order defines "major rule" as any regulations that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, and local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

The final rule would provide a congressionally required component of the statutory definition of independent power production facility, in turn, a

necessary component of the statutory definition of independent power producer. DOE has determined that the effect of today's final rule will not have the magnitude of effects on the economy to bring the rule within the definition of "major rule."

Pursuant to the Executive Order, the final rule was submitted to the Office of Management and Budget for pre-publication regulatory review.

IV. Review Under Executive Order 12612

Executive Order 12612 requires that rules be reviewed for Federalism effects on the institutional interests of States and local governments, and if the effects are sufficiently substantial, preparation of a Federalism assessment is required to assist senior policymakers. DOE believes that this rule will not have any substantial direct effects on State and local governments.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act, Public Law 96–345 (5 U.S.C. 601–612), requires that an agency prepare a Regulatory Flexibility Analyses for all rules that are likely to have a "significant impact on a substantial number of small entities."

The final rule would provide a congressionally required component of the statutory definition of independent power production facility, in turn, a necessary component of the statutory definition of independent power producer. Because the definition of "nonrecourse project-financed" will have no direct economic impact upon small entities, whatever impacts there may be will be beneficial, and the Contingency Guarantee Program is entirely voluntary, DOE has determined that this rule will not have a "significant economic impact on a substantial number of small entities."

List of Subjects in 10 CFR Part 715

Electric power plants, Air pollution control.

Issued in Washington, DC, October 9, 1991.

John J. Easton,

General Counsel.

For the reasons set forth in the preamble, part 715 is added to chapter III of title 10, Code of Federal Regulations as follows:

PART 715—DEFINITION OF NONRECOURSE PROJECT-FINANCED

Sec.

Authority: 42 U.S.C. 7651o(a)(2)(B); 42 U.S.C. 7254.

§ 715.1 Purpose and scope.

This part sets forth the definition of "nonrecourse project-financed" as that term is used to define "new independent power production facility," in section 416(a)(2)(B) of the Clean Air Act Amendments of 1990, 42 U.S.C. 7651o(a)(2)(B). This definition is for purposes of section 416(a)(2)(B) only. It is not intended to alter or impact the tax treatment of any facility or facility owner under the Internal Revenue Code and regulations.

§ 715.2 Definitions.

As used in this subpart—

Act means the Clean Air Act Amendments of 1990, 104 Stat. 2399.

Facility means a "new independent power production facility" as that term is used in the Act, 42 U.S.C. 7651o(a)(2).

715.3 Definition of "Nonrecourse Project-Financed"

Nonrecourse project-financed means when being financed by any debt, such debt is secured by the assets financed and the revenues received by the facility being financed including, but not limited to, part or all of the revenues received under one or more agreements for the sale of the electric output from the facility, and which neither an electric utility with a retail service territory, nor a public utility as defined by section 201(e) of the Federal Power Act, as amended, 16 U.S.C. 824(e), if any of its facilities are financed with general credit, is obligated to repay in whole or in part. A commitment to contribute equity or the contribution of equity to a facility by an electric utility shall not be considered an obligation of such utility to repay the debt of a facility. The existence of limited guarantees, commitments to pay for cost overruns, indemnity provisions, or other similar undertakings or assurances by the facility's owners or other project participants will not disqualify a facility from being "nonrecourse project-financed" as long as, at the time of the financing for the facility, the borrower is obligated to make repayment of the term debt from the revenues generated by the facility, rather than from other sources of funds. Projects that are 100 percent equity financed are also considered "nonrecourse project-financed" for purposes of section 416(a)(2)(B).

[FR Doc. 91–25523 Filed 10–23–91; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–CE–71–AD; Amendment 39–7099; AD 91–17–01]

Airworthiness Directives; Beech 33, 34, 36, 45, 55, 56, 58, and 95 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Beech 33, 34, 36, 45, 55, 56, 58, and 95 series airplanes. This action requires painting contrasting colors on certain parts of the elevator trim tab actuators and horizontal stabilizer spars to prevent interchange of the right-hand and left-hand elevator trim tab actuators. There have been two fatal accidents reported in which the actuators were reversed following maintenance. The actions specified by this AD are intended to prevent loss of control of the airplane because of interchanging the right-hand and left-hand trim tab actuators.

DATES: Effective November 25, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 25, 1991.

ADDRESSES: Beech Service Bulletin No. 2399, dated March 1991, that is discussed in this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4122.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Beech 33, 34, 35, 36, 45, 55, 56, 58, and 95 series airplanes was published in the Federal Register on April 11, 1991 (56 FR 14661). The action proposed painting contrasting colors on certain parts of the elevator trim tab housings and horizontal stabilizer bars to prevent loss of control of the airplane because of

interchanging the right-hand and left-hand trim tab actuators.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter, who owns a Beech Bonanza aircraft, objects to the proposed AD. The commenter states that the AD does not ensure that the FAA-certified mechanics will use the right color paint. The commenter proposes that the mechanics get endorsements to work on Beech products. The FAA has determined that the commenter should ensure that the Airframe and Powerplant (A&P) inspector use the color paint that is called out in the AD and ensure that the A&P inspector is authorized to work on products of the type that the commenter owns.

One commenter is in favor of the AD. Another commenter is in favor of the AD but recommends that the FAA also require that the left-hand actuators be of a different design than the right-hand actuators to make interchange impossible. The manufacturer is in fact considering a redesign of the actuators to prevent inadvertent interchange in future production airplanes. The FAA has determined that retrofit of units now in service is considered unnecessary and that color-coding the trim tab actuator housings and horizontal stabilizer bars is adequate to prevent reversal of the actuators.

The manufacturer, Beech, comments that Beech Service Bulletin (SB) No. 2399 was not mentioned in the proposed AD and, that without reference to the SB, the AD misses important information on checking an actuator to see if it is a left or right actuator and how to check the installation for proper operation. When the proposed AD was drafted, Beech SB No. 2399 was not available so the FAA had no way of incorporating it in the AD. After careful review, the FAA has determined that the procedures presented in Beech SB No. 2399 add information that may be helpful in ensuring proper operation of the trim tab actuators. Therefore, the FAA is incorporating Beech SB No. 2399 in the AD.

Beech comments that the preamble of the proposed AD lists the 35 series airplanes and that these airplanes are not be affected. The FAA concurs and has removed all reference to the Beech 35 series airplanes from the preamble of the AD. The 35 series airplanes are not reflected in the economic analysis paragraph in the preamble nor the Applicability paragraph in the AD.

Beech also points out a minor difference between the proposed AD and Beech SB No. 2399 in regard to the location of the paint stripe on the stabilizer rear spar. The proposed AD is specific in requiring the stripe be .25 inches away from the elevator trim tab actuator end plate. Beech SB No. 2399 specifies that this stripe should be next to the elevator trim tab actuator end plate. Beech requests the proposed AD be changed to correspond with the service bulletin. The FAA concurs and has changed the AD accordingly. In addition, since Figure 1 of Beech SB No. 2399 is almost a direct replica of Figure 1 in the proposed AD, the final rule now references Figure 1 in Beech SB No. 2399.

Beech also recommends that the compliance be at the next annual inspection instead of within the next 100 hours time-in-service (TIS) as proposed. The FAA has no way of knowing when the next annual inspection for all aircraft is and has determined that the proposed AD action should not be so changed. However, the FAA has reevaluated the proposed compliance time and determined that, because of the nature of this situation and the operator-need for flexibility in accomplishing the required actions, the compliance time should be changed to be accomplished at the next time the actuators are removed for any reason but not later than 12 calendar months from the effective date of the AD.

The applicability section of the proposed AD incorrectly listed Model A45 airplanes from serial number CG–1 through CG–57. The serial numbers should be CG–1 through CG–47. The final rule reflects this change.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described and minor editorial corrections. The FAA has determined that these changes will neither significantly increase the economic burden on any operator, nor increase the scope of the AD.

It is estimated that 13,422 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $20 per airplane. Based on these figures, the maximum total cost impact of the AD on U.S. operators is estimated to be $1,744,860. Because of the change to the compliance requirements discussed above, most operators will be able to perform this action during regularly scheduled maintenance, thus reducing the cost per airplane per operator.

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.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

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

Adoption of the amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

AD 91–17–01 Beech: Amendment 39–7099; Docket No. 90–CE–71–AD.

Applicability: The following Model airplanes, certificated in any category:

Models	Serial Nos.
35–33, 35–A33, 35–B33, 35–C33, E33, F33, G33.	CD–1 through CD–981 and CD–983 through CD–1304.
35–C33A, E33A, F33A..	CE–1 through CE–235, CE–249, CE–250, CE–256, CE–260, CE–264 through CE–268, and CE–270 through CE–1565.

Models	Serial Nos.
E33C, F33C	CJ–1 through CJ–179.
36, A36	E–1 through E–2103, E–2105 through E–2110.
A36TC, B36TC	EA–1 through EA–319, and EA–321 through EA–388.
T34C–1	GM–1 through GM–142.
34C	GP–1 through GP–50.
T–34C	GL–1 through GL–353.
45	G–3 through G–6.
A45	G–7 through G–156, G–257 through G–306, G–696 through G–845, CG–1 through CG–47, CG–58 through CG–60, CG–68, CG–73, CG–75, CG–78, CG–79, CG–105, CG–106, CG–108, CG–111 through CG–179, CG–200 through CG–223, CG–279 through CG–319.
D45	BG–1 through BG–423.
95	TD–2 through TD–302.
B95	TD–303 through TD–452.
B95A	TD–453 through TD–533.
D95A	TD–534 through TD–707.
E95	TD–708 through TD–721.
95–55	TC–1 through TC–190.
95–A55	TC–191 through TC–349, TC–351 through TC–370, and TC–372 through TC–501.
95–B55, 95–B55A	TC–371, TC–502 through TC–2456.
95–C55	TC–350.
95–C55A	TE–1 through TE–49, and TE–51 through TE–451.
D55, D55A	TE–452 through TE–767.
E55, E55A	TE–768 through TE–1201.
56TC	TG–2 through TG–83.
A56TC	TG–84 through TG–94.
58, 58A	TH–1 through TH–1388, and TH–1390 through TH–1395.
58P, 58PA	TJ–3 through TJ–435, and TJ–437 through TJ–443.
58TC, 58TCA	TK–1 through TK–150.

Compliance: Required the next time the elevator trim tab actuators are removed for any reason, but no later than 12 calendar months after the effective date of this AD, unless already accomplished.

To prevent loss of control of the airplane because of interchanging the right-hand and left-hand elevator trim tab actuators, accomplish the following:

(a) Paint a stripe on each stabilizer rear spar (right-hand black; and left-hand blue) in accordance with the Accomplishment Instructions of Beech Service Bulletin No. 2399, dated March 1991.

(b) Remove the cover over the actuator inspection hole on each stabilizer and paint the inspection hole ledges (right-hand black; and left-hand blue) in accordance with the Accomplishment Instructions of Beech Service Bulletin No. 2399, dated March 1991.

(c) Paint a stripe .50 by 1 inch on each actuator housing through the inspection holes (right-hand black; and left-hand blue) in accordance with the Accomplishment Instructions in Beech Service Bulletin No. 2399, dated March 1991. Actuators must not be removed to paint the .50 by 1 inch stripe on the housing.

Note: A left-hand trim tab actuator will have threads on its actuator screw that will rotate clockwise when screwed into the actuator assembly, and a right-hand trim tab actuator will have threads on its actuator screw that will rotate counterclockwise when screwed into the actuator assembly.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(f) The modification required by this AD shall be done in accordance with Beech Service Bulletin No. 2399, dated March 1991. 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 Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment becomes effective on November 25, 1991.

Issued in Kansas City, Missouri, on September 20, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–25588 Filed 10–23–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–NM–213–AD; Amendment 39–8069, AD 91–22–09]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With Pratt and Whitney PW4000 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Boeing Model 767 series airplanes, equipped with Pratt and Whitney PW4000 series engines, which currently requires deactivation of the thrust reverser system. That action was prompted by the possibility that contamination of the hydraulic directional control valve could result in the uncommanded deployment of a thrust reverser. Uncommanded deployment of a thrust reverser during flight could result in reduced controllability of the airplane. This amendment requires modification of the thrust reverser control system to improve the safeguards against uncommanded deployment of a thrust reverser, and subsequent reactivation of the thrust reversers.

DATES: Effective November 8, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 8, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Simonson, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S; telephone (206) 227–2683. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: On August 23, 1991, the FAA issued telegraphic AD T91–18–51, to require deactivation of the thrust reverser systems of Model 767 airplanes equipped with Pratt and Whitney PW4000 series engines. That action was prompted by the possibility that

contamination of the hydraulic directional control valve could result in the uncommanded deployment of a thrust reverser. An uncommanded deployment of a thrust reverser during flight could result in reduced controllability of the airplane. While deactivation of thrust reversers eliminates the potential for uncommanded deployment, it also has the undesirable effect of eliminating the margin of safety provided by them during takeoff and landing, particularly on wet or contaminated runways.

Since issuance of that AD, Boeing has developed, and the FAA has approved, a modification of the thrust reverser control system that eliminates the vulnerability of the original system to contamination, and further enhances the level of safety of the thrust reverser system. The modification involves: (1) Installation of an independent stow and restow system of the thrust reverser hydraulic system, (2) addition of an additional hydraulic isolation valve, and (3) modification of the electrical control system to make it less susceptible to electrical shorts induced by wire bundle chafing.

The FAA has reviewed and approved Boeing Service Bulletin 767–78–0051, dated October 9, 1991, which describes the procedures for accomplishing the modification described above.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD supersedes telegraphic AD T91–18–51 to require modification and reactivation of the thrust reverser system, in accordance with the service bulletin previously described.

This is considered an interim action until final action is identified, at which time the FAA may consider further rulemaking.

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

The 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, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

91–22–09 Boeing: Amendment 39–8069. Docket No. 91–NM–213–AD. Supersedes telegraphic AD T91–18–51, issued August 23, 1991.

Applicability: Model 767 series airplanes equipped with Pratt and Whitney PW4000 series engines, listed in Boeing Service Bulletin 767–78–0051, dated October 9, 1991, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent potential in-flight thrust reverser deployment, accomplish the following:

(a) Within 7 days after the receipt of telegraphic AD T91–18–51, issued August 23, 1991, accomplish the following:

(1) Deactivate both left and right thrust reversers in accordance with Section 78–31–1 of Boeing Document D630T002, "Boeing 767 Dispatch Deviation Guide," Revision 9, dated May 1, 1991.

(2) Add the following to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by placing a copy of this AD in the AFM.

Reduce by five percent the available accelerate-stop distance resulting from the Airplane Flight Manual takeoff performance analysis when the runway is wet or contaminated.

(b) Within 60 days after the effective date of this amendment, modify the thrust reverser system in accordance with Boeing Service Bulletin 767–78–0051, dated October 9, 1991. Once this modification is accomplished, the thrust reverser system must be re-activated, and the AFM limitation required by paragraph (a)(2) of this AD may be removed.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(e) The modification requirement shall be done in accordance with Boeing Service Bulletin 767–78–0051, dated October 9, 1991. The deactivation requirement shall be done in accordance with Boeing Document D630T002, "Boeing 767 Dispatch Deviation Guide," Revision 9, Section 78–31–1, dated May 1, 1991, which includes the following list of effective pages:

Page No.	Date
2–78–31–1.0	May 1, 1991.
2–78–31–1.1	August 15, 1989.
2–78–31–1.2, 2–78–31–1.3, 2–78–31–1.4, 2–78–31–1.6.	
2–78–31–1.5	June 29, 1990.
2–78–31–1.7	December 14,
2–78–31–1.8, 2–78–31–1.9.	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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment supersedes AD T91–18–51, issued August 23, 1991.

This amendment (39–8069, AD 91–22–09) becomes effective November 8, 1991.

Issued in Renton, Washington, on October 11, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–25587 Filed 10–23–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 772, 773, and 787

[Docket No. 910933-1233]

Special Licensing Procedure for Chemicals and Chemical and Biological Equipment

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Export Administration Regulations (EAR) by adding a new § 773.9, Special Chemical License, that authorizes exports of certain chemicals and chemical and biological equipment described in § 778.8 to approved consignees in Country Groups Q, T, V, W, and Y (except Iran, Iraq, and Syria). To be approved under this procedure, a consignee must be a subsidiary or other affiliate under the effective control of the U.S. exporter. Consignees who import commodities under this procedure are prohibited from reselling or transferring the commodities or reexporting them to any destination that requires a validated license, without prior written authorization from the Office of Export Licensing.

The availability of this special licensing procedure will decrease the paperwork burden on exporters by reducing the number of license applications that they will have to submit. While exporters will still have to obtain a validated license for these commodities, the Special Chemical License procedure provides them with a less burdensome alternative to obtaining individual validated licenses. In addition, the retention of a validated licensing requirement will ensure that effective export controls are maintained on these commodities.

DATES: This rule is effective January 22, 1992.

Comments must be received by November 25, 1991.

ADDRESSES: Written comments (six copies) should be sent to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Marc Kron, Office of Export Licensing, Bureau of Export Administration, Telephone: (202) 377-3287.

SUPPLEMENTARY INFORMATION:

Background

On March 13, 1991, the Department of Commerce published two interim rules in the **Federal Register** (56 FR 10756). One rule amended the Export Administration Regulations (EAR) by expanding the number of countries for which a validated license is required to export thirty-nine precursor chemicals. Under that rule the thirty-nine chemicals were added to ECCN 4798B, which has since been replaced by Export Control Classification Number (ECCN) 1C60C on the Commerce Control List (CCL), Supplement No. 1 to § 799.1 of the EAR. ECCN 1C60C requires a validated license for export and reexport to all destinations except NATO member countries, Australia, Austria, Ireland, Japan, New Zealand, and Switzerland. Prior to March 13, 1991, these chemicals were controlled under ECCN 5798F and required a validated license only for export to Country Groups S and Z, Iran, Iraq, Syria and military and police entities in the Republic of South Africa. A second interim rule amended the EAR to impose a validated licensing requirement on exports of certain dual-use equipment that could be used to produce chemicals controlled by ECCN 4798B (currently 1C60C) on the CCL, biological agents controlled by ECCN 4997B or 4998B (currently 1C61B) on the CCL, or chemical or biological warfare agents controlled under the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130). Effective with the publication of that rule such dual-use equipment required a validated license for export or reexport to Country Groups S and Z and the regions and countries listed in supplement No. 5 to part 778. Twelve ECCNs were added to the CCL to describe the equipment subject to these new validated licensing controls.

Both interim rules addressed some of the measures called for in the December 13, 1990, Enhanced Proliferation Control Initiative (EPCI) and included in Executive Order 12735 of November 16, 1990, on Chemical and Biological Weapons Proliferation.

Being fully aware of the substantial increase in validated licensing requirements effected by these two rules, yet mindful of the importance of maintaining effective export controls on items of concern for chemical and biological weapons production, the Bureau of Export Administration (BXA) is establishing a Special Chemical License procedure to permit exports of certain chemicals and chemical and biological equipment described in § 778.8 of the EAR.

This new special licensing procedure will allow approved U.S. exporters to make multiple shipments of these chemicals and chemical and biological equipment to their subsidiaries or other affiliates under their effective control. The Special Chemical License procedure will reduce the number of individual validated license applications that will have to be filed, thereby reducing the paperwork burden on exporters. At the same time, the procedure will maintain effective licensing requirements on these items, which are subject to U.S. foreign policy controls in support of U.S. nonproliferation policies.

Specifically, this interim rule amends the EAR by adding a new § 773.9, Special Chemical License, that authorizes exports of the following commodities to approved consignees located in Country Groups Q, T, V, W, and Y (except Iran, Iraq, and Syria):

(1) Precursor and intermediate chemicals controlled under ECCNs 1C60C and 1C64E; and

(2) Chemical and biological equipment controlled under ECCNs 1B70E, 1B71E, and 1C65E.

To be approved under this special licensing procedure, a consignee must be a subsidiary or other affiliate of the U.S. exporter who is applying for the license. When submitting an application to OEL, the exporter must include a list of controlled consignees designated to import commodities under the Special Chemical License procedure, indicating the extent of control by the exporter. In addition, three copies of Form BXA-6052P, bearing the original signature of the consignee, must be submitted for each consignee included on the list.

This special license procedure prohibits consignees from reselling, transferring, or reexporting commodities imported under a Special Chemical License except to end-users approved on the license or to destinations for which a validated license is not required. Exporters who wish to obtain authorization from OEL for their consignees to resell, transfer, or reexport commodities imported under a Special Chemical License must include, with the application, a list of end-users for each such consignee. Only actual end-users are to be included on this list; customers who would resell, transfer, or reexport the commodities are not eligible.

In order to add new consignees or end-users to a Special Chemical License, the license holder must submit an amendment to OEL. Each Special Chemical License will be valid for an initial two-year period and may be extended once by amendment for an

additional two-year period. Thereafter, a new application must be submitted, and the resulting license will be valid for four years.

The license holder, the approved consignees, and the end-users must maintain records of all transactions under a Special Chemical License in accordance with the recordkeeping requirements of § 787.13 of the EAR. The license holder and any approved consignees may be requested to produce records of transactions conducted under the Special Chemical License procedure for inspection and copying by an authorized agent, official, or employee of the Bureau of Export Administration, the U.S. Customs Service, or the U.S. Government in accordance with the provisions of § 787.13(f). Failure to comply with the requirements of the Special Chemical License may result in administrative and other actions as described in § 773.1(f).

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0007, and 0694–0050. This rule also imposes new reporting and recordkeeping requirements that have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act. Public burden for the uncleared requirements is estimated to average 15 hours. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing this burden, to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503—ATTN: Paperwork Reduction Project (0694–XXXX).

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

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

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

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

The period for submission of comments will close November 25, 1991. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–5653.

List of Subjects

15 CFR Parts 772 and 773

Exports, Reporting and recordkeeping requirements.

15 CFR Part 787

Boycotts, Exports, Law enforcement, Penalties, Reporting and recordkeeping requirements.

Accordingly, parts 772, 773, and 787 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

The authority citations for 15 CFR parts 772 and 787 are revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626, (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 141 (42 U.S.C. 2139(a)); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990).

2. The authority citation for 15 CFR part 773 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); Pub. L. 95–223, 91 Stat. 1626, (50 U.S.C. 1701 *et seq.*); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990).

PART 772—[AMENDED]

3. Section 772.2 is amended by adding a new paragraph (b)(7) to read as follows:

§ 772.2 Types of validated licenses.

* * * * *

(b) * * *

(7) A "Special Chemical License" (§ 773.9 of this subchapter) authorizes the shipment by approved exporters of certain chemicals and chemical and biological equipment to approved consignees in Country Groups Q, T, V, W, and Y (except Iran, Iraq, and Syria)

during a two-year period. Licenses may be extended once by amendment for a second two-year period. The consignee must be a subsidiary or other affiliate that is under the effective control of the U.S. exporter. Consignees are prohibited from reselling, transfering, or reexporting commodities received under this license unless specifically authorized by the Office of Export Licensing (OEL).

PART 773—[AMENDED]

4. A new § 773.9 is added to read as follows:

§ 773.9 Special Chemical License.

A Special Chemical License procedure is established that authorizes exports of certain chemicals and chemical and biological equipment described in § 778.8 of this subchapter. This procedure is intended to provide parties who ship significant amounts of these commodities with an alternative to filing applications for individual validated licenses, when exporting to their controlled subsidiaries or affiliates abroad.

(a) *Eligible commodities.* The following commodities may be authorized for export or reexport under § 773.9:

(1) Precursor and intermediate chemicals controlled under ECCNs 1C60C and 1C64E; and

(2) Chemical and biological equipment controlled under ECCNs 1B70E, 1B71E, and 1C65E.

(b) *Eligible destinations.* Exports and reexports may be authorized under § 773.9 to any destination except Country Groups S and Z, Iran, Iraq, and Syria.

(c) *Qualification of applicants.* There is not an automatic privilege to participate in this procedure. Only those firms that demonstrate the ability to adhere to the requirements of this procedure may participate. Among the factors that OEL will consider in evaluating the qualifications of applicants are the following:

(1) Whether there is adverse information on the applicant's compliance with U.S. export controls;

(2) Whether the applicant demonstrates sufficient knowledge and expertise in applying the provisions of this subchapter (the Export Administration Regulations);

(3) Whether the applicant demonstrates that there is a sufficient volume of business with the consignees identified on the application to justify the use of this Special Chemical License procedure.

(d) *Eligibility requirements for consignees and their customers.*—(1) *Specific authorization by OEL required to establish eligibility.*—(i) *Exports.* Exports under § 773.9 may be made only to consignees specifically authorized by the Office of Export Licensing (OEL) to import commodities under this special licensing procedure. Commodities exported under this procedure must be solely for use or consumption by the authorized consignee, except where OEL specifically authorizes the consignee to resell, transfer, or reexport such commodities. Paragraph (e)(1)(iii) of this section requires license applicants to submit to OEL a list of consignees designated to import commodities under this procedure.

(ii) *Resales, transfers, or reexports.* Consignees who import commodities under this special licensing procedure are prohibited from reselling or transferring the commodities, or reexporting them to a destination that requires a validated license, unless they have received prior written authorization from OEL. Applicants who wish to obtain such authorization for their consignees are required by paragraph (e)(1)(iv) of this section to submit a separate list of end-users for each consignee who intends to resell, transfer, or reexport commodities that have been imported under this procedure. Only actual end-users may be identified; this Special Chemical License does not authorize transfers from a consignee to a party that will resell, transfer, or reexport the commodities.

(2) *Eligible consignees.* To be approved under this procedure, a consignee must be a subsidiary or other affiliate that is under the effective control of the U.S. exporter. "Effective control" consists of the authority, ability, and intent of the U.S. exporter to establish the general policies or to control the day-to-day operations of the consignee in a manner that will ensure compliance with the requirements of the license.

(e) *Application procedures—(1) Documents required.* Each application to export or reexport commodities under § 773.9 must include the following documents:

(i) Form BXA–622P, Application for Export License.

(ii) Form BXA–6052P, Statement by Foreign Consignee in Support of Special License Application in triplicate. This form must be submitted for each foreign consignee—this form is not required for customers of foreign consignees. Insert "Special Chemical License" in Item 2 of the form.

(iii) List of controlled foreign consignees designated to import commodities under this procedure, indicating the extent of control by the applicant.

(iv) List of end-users to whom the commodities exported under this procedure will be resold, transferred, or reexported by the foreign consignees. A separate list of end-users is required for each foreign consignee who intends to resell, transfer, or reexport commodities that were imported under this procedure. The list should be in triplicate, on letterhead, attached to the consignee's Form BXA–6052P.

(2) *Preparation of documents*—(i) *Form BXA–622P, Application for Export License.* The applicant shall prepare and submit the application in accordance with the provisions of § 772.4 of this subchapter, except that the applicant shall follow the instructions furnished in Supplement No. 5 to part 773. The instructions for certain items in Supplement No. 5 to part 773 are not appropriate for this Special Chemical License procedure. Applicants should use the following instructions, instead:

(A) Item 4: Enter, "Special Chemical License".

(B) Item 6: Enter "See Attached List" and label the attached list as "Attachment Item 6: Consignees". The list must include each consignee alphabetically by country. Complete addresses (city, street, etc.) must be furnished for each consignee. Post Office boxes are not acceptable. This list must be submitted in duplicate. The extent of control by the applicant must be indicated for each consignee on this list.

(C) Item 9(b): (*1*) Enter "See Attached List" and label the attached list as "Attachment Item 9(b): Product Description". List the commodities proposed for export under the license in estimated descending order based on the anticipated export volume by value and indicate the appropriate Export Control Commodity Number (ECCN) from the Commodity Control List (CCL) for each commodity. This list should be provided in duplicate or on Form BXA–622P–A.

(*2*) Enter the following statement at the bottom of the attachment to Item 9(b):

> Except as authorized by OEL, commodities excluded from the Special Chemical License procedure set forth in § 773.9, or excluded under this license, will not be exported to any consignee in any destination under this license.

(ii) *Form BXA–6052P, Statement by Foreign Consignee in Support of Special License Application.* Form BXA–6052P should be completed in accordance with the instructions contained in supplement No. 6 to part 773, except that the phrase

"Special Chemical License" should be inserted in Item 2 and a list of actual end-users and their addresses must be provided where Item 5 calls for a list of countries. Each consignee must sign a Form BXA–6052P. Three originals (or single sheet copies printed back-to-back) of Form BXA–6052P shall be manually signed by the consignee or by a responsible official of the consignee who is authorized to bind the consignee to all of the items, undertakings, and commitments set forth on the Form. All copies shall be co-signed by the applicant and submitted with the application to OEL. Each Form BXA–6052P shall contain the following information or certifications on the form or on an attachment to the form, as appropriate:

(A) Notice restricting transfer, resale, or reexport. Each Form BXA–6052P shall include a certification that no commodities received under the license will be transferred or resold, or reexported to a destination that requires a validated license, unless the new party (end-user) has been approved by OEL, and that in no case will the commodities be transferred, resold, or reexported to a party who is not, in fact, the end-user.

(B) Each consignee must describe the scope of activities under the license in sufficient detail for OEL to determine whether the commodities imported under the license are intended for use or consumption by the consignee only, for transfer or resale, or both. If any of the commodities are intended for transfer or resale, the consignee must attach a complete list of end-users (and their complete addresses) to whom the commodities will be transferred or resold.

(f) *Action on applications*—(1) *Approval of applications.* When an application or a portion of an application is approved under this procedure, the Office of Export Licensing will issue an export license authorizing the export of commodities covered during the validity period, subject to the provisions of the Export Administration Regulations and to the terms and provisions of the license.

(i) *Validity period.* Licenses authorizing exports under § 773.9 will be valid for two years from the last day of the month in which they are issued and may be extended once by amendment for a two-year period. Thereafter, a new application must be submitted. If approved, it will be valid for four years.

(ii) *License number.* The license number will be indicated immediately below the validation stamp. The license number will consist of the letters "SC" followed by four digits. Each consignee is then given a three-digit designation number. The "SC" license number and the three-digit consignee designation number are noted on the validated BXA–6051P forms. The license authorization number for exports to consignees is the combination of the four-digit "SC" number and the three-digit consignee designation number. Exporters are required to use the complete license number when preparing Shipper's Export Declarations or other export documents or when communicating (after issuance) with the Office of Export Licensing.

(2) *Applications returned without action.* When an application is returned without action, the application, together with related documents, will be returned to the applicant with Form BXA–651, Advice on Application Returned Without Action (RWA). This document will state the reason for return of the license application and will explain the deficiencies or additional information required for OEL to reconsider the application. Resubmissions must be made within 120 days of the RWA to be considered. Thereafter, a new application will be required.

(3) *Rejected applications.* When the Office of Export Licensing intends to reject an application, it will notify the applicant in writing and give the reasons for the intended rejection in accordance with the provisions of § 770.13(j) of this subchapter. The applicant may apply for an individual or other appropriate type of validated license for transactions that would have been covered by the rejected license application.

(g) *Action on Form BXA–6052P*—(1) *Approval.* Concurrently with the approval of a license application under § 773.9 or the approval of an amendment adding a consignee, two validated copies will be sent to the license holder. One copy is to be retained by the license holder and one copy is to be sent by the license holder to the approved consignee.

(2) *Rejection.* If a consignee is not approved, the Form will be returned to the applicant/license holder with a rider stating the reason for this action.

(3) *Notice to approved consignee.* A letter of transmittal for each approved Form BXA–6052P must be sent by the exporter to each approved consignee and must include (or have attached) the following:

(i) A description of recordkeeping requirements applicable to the activities of the consignee;

(ii) Information to each consignee authorized to transfer, resell, or reexport on the approved Form BXA–6052P of the restrictions on any commodities imported under the license, including the approved list of end-users eligible to receive such commodities; and

(iii) A description of any special conditions or restrictions on the license applicable to the consignee.

(h) *Amendments*—(1) *Forms.* All requests for amendment of licenses issued under § 773.9 must be submitted on Form BXA–685P, Request for Amendment Action, in accordance with the requirements of § 772.11 of this subchapter.

(2) *Changes that require an amendment*—(i) *Extension of validity period.* A license issued under § 773.9 is valid for two years. The validity period may be extended for an additional two years by submitting Form BXA–685P, and the following certification:

> I (we) certify that all the facts and intentions set forth in our previously submitted application remain the same except (enter the word "none" or specify the changes).

(ii) *Addition of consignees.* If the license holder wishes to add a new consignee, a Form BXA–6052P must be submitted with the Form BXA–685P, in accordance with § 772.11 of this subchapter.

(iii) *Deletion of consignees.* The license holder may amend a license issued under this section to remove one or more consignees.

(iv) *Change of name*—(A) *License holder.* If the license holder changes the firm name, the change must be submitted on Form BXA–685P. The license holder must send a copy of the newly validated Form BXA–685P to all consignees and inform them to attach the copy to their validated Form BXA–6052P.

(B) *Consignee.* If a consignee changes its name, the license holder must submit the change on Form BXA–685P to be accompanied by a new Form BXA–6052P from the consignee.

(v) *Change of address.* If a consignee moves from one country to another, the license holder must submit Form BXA–685P, indicating the new address, and a new Form BXA–6052P showing the new address.

(vi) *Adding new commodities.* A license holder must submit Form BXA–685P to request the addition of commodities not covered by the license application or previous amendments thereto.

(vii) *Addition of new end-users.* When a consignee of the license holder wishes to add new end-users, the license holder must submit Form BXA–685P identifying the new end-users.

(i) *Export clearance*—(1) *Value of shipments.* There is no value limitation

on shipments under the Special Chemical License procedure. However, the value of each shipment must be shown on the Shipper's Export Declaration.

(2) *Shipper's Export Declaration.* The Shipper's Export Declaration covering an export made under a Special Chemical License shall be prepared in accordance with standard instructions. Although the Special Chemical License may describe the commodities in broad terms, commodity descriptions on the Declaration shall be specific.

(i) The description shall: (A) Conform to the applicable Commodity Control List description, and cite the Export Control Commodity Number in parentheses beneath the Schedule B number;

(B) Incorporate any additional information where required by Schedule B (e.g., the type, size, or name of the specific commodity).

(ii) Firms authorized to file summary SED reports to the U.S. Census Bureau may, at the request of the Office of Export Licensing (OEL), be required to submit for OEL inspection copies of such reports applicable to exports under a Special Chemical License.

(3) *Mail shipments.* Shipments by mail shall be made in accordance with the instructions contained in § 786.1(b) of this subchapter.

(4) *Destination control statement.* The U.S. exporter shall enter one of the destination control statements contained in § 786.6 (d)(1) or (d)(2) of this subchapter on the commercial invoice and bill of lading or airway-bill covering exports under the Special Chemical License procedure.

(j) *Notification of consignee by exporter.* The U.S. exporter shall notify each consignee that no commodities imported under the Special Chemical License may be transferred or resold, or reexported except to end-users approved on the license or to destinations for which a validated license is not required.

(k) *Reexport notification requirements.* Unless specifically exempted on the license or subsequently in writing by OEL, all approved consignees not located in a country listed in supplement No. 2 or 8 to part 773, when reselling commodities received under this procedure to pre-approved end-users in countries listed in supplement No. 5 to part 778 of this subchapter, must notify these end-users on the commercial invoice (or by such other means specifically approved by OEL) of the restrictions on unauthorized reexports. The notice shall read as follows:

These commodities were authorized for export from the United States under a Special Chemical License procedure on the condition that they may not be reexported without prior approval from the United States authorities. This prior approval is not required for reexports to NATO member countries, Australia, Austria, Ireland, Japan, New Zealand, and Switzerland.

(l) *Recordkeeping requirements.* The license holder and consignees must maintain records of all transactions under the license in accordance with the recordkeeping requirements of § 787.13 of this subchapter. The license holder, any approved consignees, or any approved end-user may be requested to produce records of transactions conducted under the Special Chemical License procedure for inspection and copying by an authorized agent, official, or employee of the Bureau of Export Administration, the U.S. Customs Service, or the U.S. Government in accordance with the provisions of § 787.13(f) of this subchapter.

(m) *Exceptions.* In the event that the license holder or an approved consignee is unable to meet any of the requirements of the Special Chemical License procedure, but believes that unusual circumstances warrant a waiver or an exception of one or more of these requirements, the license holder, and only the license holder, may consult with or write to OEL, explaining the circumstances in full, and submit a written request for a waiver or exception.

PART 787—[AMENDED]

§ 787.13 [Amended]

4. In § 787.13, paragraph (c) is amended by adding the reference "773.9," following the reference "773.8," in the second sentence.

Dated: October 18, 1991.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 91-25660 Filed 10-23-91; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 111

Annual User Fee for Customs Broker Permit; General Notice

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

ACTION: Notice of due date of broker user fee.

SUMMARY: This is to advise Customs brokers that for 1992 the annual user fee of $125 that is assessed for each permit held by an individual, partnership, association, or corporate broker is due by January 2, 1992. This announcement is being published to comply with the Tax Reform Act of 1986.

DATES: Due date for fee: January 2, 1992.

FOR FURTHER INFORMATION CONTACT: Robert W. Page, Chief, Entry Compliance Branch (202) 566-5307.

SUPPLEMENTARY INFORMATION:

Background

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272) established that an annual user fee of $125 is to be assessed for each Customs broker permit held by an individual, partnership, association, or corporation. This fee is set forth in the Customs Regulations in § 111.96 (19 CFR 111.96).

Section 111.96, Customs Regulations, provides that the fee is payable for each calendar year in each district where a broker has a permit to do business by the due date which will be published in the Federal Register annually.

Section 1893 of the Tax Reform Act of 1986 (Pub. L. 99-514), provides that notices of the date on which payment is due of the user fee for each broker permit shall be published by the Secretary of the Treasury in the Federal Register by no later than 60 days before such due date.

This document notifies brokers that for 1992 the due date for payment of the user fee is January 2, 1992. It is expected that annual user fees for brokers for subsequent years will be due on or about the first of January each year.

Dated: October 16, 1991.

Michael H. Lane,

Deputy Commissioner of Customs.

[FR Doc. 91-25598 Filed 10-23-91; 8:45 am]

BILLING CODE 4820-02-M

RAILROAD RETIREMENT BOARD

20 CFR Parts 236 and 240

RIN 3220-AA92

Removal of Obsolete Parts

AGENCY: Railroad Retirement Board.

ACTION: Final rule; removal.

SUMMARY: The Railroad Retirement Board (Board) hereby removes part 236, "Payments of Benefits of $1,000 or Less," and part 240, "Pensions," because those parts are now obsolete.

EFFECTIVE DATE: This regulation is effective October 24, 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, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513 (FTS 386–4513) TDD (312) 751–4701, TDD (FTS 386–4701).

SUPPLEMENTARY INFORMATION: Part 236 of the Board's regulations concerns payment of benefits owing to an estate of a deceased individual with or without formal administration of the estate of such individual, and was originally promulgated to permit payment of such benefits without the requirement that an estate be opened. Under this part the Board was required to interpret and apply State probate law. However, since virtually all States now provide for small estates procedures the regulations in this part are no longer used, and it is being removed.

Part 240 of the Board's regulations deals with pensions payable under section 6 of the Railroad Retirement Act of 1937. Section 203 of Public Law 93–445 provided that individuals receiving pensions under section 6 of the RRA of 1937 would be entitled to annuities under the Railroad Retirement Act of 1974. Accordingly, no benefits are payable under part 240 and it is being removed.

Because this rule simply removes regulations which are now clearly out of date, public comment was not considered necessary and, thus, this rule was not published in proposed form.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Parts 236 and 240

Railroad employees, Railroad retirement.

Under the authority provided in 45 U.S.C. 231f(b)(5), and for the reasons set out in the preamble, subchapter B of chapter II of title 20 of the Code of Federal Regulations is amended as follows:

PART 236—[REMOVED AND RESERVED]

2. Part 236, consisting of §§ 236.1 through 236.4, is hereby removed and reserved.

PART 240—[REMOVED AND RESERVED]

3. Part 240, consisting of §§ 240.1 through 240.7, is hereby removed and reserved.

Dated: October 16, 1991.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91–25579 Filed 10–23–91; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulation No. 16]

RIN 0960–AC26

Supplemental Security Income for the Aged, Blind, and Disabled; Subpart P—Residence and Citizenship

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final rules affect the treatment of aliens legalized under Public Law 99–603, the Immigration Reform and Control Act of 1986, for supplemental security income (SSI) purposes. These rules provide that aliens granted lawful temporary resident status under section 245A of the Immigration and Nationality Act (INA), as added by section 201 of Public Law 99–603, are considered to be permanently residing in the United States under color of law. The rules also set out the proof to be provided by certain seasonal agricultural workers who are granted lawful temporary resident status under sections 210 and 210A of the INA, as added by sections 302 and 303 of Public Law 99–603, to establish that they are lawfully admitted to the United States for permanent residence for SSI purposes. To the extent that Medicaid eligibility is based on SSI eligibility, these regulations affect the Medicaid program.

EFFECTIVE DATE: These rules are effective October 24, 1991.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, 301–966–0512.

SUPPLEMENTARY INFORMATION: Section 1614(a)(1)(B) of the Social Security Act provides that to be eligible for SSI benefits an individual must be a citizen or an alien either lawfully admitted for permanent residence or permanently residing in the United States under color of law.

Section 416.1615 of the current regulations sets out the proof an alien must provide to show that he or she is lawfully admitted to the United States for permanent residence. Section 416.1618 of the regulations, published at 52 FR 21939 (June 10, 1987), provides that an alien is permanently residing in the United States under color of law if he or she is in the United States with the knowledge and permission of the Immigration and Naturalization Service (INS) and INS does not contemplate enforcing the alien's departure.

Section 201 of Public Law 99–603 added section 245A to the INA, which provides that beginning not later than May 5, 1987, aliens who have continuously resided in the United States illegally since before January 1, 1982, can apply for and may be granted lawful temporary resident status. We are amending § 416.1618(b) to provide that aliens granted such lawful temporary resident status under section 245A are to be considered aliens permanently residing in the United States under color of law. The rule also sets out the documentation which the alien can provide as proof that he or she has been granted lawful temporary resident status.

Public Law 99–603 provides that aliens granted lawful temporary resident status generally are barred from participation in Federal programs of financial assistance for 5 years from the date the status was granted. SSI is specifically exempted from the definition of financial assistance for purposes of this prohibition. The legislative history is clear that Congress intended aliens legalized under Public Law 99–603 to be able to establish eligibility for SSI benefits (H.R. Rep. No. 682, part I, 99th Cong., 2d Sess. 74 (1986)).

Section 210 of the INA, as added by section 302 of Public Law 99–603, provides that certain seasonal agricultural workers can apply for and be granted lawful temporary resident status. Section 210 specifically provides that these aliens are to be considered as lawfully admitted to the United States for permanent residence for purposes other than immigration. Therefore, we are amending § 416.1615(a)(4) to set out the proof which these aliens 'must provide to establish that they are lawfully admitted to the United States for permanent residence for SSI purposes.

Section 210A of the INA, as added by section 303 of Public Law 99–603, provides for the admission of additional aliens to meet the shortage of workers to perform seasonal agricultural work. These aliens would be admitted for or adjusted to lawful temporary resident status and considered to be aliens lawfully admitted for permanent residence for purposes other than immigration. We are also amending § 416.1615(a)(4) to set out the proof which these aliens must provide to establish that they are lawfully admitted to the United States for SSI purposes.

We are including this change in these final regulations although it was not in the notice of proposed rulemaking (NPRM) published on January 30, 1989 (54 FR 4296). The affected individuals were not admitted to the United States until fiscal year 1990 and INS had not developed procedures for this group of aliens when the NPRM was published. Since the INS procedures are now in place, we have included as a final rule the proof these aliens must provide to establish lawful admittance for permanent residence.

Section 416.1615(a)(4) of the above-cited regulations published on June 10, 1987, contained an incorrect reference to INS documentation procedures for purposes of section 245 of the INA. Section 416.1615(a)(1) of these final rules corrects that documentation requirement by describing the forms of Alien Registration Receipt Cards necessary to show lawful permanent resident status.

We are also deleting § 416.1605. There is no time limit for establishing United States residency in order to be SSI eligible. The 30–day requirement pertains to eligibility for SSI benefits of individuals who are outside of the United States for 30 days. The requirement is already contained in § 416.214.

We are also adding an explanation to § 416.1618(a) to make clear that determinations that an alien is permanently residing in the United States under color of law are not made using the rules in that paragraph alone, but are also to be based on the rules in paragraphs (b) through (e) of § 416.1618. We are including this change in these final regulations although it was omitted from the NPRM published on January 30, 1989 (54 FR 4296).

The Department, even when not required by statute, as a matter of policy generally follows the Administrative Procedure Act's (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We find good cause to dispense with notice of proposed rulemaking and public comment procedures for the deletion of § 416.1605 and the revision of § 416.1615(a) (4). We believe that publication of § 416.1605 as a notice of proposed rulemaking is contrary to the public interest. As we explained, § 416.1605 of the current regulations includes an incorrect statement of Social Security Administration policy. We believe it is in the public's interest to have this statement of policy deleted to prevent its further application.

We believe that publication of the change in § 416.1615(a) (4) regarding aliens admitted under section 210A of the INA with notice and comment is unnecessary. The rule does not represent any exercise of discretion by the Secretary regarding the status of these aliens but merely specifies that the document provided by the INS to these aliens is the required proof of lawful admittance for permanent residence for SSI purposes.

Discussion of Comments

These rules were published as an NPRM in the **Federal Register** on January 30, 1989 (54 FR 4296). Five commenters responded. A summary of the comments and our responses follows:

Comment: Four commenters objected to the deletion of current § 416.1615(a) (4) which includes as proof of lawful admittance for permanent residence in the United States: "Any document which shows you have been granted lawful permanent resident status under section 245 of the Immigration and Nationality Act." They feel that the deletion imposes limitations on an alien seeking to prove lawful admission for permanent residence.

Response: The deletion of § 416.1615(a)(4) was not a policy change in what we accept as evidence of lawful admittance for permanent residence. It was deleted because it is duplicative of § 416.1615(a) (1) and (b). Individuals who have been granted lawful permanent residence status under section 245 of the INA normally receive from INS the evidence described in § 416.1615(a)(1). In those relatively unusual situations where the individual does not have that evidence, lawful admittance for permanent residence may be proven under § 416.1615(b), which is a general section giving us wide latitude on what we accept as evidence. Under § 416.1615(b) we may find lawful admittance for permanent residence if the individual does not have the usual documents in § 416.1615(a), can explain why the usual documents are not available, and provides information "which shows or results in proof (that the individual is) lawfully admitted for permanent residence in the United States." This gives us the flexibility to accept certain documents suggested by three of the commenters, such as INS Form G–641 or a decision of an administrative law judge granting suspension of deportation pursuant to 8 U.S.C. 1254(a)(1). We are adding INS Forms AR–3 and AR–3a (Alien Registration Receipt Card) to § 416.1615(a)(1) as they are earlier versions of INS Forms I–151 and I–551. Another form mentioned by a suggester, INS Form I–181B (Memorandum of Creation of Record of Lawful Permanent Residence), has not been considered by INS to be acceptable documentation of lawful admittance for permanent residence for several years and we also do not accept it as such.

Comment: Two commenters suggested that § 416.1618 be revised to provide that applicants for lawful temporary resident status under Public Law 99–603 be considered as permanently residing in the United States under color of law.

Response: The suggested revision is unnecessary. Although applicants for lawful temporary resident status have not been granted an immigration status, they cannot be deported while their applications are pending. Thus, they are considered as permanently residing in the United States under color of law pursuant to § 416.1618(b)(17) as redesignated by these final regulations. That section includes aliens living in the United States with the knowledge and permission of the INS and whose departure that agency does not contemplate enforcing.

Comment: One commenter pointed out that the State Medicaid Manual issued by the Health Care Financing Administration (HCFA) describes seasonal agricultural workers, granted lawful permanent residence by section 302 of Public Law 99–603, as permanently residing in the United States under color of law.

Response: HCFA on September 7, 1990, published final regulations covering the Medicaid eligibility of aliens. These regulations reflect the correct status of seasonal agricultural workers for Medicaid eligibility.

Regulatory Procedures

Executive Order No. 12291

These final rules reflect several sections of Public Law 99–603 pertaining to certain aliens granted temporary resident status in the United States. The changes in the statute have resulted in more aliens meeting the definition of lawfully admitted for permanent residence and permanent residence under color of law, and therefore more aliens are receiving SSI benefits. The number of additional SSI recipients cannot be precisely determined because, absent the legislation, some portion of the aliens could still be found to meet color of law under the provisions of the court decision in the case of *Berger* v. *Heckler*, 771 F.2d 1556 1985). The estimates below are overstated to the extent that an indeterminate number of the aliens would have been found eligible without the change in the law.

Public Law 99–603 provided for finite periods in which an alien must file for temporary residence status and permanent residence status in the United States. Based on those time limitations the number of aliens eligible for SSI benefits whose documentation requirements are covered by these final rules is expected to decrease after 1990. The estimates assume the decrease in numbers of those eligible will mirror the buildup. The estimated cost, in millions of dollars, for the first 5 full years of the change in the law are as follows:

[Dollars in millions]

	1988	1989	1990	1991	1992
Number of cases	1,300	3,400	6,400	5,100	3,000
SSI costs:					
Federal	$2	$7	$15	$16	$10
State supp	1	3	7	8	5
Medicaid costs:					
Federal	(1)	5	10	10	5
State	5	10	20	15	10
Federal administrative	4	10	6	3	2
Total	12	35	58	52	32

[1] Negligible (less than $1 million).

It is clear that these costs do not exceed the $100 million threshold established by Executive Order No. 12291 for performing a regulatory impact analysis. Further, the costs result from legislative provisions and not from the regulations, and are already budgeted.

Paperwork Reduction Act of 1980

These final regulations impose no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Program)

List of Subjects in 20 CFR Part 416

Administration practice and procedure; Aged, Blind, Disability benefits; Public assistance programs; Supplemental Security Income.

Dated: December 10, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: February 21, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

Editorial note: This document was received at the Office of the Federal Register on October 18, 1991.

Part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for subpart P of part 416 continues to read as follows:

Authority: Secs. 1102, 1614(a)(1)(B) and (e), and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382c(a)(1)(B) and (e), and 1383; sec. 502 of Pub. L. 94–241, 90 Stat. 268.

§ 416.1605 [Removed]

2. Section 416.1605 is removed.

3. In § 416.1615, paragraphs (a)(1) and (a)(4) are revised to read as follows:

§ 416.1615 How to prove you are lawfully admitted for permanent residence in the United States.

(a) * * *

(1) An Alien Registration Receipt Card (Immigration and Naturalization (INS) Form I–151 or I–551, including temporary I–551s which are stamped in a passport, or on INS Form I–94 (Arrival-Departure Record) for aliens admitted under sections 204, 206, or 245 of the Immigration and Nationality Act, and the earlier version INS Form AR–3 or AR–3a);

* * * * *

(4) INS Form I–688 which shows that you have been granted lawful temporary resident status under section 210 or section 210A of the Immigration and Nationality Act.

* * * * *

4. In § 416.1618, paragraph (a) is revised, paragraph (b) is amended by revising the introductory text, by revising (b)(15), by redesignating (b)(16) as (b)(17), and by adding a new (b)(16), and paragraphs (d)(2) and the introductory text of paragraph (d)(3) are revised to read as follows:

§ 416.1618 When you are considered permanently residing in the United States under color of law.

* * * * *

(a) *General.* We will consider you to be permanently residing in the United States under color of law and you may be eligible for SSI benefits if you are an alien residing in the United States with the knowledge and permission of the Immigration and Naturalization Service and that agency does not contemplate enforcing your departure. The Immigration and Naturalization Service does not contemplate enforcing your departure if it is the policy or practice of that agency not to enforce the departure of aliens in the same category or if from all the facts and circumstances in your case it appears that the Immigration and Naturalization Service is otherwise permitting you to reside in the United States indefinitely. We make these decisions by verifying your status with

the Immigration and Naturalization Service following the rules contained in paragraphs (b) through (e) of this section.

(b) *Categories of aliens who are permanently residing in the United States under color of law.* Aliens who are permanently residing in the United States under color of law are listed below. None of the categories includes applicants for an Immigration and Naturalization status other than those applicants listed in paragraph (b)(6) of this section or those covered under paragraph (b)(17) of this section. None of the categories allows SSI eligibility for nonimmigrants; for example, students or visitors. Also listed are the most common documents that the Immigration and Naturalization Service provides to aliens in these categories:

* * * * *

(15) Aliens whose deportation has been withheld pursuant to section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)). We ask for an order from an immigration judge showing that deportation has been withheld;

(16) Aliens granted lawful temporary resident status pursuant to section 245A of the Immigration and Nationality Act (8 U.S.C. 1255a). We ask for INS form I–688 showing that status; or

* * * * *

(d) * * *

(2) If you give us any of the documents listed in paragraphs (b)(1), (2), (3), (4), (8), (9), (11), (12), (l3), (15), or (16) of this section, we will pay you benefits if you meet all other eligibility requirements. We will contact the Immigration and Naturalization Service to verify that the document you give us is currently valid.

(3) If you give us any of the documents listed in paragraphs (b)(5), (6), (7), (10), or (14) of this section, or documents that indicate that you meet paragraph (b)(17) of this section, or any other information to prove you are permanently residing in the United States under color of law, we will contact the Immigration and Naturalization Service to verify that the document or other information is currently valid. We must also get information from the Immigration and Naturalization Service as to whether that agency contemplates enforcing your departure. We will apply the following rules:

* * * * *

[FR Doc. 91–25526 Filed 10–23–91; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1313

Importation and Exportation of Precursors and Essential Chemicals

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations implementing the Chemical Diversion and Trafficking Act of 1988 (CDTA) to simultaneously grant regular supplier or regular customer status for three of the listed chemicals (acetone, 2-Butanone (MEK), and toluene) when regular supplier or regular customer status has been established for one of these chemicals. This amendment reduces the regulatory requirement on the chemical industry without reducing the effectiveness of the CDTA.

EFFECTIVE DATE: November 25, 1991.

FOR FURTHER INFORMATION CONTACT: Chief State and Industry Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7297.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the **Federal Register** on June 14, 1991 (56 FR 27472) to amend 21 CFR 1313.15 and 1313.24 to grant regular customer or regular supplier status for three listed solvents (acetone, 2-Butanone (MEK), and toluene) when regular customer or regular supplier status is granted for one of these chemicals.

DEA previously noted that many of the regular customers and regular suppliers submitted to DEA for review handle the three chemicals on a regular basis. In considering the illicit uses of these three solvents, it has been determined that they are frequently interchanged for each other. Therefore, DEA's review of foreign customers and suppliers would address concerns which apply to all three of these chemicals.

The proposed rulemaking provided an opportunity for interested parties to submit comments in writing on or before August 13, 1991. There were no comments received concerning this notice of proposed rulemaking. Consequently, 21 CFR 1313.15, Waiver of 15-day Advance Notice for Chemical Importers is amended by redesignating paragraph (d) as paragraph (e) and inserting a new paragraph (d) providing regular supplier status for three of the listed chemicals, specifically acetone, 2-Butanone (MEK), and toluene, when regular supplier status has been established for one of the three chemicals. Title 21 CFR 1313.24, Waiver of 15-day Advance Notice for Chemical Exporters, is amended by redesignating paragraph (d) as paragraph (e) and inserting a new paragraph (d) providing regular customer status for three of the listed chemicals, specifically acetone, 2-Butanone (MEK), and toluene, when regular customer status has been established for one of the three chemicals.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this final rule will not have significant impact upon entities whose interest must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The changes will not impose any additional regulatory requirements. This final rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this final rule has been submitted for review to the Office of Management and Budget.

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

List of Subjects in 21 CFR Part 1313

Drug Enforcement Administration, Drug traffic control, Exports, Imports, Reporting requirements.

For reasons set out above, 21 CFR part 1313 is amended as follows:

PART 1313—[AMENDED]

1. The authority citation for part 1313 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(B), and 971.

2. Section 1313.15 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) which reads as follows:

§ 1313.15 Waiver of 15-day advance notice for chemical importers.

* * * * *

(d) Unless the Administration notifies the chemical importer to the contrary, the qualification of a regular supplier of any one of these three chemicals, acetone, 2-Butanone (MEK), or toluene, qualifies that supplier as a regular supplier of all three of these chemicals.

* * * * *

3. Section 1313.24 is amended by redesignating paragraph (d) as (e) and adding a new paragraph (d) which reads as follows:

§ 1313.24 Waiver of 15-day advance notice for chemical exporters.

* * * * *

(d) Unless the Administration notifies the chemical exporter to the contrary, the qualification of a regular customer for any one of these three chemicals, acetone, 2-Butanone (MEK), or toluene, qualifies that customer as a regular customer for all three of these chemicals.

* * * * *

Dated: October 7, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-25600 Filed 10-23-91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 42

[Public Notice 1513]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended; Immigrants Subject to Numerical Limitations

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends part 42, title 22 of the Code of Federal Regulations, to implement section 2 of the "Armed Forces Immigration Adjustment Act of 1991," Public Law 102-110. This section provides a new special immigrant class to benefit certain members of the Armed Forces who lawfully enlisted abroad. As a result, paragraph (7) is added to § 42.32(d) to authorize consular officers to classify beneficiaries of the new special class appropriately in connection with an application for a visa.

DATES: The effective date of this rule is November 29, 1991. Written comments must be received on or before November 25, 1991.

ADDRESSES: Please submit comments in duplicate to: Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Services, Department of State, Washington, DC 20522-0113.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully, III, Director, Office of Legislation, Regulations, and Advisory Assistance, (202) 663-1184.

SUPPLEMENTARY INFORMATION: Section 2 of Public Law 102-110 confers special immigrant status under INA 101(a)(27)(K) to members and honorably separated former members of the United States Armed Forces who lawfully enlisted abroad, were on active duty after October 15, 1978, and have served, or under a reenlistment will serve, at least 12 years in the Armed Forces. The Executive Department within which the alien is serving or has served must recommend the granting of the special immigrant status for the individual concerned.

Status as a "special immigrant" brings an alien within the terms of INA 203(b)(4), i.e., employment-based fourth preference, which requires the approval of a petition to accord fourth preference status by the Immigration and Naturalization Service.

Interim Rule

This interim rule authorizes consular officers to accord fourth preference classification to certain members and former members of the United States Armed Forces upon receipt of an approved petition granting such status if the consular officer is satisfied that the alien meets the definition in the controlling statute. It is identical, substantively, to all other regulations in § 42.32(d) which require prior petition approval by the Immigration and Naturalization Service.

This rule is not considered to be a major rule for purposes of E.O. 12291, nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The information collection contained in this rule has been submitted to the Office of Management and Budget in compliance with provisions of the Paperwork Reduction Act of 1980.

List of Subjects in 22 CFR Part 42

Immigrants, Numerical limitations, Special immigrants, Visas.

In view of the foregoing, part 42 to title 22 is amended to read as follows:

PART 42—[AMENDED]

1. The authority citation for part 42 is revised to read as follows:

Authority: 8 U.S.C. 1104; 8 U.S.C. 1101 note; 8 U.S.C. 1153; 8 U.S.C. 1101(a)(27).

2. Section 42.32 is amended by adding paragraph (d)(7) to read as follows:

§ 42.32 Employment-based immigrants.

* * * * *

(d) *Fourth Preference—Special immigrants.* * * *

(7) *Certain members of the United States Armed Forces recruited abroad*—(i) *Entitlement to status.* An alien is classifiable under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(K) if the consular office has received a petition approved by the INS to accord such classification, or official notification of such an approval, and the consular officer is satisfied from the evidence presented that the alien is within the class described in INA 101(a)(27)(K).

(ii) *Entitlement to derivative status.* Pursuant to INA 203(d), and whether or not named in the petition, the spouse or child of any alien classified under INA 203(b)(4) as a special immigrant qualified under this section, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

* * * * *

Dated: October 16, 1991.

Elizabeth M. Tamposi,

Assistant Secretary for Consular Affairs.

[FR Doc. 91-25611 Filed 10-23-91; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 103

[Docket No. R-91-1425; FR-2565-F-03]

Fair Housing Complaint Processing Final Rule Technical Amendment

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule; technical amendment.

SUMMARY: On January 23, 1989 (54 FR 3232), the Department published a final rule that adopted regulations to implement the changes made in title VIII of the Civil Rights Act of 1968 by the Fair Housing Amendments Act of 1988 (Pub. L. 100-430, approved September 13, 1988). The purpose of this document is to make an editorial correction found in § 103.405(a)(3) of the final rule (24 CFR 103.405(a)(3)), and also to make two editorial corrections to the preamble to the final rule, which was codified as appendix I to subchapter A of chapter I of the Department's regulations.

FOR FURTHER INFORMATION CONTACT: Jonathan Strong, Office of the General Counsel, room 9238, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500, telephone (202) 708-1207) or

(202) 9300 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On January 23, 1989 (54 FR 3232), the Department published a final rule that adopted regulations to implement the changes made in title VIII of the Civil Rights Act of 1968 by the Fair Housing Amendments Act of 1988 (Pub. L. 100–430, approved September 13, 1988) (title VIII as amended by the Fair Housing Amendments Act of 1988 is referred to as the Fair Housing Act). The final rule created a new part 103, which codifies the Department's procedures for the investigation and conciliation of complaints under section 810 of the Fair Housing Act.

Section 810(g)(2)(B) of the Fair Housing Act establishes the content and the basis for a charge of discrimination under the Fair Housing Act. In the preamble to the final rule, the Department discussed the changes made to § 103.405(a)(3), which implements section 810(g)(2)(B), as a result of public comment:

> Section 103.450 governs the issuance of the charge. Paragraph (a)(5) [sic] of this section provides that the charge need not be limited to the facts or grounds that are alleged in the complaint. A commenter argued that HUD should not be able to set forth new facts or new grounds in the charge. The commenter argued that HUD should be required to amend the complaint if new acts or grounds are found. Following the amendment, the respondent and aggrieved person should be given an opportunity to enter a conciliation agreement based upon the additional facts or grounds.
>
> Section 810(g)(2)(B) expressly provides that the charge need not be based on the facts or grounds alleged in the complaint. Where additional grounds are discovered during the processing of the complaint, HUD intends to inform the respondent of the additional grounds and to seek information from the respondent concerning such matters. HUD will not require the amendment of the complaint as long as the record of the investigation clearly indicates that the respondent has been given notice and an opportunity to respond to the new allegations. The final rule at § 103.405(a)(3) has been amended to reflect this policy. (24 CFR subtitle B, ch. I, subchap. A, app. I at 736 (1991); 56 FR 3269)

The text of § 103.405(a)(3), as published in the final rule, provides in relevant part that: "If the charge is based on grounds that are alleged in the complaint, HUD will not issue a charge with regard to the grounds unless the record of the investigation demonstrates that the respondent has been given notice and an opportunity to respond to the allegation." (54 FR 3297). The discussion in the preamble, noted above, makes clear that the proper wording of this sentence should be (emphasis added): "If the charge is based on grounds that are not alleged in the complaint, HUD will not issue a charge unless * * *."

Additionally, the Department notes that the final rule document submitted to the **Federal Register** for publication in January 1989 contained the correct wording of this sentence of § 103.405(a)(3). Unfortunately, the error in § 103.405(a)(3) of the published rule was not noted until recently, and therefore, too late to request the **Federal Register** to issue its own correction.

By this document, the Department also is correcting the error in the section of the preamble to the final rule, quoted above, which inadvertently refers to the relevant paragraph of § 103.405 as paragraph (a)(5) instead of paragraph (a)(3). (The preamble to the January 23, 1989 final rule was codified as appendix I to subchapter A of chapter I of the Department's regulations.) In addition, the title of appendix I, as set forth in 24 CFR ch. I, subch. A., app. I at 686 (1991), incorrectly refers to the publication date of the final rule as January 19, 1989, instead of January 23, 1989. This document also will correct the error in the title.

List of Subjects in 24 CFR Part 103

Fair housing, Handicapped.

Accordingly, the following amendments are made to 24 CFR part 103 and appendix I to subchapter A of chapter I (24 CFR ch. I, subch. A, app. I):

PART 103—FAIR HOUSING—COMPLAINT PROCESSING

1. The authority citation for 24 CFR part 103 continues to read as follows:

Authority: Title VIII, Civil Rights Act of 1968, 42 U.S.C. 3600–3619; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In 24 CFR 103.405(a)(3) is revised to read as follows:

§ 103.405 Issuance of charge.

(a) * * *

(3) Need not be limited to facts or grounds that are alleged in the complaint filed under subpart B of this part. If the charge is based on grounds that are not alleged in the complaint, HUD will not issue a charge with regard to the grounds unless the record of investigation demonstrates that the respondent has been given notice and an opportunity to respond to the allegation.

* * * * *

3. The heading of appendix I at page 686 of 24 CFR ch. I, subch. A, App. I (1991) is revised to read as follows:

Appendix I to Subchapter A—Preamble to Final Rule Implementing Fair Housing Amendments Act of 1988 (Published January 23, 1989)

Appendix I to Subchapter A of Chapter I [Amended]

4. The first two sentences in the first paragraph, under the heading "Section 103.405 Issuance of charge," of appendix I at page 736 of 24 CFR ch. I, subch. A, app. I (1991) are revised to read as follows:

Section 103.405 governs the issuance of the charge. Paragraph (a)(3) of this section provides that the charge need not be limited to the facts or grounds that are alleged in the complaint. * * *

Dated: October 15, 1991.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 91–25454 Filed 10–23–91; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Part 70

[T.D. ATF–316]

RIN 1512–AA10

Administrative Appeal of the Erroneous Filing of Notice of Federal Tax Lien (91F031T)

AGENCY: Bureau of Alcohol, Tobacco, and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This Treasury decision amends 27 CFR 70.151, Administrative appeal of liens, to incorporate a recent change in the Procedure and Administrative Regulations, 26 CFR part 301, under section 6326 of the Internal Revenue Code of 1986 (IRC). Section 6326 of the IRC was amended by section 6238 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100–647) which established the right to an administrative appeal of the erroneous filing of a notice of Federal tax lien. The amended regulation, 27 CFR 70.151, sets forth the situations in which persons may appeal, the office to which appeals may be made, and the information and documents that must be submitted with an appeal.

EFFECTIVE DATE: October 24, 1991.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background

Section 6238 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100–647, 102 Stat. 3342) redesignated section 6326 of the IRC as section 6327 and added a new section 6326. Section 6326(a) provides that the Secretary shall prescribe regulations that provide for the administrative appeal of the erroneous filing of a notice of Federal tax lien. Section 6326(b) provides that if the Secretary determines that ATF has erroneously filed a notice of Federal tax lien, the Secretary must expeditiously and, to the extent practicable, within 14 days after such determination, issue a certificate of release of the lien. This certificate must include a statement that the filing was erroneous.

Current ATF regulations are set forth in 27 CFR 70.151 which, in essence, reflect the language of section 6326.

Section 70.151 states in part that after the filing of a notice of a lien on the property or rights to property of an individual, such person shall be allowed to appeal to the official who filed the lien for release of such lien alleging an error in the filing of the notice of such lien.

Section 70.151 was promulgated pursuant to T.D. ATF–301 (55 FR 47604) and was published in the **Federal Register** on November 14, 1990. T.D. ATF–301 transferred from the Internal Revenue Service (IRS) the remaining enforced collection functions with respect to taxes administered by ATF. These functions included the use of liens and levies in enforcement of the taxes under ATF's jurisdiction.

At the time of this transfer, the IRS had, in response to the amendment of section 6326 of the IRC, published a temporary regulation (26 CFR § 301.6326–1T) and a notice of proposed rulemaking by cross reference to the temporary regulation in the **Federal Register** on May 8, 1989 (54 FR 19568, 19578). The temporary regulation provided that a person may file an administrative appeal of the erroneous filing of a notice of Federal tax lien in any of the following situations: (1) The tax liability that gave rise to the lien was satisfied in full prior to the filing of notice; (2) the underlying liability was assessed in violation of the deficiency procedures set forth in section 6213 of the IRC; (3) the underlying liability was assessed in violation of title 11, i.e., the Bankruptcy Code; or (4) the statute of limitations for collection expired prior to the filing of notice.

The legislative history of section 6236 indicates that the administrative appeal is intended to be used only for the purpose of correcting publicly the erroneous filing of a notice of Federal tax lien, not to challenge the underlying tax liability that led to the filing of a lien. In addition to the three situations specifically enumerated in the legislative history, IRS also included in the temporary regulation an appeal when the statute of limitations on collection expired prior to the filing of a notice of Federal tax lien.

Treasury Decision 8347 (56 FR 19947) published in the **Federal Register** on May 1, 1991, discusses the comments received by the IRS in response to the temporary regulation and adopts without change the temporary rule. ATF believes these additional regulations are equally applicable to its tax collection activities and is adopting such regulations, except with respect to the deficiency procedures which are not applicable to the taxes administered by ATF.

Administrative Procedures Act

Because this final rule merely adopts existing regulations promulgated by the Internal Revenue Service under section 6326 of the IRC, it is found to be unnecessary to issue this Treasury decision with notice and public procedure therein under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

Regulatory Flexibility Act

Since no notice of proposed rulemaking is required by 5 U.S.C. 553 or any other statute, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) do not apply.

Executive Order 12291

It has been determined that this final rule is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule pursuant to 44 U.S.C. 3518(c).

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Penalties, Seizures, and Forfeitures, Surety bonds, Tobacco.

PART 70—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for 27 CFR, Part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656, 6657, 6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423–7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

Par. 2. Section 70.151 is revised to read as follows:

§ 70.151 Administrative appeal of the erroneous filing of notice of Federal tax lien.

(a) *In general.* Any person may appeal to the official who filed the Federal tax lien on the property or rights to property of such person for a release of lien alleging an error in the filing of notice of lien. Such appeal may be used only for the purpose of correcting the erroneous filing of a notice of lien, not to challenge the underlying tax liability that led to the imposition of a lien.

(b) *Certificate of Release.* If the official who filed the lien determines that the filing of the notice of any lien was erroneous that official shall expeditiously, and to the extent practicable, within 14 days after such determination, issue a certificate of release of lien. The certificate of release of such lien shall include a statement that the filing of notice of lien was erroneous.

(c) *Appeal alleging an error in the filing of notice of lien.* For purposes of paragraph (a) of this section, an appeal of the filing of notice of Federal tax lien must be based on any one of the following allegations:

(1) The tax liability that gave rise to the lien, plus any interest and additions to tax associated with said liability, was satisfied prior to the filing of notice of lien;

(2) The tax liability that gave rise to the lien was assessed in violation of title 11 of the United States Code (the Bankruptcy Code); or

(3) The statutory period for collection of the tax liability that gave rise to the lien expired prior to the filing of notice of Federal tax lien.

(d) *Notice of Federal tax lien that lists multiple liabilities.* When a notice of Federal tax lien lists multiple liabilities, a person may appeal the filing of notice of lien with respect to one or more of the liabilities listed in the notice, if the notice was erroneously filed with respect to such liabilities. If a notice of Federal tax lien was erroneously filed with respect to one or more liabilities listed in the notice, the official who filed the Federal tax lien shall issue a certificate of release with respect to such liabilities.

(e) *Procedures for appeal*—(1) *Manner.* An appeal of the filing of notice of Federal tax lien shall be made in writing to the official who filed the lien.

(2) *Form.* The appeal shall include the following information and documents:

(i) Name, current address, and taxpayer identification number of the person appealing the filing of notice of Federal tax lien;

(ii) A copy of the notice of Federal tax lien affecting the property, if available; and

(iii) The grounds upon which the filing of notice of Federal tax lien is being appealed.

(A) If the ground upon which the filing of notice is being appealed is that the tax liability in question was satisfied prior to the filing, proof of full payment as defined in paragraph (f) of this section must be provided.

(B) If the ground upon which the filing of notice is being appealed is that the tax liability that gave rise to the lien was assessed in violation of title 11 of the United States Code (the Bankruptcy Code), the appealing party must provide the identity of the court, the district in which the bankruptcy petition was filed, a docket number and the date of filing of the bankruptcy petition.

(3) *Time.* An administrative appeal of the erroneous filing of notice of Federal tax lien shall be made within 1 year after the taxpayer becomes aware of the erroneously filed tax lien.

(f) *Proof of full payment.* As used in paragraph (e)(2)(iii)(A) of this section, the term "proof of full payment" means:

(1) A Bureau of Alcohol, Tobacco and Firearms receipt reflecting full payment of the tax liability in question prior to the date the Federal tax lien was filed;

(2) A cancelled check payable to the Bureau of Alcohol, Tobacco and Firearms in an amount which was sufficient to satisfy the tax liability for which release is being sought; or

(3) Any other manner of proof acceptable to the official who filed the lien.

(g) *Exception.* Whenever necessary to protect the interests of the government, the regional director (compliance) of the region in which a notice of Federal tax lien was filed or the Chief, Tax Processing Center other than the official who filed the lien, may receive and act on an administrative appeal of a lien in accordance with this section.

(h) *Exclusive remedy.* The appeal established by section 6326 of the Internal Revenue Code and by this section shall be the exclusive administrative remedy with respect to the erroneous filing of a notice of Federal tax lien.

Signed: September 26, 1991.

Daniel R. Black,

Acting Director.

Approved: October 8, 1991.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91–25502 Filed 10–23–91; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Regulatory Program; Reclamation of Bond Forfeiture Sites and Other Matters

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval with exceptions, of a proposed amendment to the Pennsylvania Regulatory Program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment includes revisions to the Pennsylvania Surface Mining Conservation and Reclamation Act (PA SMCRA) pertaining to licensing requirements, water supply replacement insurance, permit issuance, prohibition of burning of underground anthracite coal, right of entry based on leases for bituminous, anthracite and non-coal minerals, timing of informal conferences and permit review, reclamation of forfeiture sites and creation of a Mining and Reclamation Advisory Board. The amendment also includes proposed regulations on bond forfeiture which formalize the Department of Environmental Resource's (DER) existing bond forfeiture reclamation program and its policies for spending money in the Surface Mining Conservation and Reclamation Fund.

EFFECTIVE DATE: October 24, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Third Floor, suite 3C, Harrisburg Transportation Center, 4th and Market Streets, Harrisburg, Pennsylvania 17101; Telephone (717)782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information on the background of the Pennsylvania program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of the Amendment

By letter dated September 24, 1986, the Pennsylvania DER submitted to OSM a proposed amendment to revise the Pennsylvania program (Administrative Record No. PA–612). The proposed amendment includes Pennsylvania Senate Bill 1078 which was signed into law (Pub. L. 916, No. 181) on October 12, 1984. This law amended sections 3.1, 4 (a) and (b), and 18 of the PA SMCRA. Also included as part of the proposed program amendment are final rules published in the Pennsylvania Bulletin (16 Pa. B. 1501) on April 26, 1986, which amended the regulations of chapter 86 at 86.182 and 86.186–86.190 (Administrative Record No. PA–612) and subsequent changes to 86.188 and 86.189 contained in the Pennsylvania Bulletin (17 Pa. B. 641), on February 7, 1987. These regulations implement section 18 of the

PA SMCRA which pertains to bond forfeiture.

OSM announced receipt of the proposed amendment in the November 24, 1986, **Federal Register** (51 FR 42267), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on December 24, 1986. OSM reopened and extended the public comment period in the February 26, 1990, **Federal Register** (55 FR 6656) in order to incorporate the February 7, 1987, additional changes to 86.188 and 86.189. The reopened public comment period ended on March 28, 1990.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Pennsylvania program. Only substantive changes are discussed in detail. Revisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal regulations.

Amendments to the PA SMCRA

1(a) Surface Mining License

Pennsylvania proposes to amend section 3.1(a) of the PA SMCRA by requiring the application for renewal of a license as a surface mining operator to be made annually at least sixty days before the current license expires. Pennsylvania also amends section 3.1(b) to prohibit issuance, renewal or amendment of a license of an applicant if the DER finds, after investigation and opportunity for an informal hearing, that the applicant or any partner, associate, officer, parent corporation or subsidiary corporation of the applicant has failed and continues to fail to comply with an adjudicated proceeding, cessation order, consent order and agreement or decree, or as indicated by a written notice from the DER of a declaration of bond forfeiture. Section 3.1(b) is further amended to place the burden of proof on any person who opposes the DER's decision on issuance or renewal of a license. Federal statutes and regulations do not require a surface mine operator's license in addition to site-specific surface mining permits. Because there is no Federal counterpart to these State provisions, the Director finds that the provisions pertaining to licensing are not inconsistent with the requirements of SMCRA and the Federal regulations.

(b) Insurance

Pennsylvania proposes to amend section 3.1(c) of its statute to require insurance or a bond guarantee as part of a surface mining permit application if the department determines in its best conservative estimate that the mining operation may affect a public or private water supply. The operator may retain a public liability insurance policy to fulfill this requirement. Section 507(f) of SMCRA requires applicants for a permit to have a public liability insurance policy in force for surface mining and reclamation operations for which such permit is sought or evidence that the applicant is self-insured. The policy must provide for personal injury and property protection in an amount adequate to compensate any person damaged as a result of surface coal mining and reclamation operations. Federal rules at 30 CFR 816.41(h) require that any person who conducts surface mining activities to replace the water supply of an owner of interest in real property who obtains all or part of his water supply for domestic, agricultural, industrial or other legitimate use from an underground or surface source, where the water supply has been adversely impacted from surface mining activities. Pennsylvania's amendment to section 3.1(c) requires that where a public or private water supply may be affected, the liability insurance policy itself, rather than just the certificate of insurance, must be included within either the specific permit application or within the application for or renewal of a license. The Director finds that this additional specificity does not make the State statute at section 3.1(c) less stringent than section 507(f) of SMCRA. The Director notes, however, that the cross-reference to section 4.2(f) should be changed to 4b(f).

(c) Permitting Decisions

Pennsylvania proposes to add section 3.1(d) to its statute in order to prohibit the issuance, renewal, or amendment of any permit if the Pennsylvania DER finds that: (1) The applicant has failed and continues to fail to comply with the PA SMCRA; or (2) the applicant has shown a lack of ability or intention to comply with any provision of the PA SMCRA as indicated by past or continuing violations. Any person, partnership, association or corporation which has engaged in unlawful conduct or which has a partner, associate, officer, parent corporation, subsidiary corporation, contractor or subcontractor which has engaged in such unlawful conduct shall be denied any permit required by this act unless the permit application demonstrates that the unlawful conduct is being corrected to the satisfaction of the department. The amendment further states that persons other than the applicant, including independent subcontractors, shall be listed on the application and approved by the Department prior to engaging in surface mining operations and shall be jointly and severally liable with the permittee for such violations as the permittee is charged and in which the persons participate. Following the Department's approval or denial of a renewal, the burden of proof to overturn that decision shall be on its opponents. If the Department decides not to renew a permit, it shall give the permittee at least 60 days notice of its denial and provide the permittee with the opportunity for an informal hearing prior to final action.

Section 510(c) of SMCRA states that a permit shall not be issued until the applicant has submitted proof that any violations of SMCRA and any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority. The Federal law adds that no permit shall be issued to an applicant who controls or has controlled mining operations with a demonstrated pattern of willful violations of SMCRA of such nature and duration as to indicate an intent not to comply with the provisions of SMCRA. The implementing regulations at 30 CFR 773.15(b) reinforce SMCRA's provisions by prohibiting the regulatory authority from issuing a permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA. Prior to permit issuance, the applicant is required to submit proof that if a current violation exists, it has been or is in the process of being corrected. Owned or controlled and owns or controls is defined at 30 CFR 773.5 to include relationships described under the proposed amendment. The Director finds that the provisions of section 3.1(d) of the Pennsylvania amendment can be approved. Pennsylvania's amendment does not, however, include all ownership and control relationships set forth under 30 CFR 773.5. For example, section 3.1(d) does not appear to prevent the issuance, renewal or amendment of a permit to a corporation when a person owning 10 percent or more of the stock in that

corporation has engaged in unlawful conduct. Other examples of ownership and control relationships apparently not encompassed within section 3.1(d) include, but are not limited to, those set forth at 30 CFR 773.5 (a)(3), (b)(2), (b)(3) and (b)(6). Approval of the amendment to section 3.1(d) does not, therefore, relieve Pennsylvania of its obligation to comply with the May 11, 1989, part 732 notification concerning ownership and control. The Director also notes that the cross-reference to section 18.6 pertaining to unlawful conduct should be changed to 24.

(d) Underground Burning of Anthracite Coal

Pennsylvania proposes to add section 3.1(e) to its statute to prohibit the issuance of a permit to initiate or conduct underground burning of anthracite coal. Section 529(a) of SMCRA authorizes the issuance of separate regulations for anthracite coal mines. The implementing regulations at 30 CFR part 820 require that anthracite mines comply with the approved Pennsylvania program. The Director finds the proposed amendment at section 3.1(e) not inconsistent with SMCRA and the Federal regulations.

2(a) Land Surveyor Certification

Pennsylvania proposes to amend section 4(a) to allow registered professional land surveyors to prepare and certify surveyed maps or plans and cross-sections submitted to the DER as part of a permit application. Section 507(b)(14) of SMCRA provides for cross-sections, maps or plans of land to be affected by an application for a surface coal mining and reclamation permit to be prepared by or under the direction of a qualified registered professional engineer or geologist, or qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps and plans. The Pennsylvania amendment provides this authorization. The Director, therefore, finds the proposed amendment at section 4(a) to be no less stringent than section 507(b)(14) of SMCRA.

(b) Right of Entry

Pennsylvania proposes to amend section 4(a)(2)(F) by requiring that permit applications include written consent of the landowner to enter upon land affected by a surface coal mining operation. The proposed provision grants an exemption from the landowner consent requirement for permit applications based on leases in existence on January 1, 1964, for bituminous coal surface mines or leases in existence on January 1, 1972, for anthracite coal surface mining operations and all noncoal surface mining operations. When an exemption is granted, the permit applicant must provide notice of the existence of such lease and a description of the chain of title in his application for permit. This notice and the written consent of the landowner providing right-of-entry must appear on forms prepared and furnished by the DER. There must be no constraints pertaining to the assignability, transferability or duration of the landowner consent except as provided for under the PA SMCRA. Consent forms shall not be construed to alter or constrain the contractual agreements and rights of the parties thereto. Section 510(b)(6) of SMCRA states that in cases where the mineral estate has been severed from the surface, no permit or revision application shall be approved unless the application includes the written consent of the surface owner to the extraction of coal by surface mining methods, or a conveyance that expressly grants or reserves the right to extract coal by surface mining methods, or if the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship, as determined in accordance with State law. Section 510(b)(6) and its implementing regulations at 30 CFR 778.15(b)(2) require the permit applicant to submit a copy of the conveyance granting or reserving the right to extract coal by surface mining methods whereas the proposed Pennsylvania amendment only requires the applicant to submit a notice of the existence of such a conveyance. In addition, Pennsylvania's proposed amendment does not require that the applicant submit documentation that the applicant has the authority under Pennsylvania law to extract coal by surface mining methods, in the event the conveyance does not expressly grant such a right, in accordance with 30 CFR 778.15(b)(3). For these reasons, the Director finds that the proposed amendment to section 4(a)(2) is less stringent than section 510(b)(6) (B) and (C) of SMCRA and less effective than the Federal regulations at 30 CFR 778.15(b) (2) and (3). Furthermore, the Director is requiring that the State amend its program such that it is no less stringent than the applicable SMCRA provisions and no less effective than the applicable Federal regulations.

(c) Hearings and Conferences

Pennsylvania proposes to amend section 4(b) which pertains to the rights of persons adversely affected to file written objections to applications for permits and bond releases and to obtain administrative relief. Under the proposal, persons adversely affected may request either an informal conference or a public hearing within 30 days after the last publication giving notice of the public comment period. The comment period will close 30 days after the last publication. In the case of bond release applications, such hearings or conferences must be held within 30 days from the date of the request. However, any such request filed prior to the tenth day following the last date of publication shall have a constructive filing date which shall be the tenth day following the last date of publication. The department will notify the applicant of its decision within 30 days of such hearing or conference. If no conference or hearing is held, the department will notify the applicant of its decision within 60 days of the close of the comment period. In the case of permit applications, such hearings or conferences must be conducted within 60 days of the close of the public comment period and the department will notify the applicant of its decision within 60 days of such hearing or conference. If there is no conference or hearing, the Department will notify the applicant for permit of its decision within a reasonable time, not to exceed 60 days from the close of the public comment period.

The Federal counterparts to the above provisions are found in sections 513, 514 and 519 of SMCRA. Section 513(b) provides for the filing of written objections to a permit application and the requesting of an informal conference within 30 days of the publication period. The regulatory authority is required to hold the informal conference within a reasonable time of the receipt of such objections or request. The Director considers Pennsylvania's proposed requirement to hold an informal conference or hearing within 60 days of the close of the public comment period to be a reasonable length of time as required by section 513(b) of SMCRA. If no informal conference has been held, section 514(b) of SMCRA requires the regulatory authority to notify the permit applicant within a reasonable time of its decision to approve or disapprove the application. The Director finds Pennsylvania's proposed requirement to notify the permit applicant of its decision within a reasonable time not to exceed 60 days from the close of the public comment period no less stringent than section 514(b) of SMCRA. In the matter of bond release applications, section 519(f) of SMCRA allows

objectors to file objections and request a public hearing or informal conference within 30 days after the last publication of notice of application for bond release. This hearing or conference must be held within 30 days of the request for such hearing or conference and a decision issued within 30 days of the hearing. If no public hearing is held, section 519(b) of SMCRA requires the regulatory authority to notify the permittee of its decision to release or not release within 60 days from the filing of the request for bond release. This is identical to the requirement in the proposed State statute. For the above reasons, the Director, therefore, finds that the proposed amendments to section 4(b) of the PA SMCRA are no less stringent than sections 513(b), 514(b), 519(b) and 519(f) of SMCRA.

3. Surface Mining Conservation and Reclamation Fund—Background Information

Pennsylvania proposes to amend section 18 of the PA SMCRA by adding subsections (c) through (i) which pertain to the Surface Mining Conservation and Reclamation Fund (the fund). Implementing regulations for this proposed subsection are found at 25 Pa. Code section 86.182 and 86.186–190.

Subsection 18(c) of the State Code authorizes the secretary of the DER to expend funds for reclaiming and planting bond forfeiture sites in such a manner as to complete the operator's approved reclamation plan. The Secretary is permitted, after considering the engineering cost estimate for completion of the approved reclamation plan, to amend the plan to minimize the cost of reclaiming the bond forfeiture area. If the Secretary determines that completion of the approved reclamation plan is impossible or unreasonable, the bond forfeiture area must be reclaimed in a manner that makes it suitable for agriculture, forests, recreation, wildlife or water conservation, giving due consideration to the soil characteristics, topography, surrounding lands, proximity to urban centers, cost effectiveness and other land uses approved by the landowner and local land use agencies.

(a) Procedures

Implementing regulations for section 18(c) of the PA SMCRA are found at 25 Pa. Code 86.182, 86.186, 86.187 and 86.188. Section 86.182 has been amended to require written notification of the landowner concerning DER's determination to forfeit bond and the reasons for forfeiture. There is no Federal counterpart to section 86.182. However, the Director finds that it is not inconsistent with the general requirements governing bond forfeiture at 30 CFR 800.50.

(b) Scope of the Fund

Section 86.186 of the Pennsylvania Code establishes the scope of the remaining bond forfeiture regulations. While there are no Federal counterparts, the Director finds that section 86.186 is not inconsistent with SMCRA and the Federal regulations.

(c) Use of Money

Section 86.187 sets forth the conditions under which monies in the fund may be used by the DER. Section 86.187(a)(1) requires that monies received from reclamation fees, and all accrued interest, be used only to reclaim land affected by mining operations for which bonds were forfeited as a supplement to bond forfeiture funds. Subsection (a)(2) requires that monies received from bond forfeitures be used only to reclaim land affected by surface mining operations upon which liability was charged on the bond, except as provided in section 86.190, relating to sites where reclamation is unreasonable, unnecessary or impossible. The interest earned on such funds can be used only to reclaim land affected by surface mining operations for which the State has forfeited bonds, as a supplement to bond forfeiture funds. Subsection (a)(3) provides that all other monies in the fund may be used for any conservation purpose consistent with the purpose of the fund, including the purpose of administrative expenses. While there are no direct Federal counterparts to subsection (a) of section 86.187, the Director finds that this subsection is not inconsistent with the Federal regulations at 30 CFR 800.50(b)(2), relating to bond forfeiture expenditures.

Subsection 86.187(b), paragraph (2) tracks the language of section 18(b) of PA SMCRA, which was approved July 31, 1982, as part of Pennsylvania's permanent regulatory program approval (47 FR 33050). This paragraph allows the DER to expend funds to reclaim land so as to complete a reclamation plan of the operator whose bonds were forfeited for the reclamation site, unless it is determined that an alternative reclamation plan should be implemented. Alternative plans are permissible under this paragraph where the DER determines that completion of the previously approved plan is unreasonable, unnecessary or physically impossible. Since this paragraph is substantively identical to section 18(b) of PA SMCRA and since the basis for the Secretary's July 31, 1982, approval of section 18(b) has not changed, the Director finds that paragraph 2 of subsection 86.187(b) can be approved.

Paragraph 1 of subsection 86.187(b) provides, however, that the DER may also prepare and implement an alternative reclamation plan where it determines that the original plan may be amended to decrease the cost of reclaiming the bond forfeiture site. Without more clarification, this paragraph can be interpreted to allow the DER to approve an alternative reclamation plan that would not require reclamation in accordance with the applicable performance standards. Therefore, paragraph (1) of subsection 86.187(b) is not approved to the extent that it would allow the implementation of an alternative reclamation plan that fails to require reclamation in accordance with the applicable performance standards in accordance with 86.189(c)(2), (c)(3), or (c)(4), whichever is appropriate. The Director is also requiring that Pennsylvania amend its program by deleting 86.187(b)(1) or by otherwise demonstrating that any alternative reclamation plan shall meet the requirements of 86.189(c)(2), (c)(3), or (c)(4), whichever is appropriate.

(d) Postmining Land Use

OSM's bond forfeiture rules at 30 CFR 800.50(b)(2) require the use of funds collected from bond forfeiture to be used by regulatory authorities to complete the reclamation plan to which bond coverage applies. The Federal rules are silent on the question of whether the approved reclamation plan can be amended by the regulatory authority for cost efficiency reasons or because the regulatory authority has determined that completion of the approved plan for the forfeiture site is unreasonable, unnecessary or physically impossible. Amended reclamation plans for permanent program bond forfeiture sites are required by 25 Pa. Code 86.189(c)(2) to result in reclamation consistent with the Pennsylvania Clean Streams Law and the PA SMCRA and the regulations promulgated thereunder for active surface coal mining operations, except for provisions applicable to post-mining land use. However, an approved reclamation plan must be amended in accordance with the Federal regulations at 30 CFR 816.133 and 817.133 governing postmining land use and must meet all applicable performance standards.

30 CFR 816.133(a) and 817.133(a) both require that all disturbed areas be restored in a timely manner to conditions that are capable of supporting either the uses they were

capable of supporting before any mining, or to higher or better uses. Pennsylvania's proposed section 18(c) of PA SMCRA and subsection 86.187(c) of its regulations would allow an alternative reclamation plan that merely calls for reclaiming the land so that it is suitable for agriculture, forests, recreating wildlife or water conservation, without regard to whether the alternative postmining land use is equal to or higher than the premining land use. As such, section 18(c) is less effective than 30 CFR 816.133(a) and 817.133(a), and cannot be approved to the extent that it would allow lands for which bonds have been forfeited under the Federal interim program or under Pennsylvania's permanent program to be reclaimed to meet an alternative postmining land use that is not equal to or higher than the premining land use. For the same reasons, proposed subsection 86.187(c) of Pennsylvania's regulations is also not approved, and the Director is requiring Pennsylvania to amend its program to ensure that alternative postmining land use determinations are made in a manner that is no less effective than 30 CFR 816.133(a) and 817.133(a).

(e) Evaluation of Bond Forfeiture Sites

Section 86.188 of the Pennsylvania Code sets forth DER's procedures for evaluating bond forfeiture sites for reclamation purposes after the bond proceeds have been collected. Subsection (a) requires the DER to conduct an onsite inspection and solicit information regarding the site and reclamation intention from the landowner and any other interested party. Subsection (b) specifies categories by which each bond forfeiture site is identified according to the severity of conditions. Subsection (c) requires the DER to consider certain factors in selecting sites for reclamation. Subsection (d) requires the DER to compile a list of sites for which forfeiture of bonds has become final and bond proceeds have been collected. The list will be made available for review and a notice of availability will be published quarterly in the Pennsylvania Bulletin. While they have no direct Federal counterparts, subsections (a) and (d) are not inconsistent with the bond forfeiture provisions of 30 CFR 800.50.

Section 509(a) of SMCRA requires the operator to post a reclamation bond that is sufficient to assure completion of the reclamation plan for that permitted site if work must be performed by the regulatory authority. In addition, the Federal regulations at 30 CFR 800.50(b)(2) require the regulatory authority to use funds collected from bond forfeiture to complete the reclamation plan for the site to which bond coverage applies. Neither SMCRA nor the Federal regulations provide for prioritizing sites for reclamation, since both presume that site-specific bonds, together with necessary supplemental funding from alternative bonding systems, will be immediately available and adequate to cover reclamation costs for each site. To the extent that proposed subsections (b) and (c) of section 86.188 would allow high priority sites to be reclaimed while neglecting lower priority sites, they are inconsistent with section 509(a) of SMCRA and are less effective than the Federal regulations at 30 CFR 800.50(b)(2). Of particular concern is paragraph (3) of subsection (c), which lists unavailability of funds for completion of reclamation as a prioritization factor. To the extent that these subsections provide only for a ranking of sites for reclamation without compromising the requirement that all sites for which bonds were posted be properly reclaimed, however, they are not inconsistent with section 509(a) SMCRA and 30 CFR 800.50(b)(2) of the Federal regulations. Therefore, subsections (b) and (c) are not approved to the extent that they would allow bond forfeiture funds posted for and needed to complete reclamation of a specific site to be used for reclamation of other sites.

(f) Procedures for Reclamation of Bond Forfeiture Sites

Subsections (d), (e), and (f), section 18, of the PA SMCRA set forth the procedures by which DER may accomplish reclamation of bond forfeiture sites. These include public bidding and contracting, negotiation and contract with the landowner or another licensed mine operator and negotiation and contract with a surface coal mine operator when the operator is granted a permit on property contiguous to the property on which the DER has forfeited bonds. These subsections are implemented by proposed rules at 25 Pa. Code 86.189(a) and (b). There are no Federal counterparts to these proposed rules and law. The Director, however, finds that they are not inconsistent with SMCRA and the Federal regulations.

(g) Mining and Reclamation Advisory Board

Subsection (g), section 18, of the PA SMCRA establishes a Mining and Reclamation Advisory Board to assist the Secretary of DER to expend monies from the fund and to advise the Secretary on other matters pertaining to mining and reclamation. The Board is composed of three coal operators, two of whom are to be licensed bituminous surface mine operators and one a licensed anthracite surface mine operator; four public members from the Citizens Advisory Council; two members appointed by the State Conservation District Commission, one from the Anthracite and Bituminous Licensed Professional Engineers and one from the County Conservation District; four members of the General Assembly, two from the Senate, one from the majority party and one from the minority party, and two from the House of Representatives, one from the majority party and one from the minority party. Section 517(g) of SMCRA and 30 CFR 705 prohibit State employees performing any function or duty under SMCRA from having any direct or indirect interest in any underground or surface coal mining operation. In a letter dated October 8, 1991, OSM concluded that these appointees serve in an advisory capacity only and are not decision-makers; therefore, they are not employees within the meaning of 30 CFR 705.5, and are not subject to the provisions of section 517(g) of SMCRA (Administrative Record No. PA–793.06). The Director, therefore, finds that subsection (g) of the Pennsylvania statute is consistent with the conflict of interest prohibitions in section 517(g) of SMCRA and can, therefore, be approved.

(h) Restrictions on Reclamation Contracts

Subsection (h), section 18, of the PA SMCRA prohibits the Secretary of DER from entering into reclamation contracts with any person or related party who has forfeited any bond or been convicted of a misdemeanor within 3 years of violating any provisions of certain environmental statutes. There is no Federal counterpart to this provision. However, the Director finds that subsection (h) is not inconsistent with SMCRA and the Federal regulations. The implementing regulations for subsection (h) are found at 25 Pa. Code 86.189(c). The regulations specify certain threshold requirements with which a person must comply to enter into a bond forfeiture reclamation project with DER. Specifically, the person must demonstrate that: (1) Neither the person or related party has been convicted of a misdemeanor within the last three years for violating certain Pennsylvania environmental statutes; (2) for bond forfeiture sites for which permits were issued under the Federally approved

surface coal mining regulatory program, the proposed reclamation plan will result in reclamation of the site consistent with the Clean Streams Law, PA SMCRA, and related regulations; (3) for bond forfeiture sites for which bonds were forfeited on or after May 3, 1978, and for which permits were not issued under the Federally approved program, the proposed reclamation plan will result in reclamation of the site in a manner consistent with interim Federal program regulations, the Clean Streams Law and related regulations, and the PA SMCRA and related regulations in effect at the time of forfeiture; (4) for bond forfeiture sites for which the bonds were declared forfeit before May 3, 1978, the proposed reclamation plan will result in reclamation consistent with the Clean Streams Law and related regulations and the PA SMCRA and related regulations in effect at the time of forfeiture; (5) in lieu of relevant statutes and regulations specifically applicable to postmining land use, the plan for a bond forfeiture site may propose to make the site suitable at a minimum for agriculture, forests, recreation, wildlife or water conservation; and (6) except in the case of a landowner of a bond forfeiture site, the person shall demonstrate the following: (a) Neither the person or related party has a legal obligation to correct the present conditions at the site; (b) the person meets the requirements relating to criteria for permit approval or denial specified at section 86.37(a)(8)–(11). Although there are no Federal counterparts to this provision, the Director finds that subsection 86.189(c) is not inconsistent with SMCRA or the Federal regulations, except as noted below.

Paragraph (5), subsection (c) of section 86.189 allows for an alternative reclamation plan to make the site suitable, at a minimum, for agriculture, forests, recreation, wildlife or water conservation. The Federal regulations at 30 CFR 816.133(a) and 817.133(a) require that all disturbed areas be restored to uses they were capable of supporting before any mining, or to higher or better uses. The State's regulations allow DER to forgo reclamation of the bonded site to its premining use and to develop an alternative plan. There is no provision requiring that the site be restored to a higher and better use. Therefore, the Director finds the proposed regulations at 86.189(c)(5) less effective than the Federal regulations at 30 CFR 816.133(a) and 817.133(a) and he is not approving them. For this same reason, the Director is not approving the cross references to 86.189(c)(5) contained in 86.189(c)(2), (3) and (4). The Director is also requiring that Pennsylvania delete 25 Pa. Code 86.189(c)(5) or otherwise amend its program to require that sites bonded during the Federal interim program or under Pennsylvania's permanent program be restored to conditions that are capable of supporting the uses they were capable of supporting before any mining or higher or better uses.

(i) Publication

Subsection (i), section 18, of the PA SMCRA requires that DER publish in the Pennsylvania Bulletin each bond forfeiture project to be advertised for bid or contracts to be negotiated or proposals received and sets forth the required contents of the advertisement. There is no such publication requirement in the Federal statute or regulations. However, the Director finds that subsection (i) is not inconsistent with SMCRA or the Federal regulations. The implementing regulations for subsection (i) are found at 25 Pa. Code 86.189(d) and (e). The regulations require that DER publish in the Pennsylvania Bulletin notice of projects for bid and also that DER notify the landowners of a bond forfeiture site proposed for reclamation of the location of the project and a brief summary of the work to be done. Upon awarding the contract, DER is required to notify the same landowners of the name of the contract recipient, the location of the project, a summary of the work to be done, and the cost of the work and to publish notice annually in the Pennsylvania Bulletin a list of all reclamation contracts awarded under this section. The Director finds the proposed regulations at 86.189(d) and (e) not inconsistent with SMCRA or the Federal regulations.

(j) Sites Where Reclamation is Unreasonable, Unnecessary or Impossible

Section 86.190(a) specifies parameters for determining when completion of the approved reclamation plan is unreasonable, unnecessary, or physically impossible. The reasons justifying the determination include, but are not limited to the following: (1) The site has been repermitted and rebonded for mining and reclamation is a condition of the permit; (2) the site has been otherwise reclaimed; (3) the landowner refuses to allow the site to be reclaimed and the site is not a hazard to public health, safety, and welfare or adjacent property. If the plan cannot be completed, the bond amount will be made available for expenditure to reclaim other lands or restore water supplies affected by other surface mining operations for which the Department has forfeited bonds.

The introductory language of subsection (a) of section 86.190, concerning the use of funds for other sites where reclamation of the forfeited site is unreasonable, unnecessary or physically impossible, mirrors the language of subsection (b), section 18, of PA SMCRA. This provision of Pennsylvania law was approved by the Secretary, as part of the State's original permanent program approval, on July 30, 1982 (47 FR 33050). Since the basis for the Secretary's approval of 18(b) of PA SMCRA has not changed, the Director finds that the introductory paragraph of subsection (a) of section 86.190 can be approved, except for the words "but are not limited to," which are used to refer to the reasons justifying a determination that reclamation under the reclamation plan is unreasonable, unnecessary or physically impossible. Any such reasons which are not specifically contained in proposed section 86.190 are not approved. The Director is also requiring that Pennsylvania amend its program at section 86.190 by deleting the words "but are not limited to" from the introductory paragraph of subsection "a."

The reasons for making a determination not to reclaim a site have not previously been approved. If, as provided in paragraph (1) of subsection (a), the site has been repermitted and rebonded for mining with full reclamation of the entire area made a permit condition, then forfeited bond money from the original permit is not needed for reclamation of the site. Likewise, as provided in paragraph (2), forfeited bond money is not needed to reclaim the site if it has been otherwise reclaimed, as long as such reclamation was performed in compliance with the reclamation plan and in accordance with the performance standards of Pennsylvania's approved permanent program. Therefore, while there are no Federal counterparts to paragraphs (1) and (2) of subsection (a), section 86.190, the Director finds that these provisions are not inconsistent with SMCRA and the Federal regulations and can be approved to the extent that full reclamation of the site in accordance with the reclamation plan and all applicable performance standards are required.

However, paragraph (3) of subsection (a), would allow the landowner to prevent reclamation. While title V of SMCRA, 30 U.S.C. 1251–1279, contains no specific provisions authorizing the regulatory authority to compel a recalcitrant landowner to allow

reclamation, the Federal regulations at 30 CFR 800.50(b)(2) are quite explicit in requiring the regulatory authority to use funds collected from the bond forfeiture to complete the reclamation plan for that site, recalcitrant landowners notwithstanding. Paragraph (a)(3) is, therefore, less effective than 30 CFR 800.50(b)(2) and cannot be approved. The Director is also requiring that Pennsylvania amend its program by deleting 25 Pa. Code 86.190(a)(3).

Section 86.190(b) requires the Department to send written notice to the landowner of its intention to remove the restrictions on the bond forfeiture amount. There is no Federal counterpart to this provision. However, the Director finds the proposed regulation is not inconsistent with the requirements of SMCRA.

Section 86.190(c) provides that if the bond forfeiture funds exceed the amount required to reclaim that site, the excess funds will be made available for expenditure only to reclaim land and restore water supplies affected by surface mining operations for which the Department has forfeited bonds. SMCRA does not authorize the use of unused portions of forfeited bond funds to pay for other reclamation costs of State programs. The Federal regulations at 30 CFR 800.50(d)(2) require that unused funds be returned by the regulatory authority to the party from whom they were collected. While Pennsylvania's proposed use of excess funds is not specifically authorized by SMCRA, it is nonetheless within the discretion provided to the States by section 505 of SMCRA to propose more stringent regulation of the surface coal mining and reclamation operations than do the provisions of SMCRA and its implementing regulations. The Pennsylvania excess bond provisions provide substantial additional incentive beyond that afforded under the Federal program for the operator to complete, in an economical and efficient fashion, the required reclamation of the permitted area. Therefore, the Director finds the proposed regulation at 86.190(c) not inconsistent with the requirements of SMCRA and the Federal regulations.

4. Publication of Regulations

Pennsylvania is proposing to amend section 18.8 of its statute to provide for the publication and implementation of regulations concerning the above statutory changes. While there is no Federal counterpart to this provision, the Director finds that section 18.8 is not inconsistent with SMCRA or the Federal regulations.

IV. Disposition of Comments

OSM solicited public comment on the proposed amendment in the November 24, 1986, **Federal Register** (51 FR 42267), and reopened and extended the public comment period in the February 26, 1990, **Federal Register** (55 FR 6656). No comments were received and the scheduled public hearings were not held as no one requested an opportunity to provide testimony.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from Federal agencies with an actual or potential interest in the Pennsylvania program. One agency responded. This agency believed the proposed statutory amendments were unclear regarding their application to anthracite mines. Unless specified otherwise, the statutory amendment and the proposed rule changes apply to both anthracite and bituminous coal mines. The Surface Mining Conservation and Reclamation Fund may be used to fund the reclamation of bituminous or anthracite operations. The Director believes this has been made sufficiently clear in the amendment.

V. Director's Decision

Based on the above findings, the Director is approving, with certain exceptions, the proposed program amendment submitted by Pennsylvania on September 24, 1986, and as modified on February 7, 1987. The Federal regulations at 30 CFR part 938 codifying decisions concerning the Pennsylvania program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process.

As discussed in the findings listed below, the Director is not approving the proposed provisions in the cited subsections of the Pennsylvania program which have been found to be less effective than their Federal counterparts. The Director is also requiring Pennsylvania to further amend its program to correct the identified deficiencies.

A. Provisions Not Approved

Finding No.	State regulation
3(e)	86.188(b), (c)—to the extent that they allow funds posted for and needed to complete reclamation of a specific site to be used for reclamation of other sites.

B. Provisions Not Approved and Amendment Required

Finding No.	State regulation
3(c)	86.187(b)(1)
3(d)	18(c) of PA SMCRA, 86.187(c)
3(h)	86.189(c)(5)
3(j)	86.190(a), (a)(3)

C. Amendment Required

Finding No.	State regulation
1(b)	3.1(c)
1(c)	3.1(d)
2(b)	4(a)(2)

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Pennsylvania program, the Director will recognize only the statutes, regulations, and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Pennsylvania of only such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). Although the Director has determined that this amendment contains no such provisions, the EPA concurred without comment.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 9, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 938—PENNSYLVANIA

The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 938.15, paragraph (t) is added to read as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(t) The following amendment to the Pennsylvania program as submitted on September 24, 1986, and revised on February 7, 1987, is approved effective October 24, 1991:

1. Revisions to title 25, Pennsylvania Code 86.182 and 86.186–190 pertaining to the Bond Forfeiture Reclamation Program:

Section 86.182—Bond Forfeiture Procedures.

Section 86.186—Scope of Regulations.

Section 86.187—Use of Money. (Except subsection 86.187(b)(1) to the extent that any alternative reclamation plans do not comply with all applicable performance standards in accordance with 86.189(c)(2), (c)(3) or (c)(4), whichever is appropriate and 86.187(c) to the extent that alternative reclamation plans do not meet all applicable postmining land use requirements).

Section 86.188—Evaluation of Bond Forfeiture Sites. (Except for subsections 86.188(b) and (c) to the extent they allow funds posted for and needed to complete reclamation of a specific site to be used for reclamation of other sites).

Section 86.189—Reclamation of Bond Forfeiture Sites. (Except for subsection 86.189(c)(5) and the cross-references thereto, contained in subsections 86.189(c)(2), (c)(3) and (c)(4)).

Section 86.190—Sites Where Reclamation is Unreasonable, Unnecessary or Impossible; Excess Funds. (Except for the words "but are not limited to" in the introductory paragraph of subsection (a) and except for subsection 86.190(a)(3). Subsections 86.190(a)(1) and (a)(2) are approved to the extent that full reclamation of the site, in accordance with the reclamation plan and all applicable performance standards is required.)

2. Revisions to the Pennsylvania Surface Mining and Conservation Act (Pub. L. 1198):

Section 3.1—Operator's License; Withholding or Denying Permits or Licenses; Penalty.

Section 4(a) and 4(b)—Mining Permit; Reclamation Plan; Bond.

Section 18(c)(i)—Surface Mining Conservation and Reclamation Fund; Payments to Clean Water Fund. (Except subsection 18(c) to the extent that it would allow lands for which bonds have been forfeited under the Federal interim program or under Pennsylvania's permanent program to be reclaimed to meet an alternative postmining land use that is not equal to or higher than the premining land use).

Section 18.8—Publication of Regulations.

3. In § 938.16, paragraphs (kk) through (qq) are added to read as follows:

§ 938.16 Required regulatory program amendments

* * * * *

(kk) By April 22, 1992, Pennsylvania shall amend the following rules of the Pennsylvania Surface Mining and Conservation Act to correct cross-references:

(1) At section 3.1(c), replace the cross-reference to section 4.2(f) with one to 4b(f).

(2) At section 3.1(d), replace the cross-reference to section 18.6 with one to 24.

(ll) By April 22, 1992, Pennsylvania shall amend section 4(a)(2) of the Pennsylvania Surface Mining and Conservation Act or otherwise amend its program to be no less effective than 30 CFR 778.15(b) by requiring that a permit applicant submit: (a) A copy of the conveyance granting or reserving the right to extract coal; and (b) documentation demonstrating authority under Pennsylvania law to extract coal by surface mining methods where the conveyance does not expressly grant such a right.

(mm) By April 22, 1992, Pennsylvania shall amend 25 Pa. Code 86.187(b)(1) or otherwise amend its program by requiring that alternative reclamation plans comply with all applicable performance standards in accordance with 86.189(c)(2), (c)(3) or (c)(4), whichever is appropriate.

(nn) By April 22, 1992, Pennsylvania shall amend 25 Pa. Code 86.187(c) and section 18(c) of the Pennsylvania Surface Mining and Conservation Act or otherwise amend its program to be no less effective than 30 CFR 816.133(a) and 817.133(a) by requiring that alternative postmining land use determinations for sites with forfeited bonds under the Federal interim program or under Pennsylvania's permanent program be made to ensure that all disturbed areas are restored to conditions that are capable of supporting either the uses they were capable of supporting before any mining, or higher or better uses.

(oo) By April 22, 1992, Pennsylvania shall delete 25 Pa. Code 86.189(c)(5) or otherwise amend its program to be no less effective than 30 CFR 816.133(a) and 817.133(a) by requiring that sites bonded during the Federal interim program or under Pennsylvania's permanent program be restored to conditions that are capable of supporting the uses they were capable of supporting before any mining or higher or better uses.

(pp) By April 22, 1992, Pennsylvania shall delete 25 Pa. Code 86.190(a)(3).

(qq) By April 22, 1992, Pennsylvania shall delete the words "but are not limited to" from the introductory paragraph of 86.190(a).

[FR Doc. 91–25278 Filed 10–23–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 292

Defense Intelligence Agency (DIA) Freedom of Information Act

AGENCY: Defense Intelligence Agency, Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: As a result of a reorganization with the Defense Intelligence Agency (DIA), this amendment revises DIA Freedom of Information Act addresses listed in sections 292.6 and 292.8, notifies persons of the new addresses for submitting initial and appeal requests and provides information on the right to appeal no

record determinations. This amendment also revises the title of 32 CFR part 292.

DATES: Comments should be received no later than November 25, 1991. The effective date of this amendment will be December 23, 1991 unless comments are received which result in a contrary determination.

ADDRESSES: Forward comments to: FOIA/PA Office, Attention: DPS–1, Defense Intelligence Agency, Washington, DC 20340–3299.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 292

Freedom of information.

Accordingly, 32 CFR part 292 is amended as follows:

PART 292—DEFENSE INTELLIGENCE AGENCY (DIA) FREEDOM OF INFORMATION ACT

1. The authority citation for part 292 is revised to read as follows:

Authority: 5 U.S.C. 552.

2. The title of 32 CFR part 292 is revised to read "Defense Intelligence Agency (DIA) Freedom of Information Act".

3. Section 292.6 is amended by revising the paragraph (b) as follows:

§ 292.6 How the public submits requests for records.

* * * * *

(b) Persons desiring records should direct their inquiry to: Defense Intelligence Agency, ATTN: DSP–1A (FOIA), Washington, DC 20340–3299.

4. Section 292.8 is amended by revising paragraph (a) as follows:

§ 292.8 Filing an appeal for refusal to make records available.

* * * * *

(a) A requester may appeal an initial decision to withhold a record. Appeals should be addressed to: Defense Intelligence Agency, ATTN: DSP–1A (FOIA), Washington, DC 20340–3299.

* * * * *

5. Section 292.9 is amended by revising paragraph (a) introductory text, paragraph (b)(1) introductory text, and paragraph (d) introductory text as follows:

§ 292.9 Responsibilities.

* * * * *

(a) DSP–1A

* * * * *

(b) * * *

(1) When identified by DSP–1A as the Office of Primary Responsibility (OPR)

* * * * *

(d) The Director, and on his behalf the Chief of Staff.

* * * * *

Dated: October 18, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–25564 Filed 10–23–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

32 CFR Part 726

Payment of Amounts Due Mentally Incompetent Members of the Naval Service

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This rule outlines procedures for convening competency boards and appointing trustees for members of the Naval service who are incapable of handling their own finances.

EFFECTIVE DATE: October 3, 1990.

FOR FURTHER INFORMATION CONTACT: Valeria Childress, Head, Fiduciary Affairs Branch, Office of the Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332-2400, (703) 325-9752.

SUPPLEMENTARY INFORMATION: Pursuant to the authority conferred under 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 37 U.S.C. 601-604 and 1001; and 32 CFR 700.206 and 700.1202; the Judge Advocate General revises 32 CFR part 726. This revision reflects the changes made to chapter XV (now chapter XIV) of the Manual of the Judge Advocate General of the Navy, JAG Instruction 5800.7C. This part has been revised and shortened. It sets forth the procedures for convening a competency board, designation of trustees, obtaining emergency funds pending the appointment of a trustee, and supervision of trustees.

This revision was adopted on October 3, 1990. To the limited extent that this revision could be deemed to originate any requirements within the Department of the Navy, it has been determined that such requirements relate entirely to internal Naval management and personnel practices that can be administered more effectively without public participation in the rule-making process. It has, therefore, been determined that invitation of public comment on this revision would be impracticable and unnecessary and is, therefore, not required under the provisions of 32 CFR parts 296 and 701. It has also been determined that this final rule is not a "major rule" within the criteria specified in Executive order 12291, and does not have substantial impact on the public.

List of Subjects in 32 CFR Part 726

Payment of amounts due mentally incompetent members of the Naval service.

For the reasons set out in the preamble, title 32, part 726 of the Code of Federal Regulations is revised to read as follows:

PART 726—PAYMENTS OF AMOUNTS DUE MENTALLY INCOMPETENT MEMBERS OF THE NAVAL SERVICE

Sec.

Authority: 5 U.S.C. 301; 10 U.S.C. 5031, and 5148; 37 U.S.C. 601-604, and 1001; 32 CFR 700.206 and 700.1202.

Note: This part 726 is chapter XIV, of the Manual of the Judge Advocate General of the Navy.

§ 726.1 Purpose.

This part explains the procedures for convening competency boards and how to appoint trustees for members of the Naval service who have been determined to be mentally incompetent in accordance with title 11 of chapter 37, United States Code.

§ 726.2 Scope.

(a) The Secretary of the Navy has authority to designate a trustee in the absence of notice that a legal committee, guardian, or other legal representative has been appointed by a State court of competent jurisdiction. 37 U.S.C. 601-604. Trustees receive the active duty pay and allowances, amounts due for accrued or accumulated leave, and retired pay or retainer pay, that are otherwise payable to a member found by competent medical authority to be mentally incapable of managing his affairs.

(b) "Member" as used in this chapter refers to:

(1) Members of the Navy or Marine Corps on active duty (other than for training) or on the retired list of the Navy or Marine Corps; and

(2) Members of the Fleet Reserve or Fleet Marine Corps Reserve.

§ 726.3 Authority to appoint trustees.

The Judge Advocate General or his designee is authorized to act for the Secretary of the Navy to appoint trustees to receive and administer Federal monies for members and to carry out the provisions of this chapter.

§ 726.4 Procedures for convening competency boards.

(a) *Competency Board.* (1) The commanding officer of the cognizant naval medical facility will convene a board of not less than three medical officers or physicians, one of whom will be a psychiatrist, when there is evidence that a member who is a patient in the naval medical facility may be incapable of handling his affairs. The board will be convened in accordance with chapter 18, Manual of the Medical Department. The board may include members of the Reserve components on active or inactive duty. When active duty Navy or Marine corps members are hospitalized in nonnaval medical facilities, the regional Naval Office of the Medical/Dental Affairs will ensure compliance with chapter 18.

(2) The Judge Advocate General or his designee may direct the commanding officer of any naval medical facility, or request the commanding officer of another service medical facility or administrator of a Department of Veterans Affairs medical facility, to convene a board in accordance with this section to determine the mental capability of a member to manage his affairs.

(3) A finding of restoration of competency or capability to manage personal and financial affairs may be accomplished in the same manner specified in chapter 18, Manual of the Medical Department, except that the board may consist of one or two medical officers or physicians, one of whom must be a psychiatrist.

(4) At least one officer on the board, preferably the psychiatrist, will personally observe the member and ensure that the member's medical record, particularly that portion concerning his mental health, is accurate and complete.

(5) The requirement for the competency board is in addition to and separate from the medical board procedures. Each board member will sign the report of the board and will certify whether the member is or is not mentally capable of managing his affairs. After approval by the convening authority, the original board report is forwarded to the Judge Advocate General.

(b) *Records.* (1) The convening authority will forward the original of each board report to the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400.

(2) In the case of a finding that a member is not mentally capable of managing his affairs, the forwarding endorsement will set forth the name, relationship, address, and telephone number(s), of the member's next of kin and any other data to help identify a prospective trustee.

§ 726.5 Procedures for designation of a trustee.

(a) Upon receipt of a report of a board convened under section 1404 that a member has been found mentally incapable of managing his affairs, the Judge Advocate General or his designee will initiate action to appoint a trustee, provided no notice of appointment of a committee, guardian, or other legal representative by a State court of competent jurisdiction has been received by the Judge Advocate General. The Judge Advocate General or his designee may direct any Navy or Marine Corps activity to appoint an officer to interview a prospective trustee and make recommendations concerning suitability. The Judge Advocate General will provide the interviewing officer with complete instructions pertaining to the interview of the prospective trustee, including the forms required to be completed by the prospective trustee that will be returned by the interviewing officer to the Judge Advocate General.

(b) The interviewing officer will:

(1) Determine whether the prospective trustee can obtain an appropriate bond as directed by the Judge Advocate General or his designee;

(2) Ascertain that the prospective trustee is willing to execute an affidavit acknowledging that all monies will be applied to the use and benefit of the member and his legal dependents and that no fee, commission, or charge, for any service performed by the trustee, except for payment of the required bond, will be paid from Federal monies received by the trustee.

(3) Forward recommendations to the Judge Advocate General for appropriate action.

§ 726.6 Travel orders.

The Chief of Naval Personnel or the Director, Personnel Management Division, Headquarters, Marine Corps, may issue travel orders to a member to appear before an examining board convened to determine whether the member is mentally capable of managing his affairs. In the case of permanently retired members, however, travel for an appearance before a board convened pursuant to section 1404, above, will be at no cost to the Government unless the Judge Advocate General or his designee determines that unusual hardship exists and requests that appropriate authority fund the travel expenses.

§ 726.7 Status of pay account.

(a) Upon notification by the commanding officer of the medical facility preparing the incapacitation determination that a member has been declared mentally incompetent to manage his affairs, the cognizant disbursing officer will take appropriate action and immediately send the member's personal financial record to the appropriate finance center following the guidelines in the Department of Defense Military Pay and Allowances Entitlements Manual, Part Four, chapter 2. The Judge Advocate General or his designee will then direct the appropriate finance center to suspend the member's pay. Thereafter, the Judge Advocate General or his designee will direct payment of monies to:

(1) The appointed trustee;

(2) The legal representative appointed by a State court of competent jurisdiction; or

(3) Directly to the member following a determination that the member is capable of managing his affairs.

(b) The Commanding Officer, Navy Finance Center, or Commanding Officer, Marine Corps Finance Center, will notify the Judge Advocate General of any fact affecting the pay of a member mentally incapable of managing his affairs. This includes waiver of retired pay in favor of Veterans Administration compensation; death of the member; death of the trustee; or, notice of appointment of a legal representative by a State court of competent jurisdiction. At the request of the Judge Advocate General or his designee, the appropriate finance center will report all disbursements from the member's account.

(c) The Navy or Marine Corps Finance Center will seek direction from the Judge Advocate General when information from other sources indicates a member is not competent to manage his affairs.

§ 726.8 Emergency funds.

(a) Until a trustee is appointed, the Judge Advocate General or his designee may appoint the member's commanding officer or other appropriate official to receive emergency funds up to $1,000.00 from the pay account of the member without bond. The money will be used

for the benefit of the member and his legal dependents.

(b) The commanding officer of any naval medical facility may designate an officer of the command to receive and account for up to $35.00 per month for the health and comfort of a member who is found mentally incapable of handling his affairs and who is a patient at the naval medical facility, if:

(1) A trustee has not been designated under this chapter and a committee, guardian, or other legal representative has not been appointed by a State court of competent jurisdiction;

(2) The member has no other funds available for use in his own behalf; and

(3) The funds are necessary for the purchase of items necessary for the health and comfort of the member.

(c) This section will be cited on the pay voucher as authority for payment and receipt of such funds.

§ 726.9 Reports and supervision of trustees.

(a) *Accounting reports.* The trustee designated under this chapter will submit accounting reports annually or at such other times as the Judge Advocate General or his designee directs. The Judge Advocate General will provide forms to be used by trustees for the required accounting report. The report will account for all funds received from the Navy or Marine Corps on behalf of the member. When payments to a trustee are terminated for any reason, the trustee will submit a final accounting report to the Judge Advocate General. Upon approval of the final accounting report, the trustee and the surety will be discharged from liability.

(b) *Failure to submit a report and default.* If an accounting report is not received by the date designated by the Judge Advocate General or his designee, or an accounting is unsatisfactory, the Judge Advocate General or his designee will notify the trustee in writing. If a satisfactory accounting is not received by the Judge Advocate General within the time specified, the trustee will be declared in default of the trustee agreement and will become liable for all unaccounted trustee funds. If a trustee is declared in default of the trustee agreement, the appropriate finance center will be directed to terminate payments to the trustee and, if necessary, a successor trustee may be appointed. The trustee and surety will be notified in writing by the Judge Advocate General or his designee of the declaration of default. The notification will state the reasons for default, the amount of indebtedness to the Government, and will demand payment for the full amount of indebtedness. If payment in full is not received by the Judge Advocate General within an appropriate period of time from notification of default, the account may be forwarded to the Department of Justice for recovery of funds through appropriate civil action.

Dated: October 17, 1991.

Wayne T. Baucino,

Lieutenant, JACC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc 91-25614 Filed 10-23-91; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 265

[Docket No. 90805-1229]

RIN 0648-AA47

United States Standards for Grades of Fresh and Frozen Shrimp

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

ACTION: Interim final rule with request for comments.

SUMMARY: NOAA is revising the U.S. Standards for Grades of Fresh and Frozen Shrimp (standards) used in NMFS' National Seafood Inspection Program. Participation in the Program by industry members is voluntary. This rule updates the standards to reflect changes in shrimp processing technology since the existing standards were issued in 1982, and is intended to reduce labor costs of sampling and grading shrimp, and allow identification of product quality level for the benefit of the consumer and the industry.

DATES: Interim final rule effective November 25, 1991.

Comments must be received on or before April 24, 1993.

ADDRESSES: Comments should be sent to Thomas J. Moreau, Director, Technical Services, Office of Trade and Industry Services, National Marine Fisheries Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Mary A. Estrella, Chief, Standards and Specifications Branch, NMFS, 508-281-9219.

SUPPLEMENTARY INFORMATION:

Background

The U.S. General Standards for Grades of Shrimp (50 CFR part 265, subpart A) provide a system for Federal and state inspectors to classify fresh and frozen shrimp into U.S. Grade categories (*i.e.*, A, B, C, and Substandard) and allow identification of the product quality level for the benefit of the consumer and industry. The standards are used by inspectors in NMFS's National Seafood Inspection Program. Industry participation in the program is voluntary.

The existing standards for fresh and frozen, non-breaded shrimp were issued in 1982. Since that time, changes in processing technology have occurred, prompting the industry to suggest changes in sampling and grading procedures to lower associated costs. Proposed revised standards for fresh and frozen, non-breaded shrimp were developed during Technical Working Group meetings with participation from industry and user groups and were published for comment on September 21, 1989 (54 FR 38885). The major proposed changes were:

1. Grade assignment. The sample unit grade in the current standards (§ 265.104(f)) is based on an attribute system of tolerances for defects. The sample unit grade in the revised standards (§ 265.104(g)) would be based on a perfect score of zero (no physical defects).

2. Grades. The current standards include quality level specifications for Grade A, Grade B, Grade C, and Substandard § 265.103). The revised standards would include quality level specifications for Grade A and Grade B (§ 265.103).

3. Market forms. The current standards define 14 market forms (§ 265.102(c)). The revised standards would eliminate all market forms designated as "pieces" § 265.102(c)), thus reducing the number of market forms to ten.

4. Limiting rules. The revised standards would include several limiting rules that would tighten the requirements for Grade A product. These limiting rules would subject the lot to the limitations of the acceptance numbers that appear in § 260.61.

The defects proposed to be subject to limiting rules were:

a. Count. If the count of a sample unit does not conform to the declared count, that sample unit would be considered a deviant and subject to the acceptance numbers found in § 260.61.

b. Pieces, damaged and broken shrimp. If the percent by weight of the affected shrimp exceeds the parameters of the limiting rule, that sample unit would be considered a deviant.

c. Improperly deveined. If the percent by weight of affected shrimp exceeds the limiting rule, that sample unit would be considered a deviant.

5. Sample unit size. The current standards use one sample unit size for physical defect assessments and another sample unit size for uniformity of size evaluation (§ 265.104(b)). The revised standards would utilize one sample unit size to evaluate both physical defects and uniformity of size (§ 265.104(b)) with the sample unit size varying according to count per pound (kilogram).

6. Evaluation of physical defects.

a. Deterioration. Evaluation procedures for this defect appear in § 265.104(e)(2) of the current standards. Since detection of deterioration is made organoleptically, this defect would be integrated into the flavor and odor defect category in the revised standards (§ 265.104(d)).

b. Broken, damaged, and pieces. In the current standards, broken, damaged, and pieces of shrimp are addressed as two separate defect categories: "broken or damaged shrimp" (§ 265.104(e)(3)) and "shrimp pieces" (§ 265.104(e)(4)). Because of the similar nature of these defects and their comparable aesthetic qualities, they would be combined into one defect category in the revised standards (§ 265.104(e)(2)(iii)).

c. Unusable material. The current standards contain an extensive list of unusable materials (§ 265.104(e)(5)). The revised standards would divide the unusable material into two separate defect categories: "Unusable material" (§ 265.104(e)(2)(iv)) and "Unacceptable shrimp and heads" (§ 265.104(e)(2)(v)).

d. Improperly or inadvertently peeled and improperly deveined. This defect is combined in the current standards § 264.104(e)(7)). The revised standards would divide this defect into two defect categories: "Inadvertently peeled or improperly peeled shrimp" (§ 265.104(e)(2)(vi)) and "Improperly deveined shrimp" (§ 265.104(e)(2)(vii)).

7. Defect table. The revised standards would utilize a table, broken down by five shrimp size-count categories, for purposes of point assessment.

Comments and Responses

At the end of the 45-day comment period established by the proposed rule, few comments had been received. Several commenters requested an extension of the comment period to have sufficient time to study the proposed rule and submit comments. A notice of a 30-day extension of the comment period was published on December 29, 1989 (54 FR 53660).

Sixteen letters were received during the comment period, as extended—six from industry, one from a hotel corporation, and nine from government. Of the six industry commenters, two felt the proposed standards were too lenient, two felt the proposed standards were too strict, and two expressed no opinion on the severity. The hotel corporation objected to the short initial comment period but did not comment during the 30-day extension period.

Two commenters suggested count-per-pound evaluations be based on a lot average, rather than the acceptance numbers being applied on a per sample basis. NOAA disagrees, believing that averaging the count-per-pound range used by industry would not assure the consumer receiving the number of shrimp declared on the label; no change was made in the interim final rule.

Three commenters suggested deleting the limiting rules altogether. The commenters felt the use of limiting rules was cumbersome and confusing. NOAA agrees and has deleted the limiting rules sections in the interim final rule and has adjusted the defect table to reflect that change.

Three commenters requested the definition for black spot be expanded. NOAA agrees and has modified the definition for black spot in the interim final rule.

One commenter suggested separating "black spot" and "improperly cleaned ends" into two separate defect categories. NOAA disagrees and believes that the two defects are appropriately addressed in the standards; no change was made in the interim final rule.

One commenter noted that the proposed defect table was open-ended, with an unlimited percentage of defects allowable in Grade B product. NOAA agrees and has adjusted the defect table in the interim final rule to include cumulative points at the maximum end of each defect category.

One commenter suggested using the Norwegian method for determining net weights. NOAA disagrees and believes that internationally recognized methods based on the AOAC Methods of Analysis currently used in the Program are more appropriate; no change was made in the interim final rule.

One commenter suggested using the Norwegian definition of "bits and pieces" for small size shrimp. NOAA disagrees and believes that the definition in the standard is appropriate; no change was made in the interim final rule.

One commenter remarked that not all veins are visible. Those containing sand or sediment would be dark and should be assessed as defects. Also, the commenter suggested that the definition for dark roe be modified, because roe of any color is undesirable and should be considered a defect. NOAA agrees and has modified the interim final rule.

Three commenters inquired about the relation between net weight and its impact on grading eligibility using these standards. The declared net weight of a package is a labeling issue handled in accordance with the Food and Drug Administration's requirements and is not a factor of quality to be included in the standards; no change was made in the interim final rule.

Request for Comments

The revised standards should facilitate trade in fresh and frozen, non-breaded shrimp and will allow consumers to select and purchase a greater variety of shrimp products on the basis of identified quality. The revised standards are issued as an interim final rule to allow further input on their adequacy and application. Interested persons are invited to submit written comments and suggestions or objections to these revised standards during the interim rule comment period (see ADDRESSES). The comments will be reviewed and adjustments, if necessary, will be made to the revised standards before publication as a final rule.

Classification

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10.

The Under Secretary for Oceans and Atmosphere, NOAA, has determined that this rule is not a "major rule" requiring preparation of a regulatory impact analysis under Executive Order 12291. This rule will not have a $100 million effect on the economy; will not cause a major increase in costs or prices; and will not have a significant adverse effect on competition, employment, investment, productivity, or innovation.

The General Counsel of the Department of Commerce certified to the Small Business Administration when this rule was proposed that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This rule is expected to facilitate grading and trade in fresh and frozen shrimp while not imposing any new costs on industry; sampling and grading costs to participants in the program are expected to decrease. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

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

List of Subjects in 50 CFR Part 265

Food grades and standards, Seafood.

Dated: October 10, 1991.

Samuel W. McKeen,

Program Management Officer for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 265 is amended by revising subpart A to read as follows:

PART 265—UNITED STATES STANDARDS FOR GRADES OF CRUSTACEAN SHELLFISH PRODUCTS

Subpart A—United States Standards for Grades of Fresh and Frozen Shrimp

Sec.

Subpart A—United States Standards for Grades of Fresh and Frozen Shrimp

Authority: 7 U.S.C. 1621–1629; Reorganization Plan No. 4 of 1970 (84 Stat. 2090).

§ 265.101 Scope and product description.

These Standards for Grades apply to clean, wholesome shrimp that are fresh or frozen, raw or cooked, and are implemented in accordance with additional guidance set forth in part II of NOAA Handbook 25, "Inspector's Instructions for Grading Fresh and Frozen Shrimp." Copies of the Instructions may be obtained from National Seafood Inspection Laboratory, National Marine Fisheries Service, P.O. Drawer 1207, 3209 Frederic Street, Pascagoula, MS 39568–1207.

§ 265.102 Product forms.

(a) *Types.* (1) Chilled, fresh (not previously frozen).

(2) Unfrozen, thawed (previously frozen).

(3) Frozen individually (IQF), glazed or unglazed.

(4) Frozen solid pack, glazed or unglazed.

(b) *Styles.* (1) Raw (uncoagulated protein).

(2) Blanched (parboiled)—heated for a period of time such that the surface of the product reaches a temperature adequate to coagulate the protein.

(3) Cooked—heated for a period of time such that the thermal center of the product reaches a temperature adequate to coagulate the protein.

(c) *Market Forms.* (1) Heads on (head, shell, tail fins on).

(2) Headless (only head removed; shell, tail fins on).

(3) Peeled, undeveined, round, tail on (all shell removed except last shell segment and tail fins, with segments unslit).

(4) Peeled, undeveined, round, tail off (all shell and tail fins removed, with segments unslit).

(5) Peeled and deveined, round, tail on (all shell removed except last shell segment and tail fins, with segments shallowly slit to last segment).

(6) Peeled and deveined, round, tail off (all shell and tail fins removed, with segments shallowly slit to last segment).

(7) Peeled and deveined, fantail or butterfly, tail on (all shell removed except last shell segment and tail fins, with segments deeply slit to last segment).

(8) Peeled and deveined, fantail or butterfly, tail off (all shell and tail fin removed, with segments deeply slit to last segment).

(9) Peeled and deveined, western (all shell removed except last shell segment and tail fins, with segments split to fifth segment and vein removed to end of cut).

(10) Other forms of shrimp as specified and so designated on the label.

§ 265.103 Grades.

(a) *U.S. Grade A* shrimp shall:

(1) Possess good flavor and odor characteristics of the species being evaluated in accordance with § 265.104 of this subpart; and

(2) Comply with the limits for defects for U.S. Grade A quality in accordance with § 265.104(g) of this subpart.

(b) *U.S. Grade B* shrimp shall:

(1) Possess reasonably good flavor and odor characteristics of the species being evaluated in accordance with § 265.104 of this subpart; and

(2) Comply with the limits for defects for U.S. Grade B quality in accordance with § 265.104(g) of this subpart.

§ 265.104 Grade determination.

(a) *Procedures for grade determination.* Shrimp are evaluated for odor and flavor in accordance with paragraph (d) of this section. Shrimp are evaluated for physical characteristics, defects, and uniformity of size in accordance with paragraph (e) of this section.

(b) *Sampling.* Lot size, number of sample units, and acceptance numbers shall be in accordance with the regulations governing processed fishery products, 50 CFR 260.61, Table II, V or VI, whichever is applicable. For examination of physical defects, the sample unit will be one or more packages sufficient to provide the amounts as follows:

(1) For shrimp under 70 count per pound (0.45 kg), a representative 2-pound (0.91 kg) sample unit will be used.

(2) For shrimp 70–250 count per pound (0.45 kg), a representative 1-pound (0.45 kg) sample unit will be used.

(3) For shrimp over 250 count per pound (0.45 kg), a representative 8-ounce (0.23 kg) sample unit will be used.

(c) *Count.* "Count", or number of shrimp per pound (0.45 kg), is determined by dividing the number of whole shrimp in a sample unit by the adjusted weight in pounds (kilograms).

(1) *Adjusted weight* means the weight of all of the whole shrimp in the sample unit.

(2) *Adjusted count* means the number of shrimp comprising the adjusted weight.

(3) If the *count* or number of shrimp per pound (0.45 kg) of a sample unit does not conform to the declared count, that sample unit is a deviant. A lot has the declared count if the number of deviant sample units does not exceed the acceptance number prescribed for its sample size in part 260 of this subchapter. If the number of deviant sample units exceeds the acceptance number for its sample size, it is marked as a mixed lot and it is not graded.

(d) *Evaluation of flavor and odor*— (1) *Definitions of flavor and odor.* (i) *Good* flavor and odor (essential requirements for a U.S. Grade A product) means that the raw product and the cooked product have the normal, pleasant flavor and odor characteristic(s) of freshly caught shrimp that is free from off-flavors and odor of any kind. A natural odor or flavor reminiscent of iodoform is acceptable.

(ii) *Reasonably good* flavor and odor (minimum requirements for U.S. Grade B shrimp) means that the product may be somewhat lacking in good flavor and odor characteristics of freshly caught shrimp, but is free from objectionable off-flavors and off-odors of any kind.

(2) *Procedures.* (i) Raw styles of shrimp are evaluated for flavor and odor in the cooked state. Raw odor is also evaluated in the fresh or thawed state.

(ii) Cooked styles of shrimp are evaluated for flavor and odor without further cooking, if fresh, or after thawing, if frozen.

(e) *Definitions of defects.* Each sample unit is evaluated for its physical characteristics and defects in accordance with the following definitions. Detailed descriptions of defects are in part II of NOAA Handbook 25, "Inspector's Instructions for Grading Fresh or Frozen Shrimp."

(1) *Examination in the frozen state.* (i) *Dehydration* refers to a general drying of the shrimp flesh that is noticeable after any glaze and shell are removed. It includes any detectable change from the normal characteristic, bright appearance of freshly caught, properly iced or properly processed shrimp.

(A) *Slight dehydration* means scarcely noticeable drying of the shrimp flesh that will not affect the sensory quality of the sample.

(B) *Moderate dehydration* means conspicuous drying of the shrimp flesh that will not seriously affect the sensory quality of the sample.

(C) *Excessive dehydration* means conspicuous drying that will seriously affect the sensory quality of the sample.

(ii) [Reserved]

(2) *Examination in the fresh or thawed state.* (i) *Uniformity of size* refers to the degree of uniformity of the shrimp in the container to determine their conformity to the declared count. The product shall be evaluated in the fresh or thawed state for uniformity of size as follows:

(A) From the adjusted sample unit (all whole, unbroken, undamaged shrimp in the sample unit) visually select and weigh not more than 10 percent by count, but not less than one, of the largest shrimp.

(B) Visually select and weigh not more than 10 percent by count, but not less than one, of the smallest shrimp.

(C) Divide the weight of the large shrimp by the weight of the small shrimp and the result will be the uniformity ratio.

(ii) *Black spots, improperly headed (throats), and improperly cleaned ends* refer to the presence of any objectionable black or darkened area that affects the desirability or sensory quality of the shrimp, whether the market form is shell-on or peeled. Objectionable black spot refers to more than three instances of penetrating black spot that is visible but difficult to measure because of its small size (approximately the size of a pencil point); or any areas larger than a pencil point that penetrate the flesh; or aggregate areas of non-penetrating surface black spot on the shell or membrane that is equal to or greater than ⅓ the area of the smallest segment. Assessments are made on individual shrimp "Throats" are those portions of flesh and/or extraneous material from the head (cephalothorax) that remain attached to the first segment after heading.

(iii) *Pieces of shrimp, broken or damaged shrimp*—(A) *Shrimp pieces.* "Piece" means for a count of 70 or less unglazed shrimp per pound (0.45 kg), any shrimp that has fewer than five segments, with or without tail fins attached; or, for a count of more than 70 unglazed shrimp per pound (0.45 kg), any shrimp that has fewer than four segments; or, any whole shrimp with a break in the flesh greater than ⅔ of the thickness of the shrimp where the break occurs.

(B) *Broken shrimp* means a shrimp having a break in the flesh greater than ⅓ of the thickness of the shrimp.

(C) *Damaged shrimp* means a shrimp that is crushed or mutilated so as to materially affect its appearance or useability.

(iv) *Unuseable material* includes the following:

(A) *Legs* refer to walking legs only, whether attached or not attached to the body (heads-on market form excepted).

(B) *Loose shell and antennae* are any pieces of shell or antennae that are completely detached from the shrimp.

(C) *Flipper* refers to any detached tail fin with or without the last shell segment attached, with or without flesh inside.

(D) *Extraneous material* means any harmless material in a sample unit that is not shrimp material.

(v) *Unacceptable shrimp and heads*—(A) *Unacceptable shrimp* refers to abnormal or diseased shrimp.

(B) *Head* refers to the cephalothorax, except for heads-on shrimp.

(vi) *Inadvertently peeled and improperly peeled shrimp* refer to the presence or absence of head, shell segment, swimmeret, or tail fin, which should or should not have been removed for certain market forms as described in § 265.102(c) of this subpart. (Shell-on shrimp with tail fins and/or telson missing is "inadvertently peeled", but if the last segment of flesh is missing, the shrimp is "damaged").

(vii) *Improperly deveined shrimp* refers to the presence of dark vein (alimentary canal) containing sand or sediment or roe which should have been removed for peeled and deveined market forms as described in § 265.102(c) of this subpart. For shrimp of 70 count per pound (0.45 kg) or less, aggregate areas of dark vein or roe defect that are longer than one segment is a defect. For shrimp of 71 to 500 count per pound (0.45 kg), aggregate areas of dark vein or roe defect that are longer than two segments are a defect.

Note: This does not pertain to the last segment. For shrimp of over 500 count per pound (0.45 kg), dark vein or roe of any length is not a defect.

(3) *Examination in the cooked state*—(i) *Texture.* The texture of cooked shrimp should be firm, slightly resilient but not tough, moist but not mushy. Texture as a defect refers to an undesirable toughness, dryness or mushiness which deviates from the normal characteristics of the species when freshly caught, properly processed, and cooked.

(A) *Slight.* Slightly tough, dry but not mushy.

(B) *Moderate.* Moderately tough, dry or mushy.

(C) *Excessive.* Excessively tough, very dry or very mushy.

(ii) [Reserved]

(f) *Listing defect points.* When a sample unit is examined for physical defects, using the list of defect definitions in paragraph (e) of this section, defects are noted and numerical values are assigned in accordance with Table 1 of this subpart. The numbers assigned to defects in Table 1 of this subpart are points. The defect points are added together. The final total number of defect points is used to determine a sample unit grade. The scoring system is based on a perfect score of zero (no physical defects).

(g) *Grade assignment.* (1) Each sample unit will be assigned its grade in accordance with the limits for defects summarized as follows:

Grade assignment	Flavor and odor	Maximum number of defect points
U.S. Grade A	Good	15
U.S. Grade B	Reasonably Good.	30

(2) If a sample unit has been assigned different grade levels for flavor and odor and number of defect points, the sample unit grade will be the lower grade level.

§ 265.105 Tolerances for lot certification.

The grades of specific lots shall be certified in accordance with §§ 260.21 and 260.61 of this subchapter. In § 260.21 of this subchapter, the four score points are additive, not subtractive.

§ 265.106 Hygiene.

All lots to be assigned a grade will be processed and maintained in accordance with §§ 260.98 to 260.104 of this subchapter, and with the Good Manufacturing Practice regulations contained in 21 CFR part 110.

§ 265.107 Methods of analysis.

Product samples will be analyzed in accordance with the "Official Methods of Analysis" of the Association of Official Analytical Chemists, (AOAC), Fourteenth Edition (1984), section 18.004 (page 331) plus sections 32.059 and 32.060 (page 613) as described in paragraphs (a) through (d) of this section. Copies of the AOAC methods may be obtained from AOAC, 1111 North Nineteenth Street, Arlington, VA 22209.

(a) Cooking Seafood Products (AOAC "Official Methods of Analysis" section 18.004).

(1) *Procedure.* Cooking procedure is based on heating product to internal temperature of ≥160°F (70°C). Cooking times vary according to size of product and equipment used. To determine cooking time, cook extra sample using a temperature measuring device with probe of known length to determine internal temperature. Cooking equipment, including cooking oil for deep fat frying, shall be free from substances which interfere with sensory evaluation of cooked product.

(2) Methods of heating product include, but are not limited to, baking, bake-in-foil, broiling, boil-in-bag, shallow pan frying, deep fat frying, oven frying, grilling, poaching, steaming, and microwave heating.

(b) Net Contents of Frozen Food Containers—Unglazed Foods (AOAC "Official Methods of Analysis" sections 32.059 and 32.060).

(1) *Procedures.* For packages up to 5 pounds (2.27 kg), use scale of adequate capacity with sensitivity of 0.01 oz. (0.28 g).

(2) For packages over 5 pounds (2.27 kg), use scale of adequate capacity with sensitivity of 0.025 oz. (0.71 g).

(3) Set scale on firm support and level. Adjust 0 load indicator or rest point and check sensitivity.

(4) Remove package from low temperature storage, remove frost and ice from outside of package, and weigh immediately (W). Open package; remove contents, including any product particles and frost crystals. Air-dry empty package at room temperature and weigh (E). Weight of contents = W − E.

(c) Net Contents of Frozen Seafoods—Glazed Seafoods (AOAC "Official Methods of Analysis" section 18.002).

(1) *Procedures.* Set scale as in section 32.059 above, on firm support and level. Adjust 0 load indicator or rest point and check sensitivity.

(2) Remove package from low temperature storage, open immediately and place contents under gentle spray of cold water. Agitate carefully so product is not broken. Spray until all ice glaze that can be seen or felt is removed. Transfer product to circular No. 8 sieve, 20 cm (8") diameter for packages ≤0.9 kg (2 lb) and 30 cm (12") for packages 0.9 kg (2 lb). Without shifting product, incline sieve at angle of 17–20° to facilitate drainage and drain exactly 2 min. (stopwatch). Immediately transfer product to tared pan (B) and weigh (A). Weight of product = A − B.

(d) Drained Weight of Frozen Shrimp (AOAC "Official Methods of Analysis" sections 18.016 and 18.017).

(1) *Apparatus.* Container—Wire mesh basket large enough to hold contents of one package and with openings small enough to retain all pieces. Expanded metal test-tube basket or equivalent, fully lined with standard 16 mesh per linear inch (2.54 cm) insect screen is satisfactory.

(2) Balance—Sensitive to 0.25 g or 0.01 oz. Sieves—U.S. No. 8, 20 cm (8") and 30 cm (12").

(3) *Procedures.* Place contents of individual package in wire mesh basket and immerse in 15-liter (4-gal.) container of fresh water at 26±3°C (80±5°F) so that top of basket extends above water level. Introduce water of same temperature at bottom of container at flow rate of 4–11 liters (1–3 gal.)/min. As soon as product thaws, as determined by loss of rigidity, transfer all material to circular No. 8 sieve, 20 cm (8"), for packages ≤450 g (1 lb), or 30 cm (12") for packages >450 g (1 lb), distributing evenly. Without shifting material on sieve, incline sieve to 30° from horizontal to facilitate drainage. Two minutes from time placed on sieve, transfer product to previously weighed pan, and weigh. Weight so found minus weight of pan is drained weight of product.

(4) The Administrator of the AOAC will evaluate alternative methods of analysis to determine their acceptability based on their accuracy, repeatability, reproducibility, and lowest level of reliable measurement, as demonstrated by at least six laboratories.

Table 1 to Subpart A of Part 265:

TABLE 1.—DEFECT TABLE

[Size of sample unit is given in § 265.104(b)]

Name of defect	Defect points assigned				
	Up to 40	41–70	71–130	131–500	Over 500
FROZEN STATE					
Count of shrimp per pound:					
1. Dehydration:					
Slight	3	3	3	3	3
Moderate	8	8	8	8	8
Excessive	16	16	16	16	16
THAWED STATE					
2. Uniformity of size:					
Weight ratio	1.75–2.00	1.75–2.00	2.00–4.00	2.50–5.00	(1)
Defect points	4	4	4	4	(1)
Weight ratio	2.01–2.50	2.01–2.50	4.01–6.00	5.01–7.00	(1)
Defect points	8	8	8	8	(1)
Weight ratio	>2.50	>2.50	>6.00	>7.00	(1)
Defect points	16	16	16	16	(1)
3. Black spots, throats, and improperly cleaned ends:					
Percent by weight	1.00–4.00	1.00–4.00	2.00–6.00	2.00–6.00	2.00–6.00
Defect points	3	3	3	3	3
Percent by weight	4.01–8.00	4.01–8.00	6.01–10.00	6.01–10.00	6.01–10.00
Defect points	5	5	5	5	5
Percent by weight	8.01–16.00	8.01–16.00	10.01–20.00	10.01–20.00	10.01–20.00
Defect points	16	16	16	16	16
Each additional percent by weight	8.00	8.00	10.00	10.00	10.00
Defect points	16	16	16	16	16

TABLE 1.—DEFECT TABLE—Continued

[Size of sample unit is given in § 265.104(b)]

Name of defect	Defect points assigned				
	Up to 40	41–70	71–130	131–500	Over 500
4. Pieces, damaged shrimp, and broken shrimp:					
Percent by weight	1.50–2.00	2.00–4.00	2.00–4.00	7.00–9.00	11.00–22.00
Defect points	4	4	4	4	16
Percent by weight	2.01–4.00	4.01–6.00	4.01–7.00	9.01–11.00	(1)
Defect points	8	8	8	8	(1)
Percent by weight	4.01–8.00	6.01–12.00	7.00–14.00	11.01–22.00	(1)
Defect points	16	16	16	16	(1)
Each additional percent by weight	4.00	6.00	7.00	11.00	11.00
Defect points	16	16	16	16	16
5. Unuseable material (legs, loose shell, antennae, flippers, or extraneous material:					
Percent by weight	0.1–0.2	0.1–0.2	0.1–0.2	0.1–0.2	0.1–0.2
Defect points	6	6	6	6	6
Percent by weight	0.21–0.4	0.21–0.4	0.21–0.4	0.21–0.4	0.21–0.4
Defect points	16	16	16	16	16
Each additional percent by weight	0.2	0.2	0.2	0.2	0.2
Defect points	16	16	16	16	16
6. Unacceptable shrimp and heads:					
Percent by weight	1.00–2.50	1.00–2.50	1.00–2.50	1.00–2.50	1.00–2.50
Defect points	3	3	3	3	3
Percent by weight	2.51–5.00	2.51–5.00	2.51–5.00	2.51–5.00	2.51–5.00
Defect points	6	6	6	6	6
Percent by weight	5.01–10.00	5.01–10.00	5.01–10.00	5.01–10.00	5.01–10.00
Defect points	16	16	16	16	16
Each additional percent by weight	5.0	5.0	5.0	5.0	5.0
Defect points	16	16	16	16	16
7. Improperly peeled and inadvertently peeled shrimp:					
Percent by weight	2.00–6.00	2.00–6.00	4.00–9.00	7.00–12.00	12.00–17.00
Defect points	3	3	3	3	8
Percent by weight	6.01–10.00	6.01–10.00	9.01–14.00	12.01–17.00	17.01–34.00
Defect points	8	8	8	8	16
Percent by weight	10.01–20.00	10.01–20.00	14.01–28.00	17.01–34.00	(1)
Defect points	16	16	16	16	(1)
Each additional percent by weight	10.00	10.00	14.00	17.00	17.00
Defect points	16	16	16	16	16
8. Improperly deveined shrimp:					
Percent by weight	1.00–3.00	1.00–6.00	6.00–9.00	6.00–11.00	(1)
Defect points	3	3	3	3	(1)
Percent by weight	3.01–5.00	6.01–10.00	9.01–12.00	12.01–20.00	(1)
Defect points	8	8	8	8	(1)
Percent by weight	5.01–10.00	10.01–20.00	12.01–24.00	20.01–40.00	(1)
Defect points	16	16	16	16	(1)
Each additional percent by weight	5.00	10.00	12.00	20.00	(1)
Defect points	16	16	16	16	(1)
COOKED STATE					
9. Texture:					
Slight	2	2	2	2	2
Moderate	5	5	5	5	5
Excessive	16	16	16	16	16

(1) Does not apply.

[FR Doc. 91–24947 Filed 10–23–91; 8:45 am]
BILLING CODE 3510–22–M

50 CFR Part 285

[Docket No. 70355–7127]

Atlantic Tuna Fisheries

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

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice to close the fishery for Atlantic bluefin tuna conducted by vessels permitted in the Harpoon category and fishing for giant Atlantic bluefin tuna. Closure of this segment of the fishery is necessary because it has been determined that the annual quota for this category has been attained.

EFFECTIVE DATE: The closure is effective from 0001 hours local time on October 22, 1991 through December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508–281–9324.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971–971h) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction were published in the **Federal Register** on October 25, 1985 (50 FR 43396).

Section 285.22(a) of the regulations provides for an annual quota of 54 metric tons (mt) of giant Atlantic bluefin tuna to be harvested from the Regulatory Area by vessels permitted in the Harpoon category. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator is further authorized under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the category of gear subject to the quotas.

Based on landings reports, the Assistant Administrator has determined that the quota of Atlantic bluefin tuna allocated for the Harpoon category has been attained. Fishing for, or retention of, giant Atlantic bluefin tuna by vessels in the Harpoon category must cease at 0001 hours October 22, 1991.

Other Matters

Notice of this action will be mailed to Atlantic bluefin tuna dealers and fishermen, several industry publications, associations and state agencies. This action is taken under the authority of 50 CFR 285.20, and is taken in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Authority: 16 U.S.C. 971 *et seq.*

Dated: October 21, 1991.

Joe P. Clem,

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

[FR Doc. 91-25686 Filed 10-21-91; 4:24 pm]

BILLING CODE 3510-22

---

50 CFR Part 672

[Docket No. 901184-1042]

Groundfish of the Gulf of Alaska

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

ACTION: Establishment of directed fishing allowances; notices of closure to directed fishing; change of reporting and recordkeeping requirements.

SUMMARY: This notice establishes directed fishing allowances and closes directed fisheries for pollock in the Western and Central pollock subareas of the Gulf of Alaska (GOA). Additionally, this notice terminates a daily processor reporting requirement. This action is necessary to prevent exceeding the total allowable catch (TAC) for pollock in those subareas. The intent of this action is to ensure optimum use of pollock stocks.

EFFECTIVE DATES: *Establishment of directed fishing allowances:* 12 noon, Alaska local time (A.l.t.), October 21, 1991, through the remainder of the fishing year. *Notice of closure for:* (1) the Western Pollock Subarea (WSA), 12 noon, A.l.t., October 26, 1991; and (2) the Central Pollock Subarea (CSA), 4 p.m., A.l.t., October 24, 1991, both through the remainder of the fishing year. *Termination of daily processor reporting requirement:* Upon completion of processing all groundfish harvested with trawl gear from the GOA in 1991.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the GOA are managed by the Secretary of Commerce (Secretary) under the Fishery Management Plan for Groundfish of the GOA (FMP). The FMP was prepared by the North Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act and is implemented by regulations governing the foreign fishery at 50 CFR part 611 and by regulations governing the U.S. fisheries at 50 CFR parts 620 and 672.

Under regulations implementing the FMP, the Secretary annually specifies TAC amounts for the major commercially exploited groundfish species of the GOA, one of which is pollock, 50 CFR 672.20(c). A final notice specifying the 1991 GOA TACs for pollock, 103,400 metric tons (mt), was published in the **Federal Register** on June 19, 1991 (56 FR 28112). The Western and Central areas of the GOA received 100,000 mt of the 1991 GOA pollock TAC and this amount was further divided between the WSA and CSA, each with a 50,000 mt apportionment divided into quarterly allowances.

After adjustments for overages and underages from previous quarters, the amount of pollock available for harvest in any subarea and quarter is limited to 150 percent of the initial quarterly allowance 50 CFR 672.20(a)(2)(v) (56 FR 28112; June 19, 1991). Therefore, within each subarea some of the pollock allocation may be unavailable for harvest if not used. Computations of harvest and carryover from the first through third quarters show that the total 1991 subarea allocation for the WSA is 47,127 mt and for the CSA is 50,000 mt.

Establishment of Directed Fishing Allowances and Closures to Directed Fishing

NMFS is establishing directed fishing allowances for pollock by vessels fishing in the WSA of 46,927 mt and in the CSA of 49,800 mt (§ 672.20(c)(2)). The Director, Alaska Region, NMFS (Regional Director), has determined that the remaining amounts of TAC specified for pollock in the WSA and the CSA of the GOA are necessary as bycatch to support anticipated groundfish fisheries in those subareas.

Also under § 672.20(c)(2), the Regional Director has determined that the remaining balance of directed fishing allowances of pollock in each subarea (WSA, 13,700 mt; CSA, 11,500 mt) is expected to be reached within a short time of the opening of the directed fisheries on October 21, 1991. Therefore, NMFS is prohibiting directed fishing for pollock by vessels using any gear on October 26, 1991 in the WSA, and on October 24, 1991, in the CSA through the remainder of the fishing year.

Harvest rates in fourth quarter pollock fisheries are expected to be high. Under § 672.5(d), all groundfish processors were required to complete a survey of fourth quarter pollock utilization. Results of that survey were used to determine the acceptable length of directed fisheries for pollock.

Change in Reporting and Recordkeeping

Groundfish processors will no longer be required to submit daily reports to NMFS of groundfish harvested from the WSA or CSA when each processor completes processing of groundfish harvested with trawl gear from the GOA for 1991. A notice in the **Federal Register** required processors of groundfish harvested from the GOA to submit daily reports to NMFS in addition to regular weekly reports (56 FR 50279; October 4, 1991). That action was taken in order to improve monitoring of rockfishes, Pacific halibut bycatch, and pollock. In a separate action, the entire GOA was closed to trawling with the exception of pollock harvested with pelagic trawl gear as of October 14, 1991 (56 FR 52213; October 18, 1991). Therefore, the pollock fisheries in the WSA and CSA are the final trawl fisheries that will be conducted in the GOA this fishing year and daily reports will no longer be necessary after all trawl catch is processed.

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay the effective dates of this notice. Immediate effectiveness of this notice is necessary to benefit U.S. fishermen participating in domestic annual processing groundfish operations who have a need to plan and prepare for pollock directed fisheries.

List of Subjects in 50 CFR Parts 611 and 672

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: October 18, 1991.

Richard H. Schaefer,

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

[FR Doc. 91-95563 Filed 10-18-91; 4:42 pm]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 901199-1021]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the secondary allowance of the prohibited species catch (PSC) of Pacific halibut for the Domestic Annual Processing (DAP) Greenland turbot fishery in the Bering Sea and Aleutian Islands Management Area (BSAI) has been caught. Therefore, NMFS is closing the directed Greenland turbot fishery. This action is necessary to prevent the secondary allowance of halibut for the DAP Greenland turbot fishery from being exceeded before the end of the fishing year. The intent of this action is to ensure optimum use of groundfish while conserving Pacific halibut stocks.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), October 21, 1991, through 12 midnight, December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP) governs the groundfish fishery in the exclusive economic zone within the BSAI management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations for the foreign fisheries at 50 CFR 611.93 and for the U.S. fisheries at 50 CFR parts 620 and 675. PSC limits for Pacific halibut are established for groundfish fisheries in the BSAI (56 FR 2700; January 24, 1991). Under § 675.21(a)(5), the secondary PSC limit of Pacific halibut caught while conducting any Domestic Annual Harvest (DAH) trawl fishery for groundfish in the BSAI during any fishing year is an amount equal to 5,333 metric tons (mt). Section 675.21(b) requires that the PSC limit of Pacific halibut be further apportioned into bycatch allowances, one of which is assigned to the DAP Greenland turbot fishery. The final notice of initial specifications of groundfish in the BSAI for 1991 (56 FR 6290; February 15, 1991) established the secondary Pacific halibut allowance for the DAP Greenland turbot fishery at 200 mt.

Under § 675.21(c)(1)(iv), the Regional Director has determined that U.S. vessels fishing with trawl gear have caught the secondary PSC allowance of Pacific halibut in the BSAI while participating in the DAP Greenland turbot fishery. Therefore, NMFS is closing the directed DAP Greenland turbot fishery from 12 noon, A.l.t., October 21, 1991, through 12 midnight, A.l.t., December 31, 1991.

In accordance with § 675.20(h)(8) and § 675.21(b)(4)(ii), vessels fishing with trawl gear in the BSAI area may not retain at any particular time during a trip an amount of Greenland turbot and arrowtooth flounder in the aggregate that is equal to or greater than 20 percent of the amount of all other fish species retained at the same time during the same trip, as calculated in round weight equivalents. Fishermen are reminded that NMFS has already prohibited retention of Greenland turbot by vessels fishing in the BSAI (56 FR 22830; May 17, 1991) and has prohibited all trawling in the Aleutian Islands subarea (56 FR 32338; July 16, 1991).

Classification

This action is taken under §§ 675.20 and 675.21 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: October 21, 1991.

Joe P. Clem,

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

[FR Doc. 91-25663 Filed 10-21-91; 4:24 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 206
Thursday, October 24, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Antidumping and Countervailing Duties; Federal Noise Abatement and Control Activities

AGENCY: Administrative Conference of the United States.

ACTION: Notice of availability of draft recommendations.

SUMMARY: The Administrative Conference's Committee on Regulation has under consideration draft recommendations on two subjects: Procedures in Antidumping and Countervailing Duty Cases; Federal Noise Abatement and Control Activities under the Noise Control Act. Copies of the texts of these drafts are available to interested persons. Comments on the draft recommendations are welcome.

DATES: Please submit any comments by November 6, 1991.

ADDRESSES: Send comments to David M. Pritzker, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: David M. Pritzker, Office of the Chairman, 202–254–7065.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Regulation has under consideration draft recommendations on two subjects: Procedures Used in Antidumping and Countervailing Duty Cases; Federal Noise Abatement and Control Activities under the Noise Control Act. Each draft recommendation is based in part on a study prepared for the Conference by independent consultants who are identified below.

The draft recommendations have been distributed to an extensive mailing list of interested persons with requests for comments. This announcement is being published in the **Federal Register** to give additional public notice of the availability of these materials. Copies of the draft recommendations and reports are available on request from the Office of the Chairman of the Administrative Conference. All such requests will be filled promptly. Interested persons may comment on the draft recommendations. It would be most helpful to the Conference to receive all comments by November 6.

In considering possible recommendations of the Administrative Conference, it is important to understand the Conference's specific mission. The purpose of the Conference is to improve the administrative procedure of federal agencies to the end that they may fairly and expeditiously carry our their responsibilities to protect private rights and the public interest. Accordingly, for this and all research projects that the Conference undertakes, its mandate is limited to issues of administrative procedure and not substance (see 5 U.S.C. 571–576). For this reason, the Conference cannot advise agencies or the Congress on which policy or substantive choices should be made with respect to particular federal programs.

The Committee on Regulation will meet in mid-November for further consideration of the draft recommendations in the light of any comments that may be received. It is anticipated that recommendations on both subjects will then be proposed for consideration by the entire membership of the Conference meeting in plenary session on December 12 and 13. The plenary session and all committee meetings are open to the public, and notice of time and place are published in the **Federal Register.**

I. Administrative Procedures Used in U.S. Antidumping and Countervailing Duty Cases

The Administrative Conference's consultants for its study of procedures used in U.S. antidumping and countervailing duty cases are Professors John H. Jackson of the University of Michigan and William J. Davey of the University of Illinois.

The draft recommendation first suggests some steps that the International Trade Administration (ITA) of the Department of Commerce and the International Trade Commission (ITC) might take to improve the administrative record in antidumping and countervailing duty cases. In addition, several administrative reforms are suggested for the ITA, and the ITC is advised to strengthen the collegial nature of its decisionmaking process.

II. Federal Noise Abatement and Control Activities Under the Noise Control Act

At the request of the Environmental Protection Agency, the Administrative Conference undertook a study of possible alternative approaches to noise abatement and control under the Noise Control Act of 1972. EPA's activities in this area have been severely limited for the past decade because ftinding has not been made available during this period. The Conference's consultants for this project are Professor Sidney A. Shapiro of the University of Kansas School of Law and Dr. Alice Suter, an acoustical consultant from Cincinnati, Ohio.

In accordance with the general statement appearing above concerning the scope of the Administrative Conference's mission, the draft recommendation on federal noise abatement and control activities expresses no views as to whether to reactivate EPA's Office of Noise Abatement and Control, nor is advice given on whether tunds should be made available. The committee's approach to this study has been to identify issues and available options. Thus the draft recommendation points out various problems that have arisen as a result of EPA having statutory responsibilities without funding to carry them out. It suggests that steps be taken to resolve this anomalous situation, and lists a number of important considerations that should be taken into account in any decisions by EPA or the Congress as to the proper course.

Dated: October 21, 1991.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 91–25679 Filed 10–23–91; 8:45 am]

BILLING CODE 6110–01–M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 843, and 870

RIN 3206-AD 84

Payment of Lump-Sum Death Benefits Under CSRS, FERS and FEGLI

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend the Civil Service Retirement System (CSRS), Federal Employees Retirement System (FERS), and Federal Employees' Group Life Insurance (FEGLI) regulations to clarify that when a lump-sum death benefit is payable to the estate of a deceased employee or annuitant and no administrator or other fiduciary has been appointed by a court of appropriate jurisdiction, payment may be made to an individual qualifying under "small estate" procedures of the State of domicile. These regulations are needed to assure that lump-sum death benefits are paid in a manner consistent with legislative intent.

DATES: Comments must be received on or before December 23, 1991.

ADDRESSES: Written comments may be sent to Andrea Minniear Farran, Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington DC 20044, or delivered to OPM, room 4351, 1900 E Street NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Eugene R. Littleford, (202) 606-0299.

SUPPLEMENTARY INFORMATION: Payment of lump-sum death benefits under CSRS is governed by the order of precedence expressed in section 8342(c) of title 5, United States Code. Identical language governs the distribution of similar payments under FERS (5 U.S.C. 8424(d)) and FEGLI (5 U.S.C. 8705).

Under all three provisions, payment is made to the survivors of the deceased employee, Member or annuitant in the following order of precedence, with payment to one class extinguishing the right of each subsequent class: First, the designated beneficiary or beneficiaries; second, the surviving spouse; third, the child or children of the deceased, or their descendants, by representation; fourth, the surviving parent(s); fifth, the duly appointed executor or administrator of the estate; and sixth, the next of kin under the laws of the State of the decedent's domicile.

Since the first enactment of this order of precedence in 1950 (Public Law 81-547, June 14, 1950), changes have been made in laws of many States which permit the administration of a small estate without court-appointment of an executor or administrator. These changes have been made primarily to avoid the expense of administration, but also to relieve the courts of the administrative burden of an extensive case load of small estates. Generally, for estates under a certain monetary value (which varies from State to State), it is not possible for any individual to obtain an appointment as administrator or executor.

An administrator or executor who receives a payment in his or her official capacity receives that amount for the purpose of holding the funds for the benefit of the deceased's estate, i.e., to pay the legitimate debts of the deceased, and to distribute the remainder of the estate's assets to the estate's beneficiaries. Consequently, the legislative purpose of paying the lump sum under the fifth category is not to benefit any administrator or executor by virtue of his or her receipt of an appointment, but rather to assure that the lump sum is made available to the creditors and beneficiaries of the estate.

These proposed regulations, by defining the term "duly appointed representative" in a fashion that includes individuals operating under small estate procedures, will incorporate the changes in estate practice which have occurred over the last 40 years, and permit OPM to better honor the legislative intent behind the statutory order of precedence. By giving the estate of the deceased employee priority over the next of kin, Congress intended that the creditors of the estate, and the beneficiaries of wills, should be placed before the next of kin. However, if OPM were not to recognize small estate procedures, and authorized payment only to fiduciaries appointed through formal probate procedures, the interests of persons who would ordinarily benefit from the estate could be injured. This is because some States—California, for example—do not permit formal probate when the value of the estate is below a certain amount. Even in States where formal probate stands as an alternative to small estate procedures, the costs associated with such proceedings may seriously diminish the value of the estate, thus significantly reducing the amount creditors and beneficiaries ultimately receive.

These proposed regulations would also enable OPM to more consistently honor the intentions of a decedent who designated his or her estate as beneficiary. Frequently, in these cases, the value of the estate does not warrant the cost of appointing an executor or administrator under formal probate procedures. By recognizing the small estate procedures available in States that have enacted them, OPM will be able to pay lump-sum benefits in a manner consistent with the designator's intent.

We believe that it is important, not only for administrative purposes but also for the purpose of establishing equivalence between the regular estate administration procedures and the small estate procedures, that the identity of the proper payee should be determinable from the face of the documents submitted by the claimant. We believe that the proposed regulations will accomplish that purpose, by placing the burden of proof of entitlement under the small estate procedures on the claiming individual.

Also, until an individual establishes entitlement under applicable small estate procedures, he or she has no vested interest in the lump-sum death benefit. This means that, if OPM pays another individual, under the statutory order of precedence, that payment is final and conclusive. Consistent with the statutory provisions which state that payment under the order of precedence bars recovery by any other person, OPM will not pay a person claiming under small estate procedures unless that individual has established entitlement before OPM has authorized payment.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that these regulations will not have a significant impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and their family members.

List of Subjects in 5 CFR Parts 831, 843, and 870

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Life insurance, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is proposing to amend parts 831, 843, and 870 of Title 5 of the Code of Federal Regulations as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

2. Section 831.2001 is amended by adding alphabetically the definition of "duly appointed representative" as set forth below.

§ 831.2001 Definitions.

* * * * *

Duly appointed representative of the deceased employee's, separated employee's, retiree's, survivor's or Member's estate means an individual named in an order of a court having jurisdiction over the estate of the deceased which grants the individual the authority to receive, or the right to possess, the property of the deceased; and also means, where the law of the domicile of the deceased has provided for the administration of estates through alternative procedures which dispense with the need for a court order, an individual who demonstrates that he or she is entitled to receive, or possess, the property of the deceased under the terms of those alternative procedures.

* * * * *

3. Section 831.2003 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 831.2003 Eligibility for lump-sum payment upon death or retirement.

(a) * * * If a deceased employee, separated employee, retiree or Member provided in a valid designation of beneficiary that the lump sum proceeds shall be payable to the deceased's estate, or to the Executor, Administrator, or other representative of the deceased's estate, or if the proceeds would otherwise be properly payable to the duly appointed representative of the deceased's estate under the order of precedence specified in 5 U.S.C. 8342(c), payment of the proceeds to the duly appointed representative of the deceased's estate will bar recovery by any other person.

* * * * *

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

4. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

5. Section 843.102 is amended by adding alphabetically the definition of "duly appointed representative" as set forth below.

§ 843.102 Definitions.

* * * * *

Duly appointed representative of the deceased employee's, separated employee's, retiree's, survivor's or Member's estate means an individual named in an order of a court having jurisdiction over the estate of the deceased which grants the individual the authority to receive, or the right to possess, the property of the deceased; and also means, where the law of the domicile of the deceased has provided for the administration of estates through alternative procedures which dispense with the need for a court order, an individual who demonstrates that he or she is entitled to receive, or possess, the property of the deceased under the terms of those alternative procedures.

* * * * *

6. § 843.203 is amended by designating the current paragraph as (a) and adding a new paragraph (b) to read as follows:

§ 843.203 Eligibility for a one-time payment upon death of an employee, separated employee, or retiree if no one is eligible for an annuity.

* * * * *

(b) If a deceased employee, separated employee, retiree or Member provided in a valid designation of beneficiary that the lump sum proceeds shall be payable to the deceased's estate, or to the Executor, Administrator, or other representative of the deceased's estate, or if the proceeds would otherwise be properly payable to the duly appointed representative of the deceased's estate under the order of precedence specified in 5 U.S.C. 8424(d), payment of the proceeds to the duly appointed representative of the deceased's estate will bar recovery by any other person.

PART 870—BASIC LIFE INSURANCE

7. The authority citation for part 870 continues to read as follows:

Authority: 5 U.S.C. 8716.

8. Section 870.901 is amended by adding paragraphs (a)(4) and (b) to read as follows:

§ 870.901 Order of precedence.

(a) * * *

(4) *Duly appointed representative of the insured's estate* means an individual named in an order of a court having jurisdiction over the estate of the insured which grants the individual the authority to receive, or the right to possess, the property of the insured; and also means, where the law of the domicile of the insured has provided for the administration of estates through alternative procedures which dispense with the need for a court order, an individual who demonstrates that he or she is entitled to receive, or possess, the property of the insured under the terms of those alternative procedures.

(b) If an insured provided in a valid designation of beneficiary that the proceeds of the insurance shall be payable to the insured's estate, or to the Executor, Administrator, or other representative of the insured's estate, or if the proceeds would otherwise be properly payable to the duly appointed representative of the insured's estate under the order of precedence specified in 5 U.S.C. 8705(a), payment of the proceeds to the duly appointed representative of the insured's estate will bar recovery by any other person.

[FR Doc. 91-25643 Filed 10-23-91; 8:45 am]

BILLING CODE 6325-01-M

---

5 CFR Part 870

RIN 3206-AD50

Federal Employees' Group Life Insurance Program: Annual Basic Pay Rate for Less Than Full-Time Employees

AGENCY: Office of Personnel Management.

ACTION: Notice of withdrawal of proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is withdrawing its proposal to provide a new method for determining the amount of annual pay under the Federal Employees' Group Life Insurance (FEGLI) Program for employees whose tour of duty is less than full time. The proposed regulations, published October 14, 1988 (53 FR 40232), would have established a new method of computing the amount of life insurance for these employees for the purposes of withholding of contributions and settlement of death claims. Upon further review, OPM has now determined that the known or anticipated adverse consequences of this proposed change outweigh the possible advantage of proceeding with implementation. Therefore, the proposed regulations are withdrawn.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606-0780 ext. 207.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91-25644 Filed 10-23-91; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-ASW-23]

Proposed Establishment of Transition Area: Oakdale, LA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area located at Oakdale, LA. The development of a new standard instrument approach procedure (SIAP) to the Allen Parish Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new Nondirectional Radio Beacon (NDB) Runway 35 SIAP. If adopted, this proposal would change the status of the Allen Parish Airport from visual flight rules (VFR) operations only to include operations under instrument flight rules (IFR).

DATES: Comments must be received on or before December 3, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 91-ASW-23, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Mark F. Kennedy, System Management Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193-0530; telephone: (817) 624-5561.

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 as self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-ASW-23." 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 office of the Assistant Chief Counsel, 4400 Blue Mound Road, Forth Worth, TX, 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 Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193-0530. 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 the Federal Aviation Regulations (14 CFR part 71) to establish a transition area located at Oakdale, LA. The development of a new NDB Runway 35 SIAP to the Allen Parish Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for all aircraft executing the NDB Runway 35 SIAP. If this proposal is adopted, the status of the Allen Parish Airport would change from VFR operations only to include IFR operations. Section 71.181 of part 71 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 impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

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

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

Authority: 49 U.S.C. App. 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:

Oakdale, LA [New]

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Allen Parish Airport (latitude 30°45'02"N., longitude 092°41'20"W.) excluding that airspace within restricted area R-3806.

Issued in Forth Worth, TX on September 30, 1991.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 91-25595 Filed 10-23-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Definition and Extension of Port Limits of Rio Grande City, Texas

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to the field organization of Customs by defining and extending the geographical limits of the port of entry of Rio Grande City, Texas. The proposed change is being made as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources and to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before December 23, 1991.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Linda Walfish, Office of Inspection and Control (202–566–9425).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources and to provide better service to carriers, importers, and the general public, Customs is proposing to amend § 101.3, Customs Regulations (19 CFR 101.3), by defining and extending the geographical limits of the port of entry of Rio Grande City, Texas.

In the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), Customs Regulations, Rio Grande City is listed as a port of entry in the Laredo, Texas, Customs District within the Southwest Region. Rio Grande City was designated as a port of entry within the District of Laredo as part of a reorganization of Customs communicated to Congress by President Taft in a message dated March 3, 1913 (set forth in T.D. 33249 dated March 10, 1913). Although the geographical limits of the Rio Grande City port of entry were never specifically defined, Customs has considered those limits to be the area serviced by the water district in Rio Grande City.

Customs has determined that the port limits of Rio Grande City should be clearly defined and should be extended in order to meet the growing demand for Customs services in and around the community of Rio Grande City. Definition and extension of the port limits would eliminate present imprecision regarding the correct limits and would obviate the collection of reimbursement required for Customs inspectional services provided in areas not considered to be within the port of entry limits as presently administered by Customs. The proposed extended geographical limits of the Rio Grande City port of entry are as follows:

On the east, from a point-of-beginning on the United States-Mexico international boundary, directly north to the intersection of U.S. Highway 83 and FM (Farm to Market)–2221, north and then east on FM–2221 to FM–492, east on FM–492 to FM–681, and north on FM–681 to FM–1017; on the north, west on FM–1017 to the intersection of FM–1017 and FM–755 at the Village of La Gloria, south on FM–1017/755 and then west on FM–1017 to FM–2686, and west on FM–2686 to FM–649; on the west, south on FM–649 to U.S. Highway 83, and from the intersection of FM–649 and U.S. Highway 83 directly south to the United States-Mexico international boundary; on the south, east along the United States-Mexico international boundary to the point-of-beginning.

If the proposed port limits of Rio Grande City are adopted, the list of Customs regions, districts, and ports of entry in 19 CFR 101.3(b) will be amended accordingly.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Authority: This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

Regulatory Flexibility Act

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued with notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12291

Because this document relates to agency organization and management, it is not subject to E.O. 12291.

Drafting Information

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

Approved: October 4, 1991.

Michael H. Lane,

Acting Commissioner of Customs.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 91–25555 Filed 10–23–91; 8:45 am]

BILLING CODE 4820–02–M

RAILROAD RETIREMENT BOARD

20 CFR Part 345

RIN 3220–AA94

Employers' Contributions and Contribution Reports

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend part 345 of its regulations to authorize the agency to require all employers subject to the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 351 *et seq.*) to make the contributions required by that Act through the Automated Clearing House (ACH) system transfer in order to promote more efficient and less costly administration of that Act.

DATES: Comments must be received by November 25, 1991.

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

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611,

(312) 751–4945 (FTS 386–4945).

SUPPLEMENTARY INFORMATION: Section 345.10(b) of the Board's regulations currently provides that employers whose liability under the Railroad Retirement Tax Act (RRTA) (26 U.S.C. 3201 *et seq.*) equals or exceeds $1,000,000 shall deposit contributions payable under the RUIA in accordance with Board instructions. Those instructions now require employers of that size to make deposits by wire transfer. Under § 345.10(c)(2) of the regulations, smaller employers are given the option of paying contributions by wire transfer, but are not required to do so. Section 345.10(c)(1) gives such smaller employers the option of paying by certified or uncertified checks. In order to provide for more efficient and less costly administration of the RUIA, the Board proposes to amend § 345.10 so as to authorize the agency to require all employers to make RUIA contributions in accordance with instructions issued by the Board. It is anticipated that future instructions will require all employers to use the Automated Clearing House (ACH) system. Employers now required to make deposits by wire use the Fedwire Deposit System (Fedwire). ACH is less costly for employers to use than Fedwire. ACH would also provide more information on deposits and facilitate better control over the collection of contributions.

List of Subjects in 20 CFR Part 345

Railroad employees, Railroad unemployment insurance.

For the reasons set out in the preamble, chapter II of title 20 of the Code of Federal Regulations is proposed to be amended as follows:

PART 345—EMPLOYERS' CONTRIBUTIONS AND CONTRIBUTION REPORTS

1. The authority citation for part 345 is proposed to be revised to read as follows:

Authority: 45 U.S.C. 358; 45 U.S.C. 362(l).

2. Section 345.10(b) is proposed to be revised to read as follows:

§ 345.10 Payment of employers' contributions.

* * * * *

(b) An employer shall deposit the contributions under the Railroad Unemployment Insurance Act required to be deposited for the current calendar year in accord with instructions issued by the Railroad Retirement Board. At the direction of the Board, the Secretary of the Treasury shall credit such contributions to the railroad unemployment insurance account in accord with section 10 of the Railroad Unemployment Insurance Act and to the railroad unemployment insurance administration fund in accord with section 11 of the Railroad Unemployment Insurance Act.

§ 345.10(c) [Removed]

3. Section 345.10(c) is proposed to be removed.

Dated: October 16, 1991.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91–25580 Filed 10–23–91; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 773, 778, 840, and 843

RIN 1029–AB34

Use of the Applicant/Violator Computer System (AVS) in Surface Coal Mining and Reclamation Permit Approval; Standards and Procedures for Ownership and Control Determinations; Sanctions for Knowing Omissions and Inaccuracies in Ownership and Control Information

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior (DOI) extends until November 20, 1991, the public comment period on the proposed rule published in the September 6, 1991, **Federal Register** (56 FR 45780). The proposed rule would establish new regulations to require regulatory authorities to use OMS's Applicant/Violator Computer System (AVS) and other information sources to identify ownership and control links between permit applicants and violators.

DATES: OSM will accept written comments on the proposed rule until 5 p.m. local time on November 20, 1991.

ADDRESSES: Written comments may be hand delivered to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131, 1100 L Street NW., Washington, DC; or mailed to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131–L, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Annetta Cheek, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1849 C Street NW., Washington, DC 20240. Telephone: 202–208–4421 (Commercial) or 268–4421 (FTS).

SUPPLEMENTARY INFORMATION: The Office of Surface Mining Reclamation and Enforcement (OSM) published a proposed rule on September 6, 1991 that would establish new regulations to require regulatory authorities to use OSM's Applicant/Violator Computer System (AVS) and other information sources to identify ownership and control links between permit applicants and violators.

The regulations would establish the procedures, standards, and type of proof required to challenge ownership or control links and to disprove violations and include sanctions for a permit applicant's knowing submission of inaccurate or incomplete ownership and control information.

OSM also proposes to amend a number of current regulations affecting blocking of permits, abatement of notices of violations, improvidently issued permits, and permit application information.

The proposed regulations will provide necessary guidance to the regulated community and will enhance compliance with the provisions of section 510(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) and the provisions of 30 CFR 773.15(b), 30 CFR 773.20, and 30 CFR 773.21. Such proposals will reduce the possibility of violators receiving and retaining permits in violation of the permit approval provisions of SMCRA.

The comment period for the proposed rule was scheduled to close on October 21, 1991. In response to a request for more time to submit public comments on this proposal, OSM is extending the comment period by 30 days. Comments will now be accepted until 5 p.m. local time on November 20, 1991.

Dated: October 17, 1991.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 91–25589 Filed 10–23–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13 90-28]

RIN 2115-AE06

Regulated Navigation Area: Puget Sound & Strait of Juan de Fuca, WA; Grays Harbor, WA; Columbia River & Willamette River, OR; Yaquina Bay, OR; Umpqua River, OR; and Coos Bay, OR

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to require an emergency towline on tank barges while transiting certain port areas of the Pacific Northwest. This is in response to the growing concern of citizens of Washington and Oregon to prevent discharges of oil or other hazardous substances during transportation. The States/British Columbia Oil Spill Task Force, formed in 1989 to develop recommendations on reducing the threat of oil spills on the West Coast, recommended that emergency towlines be required on tank barges to minimize the probability of a major maritime disaster. As the marine transportation system expands in the Pacific Northwest, the probability of a catastrophic accident will increase unless preventative measures are implemented. These proposed regulations are intended to enhance navigation safety, thereby reducing the risk of pollution and environmental damage due to collisions and groundings.

DATES: Comments must be received on or before January 7, 1992.

ADDRESSES: Comments should be mailed to Commander, Thirteenth Coast Guard District (mps), Rulemaking Project CCGD13 90-28, 915 Second Avenue, Jackson Federal Building, Seattle, Washington 98174-1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Jackson Federal Building, room 3506, Seattle, WA. Normal office hours are 8 a.m. to 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: CDR W. O. Harper, Chief, Port Safety and Security Branch, (206) 553-1711, Commander, Thirteenth Coast Guard District (m), 915 Second Avenue, Jackson Federal Building, Seattle, Washington 98174-1067.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD13 90-28) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The Coast Guard specifically requests comments on: (1) Whether other coastal ports or areas not listed above should be considered; and, (2) any anticipated economic and environmental impact this proposal may have. Proposed alternatives to the suggested actions are sought as well. 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. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are CDR W. O. Harper, project officer, Thirteenth Coast Guard District (mps), and LT D. Schram, project attorney, Thirteenth Coast Guard District Legal Office.

Background and Purpose

The waters of the Pacific Northwest are unique because of the inherent danger of bars that exist at the entrance of most coastal ports. On December 22, 1988, the tank barge NESTUCCA, laden with oil, separated from its tow three miles west of Grays Harbor on the Washington Coast. No emergency towline was installed on the barge. Attempts to retrieve the barge resulted in damage to a cargo tank, causing a 227,304 gallon oil spill that impacted beaches from Oregon to Canada.

On October 4, 1990, a barge carrying oil separated from its tow 17 miles west of Willapa Bay on the Washington Coast. An emergency towline installed on the barge was easily retrieved by the towing vessel. The oil barge was towed to Seattle, WA, without incident.

On May 22, 1990, a "Request for comments; notice of hearing" was published in the **Federal Register** (55 FR 21044). The Coast Guard requested public comment on six navigation safety initiatives—tug escorts, emergency towing plans, speed criteria, additional bridge personnel, emergency towlines on barges, and extending pilotage. A public hearing was held on June 22, 1990, in Seattle, Washington to hear comments on the six initiatives and any alternative courses of action. The public hearing was attended by approximately 150 individuals, of whom 25 presented oral statements on the merits of the navigation safety initiatives. The Coast Guard received 42 written comments. The oral and written comments have been evaluated by Commander, Thirteenth Coast Guard District.

The navigation safety initiatives for towing vessel escorts, emergency towing plans, speed criteria and additional personnel on the bridge of tankers will become the subjects of national regulatory projects under the authority of the Oil Pollution Act of 1990. The initiative to extend pilotage will not be the subject of rulemaking action.

Discussion of Comments

The May 22, 1990 "Request for comments; notice of hearing" (55 FR 21044) requested public comment and suggestions from interested parties concerning six navigation safety initiatives. Comments received on the initiative for emergency towlines on barges are discussed below.

There was extensive support for the requirement to have emergency towlines, also called insurance hawsers, on board barges transporting oil and chemicals on certain navigable waters of Oregon and Washington.

Several comments noted that some barge companies already have an emergency towline installed aboard their tank barges.

Several comments suggested that the Coast Guard develop standards for primary towlines. At the request of the Coast Guard, the Towing Safety Advisory Committee (TSAC) is considering industry standards for maintenance and use of primary towlines.

One comment recommended that the Coast Guard develop retrieval procedures for emergency towlines. Retrieval procedures are discussed in the "Discussion of proposed rule" section which follows.

Discussion of Proposed Rule

The Coast Guard is proposing to amend existing Regulated Navigation Areas (33 CFR part 165) and create others, to require emergency towlines on barges in Puget Sound and the Strait of Juan de Fuca, Washington; Grays Harbor, Washington; Columbia and Willamette Rivers, Oregon; Yaquina Bay, Oregon; Umpqua River, Oregon; and Coos Bay, Oregon.

The emergency towline would be rigged on the barge ready for immediate deployment. Most emergency towlines currently in use have a trailing line, usually polypropylene, with a floating

buoy that can be easily retrieved by a towing vessel during an emergency. The polypropylene line, called a messenger, is pulled aboard and secured to the towing vessel. The other end of the messenger is secured to one end of the emergency towline, which is faked out and tack-welded to the deck of the barge with the other end of the towline secured to the barge. The emergency towline is retrieved by pulling on the messenger with sufficient force to break the tack welds and free the towline. The emergency towline should be at least equivalent in breaking strength to the strongest primary towline needed to pull the barge fully laden. The gear used in making up the emergency towline to the towing vessel must be compatible and at least equivalent in breaking strength to the primary towline needed to pull the barge fully laden. The operator of the towing vessel shall examine the bitter end of the emergency towline of the barge to ensure that it is compatible with the gear on board the towing vessel.

The process of ensuring that all components of the towing system meet at least the minimum breaking strength standard is essential to ensuring that an adequate towing system will be available during an emergency situation. Similarly, compatibility between the gear on board the towing vessel and the emergency towline on the tank barge must be checked prior to offering a towing vessel for service.

The Coast Guard is proposing that barges transporting oil or chemicals while transiting and bound for ports and places in certain navigable waters of Oregon and Washington, install and properly maintain emergency towlines. Vessels towing barges carrying oil or other hazardous substances in bulk as cargo must be equipped to retrieve the emergency towlines in adverse weather without placing crew members aboard the barge.

This system is not intended for long-distance towing. It is proposed as an effective way to gain control of a breakaway tank barge in coastal waters. The Coast Guard's position is that this proposed emergency system can prevent groundings of breakaway tank barges along the coast and at entrances to rivers.

The Coast Guard is proposing that emergency towlines be replaced twice within each 5 year interval, with no more than 3 years between each replacement. The emergency towline installed on the deck of the barge is exposed to seawater, which accelerates corrosive action. The emergency towline is a safety feature that can be easily overlooked, since it is not part of the operational equipment aboard the barge. Therefore, the replacement of the emergency towline, twice within each 5 year interval, is a preventive measure. This towline replacement schedule coincides with the drydock examination schedule required by 46 CFR 31.10–21 and other international inspection schemes.

Foreign bank barges operating in a Regulated Navigation Area described in this rule will be required to meet emergency towline regulations. Canadian tank barges are the only foreign tank barges that enter ports within the Thirteenth Coast Guard District. There are approximately 12 Canadian tank barges engaged in trade with ports within the Thirteenth Coast Guard District that would have to meet this requirement.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The waters of Puget Sound and the Straits of Juan de Fuca support extensive commercial and recreational activities, large population centers and military installations. The area provides natural resources and ecological qualities that are unique to this area. These proposed regulations are intended to enhance navigation safety by reducing the risk of population and environmental damage due to collisions and groundings.

The following cost/benefit analysis will evaluate the impact of requiring emergency towlines on barges.

The total economic cost for retrofitting tank barges with emergency towlines is expected to be $4.6 million. There are approximately 183 inspected tank barges in the Pacific Northwest. The cost to install a complete emergency towing package that includes a tow pad, tow wire and gas freeing the barge is approximately $25,000. The total estimated economic cost of retrofitting tank barges will be offset by the number of barges that currently have an installed emergency towline. It is estimated that over 50% of the tank barges operating in the Pacific Northwest already have an installed emergency towline. Therefore, the real cost to industry may be only $2.3 million.

The cost to replace the emergency towline aboard tank barges at each scheduled drydock would be $1,600. The annual cost to the barge industry, in the Pacific Northwest, to replace the emergency towline would be $146,000.

Reducing the risk of a major pollution incident benefits the region by ensuring that tourism, commercial and sport fishing are not impacted. The Washington Department of Fisheries estimated the value of the 1989 commercial fishing harvest to be $52 million. The Department for Trade and Economic Development and the Interagency Committee for Outdoor recreation reports that the economic benefit of tourism to the Northern Puget Sound area is annually $354 million. Assuming that a catastrophic spill would impact 50% of the commercial fish harvest and outdoor recreation the impact would be $203 million. The cost to conduct a major response and clean up impacting a large environmentally sensitive area long the Washington and Oregon Coast could exceed $100 million. Another benefit that is not quantifiable is the quality of life the local citizens of the region enjoy due to the clean and pristine environment. The net benefits are positive and would exceed $303 million dollars. Therefore, this rulemaking has significant economic benefits for the Pacific Northwest.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. A public hearing was held on 22 June 1990 in Seattle, WA, on six navigation safety initiatives including the proposed requirement for emergency towlines. Representatives of various tug and barge operators participated in the hearing and provided written comments. To date, no comments have been received by the Coast Guard which indicate that the proposed regulation would have a significant impact on a number of small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you believe that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see **ADDRESSES**) explaining why your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

Preliminary indications show that the environmental impact of this proposal should be positive and that preparation of an environmental impact statement is not necessary. However, the Coast Guard solicits comments addressing impacts this proposal may have on the human environment, or potential inconsistencies with any Federal, State, or local law or administrative determination relating to the environment. A final determination regarding the possible need for an Environmental Assessment and a Finding of No Significant Impact will be made after receipt of written comments.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

In consideration of the foregoing, the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, 49 CFR 1.46.

2. In § 165.1301, paragraph (a) is revised and paragraph (f) is added to read as follows:

§ 165.1301 Puget Sound, Washington—regulated navigation area.

(a) The following is a regulated navigation area—All of the following northwestern Washington waters under the jurisdiction of the Captain of the Port Puget Sound: Puget Sound, Hood Canal, Possession Sound, the San Juan Archipelago, Georgia Strait, Rosario Strait, the Strait of Juan de Fuca which includes the territorial sea bounded on the south from the shore westerly along 48 degrees and 20 minutes North latitude and bounded on the north at position 48 degrees and 29 minutes and 35 seconds North latitude, 124 degrees and 48 minutes West longitude, thence easterly to the intersection of the U.S./Canadian international boundary, and all waters adjacent to the above.

* * * * *

(f) *Emergency towlines on barges.* Each barge transporting oil or other hazardous substances while transiting, and bound to or from ports and places in, the navigable waters of this regulated navigation area must carry an emergency towline.

(1) The emergency towline and all gear associated with making up to the towing vessel must be at least equal in breaking-strength to a primary towline needed to pull the barge fully ladened.

(2) The emergency towline must be rigged on the barge in such a way that it is capable of immediate deployment without the need for personnel from the towing vessel to board the barge.

(3) The operator of the towing vessel shall ensure that the gear used in making up the emergency towline to the towing vessel is compatible.

(4) The emergency towline must be replaced at least twice within any five year period with no more than 3 years between each replacement.

3. Section 165.1303 is added to read as follows:

§ 165.1303 Grays Harbor, Washington—regulated navigation area.

(a) *Location.* The following is a regulated navigation area: The navigable waters of Grays Harbor, Washington, and adjacent waters, which include the territorial sea bounded on the south from the shore westerly along 46 degrees and 53 minutes North latitude and bounded on the north from the shore westerly along 46 degrees and 58 minutes North latitude.

(b) *Regulations.* (1) Each barge transporting oil or other hazardous substances while transiting, and bound to or from ports and places in, the navigable waters of this regulated navigation area must carry an emergency towline.

(2) The emergency towline and all gear associated with making up to the towing vessel must be at least equal in breaking-strength to a primary towline needed to pull the barge fully ladened.

(3) The emergency towline must be rigged on the barge in such a way that it is capable of immediate deployment without the need for personnel from the towing vessel to board the barge.

(4) The operator of the towing vessel shall ensure that the gear used in making up the emergency towline to the towing vessel is compatible.

(5) The emergency towline must be replaced at least twice within any five year period with no more than 3 years between each replacement.

4. Section 165.1304 is added to read as follows:

§ 165.1304 Columbia River and Willamette River, Oregon—regulated navigation area.

(a) *Location.* The following is a regulated navigation area: The navigable waters of the Columbia River and Willamette River and adjacent waters, which include the territorial sea bounded on the south from the shore westerly along 46 degrees and 10 minutes North latitude and bounded on the north from the shore westerly along 46 degrees and 18 minutes North latitude.

(b) *Regulations.* (1) Each barge transporting oil or other hazardous substances while transiting, and bound to or from ports and places in, the navigable waters of this regulated navigation area must carry an emergency towline.

(2) The emergency towline and all gear associated with making up to the towing vessel must be at least equal in breaking-strength to a primary towline needed to pull the barge fully ladened.

(3) The emergency towline must be rigged on the barge in such a way that it is capable of immediate deployment without the need for personnel from the towing vessel to board the barge.

(4) The operator of the towing vessel shall ensure that the gear used in making up the emergency towline to the towing vessel is compatible.

(5) The emergency towline must be replaced at least twice within any five year period with no more than 3 years between each replacement.

5. Section 165.1305 is added to read as follows:

§ 165.1305 Yaquina Bay, Oregon—regulated navigation area.

(a) *Location.* The following is a regulated navigation area: The navigable waters of Yaquina Bay, Oregon, and adjacent waters, which include the territorial sea bounded on the south from the shore westerly along 44 degrees and 35 minutes North latitude and bounded on the north from the shore westerly along 44 degrees and 39 minutes North latitude.

(b) *Regulations.* (1) Each barge transporting oil or other hazardous substances while transiting, and bound to or from ports and places in, the navigable waters of this regulated navigation area must carry an emergency towline.

(2) The emergency towline and all gear associated with making up to the towing vessel must be at least equal in breaking-strength to a primary towline needed to pull the barge fully ladened.

(3) The emergency towline must be rigged on the barge in such a way that it is capable of immediate deployment

without the need for personnel from the towing vessel to board the barge.

(4) The operator of the towing vessel shall ensure that the gear used in making up the emergency towline to the towing vessel is compatible.

(5) The emergency towline must be replaced at least twice within any five year period with no more than 3 years between each replacement.

6. Section 165.1306 is added to read as follows:

§ 165.1306 Umpqua River, Oregon—regulated navigation area.

(a) *Location.* The following is a regulated navigation area: The navigable waters of Umpqua River, Oregon, and adjacent waters, which include the territorial sea bounded on the south from the shore westerly along 43 degrees and 39 minutes North latitude and bounded on the north from the shore westerly along 43 degrees and 42 minutes North latitude.

(b) *Regulations.* (1) Each barge transporting oil or other hazardous substances while transiting, and bound to or from ports and places in, the navigable waters of this regulated navigation area must carry an emergency towline.

(2) The emergency towline and all gear associated with making up to the towing vessel must be at least equal in breaking-strength to a primary towline needed to pull the barge fully ladened.

(3) The emergency towline must be rigged on the barge in such a way that it is capable of immediate deployment without the need for personnel from the towing vessel to board the barge.

(4) The operator of the towing vessel shall ensure that the gear used in making up the emergency towline to the towing vessel is compatible.

(5) The emergency towline must be replaced at least twice within any five year period with no more than 3 years between each replacement.

7. Section 165.1307 is added to read as follows:

§ 165.1307 Coos Bay, Oregon—regulated navigation area.

(a) *Location.* The following is a regulated navigation area: The navigable waters of Coos Bay, Oregon, and adjacent waters, which include the territorial sea bounded on the south from the shore westerly along 43 degrees and 20 minutes North latitude and bounded on the north from the shore westerly along 43 degrees and 23 minutes North latitude.

(b) *Regulations.* (1) Each barge transporting oil or other hazardous substances while transiting, and bound to or from ports and places in, the navigable waters of this regulated navigation area must carry an emergency towline.

(2) The emergency towline and all gear associated with making up to the towing vessel must be at least equal in breaking-strength to a primary towline needed to pull the barge fully ladened.

(3) The emergency towline must be rigged on the barge in such a way that it is capable of immediate deployment without the need for personnel from the towing vessel to board the barge.

(4) The operator of the towing vessel shall ensure that the gear used in making up the emergency towline to the towing vessel are compatible.

(5) The emergency towline must be replaced at least twice within any five year period with no more than 3 years between each replacement.

Dated: August 7, 1991.

J.E. Vorbach,

Rear Adm., U.S. Coast Guard; Commander, Thirteenth Coast Guard.

[FR Doc. 91-25596 Filed 10-23-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Five Plants From Sandy and Sedimentary Soils of Central Coastal California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for five plants: *Chorizanthe pungens* var. *hartwegiana* (Ben Lomond spineflower (also previously known as Hartweg's spineflower)), *Chorizanthe pungens* var. *pungens* (Monterey spineflower), *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower), *Chorizanthe robusta* var. *robusta* (robust spineflower), and *Erysimum teretifolium* (Ben Lomond wallflower). These five taxa are imperiled by one or more of the following factors: habitat destruction due to residential development, agricultural development, sand mining, military activities, and encroachment by alien plant species. This proposal, if made final, would extend the Act's protective provisions to these species. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by December 23, 1991. Public hearing requests must be received by December 9, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Office Supervisor, U.S. Fish and Wildlife Service, Ventura Field Office, 2140 Eastman Avenue, suite 100, Ventura, California 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Constance Rutherford at the above address (805-644-1766 or FTS 983-6039).

SUPPLEMENTARY INFORMATION:

Background

Chorizanthe nungens var. *hartwegiana* (Ben Lomond spineflower), *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower), and *Erysimum teretifolium* (Ben Lomond wallflower) are endemic to sandstone and mudstone deposits in the Santa Cruz Mountains in Santa Cruz County, California. The Santa Cruz Mountains are a relatively young range composed of igneous and metamorphic rocks overlain by thick layers of sedimentary material uplifted from the ocean floor and ancient shoreline zone (Caughman and Ginsberg 1987). These ancient marine terraces persist as pockets of sandstones and limestones that are geologically distinct from the volcanic origins of the range. Soils that form from these sandstone and limestone deposits tend to be coarse and, at least surficially, lose soil moisture rapidly. While the more mesic slopes of the Santa Cruz Mountains are covered primarily by redwood forest (Zinke 1988) and mixed evergreen forest (Sawyer *et al.* 1988), these drier pockets of sandstone and limestone support what is referred to as maritime coast range ponderosa pine forest (Holland 1986). An open park-like forest of scattered ponderosa pine (*Pinus ponderosa*) occurs with knobcone pine (*P. attenuata*), coast live oak (*Quercus agrifolia*), and, at a few sites, the federally endangered Santa Cruz cypress (*Cupressus abramsii*). These stands intergrade with northern maritime chaparral (Holland 1986), which in this area supports the endemic silver-leaved manzanita (*Arctostaphylos silvicola*) and Schreiber's manzanita (*A. glutinosa*). These unique communities have been described by Thomas (1961), Griffin (1964), and Marangio (1985), and are currently referred to by local botanists as "sandhill parklands" or

"ponderosa pine sandhill" (California Native Plant Society (CNPS) 1986).

As uplift of the Santa Cruz Mountains has proceeded, some of the raised marine terraces of sandstone and limestone were, in turn, buried beneath layers of alluvial materials. Pockets of this alluvial material, referred to as Santa Cruz mudstone, persist as part of this process. In the Scotts Valley area, mudstone outcrops support annual grasses and herbaceous species. These communities have been referred to as annual grasslands and wildflower fields by Holland (1986).

Chorizanthe pungens var. *pungens* (Monterey spineflower) and *Chorizanthe robusta* var. *robusta* (robust spineflower) are endemic to sandy soils of coastal habitats in southern Santa Cruz and northern Monterey Counties. The inner rim of Monterey Bay is characterized by broad, sandy beaches backed by an extensive dune formation. Coastal dune and coastal scrub communities are present, but portions have been impacted by recreational use, urban development, and military activities. Dune communities have also been altered in composition by the introduction of non-native species, especially sea-fig or iceplant (*Carpobrotus* spp.) and European beachgrass (*Ammophila arenaria*), in an attempt to stabilize shifting sands. Just inland from the immediate coast, maritime chaparral occupies areas with well-drained soils, while the coastal plain of the Salinas Valley has been converted from grassland and valley oak woodland to agricultural crops.

Discussion of the Five Taxa Proposed for Listing

In California, the spineflower genus (*Chorizanthe*) in the buckwheat family (Polygonaceae) comprises species of wiry annual herbs that inhabit dry sandy soils, both along the coast and inland. Because of the patchy and limited distribution of such soils, many species of *Chorizanthe* tend to be highly localized in their distribution.

One subsection of the genus referred to as Pungentes and consisting of seven species is distinguished by the following features: The inner and outer tepals (petal-like sepals) are of equal length, and entire or lobed but not fimbriate; filaments free; involucres (whorl of bracts subtending the flowers) 6-toothed with the alternating three shorter, the anterior one slightly long-awned; involucral margins not continuously membranaceous across the sinuses; stamens variable 3–9; plants decumbent to erect with spreading pubescence, distributed mainly on or near the coast from Santa Barbara County northward (Reveal and Hardham 1989).

While three of the seven species in the section Pungentes are still thought to be common, the remaining four species are becoming increasingly rare. Two of these species (*Chorizanthe howellii* and *C. valida*) were proposed for endangered status on March 22, 1991 (56 FR 12318). The remaining two species, *C. pungens* and *C. robusta*, inclusive of their varieties, are subjects of this proposed rule.

Chorizanthe pungens was first described by George Bentham in 1836 based on a specimen collected in Monterey. This taxon was recognized by George Goodman (1934) as the type species in describing the Pungentes section of the genus. At that time, Goodman also recognized *C. punens* var. *hartwegii* as a new combination, based on *C. douglasii* var. *hartwegii* as recognized by Bentham (1856). It was named after Karl Hartweg who collected the type from "dry mountain pastures near Santa Cruz" in 1847.

Chorizanthe pungens var. *hartwegiana* was distinguished from *C. pungens* var. *pungens* by James Reveal and Clare Hardham (1989) after they noticed a distinction between the coastal form and that found inland "in the Ben Lomond sand hills area." Reveal and Hardham were careful to note that the type for *C. pungens* var. *hartwegiana* did not conform with the plant that had been called *C. pungens* var. *hartwegii*. The name *Chorizanthe pungens* var. *pungens* was retained to represent the coastal form of the plant.

Chorizanthe robusta was first described by Charles Parry in 1889 based on a collection he made 6 years earlier "north of Aptos along Monterey Bay". Willis Jepson considered it to be a variety of *C. pungens*, and thus recognized the taxon under the name *C. pungens* var. *robusta* in his Flora of California in 1913. LeRoy Abrams (1944) determined that the taxon was specifically distinct from *C. pungens* and restored the original name of *C. robusta*. In their revision of the genus in 1989, Reveal and Hardham (1989) concurred with Abrams and retained the taxon as *C. robusta*, at the same time placing in synonymy the type of *C. pungens* var. *hartwegii*. Reveal and Hardham noted, however, that the definition of subspecific taxa was still not settled, as while they were convinced that the inclusion of *C. pungens* var. *hartwegii* in *C. robusta* was appropriate, the available specimens of the inland form exhibited a more upright habit and pinkish involucres than the coastal form.

Concurrent with publication of the Reveal and Hardham revision, however, the first collection in over 140 years was made of the inland form that matched Hartweg's original collection made in 1847. Reveal was therefore able to reconfirm its affinity with *Chorizanthe robusta*, while at the same time recognizing the distinctness of this taxon as a variety. Reveal, along with local botanist Randall Morgan, published the name *C. robusta* var. *hartwegii* (Reveal and Morgan 1989).

Upon receiving a petition to list the Scotts Valley spineflower, the taxonomic validity of *Chorizanthe robusta* var. *hartwegii* was questioned by Dr. John Hunter Thomas, professor of biological sciences at Stanford University. To address these concerns, the Service reviewed specimens of var. *hartwegii* and other closely related taxa in the Pungentes subsection of the genus with plant taxonomists at the University of California. The Service's review indicates that, while further taxonomic refinement may be warranted, specimens ascribed to *C. pungens* and *C. robusta* generally fall into five morphologically recognizable phases that also correspond to ecological and geographical patterns. Four of these five morphotypes generally corresponded to *C. pungens* var. *pungens*, *C. pungens* var. *hartwegiana*, *C. robusta* var. *robusta*, and *C. robusta* var. *hartwegii*. The fifth morphotype consists of specimens that have been identified as *C. robusta* or *C. pungens* (Ertter 1990). This proposal, by addressing the subject four varieties of *Chorizanthe*, includes all five morphotypes reviewed.

The Monterey spineflower (*Chorizanthe pungens* var. *pungens*) is distinguished by white (rarely pinkish) scarious margins on the involucral lobes and a prostrate to slightly ascending habit. The aggregate of flowers (heads) tends to be less than 1 centimeter (cm) (0.4 inches (in)) in diameter and either distinctly or indistinctly aggregate.

Monterey spineflower is scattered within coastal dune, coastal scrub, and maritime chaparral communities along and adjacent to the coast of southern Santa Cruz and northern Monterey Counties, and inland to the coastal plain of Salinas Valley. The plant probably has been extirpated from a number of historical locations in the Salinas Valley, primarily due to conversion of the original grasslands and valley oak woodlands to agricultural crops.

The coastal dune and coastal scrub habitats have been impacted, to some degree, by residential development, recreational use, military activities at Fort Ord, and alteration of habitat due to the introduction of non-native species for use in dune stabilization. Other small

scattered occurrences within maritime chaparral habitat may be impacted by residential development and by a realignment of Highway 101.

Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*) has dark pinkish to purple scarious margins on the involucral lobes and a slightly ascending to erect habit. The heads are 1–1.5 cm (0.4–0.6 in) in diameter and distinctly aggregate.

Ben Lomond spineflower is found on sandy soils that are the basis for the endemic sandhill parkland communities in the Santa Cruz Mountains. The majority of occurrences of Ben Lomond spineflower are found on privately-owned lands. Sand quarrying has resulted in the direct removal of Ben Lomond spineflower habitat, and a currently proposed expansion of operations at Quail Hollow Quarry may eliminate additional populations. Residential development on smaller parcels of privately-owned lands has also contributed to the elimination of Ben Lomond spineflower and fragmentation of the remaining habitat. Certain locations are also known to have been vandalized. Protective management for sandhill parkland communities will be developed for one parcel recently acquired by the County of Santa Cruz and the State of California. A few small populations occur within Big Basin and Henry Cowell State Parks but are currently not under protective management.

The Scotts Valley spineflower (*Chorizanthe robusta* var. *hartwegii*) has rose-pink involucral margins confined to the basal portion of the teeth and an erect habit. The heads are 1–1.5 cm (0.4–0.6 in) in diameter and distinctly aggregate. The plant is endemic to Purisima and Santa Cruz mudstones in Scotts Valley in the Santa Cruz Mountains. Virtually the entire population occurs on three parcels, all in private ownership. One parcel is currently being proposed for a residential development (Harding Lawson Associates 1991). Two other parcels had been planned for development, but were recently sold to a business firm that intends to hold the property for an undetermined period of time. The plant is threatened with the destruction of a portion of currently occupied habitat and with secondary impacts associated with residential and business development including alteration of the remaining habitat by trampling, introduction of non-native species, and alteration of the surrounding hydrologic regime.

Robust spineflower (*Chorizanthe robusta* var. *robusta*) has thin white to pinkish scarious margins along the basal portions of the teeth and an erect to spreading habit. The heads are 1.5–2 cm (0.6–0.8 in) in diameter and distinctly aggregate. The robust spineflower once ranged from Alameda to Monterey Counties, but is currently known only from sandy soils along and adjacent to the coast of southern Santa Cruz County. Populations in coastal dune and coastal scrub habitats have been impacted by residential development, recreational use, and the introduction of non-native species. Management plans have not yet been developed for the robust spineflower at Sunset State Beach where the largest known population is located. Smaller populations near Manresa State Beach and on property owned by the City of Santa Cruz are not currently protected.

Ben Lomond wallflower (*Erysimum teretifolium*) was first collected at Glenwood, Santa Cruz County by Horace Davis in 1914. This plant was described by Alice Eastwood in 1938 as *Erysimum filifolium*, not realizing that this combination had already been applied to another plant (Eastwood 1938). It was therefore renamed *E. teretifolium* in the following year (Eastwood 1939). Ben Lomond wallflower is an annual, or occasionally a biennial, plant of the mustard family (Brassicaceae). Seedlings form a basal rosette of leaves, which then wither as the main stem develops flowers clustered in a terminal raceme. The flowers are a deep yellow with petals 1.25–2.5 cm (0.5–1 in) long; the slender capsule reaches 10 cm (4 in) in length and is covered with three-parted hairs; and the leaves are simple, round, and threadlike—a characteristic that separates this plant from other wallflowers.

Ben Lomond wallflower is endemic to pockets of sandstone soils in the Santa Cruz Mountains. Historical and continuing threats to the Ben Lomond wallflower include the direct removal of habitat by sand quarrying and residential development. Alteration of habitat may also be occurring in the form of an increase in canopy density within the sandhills parklands as a result of fire suppression activities. The only population with a current potential for being protected is on the recently acquired Quail Hollow Ranch site.

Previous Federal Action

Federal government actions for one of these five plants began as a result of 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. In the report, *Erysimum teretifolium* was recommended for threatened status. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act, and of the Service's intention to review the status of the plant taxa named therein.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Erysimum teretifolium* as a category 1 candidate (species for which data in the Service's possession are sufficient to support proposals for listing) and *Chorizanthe pungens* var. *pungens* as a category 2 candidate (species for which data in the Service's possession indicate listing may be appropriate, but for which additional biological information is needed to support a proposed rule). In the September 27, 1985, revised notice of review for plants (50 FR 39526), *E. teretifolium* was again included as a category 1 candidate and *C. pungens* var. *pungens* as a category 2 candidate.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, 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 *Erysimum teretifolium* because the 1975 Smithsonian report was accepted as a petition. In October 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990, the Service found that the petitioned listing of *E. teretifolium* was warranted, but that the listing of this species was precluded by other pending proposals of higher priority. The latest notice, published on February 21, 1990 (55 FR 6184) includes *E. teretifolium* in category 1 and *Chorizanthe pungens* var. *pungens* and *C. pungens* var. *hartwegiana* in category 2.

On May 16, 1990, the Service received a petition from Steve McCabe, president, and Randall Morgan of the Santa Cruz Chapter of the California Native Plant Society to list *Chorizanthe robusta* var. *hartwegii* as endangered. Based on a 90-day finding that the petition presented substantial information indicating that the requested action may be warranted (55 FR 46080), the Service initiated a status review of that taxon. During the course of that status review, it came to the attention of the Service that another

taxon, *Chorizanthe robusta* var. *robusta*, may also warrant listing; therefore, this taxon was also included in the status review. This proposed rule constitutes the Service's 1-year finding that the listing of *Chorizanthe robusta* var. *hartwegii* as endangered is warranted, as well as a finding that the listing of *Erysimum teretifolium* is warranted.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) 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 application to *Chorizanthe pungens* Benth. var. *hartwegiana* Reveal & Hardham (Ben Lomond spineflower), *Chorizanthe pungens* Benth. var. *pungens* (Monterey spineflower), *Chorizanthe robusta* Parry var. *hartwegii* (Benth. in A. DC) Reveal & Morgan (Scotts Valley spineflower), *Chorizanthe robusta* Parry var. *robusta* (robust spineflower), and *Erysimum teretifolium* Eastwood (Ben Lomond wallflower) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat range.* Three of the five taxa proposed herein (*Chorizanthe pungens* var. *hartwegiana, Chorizanthe robusta* var. *hartwegii*, and *Erysimum teretifolium*) are restricted to sandstone and mudstone soils in the Santa Cruz Mountains. Two of the five taxa, *Chorizanthe pungens* var. *pungens* and *Chorizanthe robusta* var. *robusta*, are found only on sandy soils of coastal and near coastal habitats in southern Santa Cruz and northern Monterey Counties. The imminent threat facing these species and their associated habitats is the ongoing and threatened destruction and adverse modification of habitat by one or more of the following: urban development, agricultural development, recreational use, sand mining, dune stabilization projects, and military activities.

Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*) is confined to outcrops of sandstone soils in the Santa Cruz Mountains, from Boulder Creek south to Felton, and east to Quail Hollow Ranch in the Santa Cruz Mountains. These sandstone soils support several unique plant communities, including the ponderosa pine-dominated sandhill parklands. In the 187Os, limestone quarries began operating in the Bonny Doon area of the Santa Cruz Mountains, as well as in other locations around the county (Caughman and Ginsberg 1987). In more recent years, sand quarrying has replaced limestone mining as a viable economic activity. At least half of the habitat occupied by the Ben Lomond spineflower is on property owned by sand and gravel companies. Operations at a number of quarries, including Kaiser 1 and 2, Olympia, and Quail Hollow, have already extirpated populations of Ben Lomond spineflower (Randall Morgan, botanist, Soquel, California, pers. comm., 1990). Expanded operations are currently being proposed for Quail Hollow Quarry (John Gilchrist and Associates 1990). One parcel (Quail Hollow Ranch) has recently been jointly acquired by the County of Santa Cruz and the State of California and supports a large population of Ben Lomond spineflower as well as other unique species of the sandhill parklands habitat. Another parcel owned by the San Lorenzo Valley Water District also supports several of the unique elements of the sandhill parklands habitat, including the Ben Lomond spineflower. Smaller populations of the Ben Lomond spineflower are also known to occur at the Bonny Doon Ecological Preserve managed by The Nature Conservancy and at Big Basin and Henry Cowell State Parks. These parks, however, have yet to develop management plans for Ben Lomond spineflower.

Monterey spineflower (*Chorizanthe pungens* var. *pungens*) is scattered within coastal dune, coastal scrub, and maritime chaparral communities along and adjacent to the coast of southern Santa Cruz and northern Monterey Counties, and inland to the coastal plain of Salinas Valley. Historically, Monterey spineflower ranged along the coast from southern Santa Cruz County south to northern San Luis Obispo County, and from Monterey inland to the Salinas Valley. Only one collection dating from 1842, however, was made from northern San Luis Obispo County; in recent years, it has not been collected south of Monterey Peninsula. Along the coast of the north side of Monterey Peninsula, human and equestrian use threaten scattered occurrences of Monterey spineflower, and a development is planned for a parcel owned by the Pebble Beach Corporation (Vern Yadon, curator, Museum of Natural History, Pacific Grove, pers. comm., 1991). Monterey spineflower probably has been extirpated from a number of historical locations in the Salinas Valley, primarily due to conversion of the original grassland and valley oak woodland habitat to agricultural crops. One occurrence at Manzanita County Park near Prunedale is currently not protected. A route realignment proposed for Highway 101 in northern Monterey County may impact some scattered occurrences (Morgan, pers. comm., 1991).

Fort Ord probably supports the largest extent of Monterey spineflower. In recent years, road development and construction of an ammunition supply depot on the base have eliminated some Monterey spineflower and fragmented the remaining habitat. As mitigation for recent construction, the military proposed a series of small preserves, ranging in size from 1 to 15 acres, for the purposes of protecting rare species, including the Monterey spineflower. The small size of these preserves, however, is not likely to be sufficient to ensure long-term protection for the plant. The Federal Government has recently announced intentions to close the base at Fort Ord. The impact that base closure will have on the Monterey spineflower cannot be determined at this time.

In southern Santa Cruz County, Monterey spineflower is known to occur at Sunset and Manresa State Beaches, and recently scattered occurrences have been found as far north as Day Valley (Morgan, pers. comm., 1991). Populations at Sunset State Beach may have been inadvertently impacted by trampling and the introduction of non-native species during dune stabilization projects.

The only known extant populations of the Scotts Valley spineflower (*Chorizanthe robusta* var. *hartwegii*) occur in Scotts Valley in the Santa Cruz Mountains north of the city of Santa Cruz. The plant occurs primarily on pockets of Santa Cruz and Purisima mudstones and is associated with annual grasslands and wildflower fields (Reveal and Morgan 1989). These islands of unique substrates are host to a number of rare plants, including a newly discovered species of knotweed ((*Polygonum* sp. nov.) (James Hickman, editor, Jepson Manual Project, Univ. of CA, Berkeley, pers. comm., 1991)). Half a dozen patches of Scotts Valley spineflower are scattered over an area 1.6 kilometers (km) (1 mile) in radius on three parcels in private ownership. The total number of individuals was estimated to be approximately 6,000 in 1989 (California Natural Diversity Data Base (CNDDB) 1990), though being an annual, this number may be expected to fluctuate from year to year. One of the parcels is currently being proposed for residential development (Harding Lawson Associates 1991). Two other

parcels had been planned for development, but were recently sold to a business firm. The firm has indicated that acquisition of the property fits in with their plan for future expansion, but that there are no present plans for developing the property (Krieger 1991). While immediate development of the two parcels may have been delayed by the recent transfer in ownership, the lack of protective management for any portion of the taxon leaves its long-term persistence in doubt.

Robust spineflower (*Chorizanthe robusta* var. *robusta*) historically occurred in sandy to gravelly sites in Alameda and San Mateo Counties southward in the Coast Ranges to Santa Cruz County, and near the coast from southern Santa Cruz County to northern Monterey County. Many of the areas from which collections were made in Alameda and San Mateo Counties have been urbanized, and no new collections have been made from there, or from Monterey County, for 30 years (Ertter 1990). The only known extant populations occur northeast of the city of Santa Cruz on property recently acquired by the city from the University of California, and near Sunset and Manresa State Beaches, approximately 12 miles away. The total number of individuals of the plant is estimated to be less than 7,000 as of 1990. A patch of 300 individuals that had been reported in 1985 from Manresa State Beach could not be relocated in 1990 (CNDDB 1990). Efforts have been started at Sunset State Beach to restore the native dune species by removing the introduced non-native species (Ferreira 1989). If the presence of robust spineflower is taken into consideration in areas targeted for such restoration, impacts to the plant may be avoided.

Ben Lomond wallflower (*Erysimum teretifolium*) is presently known from a dozen scattered occurrences on sandstone deposits in the Santa Cruz Mountains. These sandstone deposits support the unique ponderosa pine sandhill community; the Ben Lomond wallflower seems to prefer sites with loose, uncompacted sand in openings between scattered chaparral shrubs. The Ben Lomond spineflower is found in close proximity with the Ben Lomond wallflower at some locations. With the suppression of wildfires within the Santa Cruz Mountains, the density of woodland within the pine sandhill community has increased, which in turn may reduce the availability of suitable habitat for the Ben Lomond wallflower (CNPS 1986). The largest population of Ben Lomond wallflower contains about ¾ of the total number of known individuals of this species (approximately 5,400 individuals) (Bittman 1986). This population has already been reduced in size by sand quarrying, and ongoing quarrying will likely continue to reduce the size of the population. Of the remaining populations, none comprise over 400 individuals, and about half total less than 100 individuals each (Bittman 1986). Aside from the largest population, several of the smaller populations have also been reduced in size by quarrying, as well as by development of private lots. Occurrences of the wallflower have been repeatedly vandalized in the Bonny Doon area (CNPS 1986). Quail Hollow Ranch, a site which supports less than 300 plants, was recently acquired as a park through the joint efforts of The Nature Conservancy, the County of Santa Cruz, and the State of California.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not applicable to the five plants.

C. *Disease or predation.* A population of *Chorizanthe robusta* var. *hartwegii* has been grazed by horses in Scotts Valley. No data exist to substantiate whether grazing threatens this plant.

D. *The inadequacy of existing regulatory mechanisms.* Under the Native Plant Protection Act (Chapter 1.5 sec. 1900 et seq. of the Fish and Game Code) and the California Endangered Species Act (chapter 1.5 sec. 2050 et seq.), the California Fish and Game Commission has listed *Erysimum teretifolium* as endangered. Though both the Native Plant Protection Act and the California Endangered Species Act prohibit the "take" of State-listed plants (chapter 1.5 sec. 1908 and sec. 2080), State law appears to exempt the taking of such plants via habitat modification or land use change by the landowner. After the California Department of Fish and Game notifies a landowner that a State-listed plant grows on his or her property, State law requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant" (chapter 1.5 sec. 1913).

E. *Other natural or manmade factors affecting its continued existence.* The introduction of non-native species to coastal dunes for the purpose of sand stabilization has adversely affected native dune flora, probably including Monterey spineflower and robust spineflower. Such introduced species as European beach grass, sea-fig, and iceplant have invaded dune habitats and in many cases outcompeted the native flora (U.S. Fish and Wildlife Service 1991). While public agencies are now aware of the adverse impacts of introducing non-native species, efforts to restore dune habitats with native species may also result in further impacts to sensitive plants, if not done properly.

Typically, annuals and other monocarpic plants (individuals that die after flowering and fruiting), such as the five plants proposed herein, are vulnerable to random fluctuations or variation (stochasticity) in annual weather patterns and other environmental factors (Huenneke *et al.* 1986). All five of the plants are restricted to habitats of limited distribution within a small geographic range. Scotts Valley spineflower is found on Santa Cruz and Purisima mudstones within a 1-mile radius in Scotts Valley in the Santa Cruz Mountains. Robust spineflower is found in only two locations 12 miles apart from each other in southern Santa Cruz County. All five plants, but particularly Scotts Valley spineflower and Monterey spineflower, are vulnerable to stochastic extinction.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to propose this rule. Because these five plants are threatened by one or more of the following factors—urban and agricultural development, recreational use, sand mining, dune stabilization projects, military activities, and extinction from stochastic events—the preferred action is to list *Chorizanthe pungens* var. *hartwegiana, Chorizanthe pungens* var. *pungens, Chorizanthe robusta* var. *hartwegii, Chorizanthe robusta* var. *robusta,* and *Erysimum teretifolium* as endangered.

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 concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. Because the five plants face numerous anthropogenic threats (see Factor A in "Summary of Factors Affecting the Species") and these species occur mostly on private land, the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make these plants more vulnerable to incidents of vandalism and, therefore, could contribute to the decline of these species. The listing of these taxa as

endangered publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. The proper agencies have been notified of the locations and management needs of these plants. Protection of these species' habitats will be addressed through the recovery process and through the section 7 consultation process. The Service believes that Federal involvement in the areas where these species occur can be identified without the designation of critical habitat. Therefore, the Service finds that designation of critical habitat for the five plants is not prudent at this time, because such designation likely would increase the degree of threat from vandalism or other human activities.

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. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants 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 part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, 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 to 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.

Federal activities potentially impacting one or more of the five taxa include road and building construction projects, and perhaps waterfowl management practices on Federal land. Populations of two of the five plants occur, at least in part, on Federal land. Fort Ord, which is managed by the Department of Defense, supports populations of Monterey spineflower on the western portion of the base. If the government proceeds with closure of the base at Fort Ord as recently announced, there may be impacts to the Monterey spineflower that cannot be determined at this time. Monterey spineflower is also thought to occur on the Salinas River National Wildlife Refuge, which is managed by the U.S. Fish and Wildlife Service. Activities relating to the discharge of fill materials into waters of the United States and other special aquatic sites are regulated by section 404 of the Clean Water Act Amendments of 1972, and may affect Ben Lomond spineflower and Ben Lomond wallflower where they occur adjacent to sand quarry operations. The Corps of Engineers would be required to consult with the Service over any section 404 permitting actions that may affect these species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plant species set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to the five plant taxa proposed for listing, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant 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; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the five plant species are 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, room 432, 4401 North Fairfax Drive, Arlington, Virginia 22203–3507 (703/358–2104 or FTS 921–2104).

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 *Chorizanthe pungens* var. *hartwegiana*, *Chorizanthe pungens* var. *pungens*, *Chorizanthe robusta* var. *hartwegii*, *Chorizanthe robusta* var. *robusta*, and *Erysimum teretifolium*;

(2) The location of any additional populations of these species and the reasons why any habitat 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 these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to 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 received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Office Supervisor of the Ventura Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of 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

Abrams, L. 1944. Illustrated Flora of the Pacific States, Vol II. Stanford University Press, Stanford, California.

Bentham, G. 1836. On the Eriogoneae, a tribe of the order Polygonaceae. Trans. Linnean Society. London 17: 401–420.

Bentham, G. 1856. "Eriogoneae." Pp. 5–28. *In* A. de Candolle (ed.). Prodromus Systematis Naturalis Regni Vegetabilis. Vol 14. Victor Masson, Paris.

Bittman, R. 1986. Element conservation plan for *Erysimum teretifolium*. The Nature Conservancy, San Francisco, California.

California Native Plant Society. 1986. California native plant status report for *Erysimum teretifolium*. California Native Plant Society, Sacramento, California.

California Natural Diversity Data Base. 1990. Unpublished rare plant occurrence data. Sacramento, California.

Caughman, M. and J.S. Ginsberg. 1987. California Coastal Resource Guide. University of California Press, Los Angeles.

Eastwood, A. 1938. Two new wallflowers. Leaflets of Western Botany. Vol. II, No. 5.

Eastwood, A. 1939. *Erysimum filifolium*. Leaflets of Western Botany. Vol. II, No. 8.

Ertter, B. 1990. Report on the results of a panel to evaluate the taxonomic validity of *Chorizanthe robusta* var. *hartwegii*. Unpublished report submitted to the U.S. Fish and Wildlife Service.

Ferreira, J. 1989. Project status report on dune restoration at Sunset State Beach. Unpublished report no. 219–410–01–04. California Department of Parks and Recreation.

Goodman, G.J. 1934. A revision of the North American species of the genus *Chorizanthe*. Ann. Missouri Bot. Garden 21: 1–102.

Griffin, J.R. 1964. Isolated *Pinus ponderosa* forests on sandy soils near Santa Cruz, California. Ecology 45:410–412.

Harding Lawson Associates. 1991. Polo Ranch draft environmental impact report. Prepared for the City of Scotts Valley.

Heunneke, L.F., K. Holsinger, and M.E. Palmer. 1986. Plant population biology and the management of viable plant populations. Pp. 169–183. *In* B.A. Wilcox, P.E. Brussard, and B.G. Marcot (eds.). The Management of Viable Populations: Theory, Applications, and Case Studies. Center for Conservation Biology, Stanford University, Stanford, California.

Holland, R.F. 1986. Preliminary descriptions of the terrestrial natural communities of California. Unpublished report, California Department of Fish and Game, Sacramento, California.

Jepson, W.L. 1913. Polygonaceae. Flora of California. 4:376–428.

John Gilchrist and Associates. 1990. Santa Cruz Aggregates Quail Hollow Quarry revised draft environmental impact report. Prepared for the County of Santa Cruz.

Krieger, K. 1991. "Borland deal for Polo Ranch about to close" (May 2, 1991); "Polo Ranch sale ends 5-year saga" (May 11, 1991); "Borland pays cash for new HQ" (May 11, 1991). Articles in the Santa Cruz Sentinel, Santa Cruz, California.

Marangio, M.S. 1985. Preservation study: sandhills biotic communities of Santa Cruz County, California. Unpublished master's thesis, University of California, Berkeley.

Parry, C.C. 1889. *Chorizanthe*, R. Brown. Review of certain species heretofore improperly characterized or wrongly referred; with two new species. Proc. Davenport Academy of Natural Sciences 5:174–184.

Reveal, J.L. and C.B. Hardham. 1989. A revision of the annual species of the *Chorizanthe* (Polygonaceae: Eriogonoideae). Phytologia 66:98–198.

Reveal, J.L. and R. Morgan. 1989. A new combination in *Chorizanthe robusta* C. Parry (Polygonaceae: Eriogonoideae) from California. Phytologia 67(5): 357–360.

Sawyer, J.O., D.A. Thornburgh, and J.R. Griffin. 1988. Mixed evergreen forest. Pp. 359–381. *In* M.G. Barbour and J. Major (eds.). Terrestrial Vegetation of California. California Native Plant Society, Special Publication No. 9.

Thomas, J.H. 1961. Flora of the Santa Cruz Mountains of California. Stanford University Press, Stanford, California.

U.S. Fish and Wildlife Service. 1991. Proposed rule to list six plants and Myrtle's silverspot butterfly from coastal dunes of northern and central California as endangered. **Federal Register** notice (March 22, 1991).

Zinke, P.J. 1988. The redwood forest and associated north coast forests. Pp. 679–698. *In* M.G. Barbour and J. Major (eds.). Terrestrial Vegetation of California. California Native Plant Society, Special Publication No. 9.

Author

The primary author of this proposed rule is Constance Rutherford, Ventura Field Office (see **ADDRESSES** section) (telephone 805–644–1766; FTS 983–6039).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

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:

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 plant families indicated, 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					
Brassicaceae—Mustard family:						
Erysimum teretifolium	Ben Lomond wallflower	U.S.A. (CA)	E		NA	NA
Polygonaceae—Buckwheat family:						
Chorizanthe pungens var. *hartwegiana*.	Ben Lomond spineflower	U.S.A. (CA)	E		NA	NA
Chorizanthe pungens var. *pungens*	Monterey spineflower	U.S.A. (CA)	E		NA	NA
Chorizanthe robusta var. *hartwegii*	Scotts Valley spineflower	U.S.A. (CA)	E		NA	NA
Chorizanthe robusta var. *robusta*	Robust spineflower	U.S.A. (CA)	E		NA	NA

Dated: September 27, 1991.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–25653 Filed 10–23–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 206
Thursday, October 24, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking; Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of the meetings of the Committee on Rulemaking of the Administrative Conference of the United States.

Committee on Rulemaking

Date: Thursday, October 31, 1991.
Time: 4 p.m.–6 p.m.
Location: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037 (Library, 5th Floor).
Agenda: The Committee will meet to discuss the procedural rule exemption of the Administrative Procedure Act.
Contact: Kevin L. Jessar, 202–254–7020.

Committee on Rulemaking

Date: Friday, November 22, 1991.
Time: 12:30 p.m.–2:30 p.m.
Location: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037 (Library, 5th Floor).
Agenda: The Committee will meet to discuss Professor Robert Anthony's study of non-rule rulemaking.
Contact: Kevin L. Jessar, 202–254–7020.

Attendance at the committee meetings is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meetings. Minutes of the meetings will be available on request. The contact person's mailing address is: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: 202–254–7020.

Dated: October 21, 1991.
Jeffrey S. Lubbers,
Research Director.
[FR Doc. 91–25711 Filed 10–23–91; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 18, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250 (202) 447–2118.

New Collection

• Food Safety and Inspection Service.

Regulations Governing Poultry Inspection Addendum 1—Irradiation of Poultry Products.

FSIS 7234–1, FSIS–5200–2 and FSIS–7350–1.

Recordkeeping; On occasion.

Businesses or other for-profit; small businesses or organizations; 21 responses; 12 hours.

Roy Purdie (202) 447–5372.

Reinstatement

• Farmers Home Administration.

7 CFR 1951–K, Predetermined Amortization Schedule System (PASS) Account Servicing.

FmHA 1951–29.

On occasion; Monthly.

Individuals or households; State or local governments; businesses or other for-profit; non-profit institutions; small businesses or organizations; 102,250 responses; 8,410 hours.

Jack Holston (202) 382–9736.

• Farmers Home Administration.

Section 502 Rural Housing Demonstration Program.

On occasion.

State or local governments; businesses or other for-profit; non-profit institutions; small businesses or organizations; 15 responses; 1,200 hours.

Jack Holston (202) 382–9736.

Donald E. Hulcher,
Deputy Departmental Clearance Officer.
[FR Doc. 91–25584 Filed 10–23–91; 8:45 am]
BILLING CODE 3410–01–M

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.
Date: November 15, 1991.
Place: USDA/FGIS Technical Center, 10383 North Executive Hills Boulevard, Kansas City, Missouri 64195.
Time: 8 a.m.
Purpose: A subcommittee to review and prepare recommendations to the Federal Grain Inspection Service Advisory Committee on financial matters affecting the Federal Grain Inspection Service.

The agenda includes a review of the financial status of the Federal Grain Inspection Service, a review of the FGIS fee structure, a discussion of unit versus hourly fees and method of overhead distribution.

The meeting will be open to the public. Public participation will be limited to written statements unless permission is received from the Chairman to orally address the Committee. Persons other than the Committee members wishing to address the subcommittee or submit written statements before, at, or after the meeting, should contact Randy Marten, Subcommittee Chairman, 6211 Lemmon Avenue, Dallas, Texas 75209, telephone (214) 358–9202 or John C. Foltz, Administrator, FGIS, U.S. Department of Agriculture, P.O. Box 96454,

Washington, DC 20090–6454, telephone (202) 382–0219; FAX (202) 447–4628.

John C. Foltz,

Administrator.

[FR Doc. 91–25525 Filed 10–23–91; 8:45 am]

BILLING CODE 3410–EN–M

Forest Service

Midway Face Viewshed Management Project, Dixie National Forest, Iron County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) on a proposal to harvest timber in the Midway area of the Cedar City Ranger District, Dixie National Forest. The area is approximately 20 miles east of Cedar City, VT.

DATES: The Forest Service has received public comments concerning this project on the following occasions: August 6, 1990 (scoping letter) and July 13, 1991 (public meeting/field trip). All comments received from previous scoping efforts will be incorporated into the analysis process. Another public meeting is tentatively planned to further develop alternatives. Additional written comments to be considered in the Draft EIS (DEIS) should be submitted by November 25, 1991.

ADDRESSES: Submit written comments to: District Ranger, Cedar City Ranger District, Dixie National Forest, P.O. Box 627, Cedar City, UT 84721–0627.

FOR ADDITIONAL INFORMATION: Direct questions about the proposed action and EIS to Diana McGinn, Forester, Cedar City Ranger District, P.O. Box 627, Cedar City, UT 84721–0627, phone (801)865–3200.

SUPPLEMENTARY INFORMATION: The proposed project area encompasses approximately 975 acres on National Forest System Lands. The area is characterized by stands of Englemann spruce and subalpine fir bordering a large meadow. It is located adjacent to Utah Highway 14, a designated scenic highway. Over the past several years there has been an increasing loss of forest cover due to insect and disease activity. The purpose of the proposed action is to decrease the risk of spruce beetle and other insect and disease outbreaks, in order to maintain a forested landscape in this visually sensitive area.

The proposed action is to harvest diseased or insect infested trees, trees at high risk, and to increase stand vigor using a combination of individual tree selection and improvement cuts. The objective is to reduce stand basal area and increase diversity to the extent possible while still meeting visual quality needs. Planting would be used to reforest openings.

Preliminary issues that have been identified through scoping to date include project effects on: Visual quality in this travel corridor, recreational use and enjoyment, wildlife habitat, biological diversity, long term visual quality if no treatment occurs, soil productivity and stability, streamflows and channel stability, local economies, wildfire potential, road safety and dust levels, and the SCS snow course located in the project area.

Tentative alternatives to the proposed action include No Action (the project would not take place); sanitation; salvage; combination of sanitation/salvage; use of trap trees or pheromone attractants in combination with timber harvest, chemical treatment, or burning to dispose of infested trees; and individual tree selection in combination with group selection.

The EIS will tier to the Dixie National Forest Land Resource Management Plan (DNF–LRMP) FEIS (1986) which has specified Forest Plan goals, objectives, desired future condition, management area direction, and standards and guidelines for this area. The project area is designated under the DNF–LRMP as Roaded Natural Recreation (2B).

As lead agency, the Forest Service will analyze and document direct, indirect, and cumulative environmental effects of a range of alternatives. Each alternative will include mitigation measures and monitoring requirements.

Hugh C. Thompson, Forest Supervisor, Dixie National Forest is the responsible official.

The comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the proposed action participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may discuss the adequacy of the statement or the merits of the alternatives discussed (see CEQ Regulations for implementing the procedural provisions of NEPA at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC, 435 U.S. 519, 553 (1978).* Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the FEIS. *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334. 1338 (E.D. Wis. 1980). This is to ensure that substantive comments and objections are made available to the Forest Service at the time it can meaningfully consider them and respond to them in the final.

The DEIS is expected to be available for review by February 27, 1992. The Record of Decision and FEIS is expected to be available by June 19, 1992.

Dated: October 15, 1991.

Hugh C. Thompson,

Forest Supervisor, Dixie National Forest.

[FR Doc. 91–25613 Filed 10–23–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

MCTL Implementation Technical Advisory Committee; Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held November 13, 1991, at 9 a.m., in the Herbert C. Hoover Building, room 1617–F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations as needed.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 28, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central

Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information, call Ruth D. Fitts at 202–377–4959.

Dated: October 21, 1991.

Lee Ann Carpenter,

Acting Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 91–25659 Filed 10–23–91; 8:45 am]

BILLING CODE 3510–DT–M

Minority Business Development Agency

Business Development Center Applications: Jacksonville, FL

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the U.S. Department of Commerce's Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. Prospective offerors are advised that there is an incumbent MBDC operator now providing these services. This award is contingent upon the incumbent's satisfactory performance. The current operator is required to maintain a satisfactory level of performance during the first six months of the award period. Should the operator's performance not be acceptable, the incumbent's award may be terminated and a new award made on the basis of responses received to this solicitation. The cost of performance for the first budget period (12 months) is estimated as $165,000 in Federal funds and a minimum of $29,118 in non-Federal (cost sharing) contributions from 03/1/92 to 02/28/93. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Jacksonville, Florida geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority businesses.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one 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 purpose 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.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&%TA) rendered.

Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A–129 "Managing Federal Credit Programs," 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 Department of Commerce are made to pay the debt.

Applicants are subject to Governmental Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Public Law 100–690, title V subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF–LLL, the "Disclosure of Lobbying Activities" (if applicable) are required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

CLOSING DATE: The closing date for applications is November 20, 1991. Applications must be postmarked on or before November 20, 1991. Proposals will be reviewed by the Dallas Regional Office. The mailing address for submission of RFA responses is:

ADDRESSES: Dallas Regional Office, Minority Business Development Agency, 1100 Commerce Street, room 7B23, Dallas, Texas 75242.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. 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 West Peachtree Street, NW., room 1930, Atlanta, Georgia 30308.

Note: A pre-application will be held at the above address on November 6, 1991 at 9 a.m.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: October 16, 1991.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 91–25604 Filed 10–23–91; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: Charleston, SC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the U.S. Department of Commerce's Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. Prospective offerors are advised that there is an incumbent MBDC operator now providing these services. This award is contingent upon the incumbent's satisfactory performance. The current operator is required to maintain a satisfactory level of performance during the first six months of the award period. Should the operator's performance not be acceptable, the incumbent's award may be terminated and a new award made on the basis of responses received to this solicitation. The cost of performance for the first budget period (12 months) is estimated as $165,000 in Federal funds and a minimum of $29,118 in non-Federal (cost sharing) contributions from 3/1/92 to 2/28/93. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Charleston, South Carolina geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority businesses.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one 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 purpose 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.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&%TA) rendered.

Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A–129 "Manning Federal Credit Programs," 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 Department of Commerce are made to pay the debt.

Applicants are subject to Governmental Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF–LLL, the "Disclosure of Lobbying Activities" (if applicable) are required in accordance with section 319 of Public Law 101–121, which generally prohibits

recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

CLOSING DATE: The closing date for application is November 20, 1991. Applications must be postmarked on or before November 20, 1991. Proposals will be reviewed by the Dallas Regional Office. The mailing address for submission of RFA responses is:

ADDRESSES: Dallas Regional Office, Minority Business Development Agency, 1100 Commerce Street, room 7B23, Dallas, Texas 75242.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. 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 West Peachtree Street, NW., room 1930, Atlanta, Georgia 30308.

Note: A pre-application will be held at the above address on November 6, 1991 at 9 a.m.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: October 16, 1991.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 91–25605 Filed 10–23–91; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: Columbia, SC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the U.S. Department of Commerce's Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $165,000 in Federal funds and a minimum of $29,118 in non-Federal (cost sharing) contributions from 03/1/92 to 02/28/93. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Columbia, South Carolina geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority businesses.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one 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 purpose 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.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (MBTA) rendered.

Based on a standard rate of $50 per hour MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDC based on such factors as MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A–129 "Managing Federal Credit Programs," 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 Department of Commerce are made to pay the debt.

Applicants are subject to Governmental Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Public Law 100–690, title V subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF–LLL, the "Disclosure of Lobbying Activities" (if applicable) are required in accordance with section 319 of Public Law 101–121, which generally prohibits

recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

CLOSING DATE: The closing date for applications is November 20, 1991. Applications must be postmarked on or before November 20, 1991. Proposals will be reviewed by the Dallas Regional Office. The mailing address for submission of RFA responses is:

ADDRESSES: Dallas Regional Office, Minority Business Development Agency, 1100 Commerce Street, room 7B23, Dallas, Texas 75242.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. 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 West Peachtree Street, NW. room 1930, Atlanta, Georgia 30308.

Note: A pre-application will be held at the above address on November 6, 1991 at 9 a.m.

11.800 Minority Business Development

(Catalog of Federal Domestic Assistance)

Dated: October 16, 1991.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 91–95606 Filed 10–23–91; 8:45 am]

BILLING CODE 3510–21–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Costa Rica

October 21, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: October 29, 1991.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715. For information on categories on which consultations have been requested, call (202) 377-3740.

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).

Inasmuch as no agreement has been reached on a mutually satisfactory solution on Category 443, the United States Government has decided to control imports in this category for the twelve-month period beginning on August 30, 1991 and extending through August 29, 1992.

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 56 FR 48521, published on September 25, 1991.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 21, 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, 1991; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 29, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 443, produced or manufactured in Costa Rica and exported during the period beginning on August 30, 1991 and extending through August 29, 1992, in excess of 176,810 numbers [1].

Textile products in Category 443 which have been exported to the United States prior to August 30, 1991 shall not be subject to the limit established in this directive.

Textile products in Category 443 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided as data become available.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–25661 Filed 10–23–91; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after August 29, 1991.

Adjustment of Import Limits for Certain Cotton and Man-made Fiber Textile Products Produced or Manufactured in Egypt

October 21, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 28, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. 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 Categories 300/301 and sublimit for Category 301 are being increased for special shift. The Group I limit and the sublimit for Category 227 are being reduced to account for the special shift being applied. As a result of the increases, the sublimit for Category 301, which is currently filled, will re-open.

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 49936, published on December 3, 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.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 21, 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 November 27, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Egypt and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on October 28, 1991, you are directed to amend further the directive dated November 27, 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 the Arab Republic of Egypt:

Category	Adjusted twelve-month limit [1]
Group I 218–220, 224–227, 313–317 and 326, as a group.	61,053,634 square meters equivalent.
Sublevel in Group I 227	11,203,155 square meters.
Level not in a group 300/301	7,137,979 kilograms of which not more than 1,033,931 kilograms shall be in Category 301.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

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,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–25662 Filed 10–23–91; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Defense Intelligence Agency Advisory Board Meetings

AGENCY: DIA, DOD.

ACTION: Notice of closed meetings.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that closed meetings of a panel of the DIA Advisory Board have been scheduled as follows:

DATES: Friday, November 1, 1991 (9 a.m. to 5 p.m.)

ADDRESSES: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John G. Sutay, USAF, Chief, DIA Advisory Board, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Technologies and Applications.

Dated: October 18, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–25565 Filed 10–23–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Defense Traffic Management Regulation (AR 55–355, NAVSUPINST 4600.70, AFR 75–2, MCO P4600.24B, DLAR 4500.3)

AGENCY: Military Traffic Management Command, DOD.

ACTION: Final Notice of Changes relative to the Freight Carrier Performance Program (CPP).

SUMMARY: The following changes modify criteria which the Military Traffic Management Command (MTMC) will consider when evaluating the level of performance provided by a commercial freight carrier handling Department of Defense (DOD) shipment and establish acceptable telephone response times for shipment acceptance by a carrier and the standards required. Changes were previously published for comments in 56 FR 15865, Thursday, April 18, 1991.

DATES: The changes will be effective November 25, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia McCormick, Headquarters, Military Traffic Management Command, ATTN: MTIM, 5611 Columbia Pike, Falls Church, VA 22041–5050, (703) 756–1596.

SUPPLEMENTARY INFORMATION: MTMC is authorized by DOD Directive 5160.53 to develop and maintain procedures for the movement of DOD shipments within the continental United States. MTMC is also required to ensure that DOD shipments are tendered to carriers able to meet DOD requirements at the lowest overall cost. Therefore, the following criteria have been established to ensure responsive service by the carrier industry and will be incorporated into Chapter 42 of the Defense Traffic Management Regulation (DTMR) AR 55–355, NAVSUPINST 4600.70, AFR 75–2, MCO P4600.14B, DLAR 4500.3.

1. The number of service failures which may occur prior to a shipping activity placing a carrier in nonuse is as follows:

a. Failure to pick up as agreed is changed to 2 instances within a 45-day period and furnishing improper/inadequate equipment is also changed to 2 instances within a 45-day period.

b. Failure to pick up (No-Show)

(1) Failure to pick up occurs when a carrier fails to show up on a specific day at a specific time. This does not preclude the carrier from contacting the shipper in advance and making acceptable arrangements to pick up on an alternate day. However, if the carrier develops a pattern of calling the day prior or on the day of pick up, the shipper has the option of holding the carrier to the pick-up date and charging a failure to pick up, if warranted. Once the carrier accepts the shipment and agrees to pick it up on a specified day, the minimum advance notice requirements as established no longer apply (see d. below).

(2) Due to numerous installations not having a full staff of personnel dedicated to loading/unloading, the carrier may be charged a no-show if it fails to arrive at the specified time even though the shipper may elect to use the carrier when it can be loaded at a later time. If the shipper must pull personnel from other duties for scheduled loading/unloading duties, this creates an impact on the mission of the shipper, therefore, timely pickup is a must.

(3) Item 165, paragraph 3, MFTRP No. 1A as it applies to pickup or delivery during normal duty hours is applicable only if the carrier is not requested and agrees to a specific time to be available for pickup or delivery.

c. Improper/inadequate equipment involves furnishing equipment which is not satisfactory to the shipper, e.g. shipper requests a 45 foot van and the carrier arrives with a 40 foot van; equipment furnished is unsuitable for loading, i.e. holes in trailer, unsafe

condition, etc. Also included in this is the failure of the driver to possess the appropriate paper work or identification, i.e., appropriate copy of a trip-, master-, or permanent lease.

d. Timeframes have been established for minimum notice to the carrier prior to charging a refusal. A refusal may be charged if the carrier refused a general commodities shipment 24 hours in advance of scheduled pickup, or 48 hours advance notice for shipments which require a Transportation Protective Service. This does not preclude the shipper from requesting pick up within a lesser timeframe to meet mission requirements. (See 1.e.(3).) However, once the carrier accepts the shipment for pick up, the timeframes are no longer applicable, and the carrier can then be charged for a no show if it fails to meet pick up date.

e. Recognizing that carriers need a reasonable amount of time to determine whether they have equipment and employees available to fulfill a DOD shipper or transportation officer's request for service, shippers and carriers are authorized to set a mutually agreeable response time for acceptance or refusal of a shipment. However, failure to accept or decline a shipment as described herein will be considered by MTMC as a shipment refusal. The following will apply in the absence of a specific service agreement:

(1) When offered a shipment, the carrier will have 1 hour to accept or decline the shipment if the carrier is unable to make an immediate commitment.

(2) Failure on the part of the carrier to return the telephone call during the specified time frame(s), and either accept or decline the shipment, will be considered on the part of the shipper as a refusal.

(3) The shipper retains the right to specify a shorter response time for high priority shipments, i.e., less than 24 or 48 hours. However, the shipper may not charge the carrier with a refusal if the carrier declines the shipment. Once the carrier accepts the shipment, it is expected to arrive on the specified date, by the specified time, regardless of advance notice.

f. Disconnected numbers and unanswered inquiries will be considered as evidence that the carrier is no longer interested in providing service to the DOD. Once the MTMC area commands and/or headquarters have been advised by a shipper of a carrier's nonresponsiveness, the carrier will be provided a notice of removal from consideration for participation in DOD freight shipments. Failure on the part of the carrier to respond to the written request, with the requested information, could result in the removal of all tenders of service on file by the carrier. Once removed, the carrier will be required to meet all qualification standards in effect at the time prior to being authorized to file new tenders of service.

2. The shipper may place a carrier in nonuse for up to 60 days followed by a 60 day probationary period. (This information must be so stated in the initial nonuse correspondence.) If there is any additional service failure during the probationary status at that installation, the shipper may place the carrier in an additional 60 day nonuse status.

3. The shipper will now be allowed to place a carrier in nonuse for up to 6 months if the carrier has been placed in nonuse, at that activity, 3 times within an 18-month timeframe.

4. The shipper will have the authority to place a carrier in immediate nonuse, at that activity, for any supportable adverse incident involving drugs, alcohol, or firearms. The incident and action will be immediately forwarded to the appropriate area command for consideration of broader performance action. The shipper must provide a telephonic report, followed by appropriate written report or facsimile of all pertinent information to the area command at the earliest time possible after the incident and nonuse action.

5. The area commands will perform an in-depth review of a carrier's performance after receipt of 8 nonuse actions, collectively, from activities within their jurisdiction, on the same carrier, within a 6 month period. At that time area-wide disqualification may be taken against the carrier under MTMCR 15–1 for up to 180 days.

6. Headquarters, MTMC, will perform an in-depth review of a carriers performance once the carrier has accumulated 12 performance actions within a 6 month period, which includes, but not limited to, nonuse actions at shipping activities, any action initiated by the area commands, and letters of concern and/or warnings. Upon completion of the review, if appropriate, nationwide disqualification may be taken against the carrier under MTMCR 15–1.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 91–25573 Filed 10–23–91; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers; Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Construction of an Offloading Facility and Dredging of the Sturgeon Bay & Lake Michigan Ship Canal With Upland Disposal of Dredged Material, Door County, WI.

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: The Detroit District, Corps of Engineers proposes to construct an offloading facility along the Sturgeon Bay and Lake Michigan Ship Canal (SB&LMSC), Door County, Wisconsin, for transfer of dredged material to an upland disposal site. The District also proposes maintenance dredging of the SB&LMSC with dredged material disposal at an upland site.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed actions and DEIS can be answered by:

Mr. Paul H. Allerding, U.S. Army Engineer District, Detroit, Environmental Analysis Branch, P.O. Box 1027, Detroit, Michigan 48231–1027, Commercial telephone number: 313–226–7590, FTS telephone number: 226–7590.

SUPPLEMENTARY INFORMATION: The proposed actions are associated with operation and maintenance activities for the Sturgeon Bay and Lake Michigan Ship Canal (SB&LMSC), a Federal navigation project. The SB&LMSC was authorized by the River and Harbor Act of March 3, 1873, and subsequent acts. The canal cuts across a narrow peninsula in Wisconsin, providing a safe route between Lake Michigan and Green Bay. The SB&LMSC is approximately 8.5 miles long and varies in width from 160 to 600 feet. Authorized channel depth is 22 feet through most of the canal, with a 23 foot depth through the Lake Michigan entrance and a 20 foot deep turning basin in the city of Sturgeon Bay. Shoaling has reduced channel depths by up to 3 feet in certain areas of the canal.

The proposed offloading facility would be constructed on approximately 1 acre of Corps of Engineers property along the north shore of the SB&LMSC near the southeast end of the channel. The facility would include a crane pad and steel sheetpile revetment for offloading, woodpile clusters for barge mooring, a truck turnaround area, and a bermed stockpile area for temporary holding of material. The area along the

channel adjacent to the facility would be excavated to allow barge and scow access. Alternative offloading sites considered include use of the Corps of Engineers revetment of the south side of the canal and a scenic overlook adjacent to the proposed offloading site.

The proposed dredging activity includes initial and future maintenance dredging of the SB&LMSC and harbor channels. Initially, approximately 100,000 cubic yards of material would be dredged. Future maintenance dredging quantities would depend upon canal traffic requirements. The alternative to dredging is no action, which would severely limit the use of the canal.

The proposed disposal site is owned by the Evergreen Nursery Company. The site inludes two upland areas, totaling 19.3 acres, which have been excavated to an average depth of approximately 9.5 feet below grade. Disposal alternatives include upland disposal on the south side of the canal and beach nourishment.

Significant issues to be analyzed include potential impacts on wetlands, water quality, fish and wildlife habitat, cultural resources, recreation, and aesthetics.

The proposed actions will be reviewed for compliance with the Fish and Wildlife Act of 1956; the Fish and Wildlife Coordination Act of 1958; the National Historic Preservation Act of 1966; the National Environmental Policy Act (NEPA) of 1969; the Clean Air Act of 1970; the Coastal Zone Management Act of 1972; the Endangered Species Act of 1973; the Water Reosurces Development Act of 1976; the Clean Water Act of 1977; Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 1971; Executive Order 11988, Flood Plain Management, May 1977; Executive Order 11990, Wetland Protection, May 1977; and Corps of Engineers, Dept. of the Army, 33 CFR Part 230, Environmental Quality: Policy and Procedure for Implementing NEPA (ER 200–2–2).

All are invited to participate in the proposed project review, including affected Federal, State, and local agencies, Indian tribes, and other private organizations and parties. Coordination with Federal, State, and local agencies has been and will continue to be maintained.

During the DEIS public comment period, a public meeting will be scheduled, if necessary. It is anticipated that the DEIS would be available for public review in June 1992.

Dated: October 4, 1991.

Richard Kanda,

Colonel, U.S. Army District Engineer.

[FR Doc. 91–25574 Filed 10–23–91; 8:45 am]

BILLING CODE 3710–GA–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

[CFDA No. 84.047]

Upward Bound Program

AGENCY: Department of Education.

ACTION: Notice of Technical Assistance Workshops.

SUMMARY: The Department of Education will conduct two Technical Assistance Workshops to assist prospective applicants in developing applications for the Upward Bound Program. The Technical Assistance Workshops are scheduled to be held:

October 30, 1991—8 a.m. to 4:30 p.m.

Health & Human Services Auditorium, 330 Independence Avenue, SW., C Street Entrance, Washington, DC.

November 6, 1991—9 a.m. to 5 p.m.

North Lake College, Performance Hall, 50001 No. MacArthur Blvd., Irving, Texas.

FOR FURTHER INFORMATION CONTACT: Ms. Goldia Hodgdon, U.S. Department of Education, Division of Student Services, room 3066, ROB–3, 400 Maryland Avenue, SW, Washington, DC 20202–5249. Telephone: (202) 708–4804. 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.

Dated: October 17, 1991.

Program Authority: 20 U.S.C. 1070d, 1070d–1a.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91–25586 Filed 10–23–91; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Committee on Accreditation and Institutional Eligibility; Education

AGENCY: National Advisory Committee on Accreditation and Institutional Eligibility; Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the proposed agenda of the National Advisory Committee on Accreditation and Institutional Eligibility. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend this public meeting.

DATES AND TIMES: November 21—8:30 a.m. until 7 p.m., November 22—7:30 a.m. until 6 p.m..

LOCATION: Dupont Plaza Hotel, 1500 New Hampshire Avenue NW., (Dupont Circle) Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Steven G. Pappas, Executive Director, National Advisory Committee on Accreditation and Institutional Eligibility, U.S. Department of Education, 400 Maryland Avenue SW., room 3915–ROB#3, Washington, DC.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Accreditation and Institutional Eligibility is established under section 1205 of the Higher Education Act as amended by Public Law 93–374 (20 U.S.C. 1145). The Committee advises the Secretary of Education regarding his responsibility to publish a list of nationally recognized accrediting agencies and associations, State agencies recognized for the approval of public postsecondary vocational education, and State agencies recognized for the approval of nurse education. The Committee also advises the Secretary of Education on policy matters concerning recognition of accrediting and State approval bodies and institutional eligibility for participation in Federally funded programs.

AGENDA: The meeting on November 21–22, 1991 is open to the public. Because of time constraints, not all of the agencies previously scheduled to be reviewed at the fall meeting of the Advisory Committee will be reviewed at that time. Some will be rescheduled for a special meeting of the Committee at a date to be announced later in the **Federal Register**. On November 21, the Advisory Committee will discuss general issues related to the work of the Committee. On November 21–22, the Committee will review petitions of accrediting agencies relative to initial or continued recognition by the Secretary of Education. The Committee will also hear presentation by representatives of these petitioning agencies and third parties who have requested to be heard. The following petitions are scheduled for review November 21–22:

Accrediting Agencies

Petitions for Renewal of Recognition

1. Middle States Association of Colleges and Schools, Commission on Higher Education (Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virgin Islands).

2. National Accrediting Commission of Cosmetology Arts and Sciences (postsecondary schools and departments of cosmetology arts and sciences).

Petition for Initial Recognition

1. National Association of Private Nontraditional Schools and Colleges (private, nontraditional degree and non-degree granting institutions).

Requests for oral presentation before the Advisory Committee should be submitted to Mr. Pappas (address above) by November 6, 1991. Requests should include the names of all persons seeking an appearance, the organization they represent, and the purpose for which the presentation is requested.

A record will be made of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (room 3036 ROB#3), Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Authority: 5 U.S.C.A. appendix 2.

Dated: October 18, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91–25566 Filed 10–23–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Task Assignment; Subcontract Awards

AGENCY: Department of Energy.

ACTION: Notice of waiver of potential organizational conflict of interest.

SUMMARY: In accordance with Department of Energy (DOE) Acquisition Regulations relating to organizational conflicts of interest, 48 CFR 909.570, DOE gives public notice of its determination to approve the assignment of a task to an existing DOE contractor and related subcontract awards for data collection and cost estimating relating to environmental remediation activities in spite of any potential future organizational conflict of interest which may result from the performance of such work.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Frame, Office of Procurement, Assistance and Program Management, PR–321.2, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1044.

SUPPLEMENTARY INFORMATION:

Findings and Determination

Under the DOE Acquisition Regulations, 48 CFR 909.570, the Department of Energy is subject to strict requirements intended to avoid organizational conflicts of interest in the award and performance of contracts for technical and management support services. An organizational conflict of interest (OCI) is considered to exist when a contractor "has past, present, or currently planned interests, that either directly or indirectly, through a client relationship, relate to the work to be performed under a Department contract and which (1) may diminish its capacity to give impartial, technically sound, objective assistance and advice, or (2) may result in it being given an unfair competitive advantage." DOE Acquisition Regulations, 48 CFR 909.570–3. Pursuant to these provisions, a contract may not be awarded unless the Secretary or his designee has made a determination that it is unlikely that an OCI would exist, or that a conflict has been avoided after inclusion of appropriate conditions in the contract. If an OCI is determined to exist and cannot be avoided, the contract may be awarded only if the Secretary or his designee determines that award would be in the best interest of the United States and includes appropriate provisions in the contract to mitigate the OCI to the extent feasible.

Based on the following findings, it is determined to be in the best interest of the United States to (1) approve the assignment of the task described below to Gilbert/Commonwealth, Inc., and related subcontract awards, and (2) conclude that participation in future environmental remediation work for DOE is not precluded by performance of the work described herein.

Findings

1. In August, 1991, the Department of Energy (DOE) issued its Environmental Restoration and Waste Management Five-Year Plan, which is based, in significant part, on the information contained in activity data sheets (ADS). These ADS provide detailed data on cleanup and waste management activities and estimated costs for DOe's sites and facilities. However, these ADS are primarily in a preconceptual stage of development and do not reflect final decisions or plans for cleanup efforts.

2. On September 18, 1991, the Secretary of Energy directed that an independent cost estimate be performed of the activities detailed on the ADS. This effort is to be completed by November 15, 1991, in order to provide accurate and complete information for the Department's fiscal year (FY) 1993 budget submission. This effort is necessary to ensure that the Department's cleanup of its sites and facilities proceeds in a timely, complete and technically successful manner.

3. Phase I of this effort will involve the collection of technical data to assess the scope of work for each ADS. The data collected will primarily involve scope and quantity surveys. Phase II of this effort will involve the application of cost models to derive cost estimates for the work identified during Phase I. DOE proposes to accomplish Phases I and II by the assignment of Task No. 41 to an existing DOE contractor, Gilbert/Commonwealth, Inc., under Contract No. DE–AC01–88MA00236. It is anticipated that the work will, in large part, be performed by qualified subcontractors. Because of the specialized, highly technical nature of environmental remediation-related work, there is a limited number of entities with the expertise and experience necessary to perform such work.

4. It has become apparent to the Department that these entities are unwilling to enter into contracts or subcontracts to perform Phase I or II work if the performance of such work may create a potential OCI which would limit or preclude their participation in future environmental remediation contract/subcontract work for the Department. Given the urgent need for the performance of this work and the schedule established by the Secretary of Energy, DOe is unable to conduct a thorough OCI review prior to assignment of the Task No. 41 or award of related subcontracts.

5. Neither Gilbert/Commonwealth, Inc., nor any of the proposed subcontractors will perform Phase I or II work for any DOE site or facility for which they have performed work which was used in any way in the development of the ADS or the Environmental Restoration and Waste Management Five-Year Plan. Consequently, DOE concludes that no actual or potential OCI exists with respect to the issue of bias on the part of a contractor or subcontractor in relation to its work for the Department.

6. The work to be performed under Phases I and II involves data collection and cost estimating relating to

environmental remediation activities in a preconceptual planning stage of development. Because of the limited, fragmented nature of this work, it is highly unlikely that future DOE environmental remediation work will stem directly or indirectly from its performance (e.g., neither the contractor or subcontractors will be making recommendations regarding the future direction or content of DOE environmental remediation work). Furthermore, it is not anticipated that either Gilbert/Commonwealth, Inc., or the subcontractors performing Task No. 41 will have access to any information which will provide an unfair competitive advantage. If it is later discovered that such access has provided either the contractor or any subcontractor with an unfair competitive advantage, such information will be made publicly available. Based on the above, DOE does not foresee any likelihood that performance of Task No. 41 will result in any unfair future competitive advantage for the either the contractor of subcontractors performing that task.

Determination

Based on the Findings set forth above and in accordance with 48 CFR 909.570, it is determined to be in the best interest of the United States to (1) assign Task No. 41 (Phases I and II) to Gilbert/Commonwealth, Inc, under Contract No. DE–AC01–88MA00236 and to approve subcontract awards under such contract for the performance of that task, and (2) conclude that participation in future environmental remediation work for DOE is not precluded by performance of Task No. 41.

Dated: September 27, 1991.

Silas B. Fisher,

Director, Office of Procurement, Assistance and Program Management.

[FR Doc. 91–25647 Filed 10–23–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP92–12–000]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

October 18, 1991.

Take notice that on October 15, 1991, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and First Revised Volume No. 1–A, the following tariff sheets to be effective November 15, 1991:

Second Revised Volume No. 1:

First Revised Sheet No. 34

First Revised Volume No. 1–A:

First Revised Sheet No. 419
First Revised Sheet No. 420

Northwest states that the purpose of the filing is to revise (1) Rate Schedule SGS–1 in order to offer storage customers four changes, rather than two changes per day from the storage facility at Jackson Prairie, and (2) the nomination procedures for transportation service to ensure Northwest's ability to return notices of scheduled confirmed nominations back to the customers in advance of the start of the gas day.

Northwest states that a copy of the filing is being served on Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 25, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–25569 Filed 10–23–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ92–2–8–000]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

October 18, 1991

Take notice that on October 11, 1991, South Georgia Natural Gas Company (South Georgia) tendered for filing Seventy-Eighth Revised Sheet No. 4 and Tenth Revised Sheet No. 43 to its FERC Gas Tariff, First Revised Volume No. 1. Seventy-Eighth Revised Sheet No. 4 is being filed pursuant to the Purchased Gas Cost Adjustments (PGA) provision set out in section 14 of South Georgia's FERC Gas Tariff and represents an out-of-cycle PGA rate adjustment with a proposed effective date of November 1, 1991. Tenth Revised Sheet No. 43, Index of Purchasers, reflects the conversion by certain of South Georgia's customers from firm sales service to firm transportation service. The proposed effective date for Tenth Revised Sheet No. 43 is also November 1, 1991.

South Georgia states that Seventy-Eighth Revised Sheet No. 4 reflects a revised Current Adjustment computed in accordance with § 154.305(c) of the Commission's Regulations. The Current Adjustment, which is proposed to be in effect from November 1, 1991, through December 31, 1991, reflects a quarterly decrease in jurisdictional revenues of approximately $203,000 which is attributable to a quarterly increase in the demand component of $.39 per Mcf and a quarterly decrease in the commodity component of $.26 per MMBtu from South Georgia's quarterly PGA filing submitted on September 12, 1991, in Docket No. TQ92–1–8–001.

South Georgia states that copies of the filing will be served upon all of South Georgia's jurisdictional purchasers, interested state commissions and interested parties.

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 (§§ 385.211 and 385.214). All such motions or protests should be filed on or before October 25, 1991. 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. 91–25570 Filed 10–23–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–11–000]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

October 18, 1991.

Take notice that on October 10, 1991, Southern Natural Gas Company ("Southern") tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective November 1, 1991:

Second Revised Sheet No. 30L.01
Second Revised Sheet No. 30Q
First Revised Sheet No. 30Q.01
Third Revised Sheet No. 30Z.01
First Revised Sheet No. 30Z.33
First Revised Sheet No. 45.01
Original Sheet No. 45.02
Original Sheet No. 45.03

Original Sheet No. 45.04
Original Sheet No. 45R
Second Revised Sheet No. 45R.11

Southern states that the purpose of this filing is to implement certain provisions contained in its settlement filed in Docket No. CP89–1721–000 on July 30, 1991, which will enhance firm transportation service and allow firm sales customers to nominate sales gas. The provisions include a firm sales nomination procedure, new delivery point allocation procedures, and the elimination of the "no bump" rule for firm shippers utilizing alternate receipt points. These provisions can be implemented independently of the referenced settlement. Southern has requested a waiver of the Commission's Regulations in order to make these sheets effective November 1, 1991.

Southern states that copies of the filing will be served upon its jurisdictional purchasers, shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 25, 1991. Protests will be considered by the Commission in determining the 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. 91–25571 Filed 10–23–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–13–000]

Wyoming Interstate Co.; Change in FERC Gas Tariff

October 18, 1991.

Take notice that on October 16, 1991, Wyoming Interstate Company, Ltd. (WIG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 the following tariff sheets to be effective November 1, 1991:

Third Revised Sheet No. 3
Second Revised Sheet No. 10
Second Revised Sheet No. 11
Third Revised Sheet No. 12
Second Revised Sheet No. 13
Second Revised Sheet No. 14
Second Revised Sheet No. 15
Second Revised Sheet No. 16
Second Revised Sheet No. 22
Second Revised Sheet No. 23

WIG states that the filing is being made to make certain minor changes to its Original Volume No. 1 tariff. WIG states that the changes reflect additional language relating to Fuel and Unaccounted-for Gas, stating that it shall be reflected as a percentage of receipts. WIG also states that the filing also changes the use of the terms "Schedule" and "Nomination" by substituting the terms for each other to better meet the use of these terms in WIC's Volume No. 1 Tariff and to make it more comparable to WIC's Original Volume No. 2 FERC Gas Tariff.

WIC states that copies of the filing were served up all holders of WIC's Original Volume No. 1 FERC Gas Tariff.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 25, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–25572 Filed 10–23–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders; During the Week of September 9 Through September 13, 1991

During the week of September 9 through September 13, 1991, the decisions and orders summarized below were issued with respect to applications for refund or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Atlantic Richfield Company/Christian County Gas Co., 9/12/91; RF304–4442

The DOE issued a Decision and Order concerning an Application for Refund filed by the Christian County Gas Co. in the Atlantic Richfield Company special refund proceeding. The firm submitted data which documented banks of unrecovered increased product costs substantially in excess of its full allocable share of the consent order funds. In addition, a competitive disadvantage analysis revealed that Christian Gas Co. purchased refined products at prices higher than the regional average, indicating that the firm experienced injury and that a refund of its full volumetric share was appropriate. The refund granted in this Decision totalled $14,185, including $9,524 in principal and $4,661 in accrued interest.

Gulf Oil Corporation/Duke Power Company, 9/12/91; RF300–9213

The DOE considered an Application for Refund filed by the Duke Power Company in the Gulf Oil Corporation special refund proceeding. Duke argued that it should not be required to pass through any refund granted to its customers, but rather should be able to return those funds to stockholders. In this regard, the firm stated that for most of the period during which it purchased Gulf products it did not operate with a fuel adjustment clause and that as a result, it absorbed Gulf overcharges, to the detriment of its shareholders rather than passing any overcharges through to its utility customers. The DOE found this argument meritorious and granted the firm a total refund of $12,000. The DOE also permitted Duke to retain $10,811. It was required to pass through the balance of the refund to its customers, since that amount represented purchases for which Duke has a fuel adjustment clause.

Reinauer Petroleum Corp./Rinaldi Transportation, et al., 9/12/91; RF341–1, et al.

The DOE issued a Decision and Order granting six Applications for Refund filed by six claimants in the Reinauer Petroleum Corp. special refund proceeding. Five of the applicants were either end-users or resellers and retailers that claimed refunds of less than $10,000 in principal. The remaining applicant elected to limit its claim to $10,000. The total volume granted in this Decision was 475,187 gallons. The total amount of refunds approved in this Decision was $22,163, representing $17,031 in principal and $5,132 in interest.

State Escrow Distribution, 9/9/91; RF302–11

The Office of Hearings and Appeals ordered the DOE's Office of the Controller to distribute $19,990,000 to the

State governments. Those funds had been set aside for distribution to the States in *Diamond Shamrock R&M, Inc.*, 21 DOE ¶ 85,352 (1991); *AOC Acquisition Corp.*, Case No. LEF–0003, 21 DOE ¶ _____ (August 20, 1991); *Kern Oil & Refininery*, 21 DOE ¶ 85,344 (1991); *Seneca Oil Co.*, 21 DOE ¶ 85,327 (1991); *Enron Corp.*, 21 DOE ¶ 85,323 (1991). In addition, approximately $2 million in the escrow account is derived from an installment payment made in February 1991 by Tesoro Petroleum Corporation pursuant to Consent Order No. RTSE006A1Z. See *Tesoro Petroleum Co.*, 20 DOE ¶ 85,665 (1990). The use of the funds by the States is governed by the Stripper Well Settlement Agreement.

Thomas P. Reidy, Inc./Boswell Oil Company/Sinclair Marketing, Inc., 9/9/91; RF322–1, RF322–8

The DOE issued a Decision and Order concerning Applications for Refund filed by the Boswell Oil Company and Sinclair Marketing, Inc. The applicants, both of which were refined product resellers, sought refunds from the settlement fund obtained by the DOE through a consent order entered into with Thomas P. Reidy, Inc. (Reidy). The DOE determined that both applicants purchased refined products from Reidy on an irregular basis during the consent order period and should be subject to the spot purchaser presumption of non-injury. Since neither firm provided a detailed demonstration that it was injured by Reidy's alleged overcharges, the refund claims were denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Bowman Public Schools.	RA272–44	09/12/91.
Cullman County Commission *et al.*	RF272–78417	09/09/91.
Empire Gas Corporation/ Rosetta Pratcher *et al.*	RF335–26	09/10/91.
Gulf Oil Corporation/ Art's Courtesy Gulf Service *et al.*	RF300–11527	09/12/91.
Gulf Oil Corporation/ Louis & Ray Wilhelm *et al.*	RF300–11602	09/12/91.
Hancock School District.	RF272–78823	09/09/91.
Klemme Community School District.	RF272–78975	
Shell Oil Company/East 30th Street Shell *et al.*	RF315–8900	09/09/91.
Shell Oil Company/Ron's Shell Service Station *et al.*	RF315–6036	09/12/91.
Shell Oil Company/ Wisconsin Industrial Fuel Oil Trust Fund.	RF315–8689	09/12/91.
Center Fuel Co	RF315–8690	
Clark Oil Co	RF315–8913	
Apex Oil Co	RF315–8914	
Texaco Inc./Gil's Texaco Service.	RF321–16804	09/09/91.
Texaco Inc./ Sunset Blvd. Texaco.	RF321–16806	09/09/91.
Texaco Inc./ Waterfront Marine, Inc. *et al.*	RF321–3152	09/09/91.
Thomas P. Reidy, Inc./Armco Steel Company, L.P.	RF322–2	09/09/91.
Thomas P. Reidy, Inc./Koch Refining Company.	RF322–5	09/10/91.

Dismissals

The following submissions were dismissed:

Name	Case No.
A&B Gulf Service	RF300–17300.
Baur's Texaco	RF321–13349.
Bob's ARCO	RF304–11815.
Bob's ARCO Minimart	RF304–12425.
Boyd Concrete Products Co	RF321–3144.
Boyd Construction	RF321–3143.
Boyd Paving Co	RF321–3145.
Buff's Texaco	RF321–6103.
Buff's Texaco	RF321–6104.
Byrl's Texaco	RF321–3599.
Carl F. Wegner	RF321–3876.
Charles Brigis	RF321–2964.
Coyne Textile Services	RF272–548.
CSX Transportation	RF300–17133.
Daye's Texaco	RF321–7485.
Dollar A Day Rent A Car	RF304–11173.
Doyle's Texaco	RF321–3562.
Ed's Gulf Service	RF321–12948.
Fife's Texaco	RF321–2680.
Fifty One Texaco Service Station	RF321–0221.
Frank Kovacs Texaco Service	RF321–7476.
G. Zenn E. Combs	RF300–17199.
Glenn ARCO	RF304–11844.
Grenada Sand & Gravel	RF321–3140.
Haddock Texaco of Amarillo	RF321–330.
Hagop & Sarakis Abadjian	RF300–17301.
Henry's Super Station	RF304–11702.
Hub City Texaco	RF321–7471.
Hunter Gulf	RF321–12391.
Inabon Asphalt, Inc	RF272–71662.
James C. Yingling	RF300–17241.
James Jenkins	RF300–17200.
James M. Howard	RF321–10213.
James M. Howard	RF321–10214.
Jim's Texaco	RF321–16431.
Loveland Texaco	RF321–7478.
Lynn Larsen's Freeway Texaco	RF321–10613.
Maine Gas & Appliance	RF300–17333.
Milledge Texaco	RF321–713.
No. 8 Texaco Service Station	RF321–6107.
North Circle Texaco	RF321–7483.
Paul White Texaco	RF321–7475.
Philipp Petroleum Co	RF304–5040.
R&D Texaco	RF321–1214.
R&J Texaco	RF321–1216.
R.J. Pele & C. Barone Gulf	RF300–16765.
Ray Freeman's Texaco	RF321–1226.
Ray's Texaco & U-Haul	RF321–4072.
Ritchie's Texaco	RF321–1258.
Ron's Goodyear Texaco	RF321–1376.
Smitty's Gulf Service	RF300–11705.
Stan's Texaco Service	RF321–4181.
Starck's Evergreen Texaco	RF321–1394.
Sylvan Texaco	RF321–3345.
Texaco Town Pump	RF321–1345.
Varland's ARCO	RF304–3861.
West Side Texaco	RF321–2963.
Y Texaco	RF321–14382.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: October 18, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91–25648 Filed 10–23–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4025–3]

Science Advisory Board; Indoor Air Quality and Total Human Exposure Committee; Open Meeting; November 7–8, 1991

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Indoor Air Quality and Total Human Exposure Committee (IAQTHEC) will meet on November 7–8, 1991 at the Days Inn Crystal City Hotel, 2000 Jefferson Davis Highway, Arlington, Virginia 22202. The Hotel telephone number is (703) 920–8600. The meeting will begin both days at 9 a.m., ending no later than 2 p.m. on November 8. The meeting is open to the

public and seating is on a first-come basis.

The purpose of the meeting is for the Committee to review the Agency's Uptake Biokinetic (UBK) Model for Lead. If time permits, the Committee may also receive briefings on other relevant indoor air or exposure issues. Copies of the UBK documents are not available from the Science Advisory Board. For more information concerning these documents and the availability, please contact: Dr. Susan Griffin, U.S. EPA, Office of Emergency and Remedial Response (OS–230), 401 M Street, SW., Washington, DC 20460, Telephone: (202) 260–9493.

For details concerning this meeting, including a draft agenda, please contact Mr. Robert Flaak, Assistant Staff Director, Science Advisory Board (A–101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 260–6552 and FAX: (202) 260–7118. Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Flaak no later than Friday, November 1, 1991 in order to be included on the Agenda. Written statements of any length (at least 15 copies) may be provided to the Committee up until the meeting. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes.

Dated: October 18, 1991.

Dr. Donald Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 91–25760 Filed 10–23–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 16, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0021.

Title: Civil Air Patrol Radio Station License.

Form Number: FCC Form 480.

Action: Extension.

Respondents: Non-profit institutions.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 12 responses; .083 hours average burden per response; 1 hour total annual burden.

Needs and Uses: FCC Rules require that applicants file FCC Form 480 to apply for a new, renewal or a modified Civil Air Patrol Station License. The data will be used by Commission personnel to evaluate the application to issue licenses, to provide information for enforcement and rulemaking proceedings and to maintain a current inventory of licensees.

Federal Communications Commission

Donna R. Searcy,

Secretary.

[FR Doc. 91–25592 Filed 10–23–91; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

October 17, 1991.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0218.

Title: Section 90.41(b), Disaster Relief Organizations—"Special Eligibility Showing".

Action: Extension.

Respondents: Non-profit institutions and small businesses or organizations.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 75 responses; 0.17 hour average burden per response; 13 hours total annual burden.

Needs and Uses: Disaster relief organizations are eligible to use Special Emergency Radio Service frequencies which are usually assigned only to hospitals, ambulance companies, and other related entities for the rendition of medical services. A supplemental showing consisting of a copy of the disaster relief organization's charter or other authority, and a copy of their communications plan is required in order to ensure the organization's eligibility and to effect efficient spectrum use during emergencies. The data is used to determine eligibility of applicants for licenses on specific frequencies.

OMB Number: 3060–0221.

Title: Section 90.155(b), Time in which station must be placed in operation (exceptions).

Action: Extension.

Respondents: Individuals or households, State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 55 responses, 1 hour average burden per response; 55 hours total annual burden.

Needs and Uses: Section 90.155(b) provides that a period longer than eight months may be granted to local government entities to place their stations in operation on a case-by-case basis upon a showing of need. This rule provides flexibility to state and local governments that would normally be unable to meet the standard eight-month requirement due to the unique requirements of State and local government budget and funding cycles. Note that the term "local government" as used in FCC rules refers to all non-Federal entities. The data is used to determine if the exception to the eight-month requirement is warranted.

OMB Number: 3060–0224.

Title: Section 90.151, Requests for waiver.

Action: Extension.

Respondents: Individuals or households, State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 60 responses, 2 hours average burden per response; 120 hours total annual burden.

Needs and Uses: The Commission has the responsibility to establish and administer rules for the orderly and efficient use of radio spectrum. Circumstances do arise, however, where general rules cannot properly address the needs of the public, the waiver of those rules is desirable. In order to enable the Commission to make an informed decision on the desirability of such waivers, applicants are required to submit information justifying why a waiver is needed. The waiver justifications are used by FCC staff in determining if an exception to the rules is warranted and in the public interest. Such a determination could not be made in the absence of requiring this information from the applicant.

OMB Number: 3060–0259.

Title: Section 90.263, Substitution of Frequencies below 25 MHz.

Action: Extension.

Respondents: State or local governments and businesses or other for-profit.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 60 responses, 0.5 hour average burden per response; 30 hours total annual burden.

Needs and Uses: This rule requires applicants proposing operation in certain frequency bands below 25 MHz to submit supplemental information showing such frequencies are necessary from a safety of life standpoint, and information regarding minimum necessary hours of operation. The data will be used by FCC staff in evaluating the applicant's need for such frequencies and the interference potential to other stations operating on the proposed frequencies.

OMB Number: 3060–0261.

Title: Section 90.215, Transmitter measurements.

Action: Extension.

Respondents: Individuals or households, State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 129,900 recordkeepers, 0.033 hour average burden per recordkeeper; 4,287 hours total annual burden.

Needs and Uses: Section 90.215 requires licensees to measure carrier frequency, output power, and modulation of each transmitter authorized to operate with power in excess of two watts when the transmitter is initially installed and when any changes are made which would likely affect such parameters. Such measurements, which help ensure proper operation of transmitters, are required to be retained in the station records. The information is normally used by the licensee to ensure that equipment is operating within prescribed tolerances. Prior technical operation of transmitters helps limit interference to other users and provides the licensee with the maximum possible utilization of equipment.

OMB Number: 3060–0295.

Title: Section 90.607(b)(1) and (c)(1), Supplemental information to be furnished by applicants for facilities under this subpart.

Action: Extension.

Respondents: State or local governments, non-profit institutions and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 2,028 responses, 0.25 hour average burden per response; 507 hours total annual burden.

Needs and Uses: This rule requires the affected applicants to submit a list of any radio facilities they hold within 40 miles of the base station transmitter site being applied for. This information is used to determine if an applicant's proposed system is necessary in light of communications facilities it already owns. Such a determination helps the Commission to equitably distribute limited spectrum.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–25593 Filed 10–23–91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 91–47]

Sea-Land Service, Inc. v. Agromar, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Sea-Land Service, Inc. ("Complainant") against Agromar, Inc. ("Respondent") was served October 18, 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 failing and refusing to pay ocean freight and other charges lawfully assessed pursuant to the applicable tariffs or service contracts on six shipments of plantains, pumpkins, pineapples and other products from San Jose, Costa Rica to Miami, Florida between March 1990 and July 1991.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("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 October 19, 1992, and the final decision of the Commission shall be issued by February 16, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 91–25590 Filed 10–23–91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N–0135]

Studies/Chronic Data Formats for Chronic/Carcinogenicity Rodent Bioassays; Formats; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report entitled "STUDIES/CHRONIC Data Formats for Chronic/Carcinogenicity Rodent Bioassays," which presents file formats for the electronic transfer of individual animal toxicological data generated from long-term animal studies. The report contains descriptions of computer file structure, the parameters necessary for data evaluation, and a description of how the various files relate to each other. These file formats can facilitate the electronic transfer of toxicological data between industry and Government, within and between industry, and within and between Government agencies. Availability of this report was originally announced by the Environmental Protection Agency (EPA) in the **Federal Register** of December 19, 1990 (55 FR

52096). In the event the original notice announcing the report was overlooked by FDA-regulated industry, FDA is reannouncing its availability and asking for comments.

ADDRESSES: "STUDIES/CHRONIC Data Formats for Chronic/Carcinogenicity Rodent Bioassays" may be obtained from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161, attn: Order desk. Orders must reference NTIS order number PB90–213885 and include a payment of $17.00 for each copy of the document. For telephone orders or for further information on placing an order, call NTIS at 703–487–4650.

"STUDIES/CHRONIC Data Formats for Chronic/Carcinogenicity Rodent Bioassays" is available for public examination in, and written comments on the report may be sent to, the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William R. Fairweather, Center for Drug Evaluation and Research (HFD–715), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4710.

SUPPLEMENTARY INFORMATION: Through the efforts of an Interagency Electronic Data Transfer Workgroup represented by FDA and its National Center for Toxicological Research, EPA, and the Consumer Product Safety Commission, data formats for long-term rodent chronic/carcinogenicity studies have been developed and compiled in a report. The report, entitled "STUDIES/CHRONIC Data Formats Chronic/Carcinogenicity Rodent Bioassays" (STUDIES), presents file formats for the electronic transfer of individual animal toxicological data (i.e., tumor incidence, body weight, food consumption, organ weights, clinical chemistry, hematology, and urinalysis) generated from long-term animal studies. The purpose of these formats is to enable the electronic transfer of toxicological data between industry and Government, within and between industry, and within and between Government agencies.

The STUDIES electronic format will facilitate the storage and exchange of toxicological data on electronic media, such as tape or floppy disk, and the electronic transmission of data via modem. The STUDIES format would allow for customized tabulation and summarization, more efficient use of computers, and the reduction of human error associated with hand counts and data transcription. The STUDIES format could eventually be extended to include acute toxicity studies, subchronic studies, and developmental toxicity and reproduction studies, not only for rodents but other animal species as well.

In the **Federal Register** of December 19, 1990 (55 FR 52096), EPA announced the availability of the report and requested interested persons to participate in a case study. Since publication of the notice, it has come to FDA's attention that FDA-regulated industry and others interested in the agency's activities have not responded. This lack of response leads the agency to believe that the December 19, 1990, notice was overlooked by these persons. Because FDA wants to ensure that industry and other interested persons are aware of this report, the agency is announcing the availability of the report and asking for public comment.

The report is available for purchase from NTIS (address above), and is available for inspection in FDA's Dockets Management Branch (address above).

Interested persons are invited to submit comments on the report to the Dockets Management Branch. Comments should be identified with the docket number found in brackets in the heading of this document. Two copies of any comments should be submitted, except that individuals may submit one copy. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 18, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91–25602 Filed 10–23–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91N–0134]

List of Certain Misbranding Sections of the Federal Food, Drug, and Cosmetic Act That Are Adequately Being Implemented by Regulation; Notice of Intent

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of intent.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intent to publish in the **Federal Register** early next year a proposed list delineating whether six sections of the Federal Food, Drug, and Cosmetic Act (the act) that define circumstances in which a food is misbranded are adequately being implemented by FDA's regulations. These six sections are: Sections 403(b) (offered for sale under the name of another food), 403(d) (misleading container), 403(f) (information of appropriate prominence), 403(h) (compliance with standard of quality and fill), 403(i)(1) (common or usual name), and 403(k) (declaration that the product contains artificial flavoring, coloring, or preservatives). Sections 6(b)(3)(A) of the Nutrition Labeling and Education Act of 1990 (Pub. L. 101–535) (the 1990 amendments) required that this proposed list be published by August 8, 1991. However, the agency has delayed action so that it can consider a study contracted by FDA, required under section 6(b)(1) of the 1990 amendments, that will assess the extent to which the six misbranding provisions listed above are being implemented. The Committee on State Labeling of the National Academy of Sciences (NAS), Institute of Medicine, Food and Nutrition Board (the committee) is conducting this study and is expected to complete it early next year. Despite the delay in publishing the proposed list, the agency still expects to issue its final list of which of the above sections are adequately being implemented by regulation by the November 8, 1992, deadline imposed by the 1990 amendments (section 6(b)(3)(B) of the 1990 amendments).

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Nutrition (HFF–312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0229.

SUPPLEMENTARY INFORMATION: To implement section 6(b) of the 1990 amendments, FDA entered into a contract with NAS under which the committee is conducting a study of: (1) State and local laws that require the labeling of food that is of the type required by sections 403(b), 403(d), 403(f), 403(h), 403(i)(1), and 403(k) of the act (21 U.S.C. 343(b), 343(d), 343(f), 343(h), 343(i)(1), and 343(k)); and (2) those sections of the act and of the regulations issued by FDA to enforce them to determine whether the sections and regulations adequately implement the purposes of those sections. In the **Federal Register** of May 8, 1991 (56 FR 21388), the agency announced that the committee would hold a public meeting at NAS on May 30, 1991, to solicit information and comments pertaining to current State and local laws and regulations relevant to food labeling. Because of unforeseen circumstances, the Institute of Medicine could not schedule its meeting before the May 8, 1991, deadline imposed by section

6(b)(2) of the 1990 amendments for completion of the study. The public meeting was held as scheduled, and the committee's initial meeting was held on May 29 and 30, 1991.

At the time of the May 8, 1991 announcement, FDA did not expect that the delay in completion of the committee's study report would affect the publication by August 8, 1991, of a proposed list of sections that are adequately being implemented by regulation, as required under section 6(b)(3)(A) of the 1990 amendments. However, the committee has informed the agency that the study report will take more time than initially anticipated and cannot be completed until the first part of 1992. The committee cited the magnitude and the importance of the undertaking, as well as the complexity of the issues involved in the study as the reasons for the additional delay.

The agency believes that the committee's study report is crucial to the development of the proposed list, and, therefore, that a delay in publication is justified. In addition, it was clearly the intent of Congress in enacting section 6(b) of the 1990 amendments that the committee's study report and recommendations would be considered by FDA in developing the proposed list, and that all interested parties, particularly States or political subdivisions, would have an opportunity to comment. For this reason, the agency believes it would not be appropriate to issue a proposed list at this time. Further, the agency is concerned that if it were to publish a proposed list without benefit of the committee's study report and recommendations, the list that it published would not be complete.

Therefore, FDA is announcing that it intends to publish in the **Federal Register** in the early part of next year a proposed list determining whether or not certain misbranding sections (sections 403(b), 403(d), 403(f), 403(h), 403(i)(1), and 403(k)) of the act are adequately being implemented by regulation. Following its review of any comments on the proposed list, the agency fully expects to issue in the **Federal Register** the final list of such sections by the November 8, 1992 deadline imposed by the 1990 amendments.

Dated: October 21, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91-25603 Filed 10-23-91; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Commercialization of the Integrated Clinical Workstation: A Component of Distributed Information Management and Communication for Practicing Physicians

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) seeks agreements with companies for the marketing and commercialization of cancer information products and services of the National Cancer Institute (NCI) to community-based practicing oncologists via, an Integrated Clinical Workstation.

ADDRESSES: Questions about this opportunity may be addressed to Dr. Robert Esterhay, National Cancer Institute, Bldg. 82, rm. 201, 9000 Rockville Pike, Bethesda, Maryland 20892 (301-496-8880).

DATES: Proposals must be received by November 30, 1991.

SUPPLEMENTARY INFORMATION: The International Cancer Information Center (ICIC) and the Office of Cancer Communication (OCC), disseminates cancer information products and services of the National Cancer Institute (NCI) to the scientific community and lay public worldwide.

ICIC has identified and adopted emerging and new technologies for cancer information dissemination. These include but are not limited to telecommunications, optical disc media, touch-tone phone interface to facsimile, and technical workstation or advanced personal computer system technologies for community-based practicing oncologists.

This CRADA is directed toward the marketing of the "Integrated Clinical Workstation for "Oncology" through the use of that technology with either technical workstations or advanced personal computer systems for cancer information dissemination and communication with clinical oncologists and others engaged in providing care and services for cancer patients.

The NCI has already funded the research and development of the integrated clinical workstation for oncology by a Small Business Innovation Research (SBIR) contract. In addition, the NCI also has experience in the use of CD-ROM technology for dissemination of cancer related information but desires to implement CD-ROM technology more extensively for information dissemination by integrating and/or interfacing this technology with the integrated clinical workstation.

The successful CRADA awardee(s) will effectively market and commercialize the Integrated Clinical Workstation. Selection criteria for choosing the CRADA partner(s) will include, but will not be limited to:

1. Ability to perform market analysis, strategy, marketing, hardware platform production, distribution, sales, and support of the "Integrated Clinical Workstation for Oncology."

2. Expansion and enhancement of the existing software for the "Integrated Clinical Workstation for Oncology."

3. Provision of a business plan for the Integrated Clinical Workstation for Oncology.

4. Development, implementation, and management of the commercialization process.

5. Marketing, selling, and distributing the "Integrated Clinical Workstation for Oncology" in a manner that is reasonably calculated to ensure the dissemination of the technology to clinical oncologists and others providing healthcare services to cancer patients.

Pursuant to this CRADA, the NCI will:

1. Provide companies the use of the ICIC and OCC information products and services for the "Integrated Clinical Workstation for Oncology."

2. Contribute staff time, computer, and information resources for market analysis.

3. Work cooperatively with company(s) in determining the market potential for the "Integrated Clinical Workstation for Oncology."

Dated: October 16, 1991.

Reid G. Adler,

Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 91-25559 Filed 10-23-91; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of the Signal Transduction Inhibitor, "CAI", as an Anticancer Agent

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks a pharmaceutical company which can effectively pursue the clinical

development of the signal transduction inhibitor, "CAI", for the treatment of cancer. The National Cancer Institute has established that CAI may be effective in treating a wide variety of cancers. The selected sponsor will be awarded a CRADA for the co-development of this agent.

ADDRESSES: Questions about this opportunity may be addressed to Dr. Kathleen Sybert, Executive Secretary, CRADA Selection Committee, Office of Technology Development, NCI, building 31/room 4A51, 9000 Rockville Pike, Bethesda, Maryland 20892, (301) 496–0477, from whom further information including a summary copy of the preclinical and clinical data may be obtained.

DATES: In view of the important priority of developing new drugs for the treatment of cancer, this notice is active until December 4, 1991.

SUPPLEMENTARY INFORMATION: The Government is seeking a pharmaceutical company which, in accordance with the requirements of the regulations governing the transfer of Government-developed agents (37 CFR 404.8), can develop CAI to a marketable status to meet the needs of the public and with the best terms for the Government. CAI is a novel chemically defined compound which has shown promising antitumor activity in several preclinical trials. The drug is under patent. The Division of Cancer Biology, Diagnosis and Centers (DCBDC), NCI, currently owns all the material which will be in clinical trials for the next 2 years. The Cooperative Research and Development Agreement (CRADA) will allow a pharmaceutical company to provide resources in collaboration with the DCBDC, NCI, for the continuing preclinical and clinical development work in return for the exclusive rights to the source data from the pivotal Phase I clinical trials.

Specifically, CAI is a novel compound for which a method of synthesis has been established. Demand for the drug has been increasing, based on the promising *in vivo* activity that has been observed to date. Based on the increasing level of clinical interest, there is an urgent need to obtain greater quantities of CAI and to begin to develop this agent for clinical trials and potential commercial distribution. The Division of Cancer Biology, Diagnosis and Centers, NCI, is interested in establishing a CRADA with a pharmaceutical company to assist in the continuing development of CAI. The government will provide all available expertise and information to date and will jointly pursue new trials as required giving the pharmaceutical company exclusive rights to the New Drug Application-directed clinical data from Phase I–III trials. The successful pharmaceutical company will provide the necessary financial and organizational support to complete further development of CAI to establish clinical efficacy and possible commercial status.

The role of the Division of Cancer Biology, Diagnosis and Centers, NCI, includes the following:

1. The government has initiated a contract request for the production of CAI. The successful pharmaceutical company will be allowed access to this resource.

2. The government will provide information concerning pharmaceutical manufacturing and controls and include dosage form development data.

3. The government will allow the pharmaceutical company to review and cross-file the Division's IND; it is likely that the company would wish to undertake trials independently.

4. The government will make the Division's IND proprietary under such circumstances.

5. The government will continue the clinical development of this compound under its extramural clinical trials network, thus ensuring the clinical evaluation of the compound at no additional cost to the pharmaceutical company.

The role of the successful pharmaceutical company under the CRADA will include the following:

1. Provide plans to independently secure future continuing supplies of material to assure continued clinical development of CAI.

2. Provide funds for formulation of the clinical product and offer necessary supplies to the DCBDC, NCI, for continued clinical development of this compound.

3. Provide plan and support for clinical development leading to FDA approval for marketing.

Criteria for choosing the pharmaceutical company include the following:

1. Experience in the development of products for clinical use.

2. Experience in preclinical and clinical drug development.

3. Experience and ability to produce, package, market and distribute pharmaceutical products in the United States and to provide the product at a reasonable price.

4. Experience in the monitoring, evaluation and interpretation of the data from investigational agent clinical studies under an IND.

5. Experience with the Public Health Service or the National Institutes of Health under a prior cooperative research and development agreement.

6. A willingness to cooperate with the Public Health Service in the collection, evaluation, publication and maintaining of data from clinical trials of investigational agents.

7. A willingness to cost share in the development of CAI as outlined above. This includes acquisition of material and synthesis of CAI in adequate amounts as needed for future clinical trials and marketing.

8. An agreement to be bound by the DHHS rules involving human and animal subjects.

9. The aggressiveness of the development plan, including the appropriateness of milestones and deadlines for preclinical and clinical development.

10. Provisions for equitable distribution of patent rights to any inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee is the sole inventor).

Reid G. Adler,

Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 91–25560 Filed 10–23–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–040–4212–08]

Plan Amendment for the Virgin River Management Framework Plan

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Intent to do Plan Amendment for the Virgin River Management Framework Plan, Washington County, Utah.

SUMMARY: This notice of intent is to advise the public that the Bureau of Land Management (BLM) is proposing to amend the Virgin River Management Framework Plan.

SUPPLEMENTARY INFORMATION: The BLM is proposing to amend the Virgin River Management Framework Plan approved in April 1981 which includes public land in Washington County, Utah. The

purpose of the amendment would be to make certain public lands available for noncompetitive sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976.

The public land being considered for sale, comprising 5 acres, is described as follows:

T. 39 S., R. 16 W., Salt Lake Meridian,
Section 19, SW¼SW¼SE¼NE¼, NW¼ NW¼NE¼SE¼

The existing plan does not identify these lands as suitable for disposal. However, because of resource values, public values, and objectives involved, the public interest may be well served by offering these lands for sale. An environmental assessment will be prepared to analyze the impacts of this proposal and alternatives.

For 30 days from the date of publication of this notice, the BLM will accept comments on this proposal.

Existing planning documents and information are available at the Dixie Resource Area Office, 225 North Bluff Street, St. George, Utah 84770, telephone (801) 673–4654.

FOR FURTHER INFORMATION CONTACT: Dale Ross, Dixie Resource Area Realty Specialist.

Dated: October 16, 1991.

James M. Parker,

State Director.

[FR Doc. 91–25597 Filed 10–23–91; 8:45 am]

BILLING CODE 4310–DQ–M

[AZ–010–91–4410–08; 1784–010]

Arizona Strip District Advisory Council and Grazing Board; Meeting

AGENCY: Bureau of Land Management, Arizona Strip District, Interior.

ACTION: Notice of Advisory Council Field Tour and Meeting and Grazing Board Meeting.

SUMMARY: The Arizona Strip District Advisory Council will tour the Beaver Dam Slope area and discuss the proposed ACEC, future activity plans, Resource Management Plan protest, off-highway-vehicle designations, proposed development in the area and the Approved Resource Management Plan and Implementation Schedule.

The Arizona Strip Grazing Board will meet at the Hilton Inn on December 12, 1991 to discuss proposed range improvement projects, maintenance of water catchments and desert tortoise biological evaluation.

DATES: The Advisory Council will begin their tour at the Ramada Inn, 1440 E. St. George Blvd., St. George, Utah at 8 a.m. on November 20, 1991. The Council will return to St. George that evening and a ½ day meeting is scheduled the following day in the Ramada Inn conference room beginning at 8 a.m.

The Grazing Board will begin their meeting at 9 a.m. at the Hilton Inn, 1450 S. Hilton Inn Drive, St. George, Utah.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, 390 N. 3050 E., St. George, Utah 84770 (Phone/ 673–3545).

SUPPLEMENTARY INFORMATION: The Council tour is open to the public, but the public must provide their own transportation. The Advisory Council will consider both oral and written statements from the public at 8 a.m. on November 21st. The Grazing Board meeting is also open to the public and the Board will consider both oral and written statements from the public at 9:15 a.m. on December 12, 1991. People interested in commenting at either meeting should contact BLM at 801/673–3545 at least 5 days in advance.

Dated: October 15, 1991.

G. William Lamb,

District Manager.

[FR Doc. 91–25618 Filed 10–23–91; 8:45 am]

BILLING CODE 4310–32–M

Susanville District Advisory Council; Meeting

AGENCY: Susanville District Advisory Council, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 95–579 (FLPMA), that the Susanville District Advisory Council will hold a business meeting on Thursday, November 21, 1991, from 10 a.m. to 4:30 p.m. in the Conference Room of the Bureau of Land Management's (BLM) Susanville District Office, 705 Hall Street, Susanville, California, 96130. Topics scheduled for discussion include development of an interim management plan for the Black Rock Desert/High Rock Canyon region, development of an Integrated Vegetation Management Plan in the East Lassen area, and progress reports on various District issues and activities. The members will also hear an update on the progress in filling a council vacancy.

The meeting is open to the public, and interested persons may make oral statements or file a written statement for the council's consideration. Those wishing to make oral statements must notify the Susanville District Manager, 705 Hall Street, Susanville, CA 96130, by Monday, Nov. 18, 1991. Depending on the number of persons wishing to speak, a time limit may be imposed.

FOR FURTHER INFORMATION, CONTACT: Jeff Fontana (916) 257–5381;

Herrick E. Hanks,

District Manager.

[FR Doc. 91–25619 Filed 10–23–91; 8:45 am]

BILLING CODE 4310–40–M

[WY–920–41–5700; WYW4088]

Proposed Reinstatement of Terminated Oil and Gas Lease

October 18, 1991.

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW40880 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessees have paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW40880 effective September 1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 91–25620 Filed 10–23–91; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW114958]

Proposed Reinstatement of Terminated Oil and Gas Lease

October 15, 1991.

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW114958 for lands in Hot Springs County, Wyoming, was timely filed and was accompanied by all

the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16.2/3 percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW114958 effective July 1, 1991, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 91-25576 Filed 10-23-91; 8:45 am]

BILLING CODE 4310-22-M

[NM-030-4111-10; NMNM 35829]

Order Providing for Opening of Land, Otero County; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice will open a portion of the withdrawn lands on the McGregor Range withdrawal to the operation of the mineral and geothermal leasing laws. All lands in the McGregor withdrawal will contiue to be withdrawn from the operation of the mining laws.

DATES: November 25, 1991.

ADDRESSES: Comments should be sent to the Caballo Resource Area Manager, Bureau of Land Management, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Judith Waggoner, BLM, Caballo Resource Area, (505) 525-8228 or FTS 476-8200.

SUPPLEMENTARY INFORMATION:

1. Pursuant to section 12(a) of Public Law 99-606 (100 Stat. 3457-68), the Military Lands Withdrawal Act of 1986, the following lands have been determined to be suitable for opening to the operation of the mineral leasing laws and the geothermal leasing laws:

New Mexico Principal Meridian

T. 19 S., R. 9 E.,
Sec. 2, lots 1 to 12, inclusive, and S½;
Sec. 11, W½
Sec. 12, E½
Secs. 13 and 14;
Secs. 23 to 26, inclusive;
Secs. 35 and 36.
T. 20 S., R. 9 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 1 and 2, S½NE¼, and SE¼;
Sec. 10, E½;
Secs. 11 to 14, inclusive;
Sec. 15, E½ and E½W½;
Secs. 22 to 27, inclusive;
Sec. 33, E½;
Secs. 34 to 36, inclusive.
T. 21 S., R. 9 E.,
Sec. 1, lots 2 to 6, inclusive, and 12;
Sec. 2, lots 1 to 8, inclusive, and 10 to 12, inclusive, N½S½, S½SW¼, and SW¼SE¼;
Sec. 3, lots 1 to 12, inclusive, and S½;
Sec. 4, lots 1 and 2, and 7 to 10, inclusive, and SE¼;
Sec. 9, E½;
Sec. 10, N½, SW¼, and NW¼SE¼;
Sec. 11, N½NW¼;
Sec. 15, N½NW¼ and SW¼NW¼;
Sec. 16, NE¼, N½SE¼, and SW¼SE¼.
T. 19 S., R. 10 E.,
Sec. 2, SE½ (unsurveyed);
Sec. 7, W½ and S½SE¼;
Sec. 8, SE¼SE¼;
Sec. 9, SW¼;
Sec. 10, E½;
Sec. 11;
Sec. 12, W½ (unsurveyed);
Sec. 13, lots 1 to 4, inclusive, and W½;
Sec. 14, NE¼ and S½;
Secs. 15 and 16;
Sec. 17, W½W½;
Secs. 18 to 22, inclusive;
Sec. 23, E½ and SW¼;
Sec. 24, lots 1 to 4, inclusive, and W½;
Sec. 25, lots 1 to 4 inclusive, and W½;
Secs. 26 to 34, inclusive;
Sec. 36, lots 1 to 4, inclusive, and W½.
T. 20 S., R. 10 E.,
Sec. 1, lots 2 to 4, inclusive, S½NW¼, and NW¼SW¼;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 6, inclusive, S½NE¼ and SE¼;
Sec. 7, lots 1 to 4, inclusive, and E½;
Secs. 8 and 9;
Sec. 11, NW¼NE¼, NW¼, and NW¼SW¼;
Sec. 15, NW¼NE¼, NW¼, and NW¼SW¼;
Secs. 16 and 17;
Sec. 18, lots 1 to 4, inclusive, and E½;
Sec. 19, lots 1 to 4, inclusive, and E½;
Sec. 30, lots 1 to 4, inclusive, and E½;
T. 20 S., R. 11 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 1 to 4, inclusive, S½N½, NE¼SE¼, and SE¼;
Sec. 4, lot 1;
Sec. 10, NE¼NE¼;
Sec. 11, E½ and NW¼;
Sec. 12;
Sec. 13, NE¼, N½NW¼, SE¼NW¼, N½SE¼, and SE¼SE¼.
T. 20 S., R. 12 E.,
Sec. 2. S½;
Sec. 3, lots 1 to 4, inclusive, and S½N½;
Sec. 5, lots 1 and 2, and S½NE¼;
Sec. 7, NE¼, and NW¼NW¼;
Sec. 8, NW¼;
Sec. 9, SE¼NE¼;
Sec. 10, N½SW¼ and SE¼SE¼;
Sec. 11, E½NW¼ and NE¼SW¼;
Sec. 15, E½NE¼ and SE¼SE¼;
Sec. 16;
Sec. 22, W½SE¼;
Sec. 24, lot 3 and NW¼SE¼;
Sec. 26, SE¼NE¼, S½NW¼, N½SW¼, and NW¼SE¼;
Sec. 27, SW¼NE¼, S½NW¼, N½SW¼, and NW¼SE¼;
Sec. 28, NW¼NE¼,N½NW¼, S½N½, and N½S½;
Sec. 36, lots 1 to 4, inclusive, W½E½, and W½.
T 21 S., R. 12 E.,
Sec. 1, lots 1 to 12, inclusive, and S½;
Sec. 2, lots 1 to 12, inclusive, N½SW¼, SE¼SW¼, and SE¼;
Sec. 3, lots 1 to 3, inclusive;
Sec. 11, N½NE¼;
Sec. 12, N½, NE¼SW¼ and SE¼;
Sec. 13, NE¼NE¼.
T. 20 S., R. 13 E.,
Sec. 7, lots 3 and 4;
Sec. 16, S½;
Sec. 17, S½;
Sec. 18, lots 1 to 4, inclusive, E½SW¼, and SE¼;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 21, NE¼;
Sec. 22, E½, NW¼, and E½SW¼;
Sec. 25, E½NW¼ and SW¼;
Sec. 26, SW¼NE¼ and E½SE¼;
Secs. 27 and 28;
Sec. 29, S½;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 32 to 34, inclusive;
Sec. 35, W½W½, SE¼NW¼, and NE¼SW¼;
Sec. 36.
T. 21 S., R. 13 E.,
Sec. 1, lots 8 to 10, inclusive, and 12, and S½;
Sec. 2, lots 1 to 12, inclusive, and S½;
Sec. 3, lots 1 to 12, inclusive, and S½;
Sec. 4, lots 1 to 12, inclusive, and S½;
Sec. 5, lots 1 to 12, inclusive, and S½;
Sec. 6, lots 1 to 14, inclusive, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 8 to 17, inclusive;
Sec. 18, lot 1, NE¼, E½NW¼, N½SE¼, and SE¼SE¼;
Sec. 20, NE¼, NE¼NW¼, and NE¼SE¼;
Secs. 21 to 23, inclusive;
Sec. 24, N½ and SW¼;

Sec. 25, NW¼;
Secs. 26 and 27;
Sec. 28, NE¼, NE¼NW¼, and NE¼SE¼;
Sec. 34, NE¼, NE¼NW¼, and NE¼SE¼;
Sec. 35, N½ and SW¼.
T. 21 S., R. 14 E.,
Sec. 5, lots 1, 2, 3, and 8, and SW¼;
Sec. 6, lots 1 to 14, inclusive, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, NE¼, and E½W½;
Sec. 18, lots 1 and 2, and E½NW¼.
The areas described aggregate approximately 80,455.72 acres in Otero County.

2. At 9 a.m. on November 25, 1991, the lands described in paragraph 1 will be opened to applications and offers under the mineral and geothermal leasing laws, but not the general mining laws. All applications received at or prior to 9 a.m. on November 25, 1991, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Access to the McGregor Range Military Reservation is controlled by the U.S. Army/Fort Bliss. The public can travel through the Range on State Road 506, unless it has been closed for military operations. Access to any other portion of the Range requires an entry permit issued by the BLM and verbal clearance from the U.S. Army/Fort Bliss. Each trip onto and upon leaving the Range by prospective lessees requires verbal clearance from Range Command, telephone (915) 569–9247/9248 during duty hours (7:30 a.m. through 4 p.m., MDT) or the Staff Duty NCO after duty hours, telephone (915) 569–9206. Failure to obtain proper clearance may result in criminal action.

Any leases issued shall be subject to concurrence by the U.S. Army Air Defense Artillery Center and Ft. Bliss.

Dated: October 17, 1991.

Monte G. Jordan,

Associate State Director.

[FR Doc 91–25621 Filed 10–23–91; 8:45 am]

BILLING CODE 4310–FB–M

[CA–010–00–4212–13, CA 29011]

Realty Actions; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of public land.

SUMMARY: The following described public land is being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Selected Public Land

El Dorado County, California

T.9N., R.9E., MDM,
Sec. 22, E½NW¼, NE¼SW¼
120 acres
T.9N., R.10E., MDM,
Sec. 29, Lot 7;
Sec. 32, Lot 3.
22.7 acres

Nevada County, California

T.16N., R9E., MDM,
Sec. 18, Lots 16, 18 and 19.
16.67 acres
T.16N., R7E., MDM,
Sec. 24, SW¼NW¼.
39.37 acres

The above described land is hereby segregated from settlement, location and entry under the public land laws and from the mining laws for a period of two years from the date of publication of this notice in the **Federal Register**.

This land is difficult and uneconomic to manage as part of the public lands and is not considered suitable for management by another Federal agency.

The subject parcels will be used by the Bureau of Land Management in its exchange program to acquire wetlands in the Central Valley, California consistent with the North American Waterfowl Management Plan, the Central Valley Habitat Joint Venture and BLM's Wildlife 2000 Program. Such a transfer through conservation groups like The Nature Conservancy, Ducks Unlimited, and Trust for Public Lands, would serve the public interest by protecting or creating additional wetlands, riparian areas, and other sensitive habitat.

ADDRESSES: For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, c/o Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

FOR ADDITIONAL INFORMATION CONTACT: Dean Decker, (916) 985–4474, or at the address listed above.

SUPPLEMENTARY INFORMATION: The Federal lands will be transferred subject to a reservation to the United States for a right-of-way for ditches and canals constructed under the Authority of the Act of August 20, 1890 (43 U.S.C. 945).

Authorized rights-of-way and any other authorized land uses will be identified as prior existing rights.

All necessary clearances including clearances for archaeology, rare plants and animals, will be completed prior to any conveyance of title by the U.S.

Dated: October 17, 1991.

D.K. Swickard,

Area Manager.

[FR Doc. 91–25622 Filed 10–23–91; 8:45 am]

BILLING CODE 4310–40–M

[NV–930–02–4212–18]

Corrected Notice of Realty Action; Nevada

The Notice of Realty Action published in the **Federal Register** on October 10, 1991, (56 FR 51230; FR Doc 91–24451), is hereby corrected with respect to the serial number of parcel 91–19 and the bid deposit amount required. The corrections are as follows:

The serial number for parcel 91–19 is N–54808 instead of N–53808. The declared high bidder will be required to deposit 20% of the full bid price and not 15% as previously indicated. The 20% deposit will apply to both sealed bids and oral bids.

All other terms and conditions of the Notice continue to apply.

Dated: October 10, 1991.

Colin P. Christensen,

Acting, District Manager, Las Vegas, NV.

[FR Doc. 91–25623 Filed 10–23–91; 8:45 am]

BILLING CODE 4310–HC–M

[NM–030–01–4212–11; NMNM 77635 and NMNM 83921]

Recreation and Public Purposes Act Classification, Dona Ana County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification.

SUMMARY: The following public land in Dona Ana County, New Mexico has been examined and found suitable for classification for lease or conveyance to the New Mexico State Corrections Department under the provisions of the R&PP Act, as amended (43 U.S.C. 869 et seq.):

T. 24 S., R. 1 W., NMPM
Sec. 4, lot 2, SW¼NE¼, NW¼SE¼, N½SW¼SE¼
Containing 140.58 acres, more or less.

The Corrections Department proposes to use the subject land for the care, training, and maintenance of a wild horse training and adoption facility (NMNM 77635) and the expansion of the Southern New Mexico Correction Facility by a 204-bed housing unit with administrative services, food and recreational facilities (NMNM 83921).

DATES: Comments on the proposed lease conveyances or classification of public

land must be submitted on or before December 9, 1991.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Marvin M. James at the address above or at (505) 525–8228.

SUPPLEMENTARY INFORMATION: The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. All valid existing rights of record.

2. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

3. A right-of-way for ditches and canals constructed by the authority of the United States.

4. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed leases/conveyances or classification of the lands to the District Manager, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: October 16, 1991.

Richard T. Watts,

Acting District Manager.

[FR Doc. 91–25624 Filed 10–23–91; 8:45 am]

BILLING CODE 4310–FB–M

[NM–940–4214–10; NMNM 86711]

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 800 acres of public land and 240 acres of Federal minerals in McKinley and Sandoval Counties, to protect the archeological, historical, geological, and recreational integrity of Azabache Station, Big Bead Mesa, and Jones Canyon. 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 January 22, 1992.

ADDRESSES: Comments and meeting requests should be sent to the New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, New Mexico 87504–1449.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, 505–988–6071.

SUPPLEMENTARY INFORMATION: On October 4, 1991, a petition was approved allowing 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. 19 N., R. 2 W.,
  sec. 26, W½;
  sec. 27, E½.
T. 15 N., R. 4 W.,
  sec. 25, W½.
T. 16 N., R. 5 W.,
  sec. 15, W½NE¼.

The areas described contain 1,040 acres in Mckinley and Sandoval Counties.

The purpose of the proposed withdrawal is to protect the archeological, historical, geological, and recreational integrity of Azabache Station, Big Bead Mesa, and Jones Canyon.

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 New Mexico State Director 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 New Mexico State Director 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 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 canceled 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 discretionary land use authorizations of a temporary nature, but only with approval of an authorized officer of the Bureau of Land Management during the segregative period.

Dated: October 15, 1991.

Monte Jordan,

Associate State Director.

[FR Doc. 91–25585 Filed 10–23–91; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants 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.*):

Applicant: Blue Ridge Zoological Society, Roanoke, VA, PRT–762342

The applicant requests a permit to export one captive-born female golden lion tamarin (*Leontopithecus rosalia*) to the Bermuda Aquarium & Zoo, Bermuda, for zoological display.

Applicant: F.M. (Chick) Driscoll; Lexington Pheasantry, Kelso, WA, PRT–761960

The applicant requests a permit to import 16 unsexed captive-hatched white-eared pheasants (*Crossoptilon crossoptilon drouyni*) from Ian Henderson, Stockfield on Tyne, Northumberland, UK, for breeding purposes.

Applicant: U.S. Fish and Wildlife Service, Regional Director, Region 1, Portland, OR, PRT–702631

The applicant requests amendment of their current permit to authorize additional take activities (capture for censusing, holding in captivity, mark & release, top clip for bone-ring age determination, x-ray gravid females) with the blunt-nosed leopard lizard (*Gambelia silus*) and to add 14 species of fish for scientific purposes and the enhancement of propagation or survival in accordance with Service recovery documents for these species.

Applicant: Greg Depner, Billings, MT, PRT–761961

The applicant requests a permit to purchase one female, captive-hatched Andean condor (*Vultur gryphus*) in interstate commerce from the Buffalo Zoo for the enhancement of the propagation and survival of the species.

Applicant: Cleveland Metroparks Zoo, Cleveland, OH, PRT–761604

The applicant requests a permit to purchase in interstate commerce 2 pairs of captive hatched Darwin's Rhea (*Pterocnemia pennata*) from International Animal Exchange, Ferndale, Michigan for the purpose of enhancement of propagation and survival of the species.

Applicant: Fort Worth Zoological Park, Fort Worth, TX, PRT–759507

The applicant requests a permit to import one captive born female orangutan (*Pongo pygmaeus abelii*) from the Metropolitan Toronto Zoo, Ontario, Canada for the purpose of enhancement of propagation and survival of the species. This is an amendment to their previously published application to include this additional animal recently born to the female they originally applied to import.

Applicant: Howard Charney, Los Gatos, CA, PRT–761959

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. J.B. Pohl, Shenfield, Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Scott K. Davis, College Station, TX, PRT–761965

The applicant requests a permit to import 50 blood samples taken from captive and wild Cayman Brac ground iguanas (*Cyclura nubila caymanensis*) and 28 blood samples taken from captive and wild Grand Cayman ground iguanas (*Cyclura nubila lewisi*) for enhancement of propagation and survival of the species.

Applicant: Andrew Caridis, San Carlos, CA, PRT–762354

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive-herd maintained by Mr. H.V.Z. Kock, Verborgenfontein Game Ranch, Merriman, Republic of South Africa, for the purpose of enhancement of survival of the species.

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 342, 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 these applications 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: October 18, 1991.

R.K. Robinson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–25583 Filed 10–23–91; 8:45 am]

BILLING CODE 4310–55–M

Final Environmental Assessment and Finding of No Significant Impact (FONSI) for the Experimental Release of Red-Crowned Cranes in Schoolcraft County, Upper Peninsula, MI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the final Environmental Assessment and FONSI for the experimental release of red-crowned cranes (*Grus japonensis*) in Schoolcraft County, Michigan, has been completed. The Ohio Cooperative Fish and Wildlife Research Unit (OCFWRU) will release approximately 16 isolation-reared, juvenile red-crowned cranes on Seney National Wildlife Refuge in the fall of 1991 and 1992. All male cranes will be sterilized by vasectomy prior to release. The purpose of the release is to complete development of a reintroduction technique applicable to a migratory population of the endangered whooping crane (*Grus americana*).

Study of the environmental and socio-economic effects of the proposal has shown them not to represent a negative impact on the quality of the human environment. Based on a review and evaluation of the information contained in the final Environmental Assessment, the Service has determined that the proposed project is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969. Accordingly, preparation of an environmental impact statement on the proposed action is not required.

FOR FURTHER INFORMATION CONTACT: Dr. Richard P. Urbanek, OCFWRU Research Associate, Seney National Wildlife Refuge, Seney, Michigan 49883, 906/586–9851. Individuals wishing copies of the Environmental Assessment or FONSI should contact Dr. Urbanek.

SUPPLEMENTARY INFORMATION: Charles G. Kjos is the primary author of this document, with substantial information provided by Richard P. Urbanek.

Dated: October 11, 1991.

Marvin E. Moriarty,

Regional Director, Fish and Wildlife Service.

[FR Doc. 91–25575 Filed 10–23–91; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Alaska Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), U.S. Department of the Interior.

ACTION: Notice of availability of environmental documents prepared for Outer Continental Shelf (OCS) Minerals Exploration Proposals on the Alaska OCS.

SUMMARY: The MMS, in accordance with Federal regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of a NEPA-related Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) prepared by the MMS for oil and gas exploration activities proposed on the Alaska OCS. This listing includes the only proposal for which a FONSI was prepared by the Alaska OCS in the 3-month period preceding this Notice.

Proposal

This description of the proposed action summarizes the ARCO Alaska Inc. (ARCO) Exploration Plan. ARCO has proposed to drill up to two wells in the western Alaskan Beaufort Sea approximately 48 kilometers east southeast of Point Barrow in 1991 and 1992. ARCO intends using the Single Steel Drilling Caisson which is supported by a steel mat (SSDC/MAT).

The drilling unit would be ballasted on site in August 1991 prior to the bowhead whale fall migration. Exploratory drilling on the Cabot well #1 is expected to begin in early November 1991; however, drilling operations may commence on the determination that the whale migration is over. Drilling and testing of Cabot well #1 should be completed by February 18, 1992. Drilling on Cabot well #2 would begin on about March 2, 1992, and continue for approximately 44 days, until the spring bowhead whale migration begins. The SSDC/MAT will

operate on warm standby mode until completion of the spring whale migration.

Two support vessels will accompany the SSDC/MAT for mobilization and demobilization activities; once the SSDC/MAT is in place, the vessels will depart and remain offsite during actual drilling. Barrow would serve as the base of operations for aviation logistics. To accommodate the uncertainty of weather conditions along the flight corridor, Lonely, Kuparuk, Oliktok, and Umiat are designated as potential helicopter landing sites. Aviation support will be accomplished by helicopter. Helicopters will make one or two flights per day for handling crew changes and hauling food or other supplies.

ARCO is presently consulting with potentially affected whaling communities to determine local concerns about proposed operations and to mitigate those concerns. An ARCO Orientation Program, required by Sale 87 Stipulation No. 2, includes a "Polar Bear Personnel Encounter Plan" to be viewed by all personnel. This program is designed to minimize the liklihood of any disturbance that could result in a "take" as defined in 50 CFR 18.3.

LOCATION

Leases	Blocks
OCS–Y 0742	NR 5–1 644.
OCS–Y 0747	NR 5–1 688.
Environmental Assessment (EA):	
EA No. AK 91–01	
FONSI Date:	
July 16, 1991	

FOR FURTHER INFORMATION: Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Alaska OCS are encouraged to contact the Alaska OCS Regional office of MMS. The FONSI's associated EA's are available for public inspection between the hours of 7:45 a.m. and 4:30 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Library, 949 East 36th Avenue, room 502, Anchorage, Alaska 99508–4302, phone: (907) 271–6435.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for oil and gas resources on the Alaska OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA 102(2)(c). A FONSI is prepared in those instances where MMS finds the approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

The Notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: October 9, 1991.

Irven F. Palmer, Jr.,

Acting Regional Director, Alaska OCS Region.

[FR Doc. 91–25625 Filed 10–23–91; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Interagency Mountain Goat Management Plan/Environmental Impact Statement

AGENCIES: National Park Service, Department of the Interior; Forest Service, Department of Agriculture; and Department of Wildlife, State of Washington.

ACTION: Notice of intent to prepare an environmental impact statement for mountain goat management on the Olympic Peninsula, Washington, predominantly in Olympic National Park and Olympic National Forest.

SUMMARY: The National Park Service, Department of the Interior; Forest Service, Department of Agriculture; and the State of Washington Department of Wildlife will cooperate in the preparation of an environmental impact statement (EIS) for the interagency management of mountain goats in the Olympic National Forest, Wahington. The National Park Service (NPS) will serve as the lead agency responsible for the analysis and for the preparation of the environmental impact statement. The Forest Service and the Department of Wildlife will serve as cooperating agencies.

The mountain goat (*Oreamnos americanus*) is not native to the Olympic Peninsula, having been introduced in the 1920's. Since that time it has become well-established in the higher elevations of both Park and Forest. In 1981, Olympic National Park staff implemented an experimental management plan for the control of this non-native species because of increasing damage to and loss of alpine and subalpine native habitats. The program was initiated with the cooperation of the State of Washington Department of Game (now Wildlife), Washington State University and the Seattle Woodland Park Zoo. Between 1981 and 1987, 260 goats were captured. In 1988, the Regional Director, Pacific Northwest Region, National Park Service, determined that the NPS, using live capture exclusively for the first three years (1988–1990), would control goats in some areas and eliminate them in the majority of the park, allowing restoration of vegetation and mitigation of goat effects. During 1988 and 1989, 147 goats were live captured and translocated to sites outside the park. Sterilization of both female and male goats to control population growth was also tested.

Since 1988, conditions and information regarding mountain goat management in Olympic National Park have changed. An aerial census in 1990 has verified that with the elimination of a significant number of goats, the population has become less concentrated and more widely dispersed throughout the park, making effective control increasingly difficult. Recognizing the unacceptably high safety hazard of using helicopters for live capture and the ineffectiveness of ground-based capture, Park staff terminated live-capture operations in 1990, thereby eliminating live capture of goats as a viable option for control.

It has also become evident that several species of threatened, rare or special native plants, occurring in both the Park and the Forest, are still very much at risk due to the presence of goats. The Park's management efforts along the Park/Forest boundary have been directed toward control of goat populations rather than elimination of goats. Protection of these special native plants through management of non-native goat populations has become a high priority resource management concern for both Park and Forest. A high degree of cooperation between the agencies is required because goats readily cross the boundary separating Park and Forest.

In the Park, the National Park Service is solely responsible for the management of all natural resources, including wildlife and habitat. In the Forest, the Forest Service is responsible for the management of the land and wildlife habitat under its jurisdiction, including the establishment of management objectives. Actual management of wildlife populations on Forest lands is the responsibility of the State of Washington through the Department of Wildlife.

Because of the potential for significant effects as defined through the National Environmental Policy Act and the regulations of the Council on Environmental Quality, the National Park Service, with the cooperation of the Forest Service and Washington Department of Wildlife, will prepare an environmental impact statement on a mountain goat management plan for the Olympic Peninsula. A range of alternatives will be considered, including an alternative that would (a) maintain a viable population of mountain goats in the Olympic National Forest that is compatible with sensitive plants and (b) eliminate goats from Olympic National Park. A "no action" alternative will also be included. Other alternatives that may emerge from public comment will be considered.

Representatives of Federal, State and local agencies, private organizations, and individuals from the general public who may be interested in or affected by the proposed plan/EIS are invited to participate in the scoping process. The scoping process will help define issues and concerns involving wildlife, vegetative and cultural resources as well as social and economic impacts. Scoping meetings are tentatively scheduled to begin in January 1992; the exact date(s), time and location of scoping meetings will be publicized later. Analysis of public comment and other data will follow with a draft environmental impact statement (DEIS) available for public review in the fall of 1992. The minimum review period for a DEIS will be sixty (60) days from the date of transmittal to the Environmental Protection Agency for publication of the notice of availability in the Federal Register. The final environmental impact statement is scheduled to be completed in the spring of 1993.

The lead and cooperating agencies believe it is important to give reviewers notice at this early stage of several points related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed. Therefore, it is very important that those interested in the proposed action participate by the close of the public comment period so that substantive comments and objections are made available to the agencies at a time when they can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the lead and cooperating agencies in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement.

The responsible officials are Charles H. Odegaard, Regional Director, Pacific Northwest Region, National Park Service; and Ronald R. Humphrey, Forest Supervisor, Olympic National Forest. The responsible officials will document their decision(s) and reasons for the decision(s) in joint or separate Record(s) of Decisions. Decisions made by Regional Director Charles H. Odegaard represent the final decision of the National Park Service, and are not subject to appeal or other administrative review. Decisions made by Forest Supervisor Ronald R. Humphrey will be subject to appeal under Forest Service Appeal Regulations (36 CFR part 217).

DATES: Written comments on the scope of the issues and alternatives to be analyzed in the plan/EIS should be received by March 31, 1992.

ADDRESSES: Written comments concerning the plan/EIS should be sent to the Superintendent, Olympic National Park, 600 East Park Avenue, Port Angeles, Washington 98362.

FOR FURTHER INFORMATION CONTACT: Questions about the plan/EIS should be directed to Paul Crawford, Olympic National Park, telephone (206) 452–4501.

Dated: October 4, 1991.

Charles H. Odegaard,

Regional Director, Pacific Northwest Region, National Park Service.

[FR Doc. 91–25558 Filed 10–23–91; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub-No. 339X)]

Burlington Northern Railroad Co.—Abandonment Exemption—In Jasper Co., MO; Exemption

Applicant has filed a notice of exemption under 49 CFR part 1152 subpart F—Exemption Abandonments to abandon its 1.85-mile line of railroad between milepost 331.71, at 12th Street, and, milepost 333.35, at Maiden Lane, in Joplin, Jasper County, MO.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 17, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 28, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by November 7, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives: Sarah J. Whitney, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Forth Worth, TX 76102.

---

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 23, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, See at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 11, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–25577 Filed 10–23–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Proposed Consent Decree Under the Clean Air Act

Notice is hereby given, in accordance with Departmental policy, 28 CFR 50.7, that on October 2, 1991, a proposed Consent Decree ("Decree") was lodged with the United States District Court for the Western District of Michigan in *United States* v. *Dore and Associates Contracting, Inc.,* Civil Action No. 90–CV–364 (W.D. Mich.), between the United States—on behalf of the Environmental Protection Agency ("EPA")—and defendant Dore and Associates Contracting, Inc.

The claims that would be resolved under the proposed Decree all relate to defendant's removal of asbestos from the Manufacturers Bank Building, located at 101 North Washington Square, Lansing, Michigan, and defendant's alleged violation of the applicable national emission standard for hazardous air pollutants ("NESHAP") in the course of that asbestos removal work, in particular to adequate wetting of friable asbestos. The proposed Decree provides, *inter alia,* that defendant will comply with all aspects of the asbestos NESHAP (40 CFR 61.140, *et seq.*) and provide quarterly cerifications regarding compliance with the NESHAP. Also under the proposed Decree, defendant will pay the United States a civil penalty of $15,000 and is subject to stipulated penalties for violation of Decree requirements.

The Department of Justice will receive comments relating to the proposed Decree for 30 days following the publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Dore and Associates Contracting, Inc.,* D.J. Ref. No. 90–5–2–1–1411. The proposed Decree may be examined at the Office of the United States Attorney for the Western District of Michigan, Gerald R. Ford Federal Building and U.S. Courthouse, 110 Michigan Street NW., room 399, Grand Rapids, Michigan, or at the Environmental Enforcement Section Document Center, 601 Penn. Ave., NW., Box 1097, Washington, DC 20004 (202–347–7829). A copy of the proposed Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check the amount of $3.75 (25 cents per page reproduction costs) payable to Aspen Systems Corporation.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 91–25627 Filed 10–23–91; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Under the Clean Air Act

In accordance with Departmental policy, notice is hereby given that on October 11, 1991, a proposed Consent Decree in *United States* v. *Ohio College of Podiactric Medicine, et al.,* Civil Action No. C87–2446, was lodged with the United States District Court for the Northern District of Ohio. The proposed Consent Decree requires defendants Ohio College of Podiatric Medicine and Boyas Excavating, Inc., to fully comply with the notice requirements and work practice provisions under the National Emissions Standards for Hazardous Air Pollutants for asbestos under the Clean Air Act, and to pay a civil penalty of $24,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Ohio College of Podiactric Medicine, et al.,* D.J. reference no. 90-5–2–1–1106.

The proposed Consent Degree may be examined at the office of the United States Attorney, Northern District of Ohio, 1404 East Ninth Street, suite 500, Cleveland, Ohio 44114–1748, at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004, 202–347–7829. A copy of the proposed Consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $4.00 (25 cents per page reproduction costs) payable to "Consent Decree Library."

John C. Cruden, Chief,

Environmental Enforcement Section.

[FR Doc. 91–25628 Filed 10–23–91; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Degree Pursuant to Superfund (CERCLA)

In accordance with Department policy, 28 CFR 50.7, and section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. 9622(d)(2), notice is hereby given that on October 16, 1991, a proposed Consent Decree in *United States* v. *Wastecontrol of Florida* was lodged with the United States District Court for the Middle District of Florida. The complaint in this action seeks recovery of costs and injunctive relief under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a). This action concerns the Hipps Road Landfill Site near Jacksonville, Florida.

Under the proposed Consent Decree, Defendant Wastecontrol of Florida will: (1) Pay the United States $218,491.35 in full reimbursement for its response costs incurred and calculated since the entry of the prior Partial Consent Decree in January 1989 (under which Wastecontrol reimbursed the United States for costs incurred until that time); (2) reimburse the United States for all of its future response costs and oversight costs; and (3) fully implement the remedy selected by EPA in its Amended ROD, namely, construction, operation and maintenance of the groundwater recovery and treatment system.

The Department of Justice will receive for a period of thirty (30) days from the

date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC, 20044, and should refer to *United States* v. *Wastecontrol of Florida,* (Hipps Road Landfill Site), D.J. Ref. 90–11–3–232.

The proposed Consent Decree may be examined at any of the following offices: (1) The Office of the United States Attorney for the Middle District of Florida, 409 Post Office Bldg., 311 West Monroe Street, Jacksonville, Florida; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia; and (3) the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building NW., Washington, DC 20004 (telephone (202) 347–2072). Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., P.O. Box 1097, Washington, DC 20004. For a copy of the Consent Decree without attachments, please enclose a check for $19.50 ($0.25 per page reproduction charge) payable to "Consent Decree Library." For a copy of the Consent Decree with attachments, please enclose a check for $517.50. ($0.25 per page reproduction charge) payable to "Consent Decree Library."

Roger B. Clegg,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 91–25630 Filed 10–23–91; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Controlled Substances: Establishment of the 1991 Aggregate Production Quota for 2,5-Dimethoxyamphetamine

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of an Established 1991 Aggregate Production Quota.

SUMMARY: This notice establishes the 1991 aggregate production quota for 2,5-dimethoxyamphetamine, a Schedule I controlled substance.

DATES: This order is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to § 0.100 of title 28 of the Code of Federal Regulations.

On August 8, 1991, a notice proposing to establish a 1991 aggregate production quota for 2,5-dimethoxyamphetamine was published in the Federal Register (56 FR 37722). All interested parties were invited to comment on or object to the proposal on or before September 9, 1991. No comments or objections were received.

Pursuant to sections (3)(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

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

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the CSA of 1970 (21 U.S.C. 826) and delegated to the Administrator of the DEA by § 0.100 of title 28 of the Code of Federal Regulations, the Administrator of the DEA hereby orders that the 1991 aggregate production quota for 2,5-dimethoxyamphetamine, expressed in grams of anhydrous base, be established as follows:

Basic class	1991 Aggregate Production quota (grams)
Schedule I:	
2,5-Dimethoxyamphetamine	30,000

Dated: October 7, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91–25601 Filed 10–23–91; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Grants to Dance Presenters Section) to the National Council on the Arts will be held on November 13–14, 1991 from 9 a.m.–9 p.m. and November 15 from 9 a.m.–5 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on November 15 from 2 p.m.–5 p.m. The topic will be policy discussion.

The remaining portions of this meeting on November 13–14 from 9 a.m.–9 p.m. and November 15 from 9 a.m.–2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of September 23, 1991, as amended, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: October 15, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–25578 Filed 10–23–91; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences Meeting

In accordance with the Federal Advisory Committee Act, Public law 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences.

Date & Time: November 17, 1991: 1 pm–5:30 pm; November 18, 1991: 8:30 am–5 pm; November 19, 1991: 9 am–3 pm.

Place: National Science Foundation, 1110 Vermont Avenue, Room 500–E.

Type of Meeting: November 17, 1991: 1 pm–5:30 pm, Open; November 18, 1991: 8:30 am–12 Noon, Open; 12 Noon–2 pm, Closed; 2 pm–5 pm, Open; November 19, 1991: 9 am–3 pm, Open.

Contact Person: Dr. Julie H. Lutz, Director, Division of Astronomical Sciences, room 615, National Science Foundation, Washington, DC 20550 (202/357–9488)

Purpose of Committee: To provide advice and recommendations concerning research programs, proposals, and projects in NSF-funded astronomy with the objective of achieving the highest quality forefront research for the funds allocated. To provide advice and recommendations concerning short-range and long-range plans in astronomy, including a recommendation of relative priorities.

Sunday, November 17

Agenda:

1 am–2:30 pm—FY 1992 Budget and AST Priorities.
2:30 pm–4:30 pm—Individual Investigator Programs.
4:30 pm–5:30 pm—Education and Human Resources.

Monday, November 18

8:30 am–10 pm—Reports on Major Projects and National Observatories.
10 am–11 am—Dr. Sanchez, AD/MPS.
11 am–12 Noon—Information Item: LEST.
12 Noon–2 pm—Closed. Review of Proposal.

Reason for Closing: The project being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

2 pm–3 pm—AST Future Plans, Community Plans, and NSF Policies/Budgets.
3 pm–5 pm—Formulation of Resolutions; Other Business.

Tuesday, November 19

9 am–11:30 am—Joint Meeting with NASA Astrophysics Advisory Committee on Issues of Mutual Interest (e.g., Individual Investigator Data, Programs, Data Archiving).
11:30 am–12:15 pm—Dr. Massey, Director/NSF.
1 pm–3 pm—Joint Meeting with NASA Astrophysics Advisory Committee on Issues of Mutual Interest (Projects/Missions, Cooperative Programs).

Dated: October 21, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–25633 Filed 10–23–91; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Cross-Directorate Activities Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Cross-Disciplinary Activities.

Date/Time: November 14–15, 1991; 8:30–5 p.m., room 1242, Washington, DC 20550

Type of Meeting: Open.

Contact Person: Mrs. Barbara H. Palmer, Administrative Officer, Office of Cross-Disciplinary Activities, room 304, National Science Foundation, Washington, DC 20550. (202) 357–7349.

Summary of Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: To provide regular advice, recommendations, and oversight to the Office in guiding its policy decisions with regard to the programs within its purview.

Agenda: November 14, 1991: 8:30–12 noon Review and discussion of current OCDA activities.

12–1 p.m., Lunch
1–2:30 p.m., Program Reports
2–3 p.m., Discussions with Deputy Director
3–5 p.m., Institutional Infrastructure Program Discussions
November 15, 1991: 8:30–12 noon, Committee Discussions
12–1 p.m. Lunch
1–Adjournment.

Dated: October 21, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–25634 Filed 10–23–91; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Cultural Anthropology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Cultural Anthropology.

Date and Time: November 12 & 13, 1991, 9 a.m.–5 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., room 1243 Washington, DC 20550.

Type of Meeting: Part Open—Closed 11/12: 9 a.m.–5 p.m.; Closed 11/13: 9 a.m.–11 a.m.; 12 a.m.–5 p.m.; Open 11/13: 11–12 a.m.

Contact Person: Dr. Stuart Plattner, Program Director, Cultural Anthropology, room 320, National Science Foundation, Washington, DC 20550 Telephone (202) 357–7804.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in cultural anthropology.

Agenda: Open—General discussion of the current status and future plans of the Anthropology Program.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

Dated: October 21, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–25636 Filed 10–23–91; 8:45 am]

BILLING CODE 7555–01–M

Directorate for Education and Human Resources Advisory Committee Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee to the Directorate for Education and Human Resources.

Date and Time: Wednesday, November 13, 1991, 9 am–5 pm; Thursday, November 14, 1991, 9 am–5 pm.

Place: National Science Foundation, room 540, Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Peter E. Yankwich, Executive Secretary, Directorate for Education and Human Resources, National Science Foundation, Washington, DC 20550, (202) 357–9522.

Summary Minutes: May be obtained from contact person listed above.

Purpose of Committee: To provide advice and recommendations concerning NSF support for Education and Human Resources.

Agenda: Review of FY 1992 Programs and Initiatives, Review of FY 1993 Programs and Initiatives, Strategic Planning for FY 1994 and Beyond.

Dated: October 21, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–25635 Filed 10–23–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Materials and Metallurgy; Meeting

The Subcommittee on Materials and Metallurgy will hold a meeting on November 6, 1991, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, November 6, 1991—8:30 a.m. until 12 Noon

The Subcommittee will discuss steam generator degradation concerns, the basis of the staff's acceptance criteria for steam generator tube plugging, and its comparison with foreign experience and other related matters.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Elpidio Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: October 18, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91–25657 Filed 10–23–91; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Ad Hoc Subcommittee on Yankee-Rowe Reactor Pressure Vessel Integrity; Meeting

The Ad Hoc ACRS Subcommittee on Yankee-Rowe Reactor Pressure Vessel Integrity will hold a meeting on November 6, 1991, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

Most of the meeting will be open to public attendance. A portion of the meeting may be closed to discuss Westinghouse Proprietary Information (5 U.S.C. 552b(c)(4)) and Classified Information (5 U.S.C. 552b(c)(1) applicable to the design and operation of these facilities.

The agenda for the subject meeting shall be as follows:

Wednesday, November 6, 1991—1 p.m. until the conclusion of business.

The Ad Hoc Subcommittee will review issues related to the Yankee-Rowe reactor pressure vessel integrity and its impact on plant operations.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Ad Hoc Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Ad Hoc Subcommittee will then hear presentations by and hold discussions with representatives of Westinghouse, the NRC staff, their consultants, and other interested persons regarding this review as necessary.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Herman Alderman (telephone 301/492–7750) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 18, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91–25658 Filed 10–23–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–20787, License No. 29–21452–01 EA 91–058]

Consolidated NDE, Inc. Woodbridge, NJ; Confirmatory Order Modifying License (Effective Immediately)

I

Consolidated NDE, Incorporated (Licensee) is the holder of NRC Byproduct Material License No. 29–21452–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 34. The license authorizes the Licensee to possess numerous sealed sources in various radiography exposure devices used for the performance of industrial radiography in accordance with the conditions specified in the license. The license was issued on October 6, 1983, was due to expire on September 30, 1988, and is currently under timely renewal.

II

On April 25, 1990, an NRC inspection was conducted of the Licensee's activities at a temporary field site in East Vineland, New Jersey, where radiography was being performed on a gas pipeline temporarily located above the ground. During the inspection, several violations of NRC requirements were identified, including the failures to:

1. Survey the radiographic exposure device, as well as the associated guide tube, on at least one occasion, as well as the failure to perform adequate surveys on several other occasions in that those surveys did not include the entire circumference of the exposure device nor the full length of the guide tube, as required by 10 CFR 34.43(b); and

2. Lock the exposure device after each radiographic exposure on at least three occasions, as required by 10 CFR 34.22(a).

Most of the violations, including the two set forth above, were similar to

violations identified during the previous NRC inspection conducted just one month earlier in March 1990. As a result of the findings from the April 25, 1990 inspection, the NRC Region I office promptly conducted a management meeting with the licensee on April 27, 1990, to discuss those findings, including the repetitive nature of the violations, as well as their causes, and the licensee's corrective actions. The radiographer involved in the violations discussed above, Mr. Anthony Carbone, Sr. (Mr. Carbone), attended the management meeting.

III

As a result of the NRC findings in March and April 1990, an Order Suspending Operation and Modifying License (Effective Immediately) was issued to the licensee by the NRC on May 2, 1990, based, in part, on the April 1990 inspection, and a $10,000 civil penalty was also issued on that date. In addition, as a result of information obtained during the April 25 inspection and the April 27 management meeting, an investigation was conducted by the NRC Office of Investigations (OI) to determine, among other things, whether Mr. Carbone provided false information to the NRC or maintained false records of activities performed.

The OI investigation identified two additional violations as described below: First, Mr. Carbone provided information to the NRC that was not accurate in all material respects, in that on three separate occasions, he stated that he had adequately surveyed the guide tube and the exposure device, and locked the device after each of the exposures. The three occasions during which false information was provided to the NRC were during the April 25, 1990 inspection, the April 27, 1990 management meeting, and a subsequent interview by an OI investigator in August 1990. Second, Mr. Carbone made a false entry on his utilization log, dated April 25, 1990, indicating that he did perform surveys after each exposure. The information presented to the NRC, as well as the entry on the utilization log, were false in that two NRC inspectors had observed that Mr. Carbone had not complied with these requirements. As a result of these findings, an enforcement conference was conducted with the licensee on July 9, 1991, to discuss these violations, following the NRC transmittal of a description of the findings to the licensee in a letter dated June 26, 1991. The violations are described in detail in the related Notice of Violation also issued on this date.

IV

During the July 9 enforcement conference, the licensee described the corrective actions that it had initiated to ensure that all employees possess a clear understanding of the company's policies on integrity and forthright communications. These actions included: (1) Issuance of a letter to all employees delineating management's expectations concerning communications with the NRC; (2) posting the NRC letter, dated June 26, 1991 (which discussed these issues) at the licensee's business office; and (3) development of plans to include the requirements for completeness and accuracy of information, as set forth in 10 CFR 30.9, in the licensee's continuing training program.

In addition, the licensee also stated at the enforcement conference that (1) the licensee has prohibited Mr. Carbone from acting as a radiographer (as defined in 10 CFR part 34.2) since the April 25, 1990 inspection; (2) Mr. Carbone has acted only as an assistant radiographer during this time period and was the subject of nine management audits wherein his performance was deemed satisfactory; (3) Mr. Carbone has completed a four hour counseling session with management concerning the issues of integrity, as well as completeness and accuracy of information; and (4) Mr. Carbone will continue to act only as an assistant radiographer, and not as an independent radiographer, until such time as an acceptable rehabilitation program is implemented and completed. Furthermore, during a telephone conversation with Mr. R. Cooper, Deputy Director, Division of Radiation Safety and Safeguards, Region I, on August 14, 1991, the licensee's Radiation Safety Officer committed to the NRC that Mr. Carbone would remain as an assistant radiographer, and would not be allowed to perform as a radiographer until such time as the licensee concluded that he was rehabilitated, and approval was obtained from the NRC to allow Mr. Carbone to act as a radiographer.

V

A license to use radioactive material is a privilege that confers upon the licensee, its officials and employees, the special trust and confidence of the public. When the NRC issues a license, it is expected and required that the licensee, as well as its employees, will be accurate and forthright in providing information so that the NRC may ensure that the use of licensed materials does not endanger public health and safety. This includes ensuring that all information provided to the NRC, either orally or in writing, as well as the creation of all records of performance of activities required by NRC regulations or the license, are complete and accurate in all material respects. Such accuracy is particularly important concerning the conduct of radiography, since personnel work at sites where operations are difficult to monitor but have the potential to harm unsuspecting bystanders as well as radiography personnel. In the absence of licensee management or NRC inspectors, the NRC relies on an individual's integrity to ensure compliance with the conditions of the license and regulatory requirements. Mr. Carbone's actions, as set forth herein, raise serious questions as to whether Mr. Carbone, if performing as an independent radiographer, will ensure compliance with those requirements.

VI

I find that the Licensee's commitments made at the enforcement conference on July 9, 1991, and in the telephone conversation with the NRC on August 14, 1991, are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that these Licensee commitments in regard to Mr. Carbone be confirmed by this Order. The Licensee has agreed to this action. Pursuant to 10 CFR 2.202, I have also determined that the public health and safety require that this Order be immediately effective.

VII

Accordingly, pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 30 and 34, *It is Hereby Ordered,* Effective Immediately, That License No. 29–21452–01 Is Modified as Follows:

Mr. Anthony Carbone, Sr. may not act as a radiographer until the Licensee obtains written approval from the NRC to return Mr. Carbone to a radiographer status and only after the Licensee submits, and the NRC accepts, the Licensee's basis for being satisfied that Mr. Carbone should act as a radiographer as defined in 10 CFR 34.2.

The Regional Administrator, Region I, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

VIII

Mr. Anthony Carbone, Sr. and any other person, other than the Licensee, adversely affected by this Confirmatory Order may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Licensee. If a person other than Mr. Carbone, Sr. requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order shall be sustained.

In the absence of any request for hearing, this Order shall be final 20 days from the date of this Order without further Order or proceedings. An Answer or a Request for Hearing Shall not Stay the Immediate Effectiveness of This Order.

Dated at Rockville, Maryland this 11th day of October 1991.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

[FR Doc. 91–25656 Filed 10–23–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–482A]

Kansas Gas and Electric Co., et al.; Proposed Ownership Transfer; No Significant Antitrust Changes and Time for Filing Requests for Reevaluation

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2135, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred as a result of the proposed change in ownership of Unit 1 of the Wolf Creek Generating Station (Wolf Creek) detailed in the licensee's amendment application dated March 28, 1991. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides that an application for a license to operate a utilization facility for which a construction permit was issued under section 103 shall not undergo an antitrust review unless the Commission determines that such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous antitrust review by the Attorney General and the Commission in connection with the construction permit for the facility. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. By application dated March 28, 1991, the Kansas Gas and Electric Company (KG&E or licensee), pursuant to 10 CFR 50.80, requested the transfer of its 47% ownership interest in the Wolf Creek Nuclear Generating Station, Unit 1 (Wolf Creek) to a newly formed wholly owned subsidiary of the Kansas Power and Light Company (KPL). Wolf Creek underwent antitrust review at the construction permit stage in 1976 and the operating license stage in 1985. The staffs of the Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation and the Office of the General Counsel, hereinafter referred to as the "staff", have jointly concluded, after consultation with the Department of Justice, that the proposed change in ownership is not a significant change under the criteria discussed by the Commission in its *Summer* decisions (CLI–80–28 and CLI–81–14).

On May 13, 1991, the staff published in the **Federal Register** (56 FR 22026) receipt of the licensee's request to transfer its 47 percent ownership interest in Wolf Creek to a successor company, also called Kansas Gas and Electric Company, resulting from the proposed merger of KG&E and KPL. The notice indicated the reason for the transfer, stated that there were no anticipated significant safety hazards as a result of the proposed transfer and provided an opportunity for public comment on any antitrust issues related to the proposed transfer. No comments were received.

The staff reviewed the proposed transfer of KG&E's ownership in the Wolf Creek facility to a wholly owned subsidiary of KPL for significant change since the last antitrust review of Wolf Creek, using the criteria discussed by the Commission in its *Summer* decisions (CLI–80–28 and CLI–81–14). The staff believes that the records developed to date in the proceedings at the Kansas Corporation Commission (KCC) and the Federal Energy Regulatory Commission (FERC) involving the proposed KG&E/KPL merger adequately portray the competitive situation(s) in the markets served by the Wolf Creek generating facility and that any anticompetitive aspects of the proposed changes have been adequately addressed in those proceedings. License conditions designed to mitigate possible anticompetitive effects of the proposed merger have been agreed upon in both the KCC and FERC proceedings. The staff further believes that the KCC and FERC proceedings addressed the issue of adequately protecting the interests of competing power systems and the competitive process in the area served by the Wolf Creek facility such that the changes will not have implications that warrant a Commission remedy. In reaching this conclusion, the staff considered the structure of the electric utility industry in Kansas and adjacent areas and the events relevant to the Wolf Creek construction permit and operating license reviews. For these reasons, and after consultation with the Department of Justice, the staff recommends that no affirmative "significant change" determination be made regarding the proposed change in ownership detailed in the licensee's amendment application dated March 28, 1991.

Based upon the staff analysis, it is my finding that there have been no "significant changes" in the licensees' activities or proposed activities since the completion of the previous antitrust review.

Signed on October 18, 1991 by Thomas E. Murley, Director, of the Office of Nuclear Reactor Regulation.

Although the Atomic Energy Act of 1954, as amended, does not address a specific period for public comment regarding reevaluation of the Director's Finding, the Commission has adopted rules that normally allow for a thirty day comment period regarding a finding of "no significant change" for issuance of an initial operating license. The staff has determined that for the instant operating license amendment for which no public comment has been received on any antitrust issues related to the proposed transfer, a comment period of fifteen days will not adversely affect any potential interested party's ability to provide comments to the Commission and will avoid further delay in the issuance of the operating license amendment.

Any person whose interest may be affected by this finding may file, with full particulars, a request for reevaluation with the Director of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 15 days of the initial publication of this notice in the **Federal Register.** Requests for reevaluation of the no significant change determination shall be accepted after the date when the Director's finding becomes final, but before the issuance of the operating license amendment, only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

Dated at Rockville, Maryland, this 21st day of October 1991.

For the Nuclear Regulatory Commission.

Anthony T. Gody,

Chief, Policy Development and Technical Support Branch, Program Management, Policy Development, and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 91–25730 Filed 10–23–91; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review By Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash; (202) 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Rule 17g–1(g), File No. 270–208

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted for extension of OMB approval Rule 17g–1(g) (17 CFR 270.17g–1(g)) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the "1940 Act").

Rule 17g–1(g) requires that a registered management investment company file with the Commission a copy of the bond covering its officers and employees and information about any claim or other action taken with respect to the bond.

Approximately 3,000 registered management investment companies are governed by Rule 17g–1(g). The annual burden on each respondent of compliance with Rule 17g–1(g) is estimated to be one hour. Thus, the total estimated annual reporting burden is 3,000 hours.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–6004, and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Paperwork Reduction Project (3235–0276) Office of Management and Budget, room 3228 New Executive Office Building, Washington, DC 20543.

Dated: September 30, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–25645 Filed 10–23–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29837; File No. SR–PHLX–91–33]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc.

October 18, 1991.

In the matter of increasing the size of customer orders that are eligible for automatic execution through the Exchange's Automatic Execution System from 10 contracts to 20 contracts

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 September 20, 1991, the Philadelphia Stock Exchange ("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 proposes to permit customer orders of up to twenty contracts in all equity options traded on the Exchange to be eligible for automatic execution through the automatic execution ("Auto-X") feature of the Exchange's Automated Options Market ("AUTOM") system, a pilot program. Exchange rules currently provide that customer orders in all Phlx equity options up to ten contracts in size are eligible for automatic execution through Auto-X.[1] The AUTOM system provides for the electronic delivery of small options orders on behalf of customers to the Phlx trading floor, as well as the automatic execution of certain customer orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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 expand the Auto-X feature of AUTOM to twenty contracts in all equity options traded on the Exchange. Since approving AUTOM on a pilot basis on March 31, 1988, the Commission has approved various amendments and extensions to this system.[2] For example, the Auto-X feature of AUTOM was approved by the Commission on January 9, 1990, and was expanded to include all Phlx equity options on March 15, 1991.[3] Currently, eligibility for Auto-X is limited to customer market and marketable limit orders of up to ten contracts in size.

The proposed expansion of the Auto-X order eligibility size from ten to twenty contracts is in direct response to the competitive initiatives of other options market centers that have begun offering execution guarantees of up to twenty contracts in equity options. The Exchange also believes that the effectiveness of the AUTOM system will be improved by offering retail broker/dealers and their clients an expanded automatic execution parameter. Further, the Exchange believes that this limited expansion of the Auto-X feature of AUTOM will not impose any significant additional burdens to the operation and capacity of the AUTOM system [4] and

[1] On September 9, 1991, the Commission approved an Exchange proposal to permit the automatic execution of Phlx customer orders of up to twenty contracts in size solely in equity options on Duracell International, Inc. See Securities Exchange Act Release No. 29862 (September 9, 1991), 56 FR 46816 (September 16, 1991) (order approving SR–Phlx–91–31). The current proposal would extend this expansion of Auto-X eligibility to all equity options traded on the Exchange.

[2] See Securities Exchange Act Release No. 25540 (March 31, 1988), 53 FR 11390 (April 6, 1988).

[3] See Securities Exchange Act Release Nos. 27599 (January 9, 1990), 55 FR 1751 (January 18, 1990), and 28978 (March 15, 1991,) 56 FR 12050 (March 21, 1991).

[4] See letter from Murray L. Ross, Esq., Secretary, Phlx, to Thomas Gira, Branch Chief, Division of Market Regulation, SEC, dated October 16, 1991 ("Phlx Capacity Letter").

may increase its effectiveness by increasing the number of orders eligible for automatic execution and by slightly reducing manual processing. Accordingly, the Exchange believes that the proposed limited expansion of the Auto-X feature of AUTOM to twenty contracts for all Phlx-traded equity options is consistent with the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade as well as to remove impediments to and perfect the mechanism of a free and open market. The Exchange also believes that the proposed rule change is consistent with section 11A of the Act, as it fosters fair competition among exchange markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and section 11A.[5] The Commission continues to believe that the development and implementation of the AUTOM system provides for more efficient handling and reporting of orders in Phlx equity options through the use of new data processing and communications techniques, thereby improving order processing and turnaround time.

The Commission also believes that expanding the eligibility of Auto-X to customer orders of up to 20 contracts in size for all Phlx-traded equity options will place the Phlx in an equal competitive posture with the other options exchanges when competing for order flow in equity options. In this regard, the Commission notes that the American Stock Exchange's and Chicago Board Options Exchange's automatic execution systems, termed "RAES" and "Auto-Ex," respectively, both have Commission approval to accommodate public customer orders in equity options of up to 20 contracts in size. Accordingly, the Commission believes the Phlx proposal is consistent with the Act because it serves to eliminate constraints in Phlx rules that restrict the Exchange's ability to compete for order flow in equity options. The Commission believes enhanced competition between the exchanges for options order flow, in turn, should benefit public investors and the public interest.

Finally, the Commission believes, based on representations by the Exchange, that expanding the order eligibility size of Auto-X to 20 contracts for all equity options will not expose the Phlx's options markets or equity markets to risk of failure or operational breakdown. In particular, the Exchange represents that the AUTOM system will be able to handle the increased volume that should accompany the increased Auto-X order eligibility size.[6] Further, since the AUTOM system is completely independent from the Phlx's Philadelphia Stock Exchange Automated Communication and Execution ("PACE") system for routing and executing stock orders, neither AUTOM nor PACE should impact on the other during periods of high volume. Moreover, the Exchange represents that, in the event of unusually heavy order traffic, it does not envision that any problems will occur with the ability of specialist unit personnel to integrate orders resting on the limit order book with Auto-X orders to ensure the maintenance of book priority.[7]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission finds that accelerating approval of the Phlx's proposal will enhance competition among the options exchanges in general and with respect to multiply-traded options in particular. Because the Amex and CBOE, which are currently competing with the Phlx for order flow in multiply traded equity options, can accept orders of up to 20 contracts for automatic execution, the Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that the Phlx can compete on an equal basis with the other options exchanges for order flow in equity options. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 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. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 14, 1991.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PHLX–91–33) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–25646 Filed 10–23–91; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f and 78k–1 (1988).

[6] See Phlx Capacity Letter, *supra* note 4. Specifically, the Phlx represents that AUTOM's capacity is 48,000 orders for a six-hour forty minute trading day, although the system has been initially configured to handle 10,000 orders per day. The Phlx also represents that the system currently is processing 1,000 orders per day.

[7] See letter from Murray L. Ross, Esq., Secretary, Phlx, to Thomas Gira, Branch Chief, Division of Market Regulation, SEC, dated October 16, 1991.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1990).

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 12–A (Revision 5)]

Delegation of Authority; Redelegation of Financial Assistance

Delegation of Authority No. 12–A (Revision 4) (56 FR 37382) is hereby superseded by Delegation of Authority

No. 12–A (Revision 5). This revision reflects the organizational changes made by a reorganization of the Finance and Investment activities of the Small Business Administration. This delegation is substantively similar to that which was published in the **Federal Register** on August 6, 1991 (56 FR 37382), however, the authority for certain positions have been reorganized. To avoid confusion, SBA is publishing the entire delegation of authority for its Financial Assistance program. Delegation of Authority No. 12–A (Revision 5) reads as follows:

I. Pursuant to the action of the Administrator, Small Business Administration, dated February 12, 1990, the following authority is hereby delegated to the specific positions designated herein as follows:

A. To the Assistant Administrator for Financial Assistance as follows:

1. Financial Assistance Program

a. To take any and all actions involved in approval or decline of applications for direct and guaranteed business and development company loans, and approval or decline of guarantees or debentures, authorized to be made under section 7(a) of the Small Business Act and title V of the Small Business Investment Act of 1958 including reconsideration thereof; and to execute authorizations and modifications pertaining to such loans and debentures.

b. To cancel, reinstate, modify, and amend authorizations for any such loans and debentures.

c. To determine eligibility for loan and debenture financing applicants.

d. To take all necessary actions in connection with the sale of SBA guaranteed Certified Development Company debentures and SBA guaranteed Certificates issued against pools of such debentures to the Federal Financing Bank or any other duly qualified purchaser as determined by SBA.

e. To take all necessary action, with the exception of legal action to be taken with respect to those loans and obligations classified as in litigation, in connection with the servicing, administration, collection, and liquidation of:

1. All loans made under the Small Business Act, including all acquired property and other obligations related thereto.

2. All debentures (with the exception of those related to activities of SBA's Investment Division in connection with the Small Business Investment Company Program), lease guarantees, and pollution control financing guarantees made or guaranteed pursuant to the Small Business Investment Act of 1958, including all acquired property and other obligation related thereto.

f. To take all necessary actions in connection with the liquidation of loans made by the Economic Development Administration of the Department of Commerce pursuant to a Memorandum of Understanding executed on March 10, 1971, with the exception of legal action to be taken with respect to any such loans classified as in litigation.

g. To take all necessary actions in connection with the financial aspects of certificates of competency issued under section 8(b)(7) of the Small Business Act and, as appropriate, financial aspects of contracts let by SBA under section 8(a) of the Small Business Act.

2. Participating Lender Program

a. To take all necessary actions in connection with determinations of eligibility for lending institutions and Development Companies to participate in SBA lending and financial assistance programs in accordance with the Small Business Act and title V of the Small Business Investment Act of 1958, including actions required to initiate suspension or revocation of eligibility of any such institution.

b. To take all necessary actions in connection with the regulation of lending institutions and Development Companies participating in SBA lending and financial assistance programs, in accordance with the Small Business Act and title V of the Small Business Investment Act of 1958 and the regulations promulgated thereunder.

c. To take all necessary actions in connection with the promotion and development of the Agency's financial assistance activities as they relate to participating lending institutions and Development Companies.

3. Initial Placement and Secondary Market Activity

a. To plan, direct, and administer secondary market activity as it relates to loan servicing and processing. In so doing, to execute any necessary documents and to take other appropriate action to implement and maintain secondary market activity, including loan pooling.

b. To determine and develop policy and procedures necessary for field office support of secondary market activities, through the Office of Portfolio Management, to fulfill SBA's contractual obligations in secondary participation guarantee agreements.

4. Lease Guarantee Activities

a. To take all necessary actions in connection with the administration and servicing of direct or reinsured lease rental guarantee insurance policies (hereinafter referred to as "lease guarantees") entered into pursuant to title IV of the Small Business Investment Act of 1958, with the exception of legal action taken with respect to guarantees classified as in litigation.

b. To process claims arising out of lease guarantees.

5. Pollution Control Financing Guarantee Activities

a. To take all necessary actions in connection with the servicing and administration of pollution control financing guarantees, entered into pursuant to title IV of the Small Business Investment Act of 1958, with the exception of legal action to be taken with respect to guarantees classified as in litigation.

b. To process claims arising out of pollution control financing guarantees.

6. To take final action on matters related to compromise cases appealed by members of the Central Office Claims Review Committee (COCRC).

7. To amend, suspend, or revoke authority delegated to any position listed below.

B. To the Director, Office of Financing as follows:

1. Financial Assistance Program

a. To take any and all actions involved in approval or decline of applications for direct and guaranteed business and development company loans authorized to be made under section 7(a) of the Small Business Act including reconsideration thereof; and to execute authorizations and modifications pertaining to such loans.

b. To cancel, reinstate, modify, and amend authorizations for any such loans.

c. To determine eligibility for loan applicants.

d. To take all necessary actions in connection with the servicing of financial aspects of certificates of competency issued under section 8(b)(7) of the Small Business Act, as amended, and, as appropriate, financial aspects of contracts let by SBA pursuant to section 8(a) of the Small Business Act, as amended.

2. Participating Lender Program

a. To take all necessary actions in connection with determinations of eligibility for lending institutions to participate in SBA lending and financial assistance programs in accordance with

the Small Business Act, including actions required to initiate suspension or revocation of eligibility of any such institution.

b. To take all necessary action in connection with the regulation of lending institutions participating in SBA lending and financial assistance programs, in accordance with the Small Business Act and the regulations promulgated thereunder.

c. To take all necessary actions in connection with the promotion and development of the Agency's financial assistance activities as they relate to participating lending institutions.

3. Initial Placement and Secondary Market Activity

a. To plan, direct, and administer secondary market activity as it relates to loan servicing and processing. In so doing, to execute any necessary documents and to take other appropriate action to implement and maintain secondary market activity.

b. To determine and develop policy and procedures necessary for field office support of secondary market activities, through the Office of Portfolio Management, to fulfill SBA's contractual obligations in secondary participation guarantee agreements.

4. To amend, suspend, or revoke authority delegated to any position listed below.

The authority delegated to the Director, Office of Financing is redelegated to the specific positions designated herein as follows:

a. Chief, Loan Policy and Procedures Branch

1. To approve or decline applications for all loans, excluding disaster loans, authorized to be made by the Agency pursuant to the Small Business Act, including reconsideration thereof, and to execute authorizations and amendments pertaining to such loans.

2. To cancel, reinstate, modify, and amend authorizations for any such loans.

3. To determine eligibility of any applicant for any such loan.

b. Chief, Office of Financial Institutions

1. To take all necessary actions in connection with determinations of eligibility for lending institutions to participate in SBA lending and financial assistance programs authorized by the Small Business Act, including the suspension or revocation of such eligibility provided, however, that any final determination regarding eligibility, suspension, or revocation of such eligibility shall be retained by the Assistant Administrator for Financial Assistance.

2. To take all necessary actions in connection with the regulation of lending institutions participating in SBA lending and financial assistance programs, in accordance with the Small Business Act and the regulations promulgated thereunder.

3. To take all necessary actions in connection with the promotion and development of the Agency's financial assistance activities as they relate to participating lending institutions.

C. To the Director, Office of Portfolio Management as follows:

1. Financial Assistance Program

a. To take all necessary action, with the exception of legal action to be taken with respect to those loans and obligations classified as in litigation, in connection with the servicing, administration, collection, and liquidation of:

1. All loans made under the Small Business Act, including all acquired property and other obligations related thereto.

2. All debentures (with the exception of those related to activities of SBA's Investment Division in connection with the Small Business Investment Company Program), lease guarantees, and pollution control financing guarantees made or guaranteed pursuant to the Small Business Investment Act of 1958, including all acquired property and other obligation related thereto.

b. To take all necessary actions in connection with the liquidation of loans made by the Economic Development Administration of the Department of Commerce pursuant to a Memorandum of Understanding executed on March 10, 1971, with the exception of legal action to be taken with respect to matters classified as in litigation.

2. Lease Guarantee Activities

a. To take all necessary actions in connection with the administration and servicing of direct or reinsured lease rental guarantee insurance policies (hereinafter referred to as "lease guarantees") entered into pursuant to title IV of the Small Business Investment Act of 1958, with the exception of legal action to be taken with respect to guarantees classified as in litigation.

b. To process claims arising out of such lease guarantees.

3. Pollution Control Financing Guarantee Activities

a. To take all necessary actions in connection with the servicing and administration of pollution control financing guarantees, entered into pursuant to title IV of the Small Business Investment Act of 1958, with the exception of legal action to be taken with respect to guarantees classified as in litigation.

b. To process claims arising out of pollution control financing guarantees.

D. To the Director, Office of Economic Development as follows:

1. To approve or decline development company loan applications and debenture guarantees authorized under title V of the Small Business Investment Act of 1958, including reconsideration thereof, and to execute authorizations and modifications pertaining to such loans and debentures.

2. To cancel, reinstate, modify, and amend authorizations for such loans and debentures. To take all necessary actions in connection with the sale of SBA guaranteed Certified Development Company debentures and SBA guaranteed Certificates issued against pools of such debentures to the Federal Financing Bank or any other duly qualified purchaser as determined by SBA.

a. To take all necessary actions in connection with determinations of eligibility for Development Companies to participate in SBA lending and financial assistance programs in accordance with title V of the Small Business Investment Act of 1958, including actions required to initiate suspension or revocation of eligibility of any such institution.

b. To take all necessary action in connection with the regulation of Development Companies participating in SBA lending and financial assistance programs, in accordance with title V of the Small Business Investment Act of 1958, and the regulations promulgated thereunder.

c. To take all necessary actions in connection with the promotion and development of the Agency's financial assistance activities as they relate to Development Companies.

E. To the Central Office Claims Review Committee (COCRC) as follows:

1. This committee shall consist of the Director, Office of Portfolio Management, acting as chairperson, Director, Office of Financing, and the Associate General Counsel for Litigation, Office of the General Counsel.

2. This committee shall have the authority to take final action, upon unanimous vote of its members, on:

a. All Agency claims beyond the limits established by regulation for Regional Claims Review Committees (RCRCs) or District Claims Review Committees (DCRCs).

b. All cases arising from the Lease Guarantee and the Pollution Control Guarantee programs.

c. All cases referred to the Committee by the Associate Administrator for Investment which originated as portfolio assets of a Small Business Investment Company (SBIC) or a Special SBIC (formerly known as a MESBIC).

d. All cases referred to the Committee by the Associate Administrator for Minority Small Business and Capital Ownership Development pertaining to Advance Payments under section 8(a) of the Small Business Act, 15 U.S.C. 637(a).

3. Final action may be taken by majority vote of the members of the COCRC on matters delegated to RCRCS upon an appeal by an RCRC.

4. Upon unanimous vote of its members, to approve proposals to sell a primary obligation or other evidence of indebtedness owed the Agency for a sum less than the total amount due thereon.

5. Split decisions and reconsiderations (appeals) of actions taken by the COCRC may be decided by the Assistant Administrator for Financial Assistance.

II. This delegation does not authorize anyone serving in the above specified positions (except as set forth in I(E) above):

A. To sell any primary obligations or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon.

B. To deny liability of the SBA under terms of a participation or guarantee agreement, or the initiation of a suit for recovery from a participation or guarantee agreement.

C. To accept or reject a compromise settlement of an indebtedness owed the Agency for a sum less than the total amount due thereon.

III. The authority delegated herein may not be redelegated.

IV. The authority delegated to any position indicated herein may be exercised by any SBA employee officially designated as Acting in that position.

Dated: October 15, 1991.

Patricia F. Saiki,

Administrator.

[FR Doc. 91–25609 Filed 10–23–91; 8:45 am]

BILLING CODE 8025–01–M

Small Business Administration

[License No. 03/03–0195]

Issuance of a Small Business Investment Company License; CIP Capital, Inc.

On April 1, 1991 a notice was published in the **Federal Register** (vol. 56, No. 62 FR p. 13358) stating that an application has been filed by CIP Capital, Inc. with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing Small Business Investment Companies (13 CFR 107.102 (1991)) for a license as a Small Business Investment Company.

Interested parties were given until close of business Wednesday, May 1, 1991 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 03/03–0195 on October 3, 1991, to CIP Capital, Inc. to operate as a Small Business Investment Company.

Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies

Dated: October 11, 1991.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 91–25610 Filed 10–23–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1508]

Presidential Task Force on U.S. Government International Broadcasting; Change in Meeting Schedule

The Task Force announces that it will meet in executive session on October 28, 1991.

The meeting will take place less than fifteen days from the publication of this notice. It will permit discussion of information received at public meetings in time to assure completion of work by the deadline set for the Task Force.

The October 28 meeting will not be open to the public. In accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. I, section 10(d), it has been determined to involve discussion of matters exempt from disclosure under 5 U.S.C. 55b(c)(1). The Task Force will discuss and examine materials properly classified under the terms of Executive Order 12065 of June 28, 1978, and the effect of such materials on the deliberations of the Task Force in carrying out the tasks assigned to it by the President in the White House statement of April 29, 1991 establishing the Task Force.

Dated: October 17, 1991.

C. Edward Dillery,

Executive Director, Task Force on U.S. Government International Broadcasting.

[FR Doc. 91–25631 Filed 10–23–91; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aircraft Noise Mitigation Review; Aircraft Noise Exposure in New York Metropolitan Area; Public Hearings

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of Intent.

SUMMARY: The FAA intends to conduct an Aircraft Noise Mitigation Review of aircraft noise exposure in the New York Metropolitan Area.

FOR FURTHER INFORMATION CONTACT: Mr. Charles R. Reavis, Program Manager, ATM–700, Headquarters FAA, 800 Independence Avenue SW., Washington, DC 20591. Telephone Number 202–267–9367.

SUPPLEMENTARY INFORMATION: The FAA intends to conduct an Aircraft Noise Mitigation Review (ANMR) to examine aircraft noise issues and explore possible alternatives to mitigate the effects of aircraft noise in the New York Metropolitan Area. The review area will encompass the airspace within a 55 nautical mile radius of LaGuardia Airport, overlying the states of New York, Connecticut, and New Jersey. The New Jersey portion of this review area will be limited both to avoid unnecessary duplication and for consistency with the statutory limits on the scope of the Environmental Impact Statement (EIS) currently being prepared on the impact of the implementation of the Expanded East Coast Plan (EECP) over New Jersey as described in Public Law 101–508, section 9119(c). Since the EECP EIS will concentrate on noise exposure and alternatives in the airspace at and above 3,000 feet, the ANMR area with respect to New Jersey will be limited to airspace below 3,000 feet.

The review will be performed by a team of FAA experts drawn from several disciplines within the organization. The review team will be charged with considering community input, reviewing existing procedures,

and investigating viable operational alternatives to possibly mitigate the effects of aircraft noise on the ANMR study area. A final report will be prepared and presented to the Administrator to coincide with the submission of the final report of the EECP EIS to the Administrator.

The FAA will convene public hearings in New York and Connecticut as follows:

November 5, 1991—1–4 and 7–11 pm
Mamaroneck/Rye Brook, Ryetown Hilton, 699 Westchester Ave., Rye Brook, New York 10573
November 6, 1991—7–11 pm
White Plains, Holiday Inn Crowne Plaza, 66 Hale Ave., White Plains, New York 10601
November 12, 1991—7–11 pm
Greenwich, Sheraton Stamford Hotel & Towers, One First Stamford Place, Stamford, Connecticut 06902
November 13, 1991—1–4 and 7–11 pm
Stamford, Sheraton Stamford Hotel & Towers, One First Stamford Place, Stamford, Connecticut 06902
November 14, 1991—7–11 pm
Bridgeport, Bridgeport Hilton Hotel, 1070 Main Street, Bridgeport, Connecticut 06604
November 19, 1991—1–4 and 7–11 pm
Cedarhurst, Best Western Hotel & Conf. Center, 80 Clinton Street, Hempstead, New York 11550
November 20, 1991—3–5 and 7–11 pm
November 21, 1991—7–11 pm
Staten Island, P.S. 51 Main, 20 Houston Street, Staten Island, New York 10302
December 3, 1991—1–4 and 7–11 pm
December 4, 1991—7–11 pm
Queens, Ramada Hotel, 90–10 Grand Central Parkway, East Elmhurst, New York 11369
December 5, 1991—7–11 pm
Newburgh, Holiday Inn, 90 Route 17 K, Newburgh, New York 12550.

The team will review the record of the public hearings conducted in New Jersey in March and April 1991 as part of the EECP EIS process to extract those issues not directly related to the EECP for inclusion into this ANMR.

Written comments are also encouraged and invited from persons or interested parties unable to attend the public hearings or who do not wish to make public statements. Written comments should be received at the following address by December 31, 1991: Headquarters FAA, Office of Air Traffic System Management, Attn: ATM–700, 800 Independence Avenue, SW., Washington, DC 20591.

Issued in Washington, DC on October 17, 1991.

Norbert A. Owens,

Deputy Associate Administrator for Air Traffic.

[FR Doc. 91–25591 Filed 10–23–91; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 91–54; No. 1]

Oshkosh Truck Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

Oshkosh Truck Corporation (Oshkosh) of Oshkosh, Wisconsin, has determined that some of its trucks fail to comply with 49 CFR 571.101 "Controls and Displays," and has filed an appropriate report pursuant to 49 CFR part 573. Oshkosh has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Standard No. 101 requires that vehicles less than 10,000 pounds Gross Vehicle Weight Rating (GVWR) have the horn control identified by placing the word horn or an identifying symbol on or adjacent to the horn control. Oshkosh manufactured 709 MT–10FD chassis, starting production May 18, 1988, that lack the horn identification symbol and the word "horn." Oshkosh supports its petition with the following:

1. Oshkosh manufacturers a MT–12FD chassis that is configured identical to the MT–10FD chassis except for larger springs which accommodate a GVWR of 12,000 lbs. Oshkosh believes that since the vehicles (MT–12FD and MT–10FD) are identical in every fashion except for GVWR, there is no compromise in safety by not identifying the horn symbol for the MT–10FD [since the horn symbol is not identified on the MT–12FD].

2. The person driving the MT–12FD is a trained individual aware of control locations, thus the need for a horn symbol is unnecessary for safe vehicle operation. The same person driving the MT–12FD will also utilize the MT–10FD, thus once again the horn symbol is unnecessary for safe vehicle operation.

3. The horn button is located in the conventional location, at the center of the steering wheel, following SAE J1138 recommendations. Due to the horn button being located in the center of the steering wheel, the natural reaction to activate the horn is to push the horn button.

4. The horn control without a horn symbol as utilized on the MT–12FD is a safe system complying to all regulations as stated in 49 CFR 571.101. The MT–10FD horn system is also a safe system since the vehicle is utilized for the same function as the MT–12FD.

Interested persons are invited to submit written data, views and arguments on the petition of Oshkosh, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 25, 1991.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8

Issued on October 18, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91–25568 Filed 10–23–91; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 91–52; No. 1]

Volvo GM Heavy Truck Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

Volvo GM Heavy Truck Corporation (Volvo GM) of Greensboro, North Carolina, has determined that air brake hoses on some of its heavy trucks fail to comply with 49 CFR 571.106, Federal Motor Vehicle Safety Standard No. 106, "Brake Hoses," and has filed an appropriate report pursuant to 49 CFR part 573. Volvo GM has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

The notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

Paragraph S7.3.7 of Standard No. 106 requires that, except for hose reinforced

by wire, an air brake hose shall withstand a tensile force of 8 pounds per inch of length before adjacent layers separate. As a result of a routine compliance test by the National Highway Traffic Safety Administration, it was discovered that certain air brake hoses (Weatherhead H33806 and H33808) manufactured by the Dana Corporation failed to comply with the adhesion requirement of Standard No. 106. Upon finding the above mentioned noncompliance, NHTSA opened a noncompliance investigation numbered NCI 3166. As a result, the Dana Corporation agreed to conduct a notification and remedy campaign. The recall campaign number is 90E-045. Volve GM trucks are equipped with the noncompliant hoses and it is petitioning the agency in response to the notification issued by the Dana Corporation.

Volvo GM reported that it manufactured 3,299 truck tractors between February 9, 1988 and December 12, 1989, that are equipped with the noncompliant hoses produced by the Data Corporation. It supports its petition with the following:

1. Volvo GM Heavy Truck Corporation installed the suspect hose assemblies in non-vacuum applications, specifically as tractor to trailer connecting hoses. In support of this statement, Volvo GM presented the following arguments taken from a Dana Weatherhead letter to Volvo GM dated August 2, 1991.

Proponents of the FMVSS adhesion factor contend that air could be trapped in the reinforcement of the hose and low adhesion could result in the inner tube * * * be(ing) imploded (and) restricting the flow of air which may increase the response time. However air would not be trapped as the cover of all air brake hose produced by the supplier, Boston Industrial Products Division of Dana, is pinpricked * * * along the length of the hose.

Furthermore, the imploding or ballooning effect of the inner tube as noted above can only occur if there is a pressure differential across the inner tube. There would need to be a negative pressure or vacuum on the inside of the tube for this to occur. It is Dana's understanding (that) current air brake systems where this hose is used are subjected to internal pressures in the 0 to 120 psi pressure range.

2. Volvo GM is not aware of any accidents, complaints or warranty (claims) related to the use of these suspect hoses.

3. It is Volvo GM's belief that the installation of the suspect Weatherhead hoses on its vehicles is consistent with industry standards and the installation (practices described) * * * in the petitions filed by Navistar International Transportation Corporation and Mack Trucks, Inc. Therefore, Volvo GM believes it should be granted any such relief from recall as will be granted the other petitioners.

Interested persons are invited to submit written data, views and arguments on the petition of Volvo GM, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: November 25, 1991.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on October 21, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-25637 Filed 10-23-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 32-91]

Treasury Notes of October 31, 1993, Series AG-1993

October 17, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $13,500,000,000 of United States securities, designated Treasury Notes of October 31, 1993, Series AG-1993 (CUSIP No. 912827 C7 5), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated October 31, 1991, and will accrue interest from that date, payable on a semiannual basis on April 30, 1992, and each subsequent 6 months on October 31 and April 30 through the date that the principal becomes payable. They will mature October 31, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Wednesday, October 23, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later

than Tuesday, October 22, 1991, and received no later than Thursday, October 31, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1 Settlement for the notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Thursday, October 31, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, October 29, 1991. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-25639 Filed 10-21-91; 1:02 pm]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 33–91]

Treasury Notes of October 31, 1996, Series U–1996

October 17, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $9,000,000,000 of United States securities, designated Treasury Notes of October 31, 1996, Series U–1996 (CUSIP No. 912827 C8 3), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated October 31, 1991, and will accrue interest from that date, payable on a semiannual basis on April 30, 1992, and each subsequent 6 months on October 31 and April 30 through the date that the principal becomes payable. They will mature October 31, 1996, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Thursday, October 24, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, October 23, 1991, and received no later than Thursday, October 31, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3 A single bidder, as defined in Treasury's single bidder guidelines, shall not submit nocompetitive tenders totaling more than $1,000,000. A nocompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the

tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Thursday, October 31, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, October 29, 1991. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-25640 Filed 10-21-91; 1:02 pm]

BILLING CODE 4810-40-M

Customs Service

Application for Recordation of Trade Name: Club Design

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name Club Design, used by D. A. International, a corporation organized under the laws of the State of California, located at 2143 San Diego Avenue, San Diego, California 92110.

The application states that the trade name is used in connection with oak desks, wall units and other wood furniture. The merchandise is manufactured in Mexico and the United States.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATES: Comments must be received on or before December 23, 1991.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (room 2104), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Delois P. Cooper, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-6956).

Dated: October 21, 1991.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 91-25654 Filed 10-23-91; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 206
Thursday, October 24, 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 ELECTION COMMISSION

DATE AND TIME: Tuesday, October 29, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, October 31, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Final Audit Report on Dukakis/Bentsen for President Committee (tentative)
Final Audit Report on Paul Simon for President Committee—Revisions to State Allocations (tentative)
Advisory Opinion 1991-29: Sundstrand Corporation, Inc.
Announcement of Effective Date for Final Rules: Use of Excess Funds
Announcement of Effective Date for Final Rules: Public Financing of Presidential Primary and General Election Candidates
Announcement of Effective Date for Final Rules: Matching Fund Submission and Certification Procedures for Presidential Primary Candidates
Proposed Revisions to Bank Loan Regulations
Status of Presidential Audits
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores R. Harris,
Administrative Assistant.

[FR Doc. 91-25803 Filed 10-22-91; 3:14 pm]
BILLING CODE 6715-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 JR 52118, October 17, 1991.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11 a.m., Monday, October 21, 1991.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposals regarding a Federal Reserve Bank's building requirements.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: October 21, 1991.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 91-25719 Filed 10-22-91; 10:22 am]
BILLING CODE 6210-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 11:00 a.m. on Monday, November 4, 1991, and at 8:30 a.m. on Tuesday, November 5, 1991, in Washington, D.C. The November 4 meeting, at which the Board will consider the Postal Rate Commission's October 4, 1991, Opinion and Recommended Decision Upon Further Reconsideration in Docket No. R90-1, is closed to the public. (See 56 FR 51444, October 11, 1991).

The November 5 meeting is open to the public and will be held in the Benjamin Franklin Room on the 11th floor of U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W. The Board expects to discuss the matter stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

Agenda

Monday Session

November 4—11:00 a.m. (Closed)

1. Consideration of the Postal Rate Commission's October 4, 1991, Opinion and Recommended Decision Upon Further Reconsideration in Docket No. R90-1.

Tuesday Session

November 5—8:30 a.m. (Open)

1. Mintues of the Previous Meeting, October 7-8, 1991.
2. Remarks of the Postmaster General. (Anthony M. Frank)
3. Officers' Compensation. (Mr. Frank)
4. Report on the Administrative Services Group Programs, (Mitchell H. Gordon, Senior Assistant Postmaster General, Administrative Services Group)
5. Capital Financing Plan. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group)
6. Capital Investments. (None)
7. Review of Legislative Matters. (William T. Johnstone, Assistant Postmaster General, Government Relations Department)
8. Quarterly Report on Service Performace. (Ann McK. Robinson, Consumer Advocate)
9. Report on Operations Support Group Programs. (William R. Cummings, Senior Assistant Postmaster General, Operations Support Group)
10. Report on Technology Resource Department. (Karen T. Uemoto. Assistant Postmaster General, Technology Resource Department)
11. Tentative Agenda for December 2-3, 1991, meeting in San Diego, California.

David F. Harris,
Secretary.

[FR Doc. 91-25799 Filed 10-22-91; 3:13 pm]
BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 56, No. 206
Thursday, October 24, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regs. No. 4 and 16]

Federal Old-Age, Survivors and Disability Insurance and Supplemental Security Income; Listing of Impairments, Mental Disorders in Adults

Correction

In proposed rule document 91-17001 beginning on page 33130 in the issue of Thursday, July 18, 1991, make the following corrections:

1. On page 33134, in the first column, in part 404, in the authority citation, in the seventh line, "State." should read "Stat."

§ 404.1520a [Corrected]

2. On page 33135, in the third column, in § 404.1520a(b)(7)(ii), in the second paragraph, in the second line, "peer" should read "peers".

3. On page 33136, in the first column, in § 404.1520a(c)(3), in the fifth line, "limitations" should read "limitation".

Appendix 1 to Subpart P [Corrected]

4. On the same page, in the second column, in amendment number 3 to Part A of Appendix 1 to subpart P, in the fifth line, "listing" should read "listings".

5. On page 33137, in the second column, in the third full paragraph, in the third line from the bottom, "the symptoms" should read "The symptoms".

6. On the same page, in the same column, in the fourth full paragraph, in the first line, "c." should read "C.".

7. On page 33138, in the first column, in the first full paragraph, in the fifth line, "lead" should read "leads".

8. On the same page, in the third column, in the second full paragraph, in the second line, "Multiphasic" was misspelled.

9. On page 33139, in the first column, in the second full paragraph, in the eighth line, "germane" was misspelled.

10. On the same page, in the 2d column, in the 2d full paragraph, in the 11th line, "variable" should read "variables".

11. On page 33140, in the 1st column, in the 15th line from the bottom of the page, "liability" should read "lability".

12. On the same page, in the 2d column, in the 4th and 19th lines, "decomposition" should read "decompensation".

13. On the same page, in the third column, in the third line, "decomposition" should read "decompensation".

14. On page 33141, in the third column, in the fourth line, "12.02" should read "12.07".

§ 416.920a [Corrected]

15 On page 33145, in the 2d column, in § 416.920a(d)(1), in the 16th line, "sharing" should read "hearing".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Land Management Bureau

[NM-010-4212-13/GPO-0109]

Realty Action; Exchange of Lands in New Mexico; Correction

Correction

In notice document 91-12682 appearing on page 24408, in the issue of Thursday, May 30, 1991, in the second column, in the file line at the end of the document "FR Doc. 91-12700" should read "FR Doc. 91-12682".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1094-AA42

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

Correction

In proposed rule document 91-20977, beginning on page 45806, in the issue of Friday, September 6, 1991, make the following corrections:

1. On page 45807, in the third column, in the first full paragraph, beginning in the fifteenth line, the quoted material should read as follows, "inform any persons requesting review * * * of the proper forum for appeal." And in the same paragraph, in the fifth line from the end, "the" should read "a".

§ 4.1377 [Corrected]

2. On page 45809, in the third column, in § 4.1377(c), in the first line, "part" should read "party".

BILLING CODE 1505-01-D

POSTAL SERVICE

39 CFR Part 233

Forfeiture Authority and Procedures

Correction

In rule document 91-10460, appearing on page 20361, in the issue of Friday, May 3, 1991, in the third column, in the file line at the end of the document, "FR Doc. 91–1460" should read "FR Doc. 91–10460".

BILLING CODE 1505-01-D

federal register

Thursday
October 24, 1991

Part II

Environmental Protection Agency

40 CFR Part 268

Land Disposal Restrictions: Potential Treatment Standards for Newly Identified and Listed Wastes and Contaminated Soil; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL-3978-4]

Land Disposal Restrictions: Potential Treatment Standards for Newly Identified and Listed Wastes and Contaminated Soil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPRM) and request for comment and data.

SUMMARY: EPA today is requesting data and comments on its approach for determining the Best Demonstrated Available Technology (BDAT) for many wastes that have been identified and listed as hazardous since the enactment of the Hazardous and Solid Waste Amendments (HSWA) in November, 1984. Today's notice includes a discussion of potential BDAT and related capacity for the following: Listed wastes from wood preserving operations (F032, F034, and F035); spent potliners from primary aluminum reduction (K088); characteristic hazardous wastes generated by the mining and mineral processing industries that are no longer suspended by the Bevill Amendment; and wastes that have been recently identified as D004 through D043 based on the toxicity characteristic leaching procedure (TCLP), i.e., TC wastes. EPA also is soliciting data and comment on its approach to developing BDAT for contaminated soil.

DATES: Comments and data must be submitted on or before December 9, 1991.

ADDRESSES: The public must send an original and two copies of their written comments to EPA RCRA Docket (OS-305), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Place the Docket Number F-91-CSP-FFFFF on your comments. The RCRA Docket is located at the above address, and is open from 9 a.m. to 4 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $.20 per page.

EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ASCII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. Rather, EPA is experimenting with this procedure as an attempt to expedite our internal review and response to comments. For further information on the submission of diskettes, contact the Waste Treatment Branch at the phone number listed below.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424-9346 (toll-free) or (703) 920-9810 locally. For technical information on BDAT contact the Waste Treatment Branch, Office of Solid Waste (OS-322-W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308-8434. For technical information on capacity analyses, contact the Capacity Branch, Office of Solid Waste (OS-321-W), (703) 308-8440.

Outline

I. Background

A. Summary of Statutory/Regulatory Requirements

The Hazardous and Solid Waste Amendments (HSWA), enacted on November 8, 1984, specify dates when particular groups of hazardous wastes are prohibited from land disposal unless "* * * it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous" (RCRA section 3004(d)(1), (e)(1), (g)(5); 42 U.S.C. 6924(d)(1), (e)(1), (g)(5)).

The amendments also require the Agency to set "* * * levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1), 42 U.S.C. 6924(m)(1)). Wastes that meet the BADT standards established by EPA are not prohibited and may be land disposed.

EPA promulgates land disposal restrictions (LDRs) under 40 CFR part 268. Treatment standards for restricted wastes are promulgated under 40 CFR part 268, subpart D. All of the land

disposal restrictions are effective when promulgated unless the Administrator grants a national capacity variance from the otherwise applicable date and establishes a different date (not to exceed two years beyond the statutory deadline) based on "* * * the earliest date on which adequate alternative treatment, recovery,or disposal capacity which protects human health and the environment will be available" (RCRA section 3004(h)(2), 42 U.S.C. 6924(h)(2)). The Administrator may also grant a case-by-case extension of the effective date for up to one year, renewable once for up to one additional year, when an applicant successfully makes certain demonstrations (RCRA section 3004(h)(3), 42 U.S.C. 6924(h)(3)). A case-by-case extension can be granted whether or not a national capacity variance has been granted.

In response to these requirements, EPA promulgated five regulations: Solvents and Dioxins, November 7, 1986 (52 FR 40572); California List, July 8, 1987 (52 FR 25760); First Third, August 17, 1988 (53 FR 31128); Second Third, June 23, 1989 (54 FR 26594); and Third Third, June 1, 1990 (55 FR 22520). These rulemakings set treatment standards for all hazardous wastes that were identified and listed in 40 CFR 261.21, .22, .23, .24, .31, .32, and .33 prior to November, 1984. Land disposal of these wastes in underground injection wells was regulated in separate rules for Solvents and Dioxins, California List, and First Third wastes (see 53 FR 28188, 53 FR 30908, and 54 FR 25416, respectively).

RCRA further requires the Agency to make land disposal prohibition determinations for hazardous wastes that are newly identified or listed in 40 CFR part 261 after November 8, 1984, within six months of the date of identification or listing (RCRA section 3004(g)(4), 42 U.S.C. 6924)g)(4)). The statute does not, however, provide for an automatic prohibition (referred to as a "hard hammer") of land disposal of such wastes if EPA fails to meet this deadline.

The Third Third rule, promulgated on May 8, 1990, set treatment standards for five newly identified wastes. Today's notice suggests possible treatment standards for a number of the remaining newly identified and listed hazardous wastes, and for contaminated soil, and requests comments and data.

In an advance notice of proposed rulemaking on May 30, 1991 (56 FR 24444) EPA requested data and comments on possible BDAT and treatment capacity for other wastes that have been identified and listed as hazardous since the enactment of the Hazardous and Solid Waste Amendments (HSWA) in November, 1984. These included newly listed wastes generated from the production of ethylene dibromide (EDB), ethylenebisdithiocarbamic acid (EBDC), methyl bromide, dinitrotoluene, toluenediamine, unsymmetrical dimethylhydrazine (UDMH), ortho-toluidine (U328), para-toluidine (U353), and 2-ethoxyethanol (U359). The Agency, in addition, solicited data and comment on potential approaches for developing treatment standards for two newly listed wastes from petroleum refining (i.e., F037 and F038), and for contaminated debris.

The Agency also solicited comment on possible modifications to existing land disposal restriction (LDR) provisions that may simplify the implementation of the BDAT treatment standards: potential universal treatment standards for various categories of wastes; conversion of treatment standards for various F and K wastes from standards based on scrubber waters to those based on conventional wastewater treatment; modifications to the treatment standards for F001–F005 solvent wastes; modifications of treatment standards for lab packs; and potential concentration-based treatment standards based on recovery of chromium from various hazardous wastes.

In the May 30, 1991 notice, and in a notice of proposed rulemaking for K061 wastes (April 12, 1991 (56 FR 15020)), EPA presented a concept for generic delisting of residues from high temperature metals recovery processes. EPA is, today, soliciting further comment on the concept of generic delisting as it may apply to other categories of wastes, such as incinerator ash and stabilized wastewater treatment sludges, and the relationship to EPA's potential establishment of universal treatment standards for certain categories of wastes. (See discussion of universal standards in section III.A. of the May 30, 1991.)

B. Summary of EPA's Procedures for Developing Treatment Standards

A general overview of the Agency's approach in performing analysis of BDAT for hazardous wastes can be found in section III.A.1. of the preamble to the final rule for Third Third wastes (55 FR 22535, June 1, 1990). The framework for the development of the entire Land Disposal Restrictions program was promulgated in the Solvents and Dioxins rule (51 FR 40572 (November 7, 1986)).

The following steps outline the general procedures that EPA follows in the development of waste code-specific treatment standards:

(1) Characterize and divide the wastes to be regulated into treatability groups (by waste code) based on similarities in physical and chemical properties of the wastes and constituents.

(2) Screen all applicable technologies to identify potential BDAT for each treatability group.

(3) Screen the treatment data from "demonstrated" "available" technologies with regard to the design and operation of the equipment, the quality assurance/quality control (QA/QC) analyses of the performance and operating data, and the accuracy and precision of the analytical tests used to assess treatment performance.

(4) Statistically evaluate the individual performance data for each of the various treatment technologies (where data from more than one technology are available) to determine the "best." Where data exist for only one technology, the Agency uses best engineering judgment to assess whether that technology represents the best applicable technology for that particular waste and whether the data indicate that the treatment system was well-designed and well-operated.

(5) Determine which constituents to regulate considering the technologies will be well-operated, thus assuring consistent achievement of best treatment.

(6) Develop the waste code-specific treatment standards accounting for all QA/QC measures.

Treatment standards are expressed either as maximum constituent-specific concentrations allowed in the waste (40 CFR 268.43), in an extract of the treated waste (40 CFR 268.41), as a specific technology or group of technologies (40 CFR 268.42), or as a combination of these. Although the statute provides discretion to establish BDAT standards as either levels or methods of treatment, EPA would rather set concentration-based treatment standards whenever possible, because they provide the regulated community with flexibility in choosing treatment technologies, and encourage the investigation and development of new and alternative technologies. (This does not, however, supersede the prohibitions on dilution to achieve the concentration-based treatment standard. See, for example, 55 FR 22656.) In addition, establishing concentration-based standards provides a means of ensuring that treatment technologies are consistently operated at conditions that will result in the best demonstrated performance.

In section III.A.1. of the Third Third final rule (55 FR 22535–22542 (June 1, 1990)), EPA discussed several additional issues that are important in determining compliance with the treatment standards, including: the applicability of treatment standards to treatment residues identified as "derived-from" wastes and to waste mixtures; impermissible switching of wastewater and nonwastewater standards (with specific discussions of issues associated with characteristic wastes); placing facility-specific monitoring and compliance requirements in waste analysis plans; and the relationship of concentration-based standards to detection limits and practical quantitation limits (PQLs).

II. Requests for General Comments and Data

EPA specifically is soliciting comment and data on the following as they pertain to the wastes identified in today's notice: State-of-the-art treatment and recycling technologies; waste characterization; waste minimization (as demonstrated both here and abroad); factors affecting treatment performance that should be considered during sampling/analysis efforts; on-site and off-site treatment capacity requirements; potential outreach activities; and information on the costs for setup and operation of any current and alternative treatment technologies for these wastes.

In previous notices, the Agency promulgated listings for certain wastes as hazardous under 40 CFR part 261. Although data on waste characteristics and current management practices have been gathered as part of the administrative record for each listing rule, the Agency has not completed its evaluation of the usefulness of these data for developing specific BDAT standards or assessing the capacity to treat (or recycle) these newly listed wastes. As a result, EPA is soliciting comments on the completeness of the existing listing data (as found in the administrative record for the notices for the proposed and final listing actions for each waste) and is requesting additional data and information with respect to treatment and capacity.

In order to expedite EPA's review of all comments and data submitted in response to this notice, EPA is requesting that the comments and data be voluntarily identified by the section headings and subheadings (or numbers) of today's notice. For example, comments on the "wood preserving wastes" could be identified by that title or by "V.A.", its subheading number. EPA recognizes that many comments may actually apply to several headings or subheadings (e.g., a comment on soil contaminated with wood preserving wastes could be identified as a comment for either V.A., wood preserving wastes, or IV., contaminated soil). In this case, the commenter should select the identification that they deem most appropriate, or simply identify the comment as a "general comment". While EPA does screen all comments for applicability to all areas discussed in today's notice, this identification procedure is expected to significantly expedite EPA's review process, particularly when coupled with the voluntary submission of comments on computer diskettes (as requested in the ADDRESSES section of today's notice).

A. Request for Comment and Data on Pollution Prevention for Newly Identified and Listed Wastes

EPA has made substantial progress over the years in improving environmental quality through its media-specific pollution control programs. Standard industrial practice for pollution control has concentrated largely on "end-of-pipe" treatment or land disposal of hazardous and nonhazardous wastes. HSWA established, however, a national policy of reducing or eliminating wastes as expeditiously as possible (RCRA section 1003(b)). EPA also realizes that programs emphasizing management of pollutants after they have been generated have limitations. EPA believes that reducing or eliminating discharges and/or emissions to the environment through the implementation of cost-effective source reduction and environmentally sound recycling practices can produce additional environmental benefits. Many businesses are already incorporating pollution prevention programs into their strategic planning. Such programs may decrease the volume and/or toxicity of wastes by altering production to incorporate source reduction or recycling.

Under sections 3002(b) and 3005(h) of HSWA, hazardous waste generators are required to certify that they have a program in place to reduce the volume or quantity and toxicity of hazardous waste to the degree determined by the generator to be economically practicable. EPA encourages generators to pursue source reduction and environmentally sound recycling wherever possible to reduce the need for the costs of subsequent treatment, storage, and disposal. Waste minimization planning programs have been suggested by EPA and mandated by some States.

To aid the regulated community, EPA has produced documents such as Draft Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program; Notice and Request for Comment (54 FR 25056 (June 12, 1989)) and The EPA Manual for Waste Minimization Opportunity Assessments (EPA 600/2–88/025, April 1988). Several States also have enacted waste minimization legislation (e.g., Massachusetts Toxics Use Reduction Act of 1989; Oregon Toxics Use Reduction and Hazardous Waste Reduction Act, House Bill 3515, July 2, 1989). Additional States have legislation pending that will mandate some type of pollution prevention program and/or facility planning, and many others offer technical assistance to companies that seek alternatives to treatment, storage, and disposal of waste.

Successful reduction in waste generation often does not require complex and/or expensive process changes. There are many relatively simple, cost-effective, and easily implemented engineering solutions that will achieve this goal. Evaluation of adherence to existing process control measures, along with slight modifications of these measures, can often result in volume reduction and significant cost savings to industry. These evaluations also may point out the need for more complex engineering evaluations (e.g., mixing effectiveness, process temperatures and pressures, and reagent grade selection). Simple physical audits of current waste generation and in-plant management practices for the wastes can also yield positive results. These audits often turn up simple, cost-effective, and easily implemented practices that do not involve complicated engineering analyses. They may point out, for example, the need for the repair and/or replacement of leaking pipes, valves, and simple equipment. In addition, they may identify the need to modify inspection and/or maintenance schedules.

Waste minimization opportunities for the manufacturing processes generating the wastes identified in today's notice may result in significant reductions in waste generation and, thus, considerable cost savings for industry. The Agency is interested in comments and data on such opportunities, including both successful and unsuccessful attempts to reduce waste generation, volume, or toxicity and the cost-effectiveness of these practices. It is also possible that, owing to previous implementation of waste minimization procedures, some facilities or specific

processes have little potential for decreases in waste generation rates or toxicity.

For the wastes identified in today's notice, the Agency is particularly interested in such specific information as: Data on the quantities of wastes that have been or could be reduced; a way to calculate achievable percentage reductions (accounting for changes in production rates); potential reduction in toxicity of the wastes; the results of waste audits; and potential cost savings that can be (or have been) achieved.

EPA is currently investigating new approaches that would incorporate waste minimization techniques into the BDAT process. BDAT standards could potentially be developed that somehow use source reduction and recycling technologies as the methods for controlling hazardous constituents in the waste. One approach could involve the use of alternative mass-balance limitations for some constituents as they remain in the treatment residuals after application of best available source reduction and/or recycling techniques. For example, the concentration of heavy metals and total cyanides in electroplating wastewater treatment sludges (e.g., F006 wastes) have been demonstrated to be reducible through the use of various source reduction and recycling techniques implemented in the manufacturing process prior to treatment. Thus, implementation of waste minimization practices prior to generation and subsequent stabilization of the wastewater treatment sludges would significantly reduce not only the total mass of hazardous constituents, but also the total volume of wastes destined for land disposal units. Such a result would accord well with the mandate of section 3004(m) to promulgate BDAT standards that reduce waste toxicity or mobility in a way that "minimizes" threats to human health and the environment. (Data currently available indicate that stabilization can often result in a significant increase in total waste volume when complying with current treatment standards.) In addition, there may be situations where specifying the use of a treatment or recovery technology might provide more effective protection than relying on concentration-based or mass-based standards.

All of this is not to say that the Agency will require waste minimization as BDAT, especially by identifying a specific technology that must be used. While the Agency believes that waste minimization is important, we also believe that there should be flexibility in the program in order to encourage innovation so as to find new and better methods to control hazardous wastes. Thus, the Agency welcomes comments on whether, and if so, how cost-effective waste minimization could be factored into the development of BDAT.

B. General Approach to the Development of BDAT for Newly Identified and Listed Wastes

While the Agency has established a waste management hierarchy that favors source reduction, recycling, and recovery over conventional treatment, it is inevitable that some wastes will be generated. (See EPA's Pollution Prevention Strategy, January 1991.) Thus, standards based on treatment using BDAT will need to be developed for these wastes. The Agency recognizes that there may be some special situations where the generation of a particular waste can be totally eliminated, but this is unlikely for most wastes.

The Agency intends to develop BDAT standards for newly identified and listed wastes based on the transfer of performance data from the treatment of wastes with similar chemical and physical characteristics or similar concentrations of hazardous constituents. It also is likely that the treatment standards for these wastes will be established for both wastewater and nonwastewater forms and on a constituent-specific basis. These constituents are not necessarily limited to those identified as present in the wastes in today's notice.

The technologies forming the basis of the treatment standards, in general, are determined by whether the wastes contain organics and/or metals. For wastes containing primarily organics, the Agency has found that incineration and other thermal destruction techniques can destroy most organics to concentrations at or near the limit of detection as measured in the ash residues. Many people are concerned about environmental impacts of incinerating hazardous wastes, however, and prefer that alternative treatment technologies be used for wastes that must be treated. While the Agency believes that incineration and other thermal destruction technologies achieve a level of relatively complete destruction of organics, EPA typically establishes concentration-based standards based on these data rather than requiring the wastes to be incinerated. Thus, any alternative technologies that can achieve these levels may be used, unless otherwise restricted. In fact, where alternative destruction or removal technologies cannot achieve these levels, but achieve reasonably comparable results, the Agency may promulgate adjusted treatment standards achievable by both incineration and these technologies (see, for example, the promulgated treatment standards for petroleum refinery wastes (K048-K052) which are achievable by critical fluid extraction, thermal desorption, biotreatment, or incineration).

Since metals are never destroyed, wastes containing metals must be directly reused, extracted for recovery, chemically stabilized, or generated such that the metals are in a chemical state where the metals are substantially immobile or otherwise rendered less toxic. Wastes containing both organics and metals are usually first subject to some destruction technology, and since metals typically concentrate in the ash and/or scrubber water sludges, these additional residues may have to be chemically stabilized.

Wherever feasible, the Agency is considering transferring treatment standards for both wastewater and nonwastewater forms of the newly identified and listed wastes from the list of treatment standards in F039, the listing for multi-source leachate, promulgated in the Third Third final rule (see 40 CFR 268.41 and .43 for treatment standards applicable to F039 wastes). These treatment standards were developed not only for F039 but also for the corresponding U and P wastes and for many of the F and K wastes. The standards were based on the use of several treatment technologies performed on a wide variety of waste matrices, thus ensuring that the treatment standards are achievable for a wide variety of wastes. The standards for the nonwastewater forms of F039 are known to be achievable by thermal destruction techniques, such as incineration, or burning in boilers or industrial furnaces, while those for the F039 wastewaters are achievable by multiple wastewater treatment technologies. If a newly identified or listed waste or a new waste contains chemicals that are not currently regulated in F039 wastes, EPA will develop treatment standards for these constituents and may then propose to add them to the treatment standards for F039. (The Final BDAT Background Document for U and P Wastes/Multi-source Leachate is available from NTIS (National Technical Information Service), 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487-4600. The NTIS numbers for the three-volume set are PB90-234337, PB90-234345, and PB90-234352.)

In order to determine whether existing treatment standards such as those established for F039 can be transferred, the Agency is soliciting the following data and information on these newly identified and listed wastes: Technical descriptions of the treatment systems that are currently being used for these wastes; descriptions of alternative technologies that might be currently available or anticipated as applicable; performance data for the treatment of these wastes (in particular, constituent concentrations in both treated and untreated wastes, as well as information on the equipment design and optimum operating conditions); information on known or perceived difficulties in analyzing treatment residues or specific constitutents; quality assurance/control information for all data submissions; and information on the costs for setup and operation of any current and alternative treatment technologies for these wastes.

C. General Approach to the Analysis of Capacity for Newly Identified and Listed Wastes

1. Data Availability

In determining when land disposal prohibitions for a given waste should become effective, EPA must evaluate the availability of capacity to treat that waste. The Agency performs capacity analyses to determine the amount of alternative treatment or recovery capacity available to accommodate the volumes of waste that will be affected by the land disposal prohibition. If adequate capacity exists, the waste is restricted from further land disposal. If adequate capacity does not exist, EPA may grant a national capacity variance for the waste for up to two years, or until adequate alternative treatment capacity becomes available, whichever is sooner. To perform the necessary capacity analyses, the Agency needs reliable data on current waste generation, waste management practices, available alternative treatment capacity, and planned treatment capacity.

For previous land disposal restriction rules, the Agency performed capacity analyses using data from national surveys, including the 1981 Mail Survey, the 1986 National Screening Survey, the 1987 National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (the TSDR Survey), and the 1987 National Survey of Hazardous Waste Generators (the Generator Survey). The Agency conducted the TSDR Survey to obtain comprehensive data on the nation's capacity for managing hazardous waste and on the volumes of hazardous waste being land disposed. The Generator Survey includes data on waste generation, waste characterization, and hazardous waste treatment capacity in units exempt from RCRA permitting. Data from the TSDR and Generator Surveys were used in capacity analysis for the First Third, Second Third and Third Third LDR rules.

Although the TSDR and Generator Surveys were conducted in 1987, data from these surveys reflect 1986 waste generation and waste management practices. These surveys cannot be used to determine the volumes of newly listed and identified waste requiring treatment, since the majority of these wastes were not listed as hazardous until after 1986 and, therefore, were not included in the surveys. In addition, these surveys may not contain adequate information on currently available capacity to treat newly listed and identified wastes because the data reflect 1986 capacity and do not include facility expansions or closures that have occurred since then. Although adjustments have been made to these data to account for changes in waste management through 1990, this was not done on a consistent basis across all waste management practices. For these reasons, the Agency requests data on currently available treatment capacity to determine whether adequate capacity exists to treat newly listed and identified wastes.

EPA has compiled data from available sources including proposed and final listing rules, regulatory impact analyses (RIAs), background information documents (BIDs), and the National Survey of Solid Waste from Mineral Processing Facilities, and the Petroleum Refining Data Base. Even with these sources, however, gaps in the capacity-related data for newly listed and identified wastes remain. Much of the data are several years old and may not reflect current waste generation and management practices. In particular, data from the proposed and final listing rules are often incomplete, and, in some cases, no data on waste generation or management are included, since these rules focus on the characteristics that render a waste hazardous, rather than on waste generation and management. The RIAs and BIDs frequently use estimated data based on assumptions rather than on data collected directly from generators. The National Survey of Solid Waste from Mineral Processing Facilities does contain data for some of the mineral processing wastes; however, not all mineral processing wastes were included in the survey. The Petroleum Refining Data Base reflects 1983 data and does include all currently operating petroleum refineries. For these reasons, EPA requests additional data on the waste generation and management of newly listed and identified wastes to perform capacity analyses for these wastes.

2. Waste Management Practices

To perform capacity analyses, the Agency needs to determine the volumes of hazardous waste that will require treatment prior to land disposal. The volumes of waste requiring treatment depend, in turn, on the waste management practices employed by the hazardous waste generators. Hazardous waste that is currently treated on-site does not require additional commercial treatment capacity. Hazardous waste generators may also manage their waste using practices exempt from RCRA regulations. For example, hazardous wastes discharged to POTWs or navigable waters without any intervening land disposal are not subject to the treatment standards (i.e., they are restricted and not prohibited, and therefore subject only to recordkeeping requirements. See, e.g., 55 FR 22662). Some generators may manage their waste entirely in RCRA-exempt tanks and thus likewise may not be affected by the treatment standards; others may recycle their waste immediately after generation and not land dispose it.

Other waste management practices can also affect capacity analyses. Generators may co-manage hazardous waste with nonhazardous waste or may dewater hazardous waste, thus changing the volume of waste requiring treatment. Newly listed and identified wastes mixed with regulated hazardous waste may currently undergo treatment and, thus, have been accounted for in the capacity analyses for past rulemakings. Additionally, the hazardous waste treatment technologies may generate additional wastes in the form of residuals that also will be subject to the LDRs.

As stated above, some generators already treat their hazardous waste on-site. Other generators may decide to construct on-site treatment capacity, if it is economically feasible. Since capacity analyses determine the availability of commercial treatment, wastes that are treated on-site are not included in the estimate of the volumes requiring commercial alternative treatment capacity. Nevertheless, the Agency must still obtain information on the volumes of waste that are or will be treated on-site. However, to the extent that residuals from the treatment of

hazardous waste are generated, the Agency also needs to account for these residuals in its capacity analysis. EPA requests information on the volumes of waste that are or will be treated on-site or at captive facilities, the residuals generated from treatment, as well as any planned changes in on-site capacity.

Much of the data on waste management practices for newly listed and identified wastes were collected prior to the listing of those wastes. The added costs of managing a regulated hazardous waste may have induced generators to minimize or recycle their waste or otherwise alter their management practices. Any change in management practices will affect the volumes of waste requiring commercial treatment capacity.

As can be seen from the above discussion, to perform capacity analyses, EPA requests information on current and future waste management practices for newly listed and identified wastes, including the volumes of waste that are recycled, mixed with or co-managed with other waste, discharged under Clean Water Act provisions, injected underground via a regulated unit, and the volumes and types of residuals that are generated by the various management practices applicable to newly listed and identified wastes (e.g., treatment residuals).

3. Availability of Treatment

The availability of adequate commercial treatment capacity for wastes not otherwise treated determines whether or not a waste is granted a national capacity variance. The commercial hazardous waste management industry is extremely dynamic. National commercial treatment capacity changes as new facilities come on-line, as new units and new technologies are added at existing facilities, and as facilities expand existing units. The available capacity at commercial facilities also changes as facilities change their commercial status (e.g., changing from a fully commercial to a limited commercial or captive facility). In addition, the amount of utilized treatment capacity changes as national capacity variances granted for previous LDR rules expire and as economic and regulatory conditions change the baseline demand for various treatment technologies. To determine the availability of capacity for treating newly listed and identified wastes, the Agency needs to consider currently available capacity, as well as the timing of any future changes in available capacity.

Commercial combustion capacity for sludges and solids is an important and extremely dynamic component of the nation's hazardous waste management system. Previous LDR rules have substantially increased demand for this technology. Historically, there has been a shortage of capacity for this treatment; however, the increased demand for sludge/solid combustion has encouraged this sector to expand. EPA requests current data on the availability of sludge/solid combustion capacity as well as any planned expansions at combustion facilities in order to determine whether adequate capacity will be available for those newly listed and identified wastes that may require sludge/solid combustion.

Waste characteristics such as pH level, BTUs, anionic character, and physical form may also limit the availability of certain treatment technologies. For these reasons, the Agency requests data and comments on waste characteristics that might limit or preclude the use of any treatment technologies.

EPA requests data from facilities capable of treating hazardous wastes on their current treatment capacity and information on any plans they may have in the future to expand or reduce existing capacity. The agency also is requesting comments from companies that may be considering developing new hazardous waste treatment capacity. Specifically, EPA requests information on the determining factors involved in making decisions to build new treatment capacity.

4. EPA's Current Plans Concerning Capacity

In cases where important information for conducting capacity analysis for newly listed and identified wastes is not currently available, EPA may conduct additional data collection efforts to obtain the necessary data. The Agency could target the facilities generating large volumes of newly listed or identified wastes to obtain additional capacity-related data. The Agency may also collect additional information from the hazardous waste management industry on currently available treatment capacity.

The Agency is using this notice to present available data on newly listed and identified wastes. Whenever possible, the sources of the data are indicated. In this notice, EPA also presents key issues and preliminary assessments of capacity for newly listed and identified wastes. In addition, this notice presents a wide variety of potential approaches and assumptions the Agency could evaluate to develop capacity assessments for newly listed and identified wastes. EPA is requesting specific data and comments on currently available data and the possible approaches to capacity analyses from generators of newly listed and identified wastes. The data submitted to the Agency will be used in the capacity analyses for newly listed and identified wastes and to corroborate case-by-case variance determinations, as well as for other types of analyses (e.g., economic and cost impact analyses, regulatory impact analyses, market studies).

As noted, capacity information is important for many decisions and policies. To ensure the quality of this information, EPA must collect and validate the relevant data, and otherwise develop the pertinent data base, prior to analysis. This often is an iterative process which can be lengthy. EPA stresses that all knowledgeable parties should provide us with their data, comments and concerns as early as possible for the wastes and issues addressed by this notice.

D. Newly Identified Mixed Radioactive Hazardous Wastes

Radioactive mixed wastes (RMW) are unique hazardous wastes because of dual regulation by the Atomic Energy Act (AEA) for the radioactive components and by RCRA for the hazardous waste components. The hazardous waste components of RMW must meet all applicable treatment standards for each waste code prior to its disposal, unless the wastes are managed in land disposal units that have been granted a no-migration petition. Treating RMW presents, however, a major difficulty: Achieving the treatment standards for hazardous wastes while at the same time ensuring that the AEA safety and handling requirements for radioactive materials are met. In some instances, this may be resolved by establishing specific treatment standards for specific types of RMW, as the Agency did in the Third Third rule (see 40 CFR 268.42, Table 3), or by establishing site-specific variances for the waste.

RMW consists of hazardous waste mixed with high-level radioactive wastes, transuranic (TRU) wastes, or low-level radioactive wastes. High-level radioactive wastes are spent fuel from commercial nuclear reactors or wastes from the production of atomic weapons. TRU wastes contain elements with atomic numbers greater than 92 (the atomic number for uranium) and pose greater radioactive hazards than the low-level wastes because they contain long-lived alpha radiation emitters. Low-level radioactive wastes include

radioactive wastes that are not classified as high-level or TRU wastes.

All treatment standards that have been promulgated to date for RMW were in the Third Third final rule. Except for four specific types of RMW that have unique treatment standards, all promulgated treatment standards for RCRA listed and characteristic wastes also apply to the corresponding RMW. The Agency specifically is requesting comment on difficulties the regulated community has encountered with the treatment standards for RMW. EPA particularly is interested in resolving these issues on a more generic basis rather than relying solely on the use of the variance process.

While EPA does not specifically expect that many of the newly listed F and K wastes listed in today's notice are generated as RMW, EPA does anticipate that many radioactive wastes will now qualify as hazardous wastes (i.e., RMW) due to the recent toxicity characteristic (TC) rule. In addition, the development of new treatment standards for contaminated soil are expected to be applicable to some RMW. EPA, therefore, is requesting comment and data about specific RMW that are TC wastes and are considered soil. In addition, EPA requests information and suggestions on special decontamination procedures that have been developed (or may be required) specifically for the removal of the radioactive components of contaminated soil. (These may affect the selection of appropriate management practices for these wastes.) EPA, therefore, is requesting that readers carefully review today's notice in its entirety for its potential applicability to RMW with respect to generation, treatment, and capacity for all wastes discussed in today's notice.

E. Request for Comment on the Nexus of the Bevill Amendment and the Land Disposal Restrictions

EPA also solicits comment on requiring residues from the devices referred to in the Bevill amendment (utility boilers burning coal, various mining and mineral processing furnaces, and cement kilns) to meet the LDR treatment standards as a condition of being eligible for the Bevill exemption when these devices process prohibited hazardous wastes. In other words, if a cement kiln were to burn a prohibited spent solvent as fuel or a soil contaminated with a prohibited waste as raw material substitute, along with its normal raw material, the cement kiln dust would have to meet the treatment standard for the prohibited solvent as a condition to being considered a temporarily-exempt Bevill waste. The Agency solicits comment as to whether these devices are achieving the treatment standards in practice, and if not, for which hazardous wastes are the standards not being achieved and by what margin.

The Agency is aware of the legal argument that if these residues are covered under the Bevill amendment, then they cannot be regulated under subtitle C and so could not be subject to any of the LDR prohibitions. The DC Circuit has rejected a similar argument that would have nullified otherwise-applicable subtitle C requirements not directly related to the Bevill residues in *American Iron and Steel Inst.* v. *EPA*, 886 F. 2d 390, 395–96 (DC Cir. 1989). Moreover, Congress did not directly address the status of residues from Bevill devices that coprocess prohibited hazardous wastes, so that the Agency has considerable discretion in classifying such residues. Where Congress was concerned about subtitle C regulation of coprocessed hazardous waste affecting Bevill status of residues, it said so explicitly. See RCRA section 3004(q)(1). The absence of such a cautionary provision in any of the land disposal restriction statutory provisions is an indication of Congress' lack of concern.

III. Potential BDAT for Toxicity Characteristic Wastes

A. Background

On March 29, 1990, EPA promulgated revisions to 40 CFR 261.24—the Toxicity Characteristic or "TC"—replacing the EP leaching procedure with the toxicity characteristic leaching procedure (TCLP). This rule also increased the number of waste codes regulated under this characteristic from 14 to 40. TC wastes that are considered newly identified wastes for the purpose of developing land disposal restrictions (LDRs) fall into two categories. One consists of 26 new organic codes and includes all wastes identified as D018–D043. Newly identified wastes in the second category are limited to those D004–D011 metal wastes and D012–D017 pesticide wastes that are now hazardous because of the change in the leaching procedure. (See further explanation of this situation in a later discussion of D004–D017 wastes in section III.E. of today's notice.) The following sections of today's notice discuss how EPA intends to determine BDAT for these newly identified wastes and to propose treatment standards for them under the LDRs.

EPA is also soliciting information that may be used to characterize industrial generation patterns that could then be used to assess the potential for source reduction or recycling for these TC wastes. While source reduction and recycling are high priorities for any hazardous waste, the wide diversity of generation of these TC wastes is expected to impact EPA's ability to evaluate source reduction and recycling. (See also EPA's general solicitation for information on pollution prevention opportunities in section II.A. above.)

B. Potential Treatment Standards for New TC Organic Wastes (D018–D043)

D018—Benzene
D019—Carbon tetrachloride
D020—Chlordane
D021—Chlorobenzene
D022—Chloroform
D023—o-Cresol
D024—m-Cresol
D025—p-Cresol
D026—Cresol
D027—1,4-Dichlorobenzene
D028—1,2-Dichloroethane
D029—1,1-Dichloroethylene
D030—2,4-Dinitrotoluene
D031—Heptachlor
D031—Heptachlor epoxide
D032—Hexachlorobenzene
D033—Hexachloro-1,3-butadiene
D034—Hexachloroethane
D035—Methyl ethyl ketone
D036—Nitrobenzene
D037—Pentachlorophenol
D038—Pyridine
D039—Tetrachloroethylene
D040—Trichloroethylene
D041—2,4,5-Trichlorophenol
D042—2,4,6-Trichlorophenol
D043—Vinyl chloride

1. General Approach to Establishing Concentration-Based Treatment Standards

EPA is considering two general analytical approaches for the development of concentration-based treatment standards for the newly identified TC wastes (D018–D043). One approach is to establish standards based on the analysis of TCLP leachates. The other approach is to establish standards based on total constituent analysis. Applicability of these approaches depends on the physical form of the waste (i.e., whether the TC waste is a wastewater or a nonwastewater), whether the waste is a metal or an organic, the toxicity of the waste, and the available performance data. The Agency considers these and other factors in establishing BDAT treatment standards (see BDAT Methodology Background Document).

A central issue in establishing treatment standards for the newly identified TC wastes is whether or not to require treatment below levels that would define the waste as hazardous. In the final rule for Third Third wastes,

EPA was confronted with this same issue for the EPA characteristic metal wastes (D004–D011) and pesticide wastes (D012–D017). (See the general discussion of the development of treatment standards for these wastes in 55 FR 22553–22575 (June 1, 1990).) In that rule, EPA maintained that it has the authority to establish treatment standards below the characteristic levels, and did so, where data were available. (See also the discussion below on the consideration of other programs.) In keeping with this reasoning, for some of the characteristic wastes, the Agency also established standards that require the use of specified treatment or recovery methods that also ensure treatment below the characteristic level.

EPA recognized, however, that there were far-reaching policy considerations regarding the actual implementation of this approach, particularly as they relate to subtitle D facilities and to discharges under the Clean Water Act or Safe Drinking Water Act. (These were important factors in establishing treatment standards for the EP characteristic wastes.) EPA is, thus, evaluating the impact of establishing treatment standards for the TC wastes on these other environmental programs. Therefore, notwithstanding the legal and technical precedents established in previous LDR rulemakings, the Agency specifically requests comment on whether, as a policy matter, standards should be set below the levels that would define the waste as hazardous.

a. Nonwastewaters

While either of the two analytical approaches—TCLP leachate or total analysis—could be used for nonwastewater forms of TC wastes, it is somewhat difficult to compare potential treatment standards based on total constituent analysis to those that might be developed based on TCLP analysis (or to the characteristic levels). This is primarily because of the inherent differences in the analytical techniques. In a TCLP analysis, organic constituents are extracted from a waste using an aqueous leaching medium, while in a total analysis, they are extracted using an organic solvent (typically at elevated temperatures or with significant agitation).

One could compare the numerical value of a potential TCLP standard to a theoretical maximum leaching level derived from a total constituent standard. One would have to assume that the entire amount of the TC constituent (as represented by the total constituent concentration at the level of the standard) would be extracted into an aqueous leaching medium. One would then have to account for the 20-fold dilution inherent in the TCLP analytical procedure. A theoretical maximum leaching value could, thus, be calculated by dividing the numerical value of the total constituent treatment standard by a factor of 20.

One possible advantage in establishing a TCLP standard for a nonwastewater TC waste is that the basis of the treatment standard would than be consistent with the analytical basis for defining the waste as hazardous. EPA could, thus, directly compare any potential TCLP standard to the corresponding TCLP level. One problem in developing such standards is, however, that the majority of treatment data currently available to EPA is based on total constituent analysis rather than TCLP analysis. Without the appropriate TCLP data for both treated and untreated wastes, it is more difficult for EPA to establish standards based on TCLP analysis (except, perhaps, for establishing the characteristic level as the standard).

There appear to be at least three major advantages to establishing standards based on total constituent analysis for nonwastewaters. First, such standards would be consistent with the majority of treatment standards for hazardous organics in other RCRA hazardous wastes (i.e., they are also based on analysis of total constituents). This would be particularly advantageous for those listed wastes that are regulated for the same constituents included in the TC. The following example demonstrates this point. A treatment standard requiring total constituent analysis for benzene (as well as 12 other constituents) exists for K048 wastes. If a D018 waste (TC for benzene) is commingled with a K048 waste prior to treatment and if the treatment standard for the D018 waste is based on TCLP analysis, the treatment residues would have to be analyzed for benzene using both a total analysis and a TCLP analysis. Total analysis for the other constituents would have to be performed regardless of the analytical basis of the D018 standard.

Second, EPA is investigating the potential for establishing a set of standards for over 200 organic constituents that could be universally applied to the majority of listed hazardous wastes and could virtually replace many of the existing standards. As evidence in the aforementioned example, standards based on different analyses (i.e., total and TCLP) could complicate the application of these universal standards. Two different basis of analytical standards for the same constituents could, thus, potentially interfere with the total goal of simplifying the treatment standards.

Third, treatment standards based on a total constituent analysis more accurately measure the performance of extraction and destruction technologies, while standards based on TCLP analysis typically measure the performance of immobilization technologies. (Extraction technologies remove and often recover organics for either reuse or subsequent destruction. Destruction technologies involve biological, chemical, and/or thermal destruction of the hazardous organics.) Where it is desirable to minimize the hazardous organics in residues requiring land disposal (i.e., assuming source reduction techniques have been employed to reduce the generation of the waste in the first place), treatment standards reflecting the total amount of hazardous organics that have been destroyed or extracted from the waste (i.e., standards based on total constituent analysis) more accurately measure this goal than do those standards based on a leachable amount.

b. Wastewaters

The TCLP analytical procedure was established primarily for application to nonwastewaters. For wastewater forms of the TC wastes, the protocol in 40 CFR 261.24(a) calls for total constituent analysis of the TC constituents in the waste (i.e., where the waste contains less than 0.5 percent filterable solids). The issue of comparing TCLP analysis versus total constituent analysis is, thus, moot for TC wastewaters. The major issue is whether to establish technology-specific standards, concentration-based standards at the characteristic level, or concentration-based standards below than the characteristic level.

In the final rule for Third Third wastes, EPA established technology-specific treatment standards rather than setting concentration-based standards for wastewater forms of D012–D017 pesticides. While this is a potential option for the TC organic wastes (D018–D043), preliminary investigation indicates that many treatment technologies may have to be specified as BDAT. The variability of waste types and quantity of D018–D043 wastewaters is also expected to be much greater than the D012–D017 wastewaters. (See further discussion of TRI data and capacity data on wastewaters in sections III.B.5. and III.C., respectively.) This variability in waste characteristics further complicates the selection of the

most appropriate technologies to specify as BDAT.

Additional complications arise in establishing technology-specific standards for TC wastewaters. Unless treatment standards account for all possible treatment trains required for the TC wastewaters, facilities would have to apply for a treatability variance (40 CFR 268.44) or for a demonstration of equivalency (40 CFR 268.42(b)) on a relatively frequent basis. These additional regulatory requirements and procedures could potentially serve as impediments to the development or use of innovative or alternative treatment technologies. Where the standards are expressed as concentrations, the flexibility in selecting the most appropriate treatment technology for each facility and waste is generally increased.

Moreover, if EPA were to specify technologies for TC wastewaters, it would most likely have to establish additional means of ensuring that the technologies are well-designed and well-operated. This is particularly important as illustrated in the following example. The efficiency of carbon adsorption for TC wastewaters listed for substituted phenolics (i.e., D023, D024, D025, D026, D037, D041, and D042) is greatly affected by the pH of the untreated waste. By using the correct pH, these phenolics can be almost completely removed from the wastewater for significant periods of time. Using the wrong pH or using the carbon too long can reduce the efficiency of removal to essentially zero. Specifying carbon adsorption as a standard would, therefore, need to incorporate provisions into the standards that ensure proper control of pH.

With respect to concentration-based standards, the Agency believes that there are three major advantages to establishing such standards for D018–D043 wastewaters (rather than technology-specific standards). First, wastewater treatment data using many different wastewater treatment technologies are available for all 26 TC organic constituents. This implies that concentration-based standards can be established that would allow a facility to select the most appropriate technology for a given waste. Second, wastewater treatment standards for these TC organics (as they are regulated in other RCRA hazardous wastes) are also concentration-based rather than technology-specific. Third, concentration-based standards would conform to EPA's concept of establishing a universal set of wastewater standards for organics.

Available data indicate that concentration-based standards can be readily met at levels below characteristic levels. However, under the existing regulations, once a waste is treated to the characteristic level, the waste is no longer considered hazardous. Therefore, the Agency questions what benefits are gained by requiring TC wastewaters to be treated to levels below the characteristic level. Nevertheless, if such levels can be readily obtained and if the Agency decides to set a universal set of treatment standards, the Agency believes that it may be appropriate to set the treatment standard below the characteristic level in order to simplify compliance with the rules. The Agency specifically solicits comment on this point.

2. Characterization of D018–D043 Wastes

In the process of developing treatment standards for D018–D043, EPA will be examining the industries and processes generating these wastes. In doing so, EPA will determine whether there are certain waste characteristics based on generation patterns that may impact the achievability of potential treatment standards. Since these wastes have been recently identified, complete generation data for D018–D043 wastes may not be available until the next biennial reporting for RCRA hazardous wastes. As a result, chemical and physical characterization data are also expected to be limited.

According to the regulatory impact analysis conducted for the TC, D018–D043 wastes are generated by widely diverse industries and/or processes and should, therefore, be comprised of a broad range of constituent concentrations in a variety of physical matrices. In the Third Third final rule, EPA encountered similar situations in developing treatment standards for wastes identified as D004–D017 (based on the old EP leaching procedure), for F039 (multisource leachate), and for many U or P wastes. EPA was able to account for the variability in waste characteristics in developing treatment standards for these wastes.

3. Potential Treatability Groups for D018–D043 from the Petroleum Refining Industry

In an attempt to minimize the number of treatment standards for D018–D043 nonwastewaters, one option that EPA is evaluating would be to set concentration-based standards that would be applicable to the majority of TC wastes. EPA is requesting information on anticipated patterns in waste characteristics or industrial generation that may assist EPA in establishing treatability subcategories for D018–D043 wastes.

EPA anticipates that one such industry is the petroleum refining industry. A potential problem with TC nonwastewaters from this industry is that these wastes may contain significant amounts of oil. Recovery of the oil or other organics, thus, becomes an important alternative to incineration or other destructive technologies. If certain D018–D043 wastes from the petroleum refining industry can be identified that are similar to the listed wastes from this industry (K048–K052, F037, and F038) or if they are demonstrated to contain sufficient levels of recoverable organics, EPA may propose a separate treatability group within each appropriate TC waste code. EPA specifically solicits comment on this approach and the probability of the existence of such recoverable TC wastes. EPA also solicits information and data that could be used to establish a minimum or maximum organic content (as measured by total oils and greases content or total organic content) for this potential subcategory.

4. Potential Transfer of Standards from F039 Wastewaters and Nonwastewaters

One option EPA is considering is to transfer the concentration-based standards for the 26 TC organic constituents in D018–D043 from the corresponding standards for wastewater and nonwastewater forms of F039, multisource leachate. (These were also developed for the corresponding U and P wastes.) The standards for each TC chemical in D018–D043 would then be transferred from the corresponding constituent standard of F039 (e.g., the standard for D018 would be transferred from the wastewater and nonwastewater standards for benzene in F039).

The primary basis of this potential transfer is the similarities in the assumptions behind the development of the F039 standards and those expected for these TC wastes. F039 wastes and the corresponding U and P wastes can come from many different sources and can vary in concentration levels much like the TC wastes. EPA examined many sources of data in developing these standards, including treatment data on specific U and P wastes, F and K wastes from a variety of industries, and multisource leachate. F039 treatment standards, thus, take into account not only the high degree of variability of waste matrices, but also the variability in treatment technologies used.

a. Nonwastewaters

The treatment standards for nonwastewater forms of F039 were based primarily on incineration performance data. Most of these data came from EPA-conducted incineration tests. The standards are generally quite close in numerical value to those for K048–K052. Since standards for K048–K052 are achievable by critical fluid extraction and thermal desorption, EPA suspects that the potential standards for D018–D043 based on a transfer from F039 are achievable by other technologies. On May 30, 1991, EPA solicited information and data that would indicate whether these standards could be achieved using treatment technologies other than incineration. (See 56 FR 24444.) EPA is not aware of situations where the standards for the TC organic constituents as regulated in other hazardous wastes are not being achieved. Nevertheless, the Agency specifically solicits comment on this point.

b. Wastewaters

The development of standards for multisource leachate (F039) wastewaters was based on a transfer of performance data from various sources, including: (1) The Office of Water's Industrial Technology Division and National Pollution Discharge Elimination System data (specifically from the Organic Chemicals, Plastics, and Synthetic Fibers database); (2) the Hazardous Waste Engineering Research Laboratory's database; (3) the Office of Solid Waste BDAT data (from previous land disposal restriction rules); and (4) additional wastewater treatment data from articles on wet air oxidation and powdered activated carbon treatment. Many of the aforementioned data included a significant amount of biological wastewater treatment data.

Most of the wastewater F039 standards are below the corresponding TC characteristic levels. As discussed earlier, EPA has not made a decision to establish treatment standards below the TC characteristic levels. In fact, EPA is specifically requesting comment on this issue. While EPA has not completed its analysis of the impact of establishing these standards, some capacity information suggests that the impact of going below the characteristic levels may be less than expected. Preliminary data indicate that the majority of TC wastewaters may be currently managed in units exempt from general compliance with land disposal restrictions or from compliance with the treatment standards. As a result, EPA anticipates there may be relatively few facilities that are actually impacted. EPA is specifically soliciting comment and facility-specific information that might indicate the potential scope of this impact.

c. Availability of Background Information

The BDAT Background Document for U and P wastes and Multisource Leachate (F039) consists of three volumes. Volume A covers the wastewaters with standards expressed as concentrations. Volume B pertains to those wastes for which technologies were specified as standards. Volume C covers the nonwastewaters with standards expressed as concentrations. These documents are organized by constituent; cross-reference tables with waste code, regulated constituent, and treatment standards are included. These documents provide EPA's rationale and technical support for developing treatment standards for hazardous constituents in F039. (The Final BDAT Background Document for U and P Wastes/Multisource Leachate is available from NTIS (National Technical Information Service), 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487–4600. The NTIS numbers for the three-volume set are PB90–234337, PB90–234345, and PB90–234352.)

5. Use of the Toxic Release Inventory Data

EPA intends to rely, in part, on data from the Toxic Release Inventory (TRI) to assist in the investigation of the overall scope of potential generators and to estimate the likely presence of waste characteristics that may interfere with applicable treatment processes. Data on the releases of chemicals specified in 40 CFR part 372 are submitted annually by industries with two-digit standard industrial classification codes, 20 through 39, as required by section 313 of the Emergency Planning and Community Right-to-Know Act. Most of the 26 TC organic chemicals are included on that list. The TRI data do not, however, track the generation and release of specific hazardous wastes such as the TC wastes. They report, instead, the releases of the chemicals corresponding to the TC. EPA anticipates that release data on the TC chemicals may be used to estimate the potential magnitude of EPA's investigations and, thus, could provide another tool for investigating sources and patterns of potential generation of TC wastes. (See also the discussion of industrial generation of TC wastes in the discussion of capacity for TC wastes below.)

Preliminary examination of the 1987 data for total releases (i.e., the sum of the quantities released to the air, land, and water) of the chemicals corresponding to the new TC wastes indicates that a total of approximately 580 million pounds of these chemicals were released. Most (98 percent) of the total releases involved nine relatively volatile organics. In descending order of total quantities released, these nine chemicals were: Methyl ethyl ketone, trichloroethylene, tetrachloroethylene, benzene, chloroform, 1,2-dichloroethane, vinyl chloride, chlorobenzene, and carbon tetrachloride. While the releases for these nine chemicals are quite large, EPA suspects that the majority of them were to the air. This is supported by other EPA estimates indicating a rate of 85 percent loss of volatile organics to the air. As a result, the magnitude of the generation of solid wastes containing these chemicals is expected to be significantly lower than that implied by the total release data.

If these chemicals were released as solid wastes and were above the characteristic limits, they would correspond to the new TC wastes identified as D035, D040, D039, D018, D022, D028, D043, D021, and D019. All nine of these chemicals were released by 50 or more facilities (per chemical). Patterns may, thus, exist in the industries releasing these chemicals that may potentially lead to the development of treatability groups.

The 1987 TRI data also indicate that only 2.8 million pounds of six specific organic chemicals (hexachlorobenzene, hexachloro-1,3-butadiene, Chlordane, Heptachlor, 2,4,6-trichlorophenol, and 2,4,5-trichlorophenol) were released from a total of only 22 facilities. If these six chemicals were released in solid wastes and were above the characteristic limits, they would correspond to the new TC wastes identified as D032, D033, D020, D031, D042, and D041. Because these six chemicals are typically used as pesticides and because they are anticipated to be generated by a very limited number of facilities, EPA anticipates that the variability in the composition of these six wastes may be somewhat limited. Therefore, EPA is investigating whether this would justify transferring existing treatment data.

The TRI data also indicate that o-cresol, m-cresol, p-cresol, and pentachlorophenol were released from fewer than 50 facilities each, totalling only 1.2 million pounds. While analysis of the data is incomplete, it may be assumed that the releases came from facilities preserving wood with these

chemicals. These data could easily represent facilities generating D023, D024, D025, and D037 wastes. EPA also intends to investigate whether the transfer of treatment standards for K001 and U052 wood preserving wastes may be appropriate for these wastes or whether a separate treatability group based on the wood preserving industry should be developed.

C. Capacity Issues for All TC Wastes

The primary sources of capacity-related data for TC wastes is the Regulatory Impact Analysis (RIA) and Background Information Documents (BIDs) prepared for the TC rulemaking which estimated total volumes of waste generated by all industrial sectors studied, the volume for each waste stream expected to exhibit the TC, the number of facilities affected, and the volume of wastes managed in land-based units that may be affected by the LDRs. EPA estimated that 2.34 billion tons of waste exhibiting the TC would be generated annually by the industries studied. Most of this waste (over 2.33 billion tons) is an aqueous liquid, with a very small portion (50,000 tons) being organic liquid. Sludges and slurries account for approximately 2,000,000 tons, while solid residuals account for approximately 20,000 tons. Most of the TC wastes are generated by a few industries. It was estimated that the petroleum refining industry generates almost 760,000,000 tons of TC wastes, or about 33 percent of all TC wastes generated annually. Together, the synthetic rubber, cellulosic and noncellulosic synthetic fiber, organic chemical, and petroleum refining industries generate over 80 percent of the total TC wastes produced annually.

EPA estimated that approximately 16,000 facilities may generate TC wastes. While 13,000 facilities in the wholesale petroleum marketing industry (80 percent of all facilities) could generate TC wastes, these facilities produce only 3 percent of the total volume of TC wastes. In contrast, the five industries that account for over 80 percent of the volume comprise less than 4 percent of the facilities.

In the RIA, EPA evaluated information on preregulatory or baseline management practices and estimated likely postregulatory (i.e., following the promulgation of the TC rule) compliance practices for each waste type. In particular, EPA assumed in the RIA that after the rule was implemented, facilities would use the least costly method of managing TC wastes as hazardous waste. EPA assumed in the RIA that the aqueous liquids would be managed in exempt wastewater treatment tank units or underground injection wells. Prior to the promulgation of treatment standards for newly identified TC wastes, solid residuals and sludges and slurries were likely to be managed on-site in subtitle C landfills. Management practices for sludges and slurries also could include on-site or off-site commercial subtitle C land application units or off-site commercial subtitle C landfills. TC wastes managed in land-based units, including underground injection wells, are subject to the LDRs and require alternative treatment. EPA requests information on the current management of nonwastewaters exhibiting the TC.

Wastewaters account for over 99 percent of the total waste volumes exhibiting the TC. The volume of wastewater residuals and of wastewaters that are deep-well injected are significant for capacity determinations. EPA estimated that approximately 760,000,000 tons of wastewaters are managed in surface impoundments annually, over 70 percent of which are generated by the petroleum refining industry. All other types of facilities were assumed to be using baseline management practices for wastewaters and are already in compliance with the subtitle C requirements.

Using currently available data, EPA estimates that approximately 540,000 tons (132 million gallons) of used oil generated annually may both exhibit the TC and be land disposed. (Used oil that exhibits the TC and is recycled is exempt from subtitle C control, except where the used oil is burned as a fuel; in this instance, the used oil is subject to minimal standards.) EPA may analyze treatment capacity for used oil separately from other TC wastes because, although used oil is generated across a wide variety of industries, the specific characteristics and management practices of used oil distinguish it from other TC wastes. EPA requests additional data on the generation and management of used oil and comment on this estimate.

In performing capacity analyses for TC wastes, EPA will have to account for the overlap of TC wastes with previously regulated waste. Some waste streams previously regulated as hazardous for certain metals may exhibit the TC. Because the TCLP is a different testing procedure than the EP, there may be additional volumes of characteristic wastes exhibiting the TC than were accounted for in the Third Third rule.

Wastes from industries not analyzed in the RIA or BIDs supporting the TC rule may also exhibit the TC, but EPA currently has few data on the wastes generated by these industries. In addition, there may be other potential sources of TC wastes, not specifically related to an industry or directly related to the generation of current waste streams. The primary sources of these other wastes are remediation wastes, soil, and debris generated during remedial activities taken under CERCLA remedial and removal actions, RCRA corrective actions or closure actions, state program authorities, and voluntary private party cleanup activities; certain PCB wastes; and waste disposed of in shallow Class V injection wells.

Currently available data on the facilities generating newly identified TC wastes do not generally indicate whether these facilities have on-site treatment capacity. EPA's capacity determinations for TC wastes will be impacted by the extent to which facilities generating TC wastes rely upon commercial treatment.

EPA requests information from industries that generate newly identified TC wastes, including information on volumes of TC wastes generated, current waste management practices (including the proportion of TC wastes that are land disposed), on-site treatment capacity, and the current regulatory status of generators. EPA may collect information in the future on facility-specific generation and management of TC wastes.

The lack of facility-specific management data also makes it difficult for EPA to determine what fraction of wastewaters is managed in tanks exempt from subtitle C requirements—a management practice likely to be more economical than the other management options. Consequently, EPA needs information on the actual management practices for wastes exhibiting the TC.

D. Additional RIA Information for TC Wastes

While an RIA for the TC rule was completed at the time it was promulgated, EPA is now soliciting the following additional information in order to understand more fully the recent costs impacts that the TC rule has had on industry: With respect to the cost of testing wastes for applicability of the TC, how often is judgment based on knowledge of the waste being used rather than on quantitative waste analysis? What process changes are being made in order to comply with the rule? What percentage of compliance is being achieved through such process changes? What are the increases in cost

per metric ton of managing TC wastes in Subtitle C disposal units?

The Agency also requests comment and data addressing the following RIA issues: What are the potential differences in human health and environmental benefits associated with setting treatment standards at the characteristic level versus below the characteristic level? What are the cost increases associated with meeting treatment standards that are below the characteristic levels? What is the potential for restricting from use certain types of technologies (including innovative technologies), if the standards are below the characteristic levels? What implementation problems would arise, if the former TC wastes (i.e., no longer exhibiting a hazardous characteristic) are restricted from land disposal as a result of the establishment of standards below the TC levels?

E. New TC Wastes That Were Not Previously Hazardous by the Old EP Leaching Procedure (D004–D017)

In the final rule for the Third Third wastes (55 FR 22520), EPA promulgated treatment standards for D004–D017 wastes, but only for those wastes that were previously hazardous by the old EP leaching procedure and remain hazardous by the new TCLP. This was due, in part, to the fact that the TC final rule was not promulgated until after the D004–D011 treatment standards had already been proposed. Wastes that were not hazardous by the old EP leaching procedure that are now hazardous using the new TCLP are considered newly identified D004–D017 wastes and are currently not subject to the treatment standards.

EPA is attempting to ascertain the existence of the wastes caught by this anomaly and to define their universe. EPA, thus, is soliciting information on the generation, characterization, and treatability of these newly identified wastes. Information on these wastes (assuming they exist) will assist EPA in developing treatment standards for them.

EPA envisions that two general categories of wastes may be in this universe. First, there may be new waste types and generators that were previously not in the hazardous waste system. Second, there may be wastes for which the frequency of being hazardous has increased (i.e., wastes that were not hazardous by the EP leaching procedure, but now fail the TCLP). The Agency requests information on the generation and management practices for both categories of newly identified TC wastes. Generators submitting comments and information of their newly identified D004–D017 wastes should specify in which of the above categories their wastes fall.

1. Metal Wastes (D004–D011)

D004—Arsenic
D005—Barium
D006—Cadmium
D007—Chromium (total)
D007—Lead
D009—Mercury
D010—Selenium
D011—Silver

a. Newly Identified D004–D011 Wastes

In anticipation of the promulgation of the TC rule, EPA established treatment standards for D005, D006, D007, D009, D010, and D011 nonwastewaters requiring compliance based on TCLP analysis rather than the old EP leaching procedure. This was possible because treatment data based on TCLP analysis of these six metals were available that supported the promulgated treatment standards. (In many cases, other supporting treatment data based on EP analysis were also available.) This also provided a consistent analytical basis for measuring compliance for both the characteristic and the treatment standards.

On the other hand, treatment standards for D004 (arsenic) and D008 (lead) nonwastewaters were established requiring compliance based on analysis of either an EP leachate or a TCLP leachate. This is because the data used to promulgate treatment standards for D004 and D008 were based on EP analysis (i.e., those data representing the most difficult waste to treat) and because additional data appeared to indicate that the TCLP leaching procedure was more aggressive than the EP procedure for certain D004 arsenic and D008 lead wastes. The Agency, thus, specified that if a waste does not achieve the nonwastewater standard based on analysis of a TCLP extract but does achieve the standard based on analysis of an EP extract, the waste is in compliance with the standard. (See the further discussion of the use of the TCLP versus EP analytical methods for compliance with the treatment standards in 55 FR 22660 (June 1, 1990).)

In an attempt to simplify the application and enforcement of these standards, EPA is now considering proposing that the treatment standards for D004 and D008 nonwastewaters be based solely on the analysis of TCLP extracts. EPA is soliciting comment and data on whether making this change in the analysis of load and arsenic would present any problems for the generators or treaters of these wastes.

For new wastes brought into the hazardous waste system, EPA is soliciting comment on their treatability and their anticipated ability to comply with the existing TCLP treatment standards for the old EP wastes. For all D004–D011 nonwastewaters that are newly characteristic TC wastes, EPA is, thus, considering proposing the application of the existing D004–D011 treatment standards.

b. Issues Concerning Existing Standards for D004–D011

In an advance notice of proposed rulemaking (56 FR 24444 (May 30, 1991)), the Agency solicited comment and data that could potentially be used to develop revised treatment standards for metal-bearing wastes. Except for D010 selenium wastes, treatment standards for metal-bearing wastes that were previously EP toxic are currently at the characteristic levels for D004–D011.

The Agency is now evaluating whether to revise the treatment standards for D004–D011 nonwastewaters; before the Agency could do this, additional data would have to be provided that could be used to define specific treatability groups. Standards for some treatability groups may conceivably be below the characteristic levels, while standards for the highly concentrated, difficult-to-treat, metal-bearing wastes may be somewhat higher than the characteristic levels. Any data on stabilization being submitted should include detailed information on the characteristics of all wastes being co-treated (both hazardous and nonhazardous), characteristics of the reagents or waste reagents being added, and their mixing ratios (including the amount of water or wastewater being added). This information is necessary in order to assess whether the data represent valid, significant treatment or merely represent the effects of dilution, and whether levels are being achieved through the presence of constituents found in the other wastes that may not be available to other facilities.

EPA is specifically interested in treatment data from pyrometallurgical, hydrometallurgical, and stabilization processes. The Agency is also requesting data on the available treatment/recovery capacity for these processes and on plans for expansion or closure of treatment systems. EPA will evaluate these data to determine whether to establish a universal set of metal standards for a limited number of definitive waste subcategories, such as metal hydroxide sludges, incinerator ash, metal sulfide sludges, and slags

from pyrometallurigcal technologies. These universal standards for subcategories could potentially lead to a justification for automatic delisting or generic exclusion. (This concept was presented in the proposed rule on April 12, 1991 (56 FR 15020) for residues from the high-temperature metals recovery of zinc from K061 electric arc furnace dust.) Wastes that do not fall under these subcategories would then remain subject to existing standards, and, in a sense, the characteristic level would essentially become a default standard for all other metal-bearing wastes.

Finally, in the Third Third final rule, treatment capacity extensions were given for some nonwastewater EP toxic metals (arsenic, lead materials before secondary smelting, mercury). When the capacity extensions expire, these wastes must meet characteristic BDAT before being land disposed. EPA would like to know if adequate treatment capacity is still unavailable (and how the waste is currently being treated), so that we might investigate other treatment options for these wastes, rather than relying on case-by-case variances. This information can be used to develop standards that are attainable by these treaters before their variances run out.

2. Pesticide Wastes (D012–D017)

D102—Endrin
D013—Lindane
D014—Methoxychlor
D015—Toxaphene
D016—2,4-D
D017—2,4,5-TP (Silvex)

While developing the existing standards for D012–D017 pesticides wastes, EPA determined that the number of wastes affected was very small. D012–D017 wastes that are considered newly listed TC wastes are, therefore, unlikely to exist. Since the existing nonwastewater treatment standards for D012–D017 were based on incineration and since incineration has been demonstrated to be less dependent upon matrix interferences, it is likely that any newly identified D012–D017 nonwastewaters (provided they exist) can comply with the existing D012–D017 nonwastewater standards.

EPA is, thus, considering proposing to extend the existing D012–D017 standards to all newly identified D012–D017 TC wastes. These standards are based on an analysis of total constituents in the waste rather than on a TCLP analysis.

EPA set methods of treatment for the EP toxic pesticide wastewaters in the Third Third final rule (55 FR 22554). Because treatment methods rather than concentration-based standards apply to these wastewaters, the dilution prohibition applies when these wastes are managed in systems regulated by the Clean Water Act, and destruction of these constituents is assured.

EPA is evaluating whether to transfer the concentration-based standards developed for these constituents in F039 to the respective D012–D017 wastewaters. This would be consistent with promulgated standards for many U, P, and K pesticide wastes that contain the same pesticides. EPA requests any comments on what the impact would be if concentration-based standards were set for these wastes.

IV. Potential BDAT for Contaminated Soil

This section of today's notice presents a discussion of the data currently available to EPA on contaminated soil, the status of ongoing treatment evaluations, and the approach and options EPA is considering for establishing revised treatment standards for contaminated soil. (A discussion of data and EPA's approach to develop treatment standards for contaminated debris was addressed in a previous advance notice of proposed rulemaking published on May 30, 1991 (56 FR 24444).) EPA is today soliciting any available treatment data and other information relating to the development of revised treatment standards for contaminated soil.

Commenters submitting performance data for treatment or recovery technologies in response to today's notice are requested to include, to the extent possible, the following: Complete chemical and physical analysis of the contaminated soil, treated soils, treatment residuals, and any other materials separated from the contaminated soil; technical descriptions of the treatment or recovery process, including design and operating parameters; and information on the quality control/quality assurance (QA/QC) procedures utilized for sampling, analyzing, and operating the technology.

EPA has developed a "Quality Assurance Project Plan (QAPP) for Characterization Sampling and Treatment Tests Conducted for the Contaminated Soil and Debris (CS&D) Program" that describes the data quality objectives of the contaminated soil and debris program and provides the following: Detailed protocols for field sampling and measurement; a list of contaminated soil and debris constituents; procedures for sample custody and transportation; and additional QA/QC procedures for sampling and analysis. This document is available in the docket. Those planning new treatment tests with the intent of submitting data to EPA are urged to consult the QAPP and communicate with EPA before testing to confirm that the data developed will meet EPA's QA/QC objectives.

EPA also is soliciting information on the costs associated with treatment or recovery technologies for contaminated soil in order to prepare a revised regulatory impact analysis. Of interest are technical reports that include costs or estimates of costs for set-up and operation of the treatment technology. These reports should include the appropriate information on treatment efficiencies and applicability to various soil types, including all the technical information discussed in the preceding paragraphs.

A. Development of Potential Regulatory Definitions for Soil and Contaminated Soil

EPA has previously developed definitions for soil that serve as guides in applying the treatment standards. The Agency now is considering and requesting comment on whether regulatory definitions for soil and contaminated soil are necessary or could provide a means of simplifying the implementation of treatment standards. These definitions could be placed either in 40 CFR 260.10 for general application, or in 40 CFR 268.2 for application only to the land disposal restrictions. The preliminary regulatory definitions for soil and contaminated soil are given below. (The appearance of these suggested definitions in today's notice should not be construed as replacing definitions that appear in other regulatory situations.) *Soil* means unconsolidated earth material composing the surficial geologic strata (material overlying bedrock), consisting of clay, silt, sand, or gravel size particles (sizes as classified by the U.S. Soil Conservation Service), or is a mixture of such materials with other liquids, sludges, or solids, and is inseparable by simple mechanical removal processes. *Contaminated soil* means soil that contains RCRA hazardous waste(s) listed in 40 CFR part 261, subpart D, or soil that otherwise exhibits one or more characteristics of a hazardous waste as defined in 40 CFR part 261, subpart C.

The term "inseparable" to describe mixtures of soil and wastes was developed to allow site managers (e.g., on-scene coordinators, remedial project managers, or equivalent corrective action officials) to determine whether the material to be excavated is separable from the soil by simple in-situ mechanical removal processes. Such

processes include pumping, dredging, or excavation by backhoe, forklifts, or other devices.

This approach is also intended to avoid requiring chemical analysis for soil characteristics in order to determine the exact boundaries between contaminated soil and wastes (e.g., soil particle size, elemental composition of the soil, or other characteristics, such as percent moisture, that would distinguish the soil from the waste). A basis for such chemical analysis has not been developed, and requiring this would most likely have a significant impact on the progress of the remedial action.

Liquids, sludges, solids, and wastes are, however, often separated during the treatment of contaminated soil. Depending upon the treatment process utilized for the soil, these separated materials may or may not have received treatment. It is, therefore, likely that these materials may require additional treatment. (See discussion of potential treatment standards for these residues later in this section. Treatment standards applicable to these materials will probably be different from those for the treated soil.)

B. Applicability of Existing Treatment Standards, Superfund 6A and 6B Guides, and EPA's Contained-in Policy

In promulgating land disposal restrictions (LDRs), including treatment standards, for Solvents and Dioxins, California List wastes, and the First, Second, and Third Third listed wastes, the Agency regulated soil contaminated with these restricted wastes. The LDRs promulgated in 40 CFR part 268 thus generally apply to contaminated soil and include such soil generated from corrective actions and closures at RCRA-regulated land disposal sites, remedial and removal actions at CERCLA (Superfund) sites, and private-party cleanups.

EPA has determined, however, that contaminated soil generally is more difficult to treat than the corresponding RCRA industrial waste. Special treatability variance procedures were established for contaminated soil based on limited soil treatment data that existed at the time. These data were used to develop interim guidance treatment levels (Superfund LDR Guides #6A and #6B, OSWER Directives 9347.3–06FS and 9347.3–07FS) for assessing these treatability variances. Complete copies of the 6A and B guides can be obtained by calling the RCRA Hotline at 1–800–424–9346.

Under EPA's "contained-in" policy, contaminated media (i.e., debris, soil, groundwater, sediments) containing RCRA wastes must be managed as if they were hazardous waste until the media no longer contain the hazardous waste (i.e., until decontaminated) or until the hazardous waste is delisted. To date, EPA has not issued any definitive guidance as to when, or at what levels, environmental media contaminated with hazardous waste no longer contain such waste. The Agency is considering codifying the contained-in policy when LDRs are promulgated for contaminated soils by determining that once a contaminated soil meets the applicable BDAT treatment standards, it no longer contains the hazardous waste, and, therefore, is no longer subject to Subtitle C requirements.

C. Related EPA Activities on Contaminated Media

1. Contaminated Media Cluster

The Agency has recently begun a broader consideration of contaminated media issues that will have some influence on the issues raised today. This effort is designed to improve the overall quality of its regulatory decision-making by looking at groups or clusters of regulations in order to develop more integrated approaches to various environmental problems. The purpose of one of these regulatory clusters, the Contaminated Media Cluster, is to develop a more integrated Agency approach to its policies and regulations dealing with waste remediation programs. Over the next several months, the Contaminated Media Cluster will gather information on the quantities and types of waste needing remediation, the types of risks they represent, the current statutory and regulatory framework, the elements of an effective cleanup process, and the costs and benefits of cleanup. The culmination of that effort will be a regulatory strategy that includes a set of objectives and operating principles for EPA's remediation programs. The LDR regulatory effort and the resolution of issues on contaminated soil will be closely coordinated with the Contaminated Media Cluster.

2. Weathered Sludges

EPA believes that weathered sludges may constitute a new category of contaminated media. EPA currently is attempting to assess the definition of weathered sludges, the comparison of these sludges to newly generated sludges, methods available to treat these sludges, and the relationship of these sludges to sediments. EPA is requesting data or comments on any of the above areas to consider in developing a research program which may lead to the amendment of BDAT standards that are currently applicable to weathered sludges.

3. EPA Lead Strategy

In the case of soil contaminated with lead, EPA will integrate the present rulemaking effort with the Agency's Lead Strategy, which was issued on February 21, 1991. This strategy presents a coordinated approach addressing the significant health and environmental problems resulting from lead pollution. Lead is a multimedia pollutant with significant toxic concerns; accordingly, EPA plans to address lead contamination by coordinating its authorities across programs. Copies of the Lead Strategy can be obtained by calling the TSCA Hotline at 1–800–835–6700.

4. Bioremediation

As a follow-up to the Administrator's Bioremediation Summit held in February, 1990, EPA explicitly is soliciting contaminated soil treatment data on biological technologies to aid in the development of treatment standards for contaminated soil. EPA is aware of the impact of all LDR rulemaking on the development and application of innovative treatment technologies. This notice affirms EPA's interest in gathering private sector data for consideration in setting treatment standards.

D. Applicable Treatment Technologies and the Availability of Treatment Data for Contaminated Soil

EPA is aware of nine general categories of treatment technologies that are considered to be available and demonstrated for contaminated soil: (1) Biological treatment; (2) chemical extraction; (3) soil washing; (4) dechlorination; (5) low-temperature thermal desorption; (6) high-temperature distillation; (7) thermal destruction; (8) stabilization; and (9) vitrification.

EPA has reviewed 124 remedial actions with Records of Decision (RODs) that had the potential to trigger LDRs. This review indicated that 112 sites (93 percent) had some type of soil contamination. Of the 1,350,000 cubic yards (cy) of soil to be treated, 644,000 cy (48%) were to be incinerated, and 437,000 cy (32%) were to be solidified/stabilized. Aeration, biological treatment, soil washing, and miscellaneous other methods were used for the remainder.

EPA also has reviewed over 500 documents dealing with treatment of contaminated soil. Sixty-seven of these documents contained analytical data on soil treatment. Many of these data

(contained in 54 of the documents) have, however, several limitations for the purpose of developing treatment standards, including: inadequate quality assurance/quality control information; incomplete analysis for all contaminated soil constituents; and inconsistencies in the use of analytical test methods. In addition, some of these data do not represent pilot-scale or full-scale operations, and some were generated from treatment of synthetically spiked soil and not actual contaminated soil. Because of these deficiencies, an intensified data collection effort was initiated, including: Collecting existing data from remedial actions and removals; collection of available data through the Superfund Innovative Technology Evaluation (SITE) program; and planning EPA-sponsored treatment tests of specific treatment technologies on selected contaminated soils to fill in data gaps for various combinations of contaminants, soils, and treatment technologies.

EPA is soliciting treatment data on demonstrated and available technologies for soils of varying clay, silt, and sand content, as well as mixtures of organics and inorganics, to determine the impacts of these matrices on the treatability of contaminated soils. Data on the effect of hot spots of contamination and preprocessing (e.g., mixing of soils before treatment) on treatability is also being solicited.

In the final rule for Third Third wastes, EPA determined that the presence of radionuclides did not generally affect the selection or performance of the treatment or recovery process determined to be BDAT for the corresponding RCRA hazardous waste. For a few radioactive mixed wastes, however, the radioactivity of the wastes significantly impacted the selection of applicable treatment technologies (e.g., D009 elemental mercury wastes and D008 lead shielding). EPA is, therefore, soliciting data and other information on the impact of the following radionuclides on the selection and performance of applicable treatment technologies for soils contaminated with radioactive mixed wastes: (1) Americium–241; (2) Cesium–134 and 137; (3) Cobalt–60; (4) Plutonium–238 and 239; (5) Radium–224 and 226; (6) Strontium–90; (7) Technetium–99; (8) Thorium–228 and 232; and (9) Uranium–234 and 238.

E. Potential Regulatory Construct for Revised Treatment Standards for Contaminated Soil

Existing treatment standards in the LDR program are found in 40 CFR part 268, subpart D, and specifically as leachate concentrations in § 268.41, as required treatment methods in 268.42, and as total constituent concentrations in § 268.43. As a result, any revised treatment standards for contaminated soil might logically fall under the construct of these regulations. The Agency may, however, consider placing revised treatment standards for contaminated soil in a new regulatory section or in a new appendix within 40 CFR part 268, subpart D.

Revised treatment standards could be established for contaminated soil as an alternative set of standards for the existing waste codes. To avoid the complications of ascertaining the applicable waste codes, this set of standards could be presented in an appendix or table within a new regulatory section of part 268, subpart D, and would be applicable to all soil contaminated with any RCRA hazardous waste listed in 40 CFR part 261. A four digit, alphanumeric code similar to those for listed wastes could be established in part 268 that could be used solely for the purpose of record keeping and only under the land disposal restrictions.

1. Potential Treatment Standards for the Residual Treated Soil

a. Sets of Concentration-based Standards

Concentration-based standards could be established for the contaminated soil and debris (CSD) list of constituents. (This list includes the BDAT list of constituents plus constituents identified in the Contract Lab Program under CERCLA that do not appear in the BDAT list.) These constituents would be measured in the residual treated soil and would consist of maximum allowable total constituent concentrations for organics and maximum allowable concentrations in a TCLP extract of the treated soil for metals. EPA is currently investigating all available treatment data and is performing field evaluations of technologies in order to develop a set (or sets) of concentration-based standards.

Although EPA recognizes that different soil types and sources of contamination may have an effect on the treatability of contaminated soil, EPA expects that available data may limit EPA to a single set of concentration-based standards based on the most difficult to treat waste. This procedure has been commonly used in the development of existing treatment standards.

EPA believes that these concentration-based standards will most likely be achievable by a variety of technologies. In order to achieve these treatment standards, however, some soils that are more highly contaminated may need to be treated with technologies that are relatively more aggressive than others (i.e., incineration, high-temperature distillation).

b. Standards Based on Organic Treatability Groups

EPA may propose to maintain the constituent structural/functional treatability group concept that was developed in the treatability variance guidance for contaminated soil, because of potential variations in constituent concentration and differences in soil type. These groups were created because treatment data for many individual constituents were not available or were deficient in quality, thus making it difficult to produce constitutent-specific guidance. This approach also recognizes that structurally and functionally similar organic constituents can be treated in a similar manner. This concept was also integral to the development of transfers of treatment data for the existing treatment standards for listed wastes.

c. Standards for Metals

The majority of soils contaminated with metals are expected to be considered hazardous on the basis of the toxicity characteristic and, thus, the applicable treatment standards could be the corresponding standards for D004–D011. EPA is specifically soliciting treatment data and comment on those contaminated soils or types of soils that are not expected to be able to comply with the existing treatment standards for D004–D011. For soils known to be identified with listed waste codes that are hazardous only for their metal content (e.g., K061 and K069), EPA solicits comment on whether these soils can comply with the existing metal standards for those waste codes.

d. Potential Standards Based on Percent Removal or Ranges of Concentrations

Case-by-case variances from existing treatment standards can currently be set within specified concentration ranges or ranges of percent removal (as designated in the treatability variance guidance documents). In establishing ranges of concentrations or ranges of percent removal as revised treatment standards for soil, there is no mechanism for requiring treatment any more stringent than the upper end of a concentration range or the lower end of a percent removal range. In other words, when there is a concentration range as a treatment standard (e.g., 10–50 ppm),

there is no apparent incentive to treat to a concentration significantly lower than the upper concentration (i.e., 50 ppm); when there is a percent removal range (e.g., 80–99 percent), there is no apparent incentive to remove significantly more than the lower percent (i.e., 80 percent). For this reason, establishing ranges as sole treatment standards does not appear to be a practical option.

Percent removals, triggered by threshold levels (similar to the concept used in developing the treatability variance guidance), potentially could be used as alternatives to concentration-based standards to address the concern that more highly contaminated wastes (those above the threshold) may not be treatable to the specified concentration levels. Alternatives that are more consistent with previous development of treatment standards involve adjusting the concentration-based standards so that the limits are achievable on the most difficult to treat waste or subcategorizing the wastes into separate treatability groups and establishing separate concentration-based standards. The problem with the percent removal concept is that when contaminant concentrations are very high in a soil, the percent removal could result in insufficient treatment with significantly high concentrations of contaminants remaining in the "treated" soil. WPA specifically solicits comment on this approach.

e. Standards for Soils Contaminated with Constituents That Are Difficult to Analyze

There are hundreds of RCRA U and P waste codes for which there are no verified analytical methods for measuring concentrations in treatment residues. The CSD list and BDAT list of constituents do not include these chemicals for this very reason. In establishing treatment standards for contaminated soils, EPA must account for the potential presence of these constituents in the soil.

When other constituents are present in the contaminated soil that can be verified through chemical analysis (i.e., those on the CSD or BDAT lists), these other constituents may act as surrogates to verify that the difficult to analyze constituents have been properly treated. The chemicals on the CSD list are generally the most widely used chemicals in the nation and are thus most likely to be found in the majority of contaminated soil. Treatment standards based on analysis for only the CSD list of constituents thus will more than likely suffice for most situations.

Situations may arise, however, where these difficult to analyze constituents could be the only constituents contaminating a soil; thus, standards based on analysis of the CSD list would be inappropriate (e.g., a spill or leak of one of these U or P wastes). In such a situation, EPA is considering the application of the existing treatment standards for these U and P wastes: incineration (identified in 40 CFR 268.42 as INCIN). This would be limited to situations where only this waste code was known to be present. Alternative technologies could still be used through a demonstration of equivalency, as outlined in 40 CFR 268.42(b), or through the variance procedure in 40 CFR 268.44. EPA solicits specific comments on the approaches for developing treatment standards for soil known to be contaminated with difficult to analyze constituents.

f. Potential Standards Based on Total Residual Hazards

While recognizing that concentration based BDAT treatment standards are being employed within the Superfund program and RCRA corrective action program, EPA is also attempting to improve risk estimation measures by developing a Risk Assessment Guidance for Superfund: Volume 1—Human Health Evaluation Manual (Part B, Development of Risk-based Remediation Goals) (Draft, April 1991), which will allow for a detailed evaluation of the total residual hazards through the use of standardized risk assessments. Consequently, EPA is requesting comments on how the Agency might consider total residual hazards from remediation technologies in determining the BDAT treatment standards for contaminated soils.

2. Potential Standards for Nonsoil Residues

Depending upon the treatment process that is applied to the contaminated soil, nonsoil nonwastewater residues and wastewater residues may be generated that could require further treatment. (For example, low temperature thermal desorption will probably result in a concentrated organic residue containing the hazardous constituents of concern.) For some technologies such as soil washing, nonwastewater residues are generated during the treatment process that contain a significant amount of soil. EPA anticipates that these residues will be considered soil and would, therefore, have to comply with the standards developed for the residual soil.

Since the separated materials are actually derived from the hazardous waste that originally was contaminating the soil, one option for developing treatment standards for these residues would be to apply the existing applicable treatment standard for that hazardous waste code (if identifiable). This, again, requires prior knowledge of the identity of the waste code that was contaminating the soil. The residues could logically carry the waste code or codes of the wastes originally contaminating the soil.

Another possible option is to establish one set of concentration-based treatment standards for each of these residue types. These sets of standards then could be applicable as treatability groups of contaminated soil. EPA believes that existing data used in developing other treatment standards may also be used to develop standards for both these nonwastewaters and wastewaters.

A similar situation exists for multisource leachate, which, theoretically, could be derived from any combination of waste codes. As a regulatory solution, the Agency created a new listing for multisource leachate (F039) and established treatment standards for approximately 200 constituents. On the basis of the technical theory behind the development of these treatment standards for F039 and the corresponding U and P chemicals, EPA could establish nonwastewater and wastewater treatment standards for residues from the treatment of contaminated soil by transferring the corresponding standards from F039. EPA believes this approach would be technically supportable and the resulting treatment standards achievable for these residues. EPA specifically solicits comment on this approach.

F. Analysis of Capacity Data for Contaminated Soil

EPA needs to determine the volume of soil contaminated with newly listed and identified wastes that is currently land disposed in order to assess whether adequate alternative treatment capacity exists to treat these wastes. The Agency has already set LDR effective dates for soil contaminated with Solvents and Dioxin wastes, California List wastes, and First Third, Second Third, and Third Third wastes. EPA will, however, have to collect and evaluate data on all contaminated soil because EPA's current information is limited.

A comprehensive data base on the generation volumes and characteristics of contaminated soil and the capacity of treatment technologies is important for the following reasons: To determine the volumes of soil contaminated with newly listed and identified wastes that

may require alternative treatment; to assess the available capacity of treatment technologies suitable for soil contaminated with these wastes; and to identify the total volume of affected contaminated soil, which may include soil contaminated with regulated wastes in addition to newly listed and identified wastes.

EPA has initially categorized two types of sources of contaminated soil. The first type consists of sites where remedial/removal actions are or will be taking place. Remedial/removal action sites where contaminated soil can be generated can be divided into five groups: Superfund sites, RCRA corrective action sites, RCRA facility closures, federal facility cleanups, and voluntary cleanups. The major sources of available capacity-related data on contaminated soil at these sites are Superfund RODs; RCRA Facility Investigations and Facility Assessments; SARA Capacity Assurance Plans; Federal Facility Data Sources; and the New Jersey ECRA Data Base. EPA is expecting to supplement these sources with data from studies that are currently being conducted. The Office of Solid Waste is, for example, considering collecting data on RCRA corrective actions to support the upcoming corrective action rule. The results of these data collection efforts and the relevant capacity-related data on contaminated soil will be included in the capacity analysis when they become available.

The second type consists of spill and excavation sites (e.g., excavation of hazardous waste tanks) that are not included in the remedial/removal category. EPA currently has little information on the generation of contaminated soil from these sources.

1. Issues Specific to Treatment Capacity for Soil

Much of contaminated soil remediation is performed on-site. In fact, current information indicates that between one-half and two-thirds of the waste being treated under CERCLA response actions is being treated or disposed of on-site. It is likely, then, that mobile treatment units will be employed to treat contaminated soil. EPA is investigating the development of an approach to "count" these units, assuming their potential availability for several sites in succession. If, for example, a mobile unit can treat 1,000 cubic feet of contaminated soil per day, the Agency could assume that the unit represents 250,000 cubic feet of annual treatment capacity, or a lesser volume, based on practical operational throughput.

Because there is no comprehensive source on contaminated soil treatment and volume data, the Agency will rely on a variety of sources for capacity analysis. The Agency plans to use assumptions to fill the remaining data gaps. When using multiple sources of data, it is important to be aware of different reporting guidelines, definitions of contaminated soil, and the potential for inconsistencies across data sources.

A second data quality concern involves data overlap. Contaminated soil volumes have the potential to be double-counted, particularly between commercial treatment facilities and the major generators (i.e., Superfund remediations, RCRA corrective actions, RCRA closures, voluntary remediations, and actions undertaken at federal facilities). EPA notes that keeping track of contaminated soil volumes during the treatment process will be necessary to estimate required treatment capacity.

Some RCRA facilities consider sites that deliver waste for disposal for one day, or over a few days, to be one-time generators. The actual length of time it takes to treat and/or dispose of waste from remedial actions can vary considerably, however. The difference between recurrent and one-time waste generation is that a recurrent generator continues to produce waste over time while a one-time generator needs to treat or dispose of a fixed amount of waste. This clarification is important for analyzing treatment capacity for contaminated soil, because these wastes are one-time generated wastes. The interpretation of the reported quantities of contaminated soil is another important consideration for the capacity analysis. In some reports, for example, contaminated soil is recorded as a one-time quantity, in others as an annual generation for a specified number of years (e.g., assuming a five-year remediation, a report might present one-fifth of the total in each of five successive years). The Agency is aware that the definition of "annual generation" is important for the capacity analysis for contaminated soil and requests comments on this issue.

Because federal facilities are typically large (i.e., Department of Energy and Department of Defense facilities), they may generate the greatest volumes of contaminated soil. Moreover, current data indicate that federal facilities may contain up to 25 million cubic feet of mixed radioactive contaminated soil. EPA plans to obtain information on contaminated soil at these facilities.

Because of several years usually elapse between the completion of an ROD or an RFI and the start of site remediation, there is a delay between the time actions are recommended for a site cleanup and the time available treatment capacity is needed. The Agency, therefore, will consider the schedule of future listings, the cleanup start dates for sites on the National Priorities List, and sites involving a plan for voluntary cleanup. A second timing issue that affects the capacity analysis is the duration of cleanup actions. Since many actions are still ongoing, data on the duration of cleanup actions are currently incomplete.

Another timing issue concerns the availability of alternative treatment technologies to treat contaminated soil on a non-continuous basis. Because contaminated soil is largely a finite quantity with low volumes of repeated generation, the length of time necessary to complete remedial actions is important in assessing whether sufficient capacity will exist to treat contaminated soil. The current availability of mobile incineration may, for example, be sufficient to remediate all contaminated soil over several years but not within the same year. The Agency requests comments on the length of time required to complete remedial actions in which contaminated soil is generated.

EPA also needs more information on the constraints associated with making treatment capacity available (i.e., technical, geographical, economic, and regulatory (e.g., permitting)), and on the typical length of time it takes for treatment systems to become fully operational.

2. Preliminary Assessment of Treatment Capacity for Contaminated Soil

Remedial actions at hazardous waste sites are likely to generate the largest volumes of contaminated soil. The Agency reviewed data for 146 sites from 1988 RODs and for 141 sites from 1989 RODs in order to characterize the volumes of contaminated soil that may require treatment under the LDRs. The facilities reviewed included both Superfund lead remedial actions and private party lead remedial actions. A significant number of RODs did not distinguish volumes of contaminated soil from contaminated debris. In addition, contaminated soil wastes were often combined with other soil wastes in the RODs, making it difficult to determine the magnitude of the contamination. Finally, in

recommending remedial technologies, RODs rarely indicated the relative quantities of contaminated soil that would be assigned to each technology.

Two notable conclusions can be drawn from the Agency's initial analysis of Superfund RODs. First, the current data indicate that 10 percent of the facilities account for 75 percent of the total contaminated soil volume. Second, the majority (55 percent) of contaminated soil is contained in-situ (i.e., within the area of contamination) and is not likely to trigger the LDRs. These findings are significant in directing the focus of the capacity analysis. The data also indicate that while a few large-quantity generators of contaminated soil account for most of the volume generated, these large volumes tend to be contained on-site and may not require off-site commercial capacity. This observation may become important as the Agency examines contaminated soil at federal facilities.

There are several management options available for contaminated soil at Superfund sites. Most contaminated soil volumes are contained in-situ, yet these volumes, along with the volumes treated in-situ, are unaffected by the LDRs. Facilities may also treat contaminated soil on-site or send it off-site for treatment; if these volumes are land disposed either on-site or off-site they must meet the contaminated soil treatment standards. Nonwastewaters and wastewater residuals from soil treatment also must meet the relevant LDR standards prior to land disposal. These management options for contaminated soil will be the focus of the Agency's capacity analysis.

The total volume of contaminated soil at Superfund sites for which RODs were signed in 1988 and 1989 is approximately 8.7 million tons. Approximately 3.7 million tons are reportedly land disposed either on-site or off-site and may trigger the LDRs. Data from the RODs have also been used to determine the breakdown of contaminated soil and sludge treatment practices.

The Agency requests comments on this analysis. The Agency also requests data on contaminated soil subject to remediation at Superfund and RCRA corrective action sites, including data on the actual volume of contaminated soil at each site; applicable hazardous waste codes (if identifiable); current and planned management practices for contaminated soil; and the starting date and projected duration of cleanup actions.

V. Potential BDAT for Four Specific F and K Wastes Promulgated After November, 1984

A. Potential BDAT for Newly Listed Wastes from Wood Preserving Operations (F032, F034, and F035)

On December 6, 1990 (55 FR 50450), EPA listed F032, F034, and F035 as hazardous wastes from the wood preserving industry. Detailed descriptions of the listings and waste characterization data for these wastes are presented in the final rule and Listing Background Document for these wastes. EPA has begun analysis of the data and information contained in these documents to develop concentration-based standards and to analyze treatment and recycling capacity for these wastes.

Concentration-based standards that may be proposed for the organic constituents in F032, F034, and F035 wastes may be based on the transfer of standards from other wood preserving wastes, such as K001 (bottom sediment sludge) and U051 (creosote), or on the transfer of standards from other wastes determined to be similar or more difficult to treat, such as those developed for F039 (multi-source leachate). The development of these standards is discussed in the Third Third final rule (June 1, 1990) for K001 and U051 at 55 FR 22582, and for F039 at 55 FR 22619.

Standards for the inorganic constituents in F032, F034, and F035 wastes may be based on performance data currently being developed by EPA's Office of Research and Development (ORD) or based on a transfer of standards from various metal-bearing wastes that are determined to be as difficult to treat. These include D004 (wastes characteristic for arsenic), K031 (specific organo-arsenical veterinary chemicals), D007 (wastes characteristic for chromium), and K062 (spent pickle liquor from iron and steel manufacture). The development of standards for these wastes is discussed in the Third Third final rule (June 1, 1990) for D004 and K031 at 55 FR 22556, and for D007 at 55 FR 22563. K062 standards were discussed in the First Third final rule (August 17, 1988) at 53 FR 31164.

Treatment data and supporting documentation for all the aforementioned wastes are provided in the administrative reocrds for the respective rules and are summarized in the appropriate BDAT Background Documents located in those records. The following sections of today's notice discuss how EPA might use the information and data on the aforementioned wastes in developing proposed treatment standards for F032, F034, and F035. For simplicity, the **Federal Register** references discussed above are not repeated in the discussions of potential BDAT.

1. Potential BDAT for F035 Wastes

F035—Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.

F035 wastes are generated by facilities that use inorganic wood preserving formulations. The inorganic preservatives of concern in the listing are arsenical and chromate salts dissolved in water. The most commonly used inorganic preservatives include chromated copper arsenate (CCA), ammoniacal copper arsenate (ACA), acid copper chromate (ACC), chromated zinc chloride (CZC), and fluor-chrome-arsenate-phenol (FCAP). EPA estimates that over 80 percent of all wood preserved with inorganics are preserved with CCA.

EPA may propose concentration-based standards for F035 wastewaters and nonwastewaters that would include all the constituents expected from the use of all the aforementioned formulations, i.e., arsenic, copper, chromium, zinc, fluoride, phenols, and lead. (Lead, which is regulated in K001 and U051 wastes, and mercury have also been suggested as potentially being present in these wastes.)

Most treatment data currently available for the inorganic constituents are from the treatment of hazardous wastes other than F035 wastes. Treatment processes for wastewaters containing these inorganic constituents typically involve the use of chemical oxidation, chemical reduction, precipitation, and filtration of sludges. Treatment for nonwastewaters include cementitious or pozzolanic stabilization, vitrification, or stabilization with specialized reagents (i.e., for arsenic).

Because F035 wastes consist primarily of inorganics, EPA is investigating the potential for developing concentration-based standards that are based on the leachability of metals from residuals of recovery processes. EPA specifically solicits comment and data on the applicability of high-temperature metal recovery processes (such as copper smelting operations) or conventional hydrometallurgical processes for the

recovery of arsenic, copper, and chromium from F035 wastes.

EPA also solicits information and data on the potential for incorporating pollution prevention as an alternative BDAT. EPA is particularly interested in procedures that facilities could use to reduce the generation of not only F035, but also F032 and F034. Owing to the widespread use of inorganic preservatives and the relative decline in the use of creosote and chlorophenolics, it is possible that F035 wastes realistically may have a greater potential for overall reduction through pollution prevention activities. (See also a general discussion and request for comment on EPA's approach to pollution prevention in the land disposal restrictions program in Section II.A. of today's notice.)

a. Treatment Data for Inorganics in Wastewaters

EPA's Office of Research and Development has conducted preliminary bench-scale treatment studies on wastewaters synthesized to mimic the composition of F035 wastewaters as they might appear from facilities using CCA formulations. The process studied focused on the treatment of arsenic and chromium in the wastes and consisted of two stages. The first stage of the treatment process oxidizes any trivalent arsenic present to the pentavalent state for subsequent precipitation and filtration as ferric arsenate and ferric hydroxide. In the second stage, hexavalent chromium is reduced to the trivalent state for subsequent precipitation and removal.

Besides these bench-scale data, EPA has performance data for treating various arsenic and chromium-bearing industrial wastewaters. While some of these data are for wastewaters containing relatively low concentrations of these metals, they were used to develop treatment standards for wastewater forms of multi-source leachate (F039). EPA is investigating the feasibility of directly tranferring the F039 standards for metals other than arsenic and chromium to these wood preserving wastes.

Additional treatment data exist for arsenic-bearing wastewaters (D004) generated from the veterinary pharmaceuticals industry. These wastewaters contain various inorganic forms of arsenic (in different ionic states), along with various organo-arsenical pharmaceuticals. The matrix of this D004 wastewater may be determined to be more difficult to treat than that expected for F032, F034, or F035. As such, these data may be used in the development of arsenic standards for these wood preserving wastewaters.

Wastewater treatment data for chromium in K062 (see below) and various D007 wastewaters are being considered for development of treatment standards for chromium.

b. Treatment Data for Metals in Nonwastewaters

EPA currently has performance data for the treatment of hexavalent chromium and other metals in K062 wastes. The treatment process for these wastes includes reduction of the hexavalent chromium to the trivalent state, followed by chemical precipitation with lime and/or sulfide, settling, filtering, and dewatering of the sludge. The concentration-based standards for K062 nonwastewaters were then developed based on the leachability of the metals from this sludge. The concentrations of chromium and lead in the untreated K062 wastes appear to be within an order of magnitude of the concentrations expected in F035 wastes, thus providing a basis for transfer of the concentration-based standards for chromium and lead. The concentrations of arsenic in untreated F035 wastes are, however, five orders of magnitude higher than those in K062. Additional performance data for the treatment of chromium also exist for various types of other nonwastewaters identified as D007. These primarily include data on cementitious and pozzolanic stabilization. Many of these D007 nonwastewaters are expected to be as difficult to treat as F035 nonwastewaters.

Stabilization and vitrification tests have been conducted on various arsenic-bearing nonwastewaters that were used in the development of treatment standards for K031, K084, K101, K102, P010, P011, P012, P036, P038, and U136 wastes (June 1, 1990, 55 FR 22560). Based on data for some D004 nonwastewaters that contained over one percent of arsenic, vitrification was determined to be BDAT for all nonwastewater forms of these ten wastes. While data from nonconventional stabilization processes indicated that other D004 wastes low in arsenic could be stabilized to lower treatment levels using additives (e.g., iron salts) and specialized reagents, insufficient data were available to create separate treatment standards for subcategories of D004 wastes based on their arsenic content. Therefore, EPA promulgated treatment standards based on vitrification of the most difficult to treat wastes, i.e., those with high concentrations of arsenic.

EPA may develop proposed treatment standards for F035 nonwastewaters based on a transfer of the performance data for the metals in the aforementioned wastes.

2. Potential BDAT for F034 Wastes

F034—Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.

F034 wastes are generated by facilities that have used creosote in their wood preserving formulations. Creosote generically refers to mixtures of relatively heavy residual oils (liquid and solid aromatic hydrocarbons) obtained from the distillation of wood, coal tar, or crude petroleum. Only creosote from coal tars are, however, accepted for use as wood preservatives. The majority of creosote-based formulations consist of coal tar creosote or blends of creosote and crude coal tar.

When unused creosote is discarded or spilled, it is the listed hazardous waste identified as U051 (a more complete explanation of generation of listed wastes identified as U wastes is provided in 40 CFR 261.33). Treatment standards for U051 and K001 wastes were promulgated in the Third Third final rule (55 FR 22582) and established concentration-based standards for lead and six organics, including naphthalene, pyrene, phenanthrene, pentachlorophenol, touluene, and total xylene(s). EPA is considering proposing a transfer of standards for the constituents regulated in U051 and K001, as well as any other organic constituents that may be anticipated to be present in F034 wastes, such as other polynuclear aromatic hydrocarbons and other solvents.

Pentachlorophenol was selected for regulations in U051 wastes because of the anticipated co-management of U051 with K001 wastes (which are also regulated for pentachlorophenol) and the likelihood that U051 wastes could be generated in the form of a spill residue at a site that uses or used pentachlorophenol. EPA stated that a facility's waste analysis plan could be revised to eliminate analysis for pentachlorophenol, provided the facility could demonstrate that it never used pentachlorophenol and that the U051 wastes were generated only as an off-specification product.

Note: On January 31, 1991 (55 FR 3864), EPA published a technical amendment to the

Third Third final rule correcting a publication error in the standard for pentachlorophenol in U051 and K001 nonwastewaters. The correct standard is 7.4 mg/kg.)

According to the listing definition, F034 wastes should not contain pentachlorophenol, and EPA may not propose treatment standards for pentachlorophenol in F034 wastes. EPA is, however, specifically soliciting comment on this issue.

The U051 and K001 nonwastewater standards for naphthalene, pyrene, phenanthrene, pentachlorophenol, toluene, and total xylene(s) are based on the analysis of ash from the incineration of K001 wastes. The standards for these six organics were modified somewhat in the Third Third final rule and were transferred as standards for F039 nonwastewaters. For these and other organics that might be expected to be present in F034 wastes (or F032), EPA also is considering proposing a transfer of the corresponding nonwastewater standards that were developed for F039.

While the standards for the organics are based primarily on analysis of incinerator ash, EPA believes that most of these organic standards are achieveable by several technologies other than incineration. (Standards for organics in petroleum refining wastes identified as K048–K052 are well within an order of magnitude of the corresponding standards set for F039 nonwastewaters and have been demonstrated to be achievable by solvent extraction, thermal desorption, or incineration.) EPA is soliciting specific data and comment on the achievability of the F039 nonwastewater standards using other technologies, such as biodegradation, as applied specifically to F034 wastes or wastes that are similar to F034. Since these standards may also be proposed for F032, EPA similarly solicits data and comment for these organics in F032 wastes.

For all organics in wastewaters, EPA is considering a direct transfer of the constituent-specific wastewater standards that were developed for F039. The promulgated treatment standards for the organics in U051 and K001 currently are based on incineration scrubber wastewaters, while the F039 wastewater standards are based on one or more of the following wastewater treatment technologies: Biological degradation, powdered activated carbon treatment (PACT), steam stripping, wet-air oxidation, and granulated activated carbon adsorption. Because the standards for F039 were based on the use of multiple technologies, EPA anticipates these wastewaters standards also will be achievable for wastewaters from wood preserving operations.

The characterization data available for metals in F034 wastes show that chromium, lead, and arsenic appear to be present at treatable concentrations. EPA is considering proposing treatment standards for these three metals and is investigating whether other metals also may be present. Standards for metals in F034 wastes are likely to be proposed similar to those being developed for F035 (as discussed above). Because F034 wastes contain organics (creosote), EPA may propose to transfer metal treatment standards from those wastes containing organo-metallic compounds (e.g., D004 wastewaters from veterinary pharmaceuticals and K031), rather than those containing only inorganic forms of these metals.

3. Potential BDAT for F032 Wastes

F032—Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with section 261.35 of this chapter and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.

As described in the listing, F032 wastes are generated from wood preserving processes that use chlorophenolic formulations (such as pentachlorophenol and tetrachlorophenol) or from facilities that previously used chlorophenolic formulations—even though they currently may be using creosote or inorganic preservatives. The potential presence of hazardous constituents from these other wood preserving formulations most likely will affect the selection of constituents to be proposed for regulation in the treatment standards for F032 wastes.

EPA is considering transferring all the organic and inorganic standards currently being investigated for proposal for F034 and F035 wastewaters and nonwastewaters to standards for F032 wastewaters and nonwastewaters. Since F032 wastes are expected to contain treatable levels of several chlorophenolics, EPA may propose additional treatment standards for these constituents. EPA specifically solicits waste characterization data that may be available (or that could be developed) supporting or refuting the necessity of regulating the various homologues and congeners of chlorine substituted phenolics. Treatment standards for these constituents may be proposed based on a transfer from F039 or from the corresponding U waste for that particular chlorophenolic.

Listing data indicate the potential presence of up to ten homologues of polychlorinated dibenzo-p-dioxins (PCDDs) and dibenzofurans (PCDFs) in some F032 wastes. EPA solicits data and comment on whether the regulation of these constituents as treatment standards for either wastewaters or nonwastewaters may cause these wastes to go untreated. It has been EPA's experience that where these constituents have been proposed for regulation in a waste-specific treatment standard, the commercial hazardous waste treatment industry tends to shy away from treating these wastes, thus resulting in unnecessary delays in such treatment. This is primarily due to the acute sensitivity of the public to these constituents and the increase in liability resulting from handling them. EPA solicits ideas on how treatment standards for F032 wastes could be constructed so as to avoid delays in treatment that may arise from these concerns.

4. Analysis of Capacity Issues for F032, F034, and F035

a. Currently Available Capacity Data

In 1985, EPA conducted a RCRA Section 3007 survey to gather information on treated wood production volumes, production processes, waste generation, waste characteristics, and waste management practices in effect in 1984. Eighty five plants (81 pressure and 4 non-pressure plants), representing 15 percent of the total number of identified active plants in 1984 and 44.5 percent of the total production of treated wood in 1984 submitted data. Using this survey data and information provided in public comments on the proposed wood preserving listing rule, EPA determined generation rates for waste streams in the wood preserving industry.

Thirty-three percent of survey respondents reported generating and managing process wastewater and most of these used chlorophenolics or creosote preservatives. EPA has determined that process wastewater generated at facilities using inorganic preservatives is reused in the process. Approximately 63 percent of the facilities responding to questions about wastewater generation and management sent wastewater to a POTW, while 13 percent stored or disposed of their wastewater in land-based units, including land application units,

evaporation ponds, and surface impoundments. It is likely that the wastewater management practices of facilities that used surface impoundments in 1984 have changed since bottom sediment sludge from wastewater treatment at wood preserving facilities using chlorophenolics or creosote is a listed hazardous waste (K001), and, therefore, these land-based units are now subject to the minimum technology requirements under HSWA. These facilities are currently sending wastewater to POTWs or using thermal evaporation.

Approximately 70 percent of facilities using chlorophenolic preservatives and 84 percent of facilities using inorganic preservatives reported in the 3007 Survey that a waste contractor removed their process residuals. Additional information collected by EPA indicates that other facilities treat their waste as hazardous and dispose of it in subtitle C landfills. In addition, most of the facilities that send wastewater to a POTW pretreat the wastewater. Although the bottom sludges from wastewater treatment at facilities using organic preservatives are already a listed hazardous waste, other sludge/solid residuals from wastewater treatment may be subject to the LDRs. EPA does not have information on waste generation rates for these residuals.

No information has been collected on the generation or management of discarded spent formulations. EPA assumes that such wastes may be generated in very small quantities during maintenance of work tanks or closure of wood preserving facilities.

To calculate total volumes for each waste stream, the waste generation rates per unit of wood treated were multiplied by the total volume of wood treated with each preservative type. Because the listing definition of F032 includes all wood preserving waste generated at facilities that use or have previously used chlorophenolics, any waste from creosote or inorganic processes at facilities that also use chlorophenolics was classified as F032. Wastes from inorganic processes at facilities that also use creosote were classified as F034. When estimating total waste generation, waste from facilities that use multiple preservatives was re-grouped into the correct category.

b. Specific Capacity Issues for Nonpressure Treaters

Comments on the proposed wood preserving listing rule (53 FR 53282) indicated that there are approximately 100 nonpressure treaters currently in operation. Nonpressure treaters, which are normally very small facilities, are believed to use chlorophenolic formulations. While these facilities could potentially qualify as conditionally exempt small quantity generators (generating less than 100 kg/month), no information is readily available on actual waste generation rates to confirm this possibility. Although EPA has received some data from four nonpressure treaters, the data were not used to calculate waste generation rates for nonpressure processes. EPA therefore requests data and information on nonpressure treaters in order to improve the capacity analysis for these wastes.

c. Specific Capacity Issues for Inorganic Preservative Wastewaters

Because most facilities using inorganic preservatives achieve zero discharge by reusing process wastewater, a wastewater generation rate for facilities using inorganic preservatives was never calculated. Thus, EPA may consider establishing recycling as BDAT for these inorganic wastewaters. The lack of information on the volumes of waste generated would, therefore, not affect the capacity analysis. If recycling is, however, not established as BDAT, the availability of commercial treatment becomes an issue. If this is the case, a generation rate for inorganic wastewater will need to be estimated. EPA requests comments and additional data on the generation and management of inorganic wastewaters for F032, F034, and F035 wastes, and the volumes that are currently recycled.

d. Preliminary Assessment of Capacity

Data available to EPA on the generation of F032 wastes indicate that 300,000 tons of organic wastewater, 2,000 tons of organic nonwastewater, and 60 tons of inorganic nonwastewater are generated annually. The generation of F034 wastes consists of 330,000 tons of organic wastewater, 1,500 tons of organic nonwastewater, and 30 tons of inorganic nonwastewater. Currently available data on F035 wastes indicate that 1,300 tons of inorganic nonwastewater are generated annually. Since inorganic processes typically have no net generation of wastewater because water is recycled back into the treatment process without intervening land disposal, inorganic wood preserving wastewater may not require alternative treatment capacity.

EPA requests comments on the data presented above and solicits additional data from nonpressure treaters including information on waste generation rates. EPA also requests data on current wastewater treatment practices for wood preserving facilities that used surface impoundments in 1984.

5. Request for Data on the Regulatory Impact Analysis for Developing BDAT for F032, F034, and F035

While EPA performed a regulatory impact analysis for the listing of F032, F034, and F035 wastes, EPA is now soliciting additional related information in order to perform such analysis on potential BDAT for these wastes.

EPA is soliciting specific information on the drip pads used at wood preserving sites. (1) What are the rates and quantities of drippage for the different processes used in wood preserving (e.g., creosote, pentachlorophenol, inorganic)? (2) What are the constituent concentrations of the drippage? (3) How many facilities have drip pads, and what is the type of construction used for the pad (e.g., concrete, asphalt, other)? (4) What are the age and condition of the drip pads? (5) How many of the drip pads have liner systems? (6) How many facilities are doing nonpressure wood preserving through a dripping process?

EPA is also attempting to ascertain information on the financial status of the wood preserving industry: (1) Do wood preserving facilities have the ability to finance capital improvements? (2) What types of loans do these firms qualify for, and what are the conditions set on the loan? (3) At what interest rate do these firms borrow?

In the process of listing F032, F034, and F035 as hazardous wastes, EPA also proposed to create a listing for F033 surface protectants, but deferred regulation on this waste because of a lack of data. Besides the information requested above, EPA is attempting to determine the number of facilities currently using sodium pentachlorophenate as a surface protectant and the number that have used sodium pentachlorophenate in the past. This information will assist EPA in making a listing determination for F033 wastes.

B. Potential BDAT for Newly Listed Aluminum Potliners (K088)

Wastes identified as K088 are described in 40 CFR 261.32 as spent potliners removed from electrolytic cells at primary aluminum reduction facilities. K088 wastes were originally listed as hazardous on July 16, 1980 (45 FR 47832), but RCRA section 3001(b)(3)(A)(ii) (also known as the Bevill amendment) suspended the listing. In response to a court order (*EDF* v. *EPA*, No. 86–1584,

DC Cir, July 29, 1988), the suspension was lifted in a final rule on September 13, 1988 (55 FR 35412), thereby relisting K088 wastes as hazardous.

Potliners are comprised of very large solid blocks of carbon that line electrolytic cells used for reduction of aluminum oxide and formation of molten aluminum. The electrochemistry of the manufacturing process results in gradual contamination of the carbon blocks over the lifetime of the cell (typically ranging from 4 to 7 years). As a result, K088 wastes contain relatively high concentrations of fluoride and cyanide and often contain lower concentrations of various polynuclear aromatic hydrocarbons, other organics, and some metals. A more detailed description of the listing, along with characterization data for these wastes, is presented in the final rule and Listing Background Document for K088 wastes.

EPA has begun analysis of the data and information contained in these documents for the development of BDAT treatment standards and for the subsequent analysis of treatment and recycling capacity for these wastes. The relatively infrequent generation of these wastes (per cell), their unusual physical size and composition, along with the electrochemical nature of the manufacturing process, will all impact the potential for waste minimization, treatment, and recycling of these wastes. EPA is currently investigating how all of these factors will affect the selection of BDAT and is specifically soliciting comment on these issues.

1. Applicable Treatment and Recycling Technologies

EPA is investigating thermal destruction technologies such as incineration and fuel substitution as applicable to K088 wastes. EPA's Office of Research and Development (ORD) has recently conducted performance testing of rotary kiln incineration on samples of K088 wastes selected as the most difficult to treat. EPA also is aware of reported efforts by the aluminum industry to evaluate the use of K088 wastes as fuel substitutes or fluor-spar substitutes in industrial furnaces such as cement kilns, wool cupolas, and iron and steel furnaces.

EPA is also gathering information on the potential recovery of fluorides using thermal treatment, the removal and/or recovery of fluorides using chemical extraction, the reuse of the spent potliners for their carbon content, and the recovery of cryolite (present from the manufacturing process) from the K088 wastes. (See further discussion of capacity issues from the cryolite recovery process in section V.B.5. below.) A company in the aluminum industry recently indicated to EPA that its parent company is developing a proprietary commercial process, referred to as the Comtor process, and claimed that it can thermally detoxify spent potliners allowing for the potential recovery of fluorides. Information on these technologies was, however, unavailable for inclusion in today's notice and administrative record. EPA is soliciting information on all potential recovery technologies for K088 wastes.

2. Potential Slagging of K088 Wastes During Thermal Destruction

Prior to EPA's testing of the incineration of K088 wastes in a rotary kiln, there were some concerns about how to prevent slagging of materials in the kiln. (Slagging refers to the agglomeration of fused ash or particulates and can occur in the thermal unit or air pollution control devices.) Slagging is likely to have a negative effect on the performance and/or operation of a kiln depending upon the design of the kiln and the waste being incinerated.

Slagging can often be prevented and controlled by adopting one or more of the following techniques. One technique, based on thermochemical reactions, is to add fluxing agents such as calcium silicate to the waste to prevent any fused potliner pieces from agglomerating on the surface of the kiln refractory. EPA contemplated using this technique. In fact, EPA performed several tests prior to the test burn in order to determine if anti-agglomerants should be added to the feed prior to burning. First, analyses of ash fusion temperature were performed that indicated no slagging should occur at the proposed incineration temperature. Second, a brief scoping burn was performed prior to the test burn demonstrating that the K088 material should not slag in the kiln.

Other techniques, usually based on the thermochemical properties inherent to the spent potliners, primarily involve the control of various operating parameters of the kiln. In one such technique, the temperature of the kiln is operated well above the fusion temperature of the wastes so that the thermodynamics and kinetics of destruction are controlled by the high temperatures.

In another technique, the kiln is operated well below the fusion point of the waste, but uses longer residence time to assure destruction. EPA's incineration test utilized this technique. The kiln was operated at temperatures up to 1800 F, which is significantly below the anticipated fusion point of 2700 F for the K088 ash. EPA did not attempt to incinerate K088 wastes at temperatures above this fusion point because the necessary operating temperatures were beyond EPA's rotary kiln design capabilities. Since K088 wastes are generated as hard carbon blocks in various large sizes, EPA had to pretreat the wastes to a particle size below one quarter of an inch in order to homogenize and feed the waste into the incinerator. The K088 wastes were fed to the rotary kiln incinerator over a period of three days with a residence time of about one hour.

On the third day, some slagging was observed. While data on the operating temperatures of the kiln have not yet been correlated to these observations, EPA is uncertain if the slagging may have been a result of analytical testing procedures to determine the ash fusion point of the K088 wastes. In addition, EPA observed that the K088 wastes fed during the third day contained more fine particles than during the previous two days. EPA is unclear on whether the fine particle size may have played a role in the slagging problems or whether it was simply the fluctuations in kiln temperature. It is also possible that the high concentration of fluoride in the K088 wastes may have played a significant role in slagging owing to the fusion properties and reactivity of some fluoride salts.

3. Potential for Establishing Concentration-based Standards

An analysis of residues from the testing of rotary kiln incineration of these K088 wastes leads EPA to believe that concentration-based treatment standards may be possible. As discussed in the beginning of this notice, EPA attempts to establish concentration-based standards for wastes so as to allow the use of any technology that can technically achieve the numerical values.

EPA's preliminary analytical test results quantifying the concentration of cyanide constituents (amenable, total, and TCLP) show that 90 to 97 percent of amenable cyanides were destroyed. The amenable cyanide analysis of the ash was reported as 1 to 190 mg/kg. While the operating and analytical data have not undergone full review within EPA, they have been placed in the administrative record for today's notice for public review and comment. EPA is specifically soliciting review of these data and preliminary findings.

EPA also is reviewing data from the incineration of K088 wastes in Reynolds Aluminum modified cement kiln. This process included the addition of approximately 30 percent sand and 30

percent limestone to the K088 wastes. An exit temperature of 1200 F was maintained for the ash, which was similar to the exit temperature during EPA's testing. A residence time of up to two hours was used rather than the one hour residence time for EPA's testing. Reynolds reported achieving levels of cyanides (total) ranging from 0.5 mg/kg to 16 mg/kg in the ash residues.

EPA is also considering an alternative of transferring data from the rotary kiln incineration of K011, K013, and K014 (wastes containing cyanides and nitriles). These wastes were incinerated under similar operating temperatures and residence times to those of the K088 test. The final cyanide concentrations in these ashes averaged 11 mg/kg.

Results of the analysis for metals and for organic constituents such as volatiles and polynuclear aromatic hydrocarbons have not been reviewed for inclusion in today's notice. These data will, however, be reviewed for possible development of concentration-based treatment standards.

4. Potential for Specifying Technologies as a Treatment Standard

Should difficulties arise in analyzing hazardous constituents in the treatment residues, EPA may have to propose standards specifying the use of certain technologies. EPA is soliciting comment and data indicating any known or perceived analytical difficulties specifically for residues from the thermal destruction or recovery of K088 wastes.

EPA is investigating whether thermal destruction technologies such as incineration or fuel substitution would have to be specified as the treatment standard. Because of the potential for slagging (as discussed above), standards for K088 wastes may need to include minimum operating temperatures, minimum residence time, and/or the use of specific fluxing agents. These additional requirements may be necessary to ensure that the thermal units are operated properly (i.e., no slagging) and that the hazardous organic constituents of concern are destroyed. EPA is soliciting comments on these issues and is soliciting data that could assist in establishing such operating conditions. In addition, EPA is investigating the need to require specific controls for other thermal destruction or recovery processes such as those that would use K088 wastes as either a fuel substitute or fluor-spar substitute.

5. Currently Available Capacity Data

In 1988, EPA collected data on K088 and other waste streams for a RCRA section 8002(p) study and Report to Congress. Data indicate that approximately 130,000 tons of spent aluminum potliners are generated every year. EPA has also received updated data from the aluminum industry indicating approximately 14,000 tons are sent to cryolite recovery annually and 500 tons are otherwise recycled. Approximately 5,000 tons of K088 wastes are either incinerated or burned as fuel. The remaining wastes, approximately 105,000 tons, are placed in units that are now considered land disposal units. These figures reflect, however, management practices prior to the relisting of this waste.

The cryolite recovery process extracts the mineral cryolite (i.e., sodium aluminum fluoride) from spent potliners for reuse in the aluminum reduction process. This process generates residues that are considered to be K088 wastes based on the derived-from rule (50 FR 639 (January 4, 1985)). The data submitted on waste generation rates indicate that approximately 1,700 tons per year of these residues would be generated during cryolite recovery, provided the K088 spent potliners are not mixed with any other materials during the recovery process. If the potliners are mixed with other waste prior to recovery, the volume of K088 residues could be much higher. In fact, data from facilities using this process indicate that this could be as much as 30,000 tons per year. Just prior to publication of this notice, additional information from the aluminum industry indicates that this recovery process is being discontinued. EPA solicits comment on the reasons for the apparent abandonment of this process and its effect on the potential for establishing cryolite recovery as BDAT.

Curent data for K088 indicate that 100,000 tons of spent potliners may require treatment prior to land disposal, and the volume of cryolite recovery residues requiring treatment prior to land disposal could be greater than 30,000 tons per year. EPA requests comments on this analysis, specifically on current and projected data on the generation and management of K088 wastes, including information concerning on-site treatment capacity. In addition, EPA requests information on the cryolite recovery processes employed, including the volume of K088 treated, the volumes of other waste mixed with K088 prior to recovery, the volumes of K088 cryolite recovery residues, and the waste characteristics and management practices for those residues.

VI. Potential BDAT for Mineral Processing Wastes

A. Background

RCRA section 3001(b)(3)(A)(ii) also known as the "Bevill exclusion" excludes "solid waste from the extraction, beneficiation, and processing of ores and minerals" from regulation as hazardous waste under subtitle C of RCRA, pending completion of certain studies by EPA. In 1980, EPA interpreted this exclusion (on a temporary basis) to encompass all "solid waste from the exploration, mining, milling, smelting, and refining of ores and minerals" (45 FR 76619, November 19, 1980). In July 1988, a Federal Court of Appeals (*EDF* v. *EPA*, 852 F.2d 1316 (DC Cir. 1988), *cert. denied*, 109 S. Ct. 1120 (1989)) found this exclusion to be based upon the "special waste" concept first proposed by EPA in 1978 (43 FR 58946), and that Congress intended the term "processing" in the Bevill Amendment to include only those wastes from processing ores or minerals that meet the "special waste" concept, that is, "high volume, low hazard" wastes. (852 F.2d at 1328–29.)

In compliance with this Court decision, on October 20, 1988 EPA published a proposal to define further the scope of section 3001(b)(3)(A)(ii) of RCRA. (See 53 FR 41288.) In that proposal, EPA presented criteria for defining mineral processing wastes and criteria for identifying mineral processing wastes that are high volume and low hazard. On September 1, 1989 (54 FR 36592) and January 23, 1990 (55 FR 2322), EPA published final rules that removed a number of mineral processing wastes from the so-called "Bevill exclusion." A definition of mineral processing wastes (54 FR 36628) excludes wastes derived from beneficiation processes. All "high volume and low hazard" mineral processing wastes (for definitions, see 54 FR 36607 and 36597, respectively) retained within the final Bevill mineral processing waste exclusion have been subjected to detailed study by EPA, and the findings were contained in a Report to Congress that was submitted to Congress on July 31, 1990.

Most of the mineral processing wastes removed from the Bevill exclusion appear to be characteristic for EP metals (D004–D011), corrosivity (D002), and/or reactivity (D003). EPA considers these wastes to be "newly identified" wastes because they were brought into the RCRA Subtitle C system after the date of enactment of HSWA on November 8, 1984. In the Third Third final rule published on June 1, 1990, EPA promulgated BDAT treatment standards

for characteristic hazardous wastes (D001–D017). For reasons outlined at 55 FR 22667, EPA determined, however, that the newly identified mineral processing wastes are not subject to these standards. At that time, EPA had not performed the technical analyses necessary to determine if the treatment standards for characteristic wastes could be achieved for mineral processing wastes. This was further complicated by the fact that the universe of wastes covered by the Bevill exclusion was not completely defined and, thus, neither was the universe of mineral processing wastes that are considered hazardous. Recent investigation of waste characterization data also indicate that many of these wastes may have unique treatability and/or capacity problems.

EPA must, therefore, develop treatment standards for all mineral processing wastes that have lost their Bevill exclusion and have been recognized as newly identified wastes. This section of today's notice describes the waste characterization, treatment, and capacity data currently available on these wastes and discusses approaches EPA could take to develop BDAT treatment standards for these wastes. EPA is also soliciting data and information on opportunities for incorporating pollution prevention (i.e., source reduction) into the BDAT determination.

B. Waste Characteristics Based on Generation Patterns and Potential Treatability Groups

EPA has recently begun reviewing waste characterization data for the mineral processing wastes from various sources, including sampling data from EPA's Office of Research and Development, data from EPA's Office of Water, responses (from potential generators) to RCRA section 3007 requests for information, EPA-sponsored surveys of facilities in the mining and mineral processing sectors, public responses to proposed rules on EPA's interpretation of the Bevill exclusion, and various other literature sources. Review of this information (see exhibit 1) indicates that approximately 36 industrial sector/processes currently generate 97 different general categories of wastes that may be classified as hazardous.

EXHIBIT 1.—WASTE VOLUMES GENERATED AND LAND DISPOSED FOR SELECTED FORMER BEVILL WASTES THAT ARE POTENTIALLY HAZARDOUS

Sector/process	Waste stream	Potential waste code	Form	Data source	No. of facilities	Volume generated (tons/yr)	Volume land placed (tons/yr)
Aluminum Reduction	Casthouse Dust	D006	Solid	[1] 1988 RTC	16	15,000	[2] Most
	Cryolite Recovery Residue Sludge	D008	Sludge	1988 RTC	1	35,000	Most
	Spent Potliners	D008, D007	Sludge	1988 RTC	13	74,000	Few
Antimony Electrowinning	Stripped Anolyte Solids	D004	Sludge	[3] 1984 PEI	1	210	210
Antimony Smelting/Refining	Air Pollution Control Dusts/Sludge						
	Refining Dross Wastewater Treatment Sludge						
Arsenic Acid from Lead Dusts	Lead Dust Leach Residue	D008	Sludge	[4] Tech BID	1	380	[5] NA
Beryllium	Barren Filtrate						
	Processing Raffinate						
	Sludge						
Bismuth from Lead Dross	Metal Chloride Residues	D008	Sludge	Tech BID	1	3,200	NA
Cadmium Processing	Caustic Wash Water						
	Leach Solution						
	Purification Solution						
	Scrubber Wastewater						
	Spent Electrolyte						
Calcium Metal Retorting	Dust with Quicklime	D003, D002	Sludge	Tech BID	1	50	NA
Cerium Production	Process Wastewater						
Coal Gasification	Zeolite Softening						
	Wastewater						
Copper Smelting and Refining	Acid Plant Blowdown	D002, D004, D008	Liquid	[6] SWMPF	5	4,100,00	2,200,000
	Acid Plant Thickener						
	Sludge						
	Process Wastewater	D004, D008	Liquid	SWMPF	5	4,600,00	420,000
	Non-recyclable APC Dusts	D004	Solid	1988 RTC	NA	NA	NA
	Scrubber Blowdown						
Copper EW Slime Refining	Residuals	D008	Sludge	9/89 Rulemaking	10	6,000	NA
Elemental Phosphorus Production.	Dust (Off Gas Separation)	D008	Sludge	SWMPF	5	60,000	19,000
	Furnace Off Gas Solids	D003	Liquid	SWMPF	5	830,000	0
	Furnace Scrubber Blowdown						
	Condenser Wastewater						
	Slag Quench Water						
	Spent Furnace Brick						
Ferrochromium Production	Emission Control	D007	Solid	[7] 1984 Radian	[8] 1	52,000	52,000
	Dust/Sludge						
	Slags and Residues						
Ferrochromiumsilicon	Dusts and Sludges	D007	Solid	1984 Radian	[9] 1	15,000	NA
	Slags and Residues						
Ferrocolumbium	APC Dusts/Sludges						
Ferromolybdenum	APC Dusts/Sludges						
Ferrous	Steel Alloying APC Wastes						
Germanium Leaching	Leach Residue	D008	Solid	Tech BID	3	10	10
Lanthanides	Ammonium Nitrate						
	Production Solution						
Lead Smelting and Refining	Acid Plant Blowdown	D002, D004, D006, D008.	Liquid	[10] 1988 RTC	5	380,000	NA
	Acid Plant Sludge						
	Baghouse Dust						
	Spent Furnace Brick	D004, D006, D007	Slid	1988 RTC	4	580	NA
	Slag fines	D006, D008	Sludge	1988 RTC	1	11,000	NA
	Surface Impound Solids						
	Process Wastewater	D004, D006, D008	Liquid	1/90 Rulemaking	4	3,800,000	0
Lightweight Aggregate	APC Dust/Sludge	[11] DF	Sludge	SWMPF	4	200,000	200,000
Production	APC Scrubber Water	DF	Liquid	SWMPF	4	1,800,000	
Magnesium Electrolytic Refining.	Smut	D003	Sludge	1984 PEI Study	2	24,000	NA
Manganese/Manganese Oxide	Electrolyte Purification						
	Waste						
	Waste Electrolyte						

Mercury (Primary) Retorting	Particulate Control Effl.	D009	Liquid	9/89 Rulemaking	1	1,900	NA
	Furnace Calcines	D009	Solid	9/89 Rulemaking	1	10	NA
	SO2 Scrubber Effluent	D002, D009	Liquid	9/89 Rulemaking	1	3,000	NA
Mercury (By-Product) Retorting	Furnace Residue	D009	Solid	9/89 Rulemaking	9	90	NA
	Dust	D009	Solid	9/89 Rulemaking	9	10	NA
Molybdenum Metal	Refining Wastes						
Molybdic Oxide/Rhenium	Rhenium Raffinate	D008	Liquid	9/89 Rulemaking	2	96,000	NA
	Roaster Gas Blowdown	D002	Sludge	9/89 Rulemaking	2	70	NA
	Solids						
	Refining Wastes	D008	Solid	9/89 Rulemaking	2	2,600	NA
	Treatment Solids						
	Production Wastewater						
Phosphorus Fertilizer (Ammoniated)	Production Wastewater						
Phosphoric Acid (Furnace)	Arsenic Sulfide Sludge						
Tantalum/Columbium Digestion	Raffinate Solids	D002	Sludge	9.89 Rulemaking	2	[12] 1,700	1,500
	Digestor Sludge	D002	Sludge	9/89 Rulemaking		([12])	
	Potassium Titanium						
	Chloride						
	Scrubber Overflow						
	Production Wastewater						
Titanium Tetrachloride Proc.	Waste Acids	D002, D007	Liquid	SWMPF	9	3,200,000	1,900,000 to UIC
	Ferric Chloride Treatment						
	Sludge						
	Ferric Chloride						
	Reactor Slurry						
	Scrubber Solids						
	Scrubber Water						
	Vanedium Oxychloride						
Titanium Dioxide Sulfate Process.	Waste Acids	D002, D007, D010	Liquid	SWMP	2	CBI	CBI
Titanium Ingot Production	Pickle Liquor						
Titanium Sponge Production	Leach Liquor						
	Smut from Magnesium						
	Recovery						
	Sponge Wash Water						
	Titanium Chloride						
	Purification Effluent						
Tin Smelting and Refining	APC Scrubber Blowdown						
	Boiler Blowdown						
	Process Wastewater						
	Treatment Impoundment Sludge						
Zinc Oxide Retorting	Clinker						
Zinc Smelt/Ref. or Electrolytic Ref.	Goethite and Leach Cake Residues	D006	Solid	SWMPF	1	14,000	14,000
	Synthetic Gypsum	D008	Solid	1988 RTC	1	18,000	18,000
	Process Wastewater	D006, D008	Liquid	SWMPF	4	6,000,000	[13] 940,000
	Acid Plant Blowdown	D002, D006, D008	Liquid	SWMPF	4	480,000	0
	WWT Sludge/APC Blowdown						
	Ferrosilicon						
	Zinc-Lean Slag						
Zirconium/Hafnium	Waste Acid/Solid						

[1] Due to a Court decision, the 1988 Report to Congress was never finalized.
[2] No quantitative data were available on management of aluminum reduction wastes.
[3] Study conducted for EPA covered several mining industry sectors.
[4] Background document in support of September 1, 1989 rulemaking.
[5] Not Available.
[6] SWMPF is the National Survey on Solid Wastes from Mineral Processing Facilities; Data for three facilities are CBI and not included.
[7] Site visits were conducted for EPA study of ferroalloy industry sector.
[8] Bureau of Mines reported that only one facility is currently processing FeCr (Telephone conversation with BOM commodity specialist).
[9] Bureau of Mines reported that there are no domestic facilities currently processing FeCrSi (Telephone conversation with BOM commodity specialist); Data are for the one non-CBI facility.
[10] SWMPF data are available, however, data for three of five facilities are CBI.
[11] DF = Derived From Rule; These facilities burn listed wastes.
[12] Data are for one facility and volume includes both raffinate and digestor sludge.
[13] Includes both process wastewater and acid plant blowdown; 910,000 tons to UIC, 30,000 tons to SI.

EPA also has information suggesting that, within each of these categories, wastes from different facilities may have different chemical or physical characteristics that could affect their treatability. These differences may, in part, be due to variations in system configurations, equipment design, operating conditions, and/or ore compositions. Because these mineral processing industries generate many different wastes within these general categories, EPA is attempting to group wastes according to their anticipated treatability. The resultant treatability groups would consist of wastes that are expected to contain similar waste characteristics or would be expected to be treatable to similar concentrations. To develop these, EPA is examining data on total constituent concentrations, leachate analysis (both old EP data and new TCLP data), and other chemical/physical characteristics that could potentially interfere with treatment or recovery. EPA is soliciting additional waste characterization and treatment data that could assist in these determinations.

EPA is also investigating the relationship of the chemical composition of the processed ores to the chemical composition of the corresponding wastes. With this information, it may be possible to develop treatability groups based on unique treatability problems that may be expected to arise from the composition of certain ores. For example, wastes identified as air pollution control residues (e.g., baghouse dust and scrubber blowdown) that are generated from processing copper ores from the Northwest United States appear to contain relatively high levels of arsenic and may represent a unique treatability group. Wastes containing arsenic are generally more difficult to treat with conventional technologies than most other metal-bearing wastes. With respect to recovery, there appears to be a relatively limited market for the reuse of arsenic other than in the preparation of inorganic wood preservatives, certain veterinary pharmaceuticals, and a limited number of herbicides. For wastes derived from the processing of arsenic-rich ores, the viability of establishing BDAT based on conventional treatment technologies or recovery is, therefore, somewhat limited. EPA is, thus, soliciting information on the chemical composition of ores and how they may vary by geographic location.

C. The Dilemma in Establishing BDAT for Some Mineral Processing Wastes

EPA is confronted with a unique dilemma in establishing treatment standards for some of the metal-bearing wastes from the mineral processing industries. Conventional treatment (such as cementitious or pozzolanic stabilization) for similar metal-bearing wastes tends to increase the total volume of wastes needing land disposal, and many of the metal-bearing mineral processing wastes already have significant volumes. On the other hand, many of the metal extraction and metal recovery technologies being investigated as BDAT are quite similar to the mineral processing technologies generating the wastes. (Chemical stabilization is also likely to reduce the economic viability of future recovery or extraction of metals from the stabilized wastes.)

EPA has not yet determined which of the metal-bearing wastes in the approximately 97 different general categories of wastes and 36 industrial sector/processes are likely to be caught. Other corrosive and/or reactive mineral processing wastes may also be caught by this dilemma. For some of these wastes (or for some processes), source reduction may be a likely candidate for BDAT. There are indications that for some mineral processing wastes, the goal of BDAT (i.e., reducing waste volume and/or toxicity) could be achieved by modifying the mineral processing techniques. (See further discussion on potential process modifications as BDAT in section VI.F., below.) EPA is, therefore, soliciting data and information on specific wastes for which this alternative might be possible.

D. Potential BDAT for Metal-bearing Mineral Processing Wastes

1. Wastewaters

EPA intends to rely on the use of conventional wastewater treatment in establishing treatment standards for mineral processing wastewaters containing metals. Conventional wastewater treatment technologies include chemical precipitation (typically as hydroxides or sulfides), flocculation, coagulation, settling, filtration, and centrifugation. EPA is, however, interested in the potential for establishing metals recovery for some metals. Recovery technologies for wastewaters typically include reverse osmosis, cation exchange, chelation, solvent extraction, electrolysis, and selective precipitation.

Many of the approximately 97 different general categories of wastes and 36 industrial sector/processes are likely to be metal-bearing wastewaters. It is conceivable that the majority of these wastewaters can be treated to levels below the concentrations listed in 40 CFR 261.24, Table 1, for each metal (i.e., D004–D011). EPA is, however, concerned about the potential for high concentrations of inorganic anions to interfere with conventional wastewater treatment for metals. (See also the discussion of the treatment of these anions in section VI.E.2., below.) These high concentrations are a direct result of the techniques and principles used to process the minerals. These anions have been specifically selected in order to provide the necessary extraction conditions for certain metals and tend to favor dissolution of some metals over others. Because of this, some metals present in the wastewaters may be more difficult to treat than others. EPA is soliciting information on these potential wastewater treatment complications for all metals including D004–D011.

EPA is also soliciting comment on the achievability of the treatment standards for D004–D011 wastewaters (i.e., the characteristic levels) and, alternatively, the achievability of the metal standards for wastewater forms of F039 (i.e., the listing for multisource leachate). EPA established the levels for D004–D011 rather than establishing numerous treatability groups for these wastewaters because of the high variability in waste types and industries generating the D004–D011 wastewaters. Treatment standards for metals in F039 were generally much lower because the concentrations in untreated F039 wastewaters were relatively low. Because of the large variability in mineral processing techniques and the potential presence of high concentrations of interfering anions, the existing standards for D004–D011 wastewaters may be the more viable alternative for metal-bearing wastewaters from mineral processing.

2. Nonwastewaters

EPA intends to rely on the use of stabilization and/or recovery technologies in establishing treatment standards for metal-bearing mineral processing nonwastewaters. Conventional stabilization technologies include cementitious and pozzolanic stabilization with the potential addition of specialized reagents for the enhancement of structural stability, curing time, and/or reduced leachability. Other stabilization technologies based on thermal reactions include vitrification and calcining. EPA is, however, particularly interested in the potential for establishing metals recovery for certain metals from certain nonwastewaters. Metals recovery technologies typically include hydrometallurgical, electrometallurgical,

and pyrometallurgical processes (such as high temperature metals recovery).

Technologies that recover metals from nonwastewaters and/or thermally stabilize metals in residues are preferable over those conventional stabilization processes that rely on chemical immobilization at essentially ambient temperatures. While recovery technologies usually result in lower volumes of wastes requiring land disposal, they also generate residues that typically leach lower concentrations of metals then chemical stabilization processes. (This is particularly evident for HTMR technologies that process K061 wastes.)

a. High Temperature Metals Recovery

High temperature metals recovery (HTMR) is a common technology for the extraction and recovery of metals from complex matrices. HTMR is based primarily on pyrometallurigcal separation principles and normally includes the use of any of the following units: Primary or secondary smelting, melting, and refining furnaces; electric furnaces; plasma and reactors; cupolas; and roasters. Recovery of metals using HTMR is achieved through the use of high operating temperatures to melt and/or volatilize the metals, control of the oxidation state of the feed and/or slag materials, and separation of the volatilized metals through control of the cooling/condensation conditions. Recovery often requires multiple separation steps using duplicative units or sequential units of different design. Often these must be performed at different sites depending upon availability of equipment. HTMR has been demonstrated to be applicable to almost all metals in a relatively wide variety of matrices. This is primarily due to the thermodynamic and kinetic reactivity of these metals (and other inorganics present) at the high temperatures and oxidation states in the unit.

Depending on the type of HTMR unit and the temperatures utilized, nonwastewater residues that would be classified as slags are likely to be produced. Slags are residues from the molten mass of metals (referred to as the melt). They often act as "sinks" for various metals, inorganic impurities, and/or inorganic reagents and typically are used by the facility to control the chemistry of the melt. When removed, the hot slag is cooled to become a solid mass and, depending on the cooling process, can have different structural properties. Data indicate that many of these slag matrices are quite resistant to leaching of metals.

For all nonwastewater residues from HTMR units, EPA is considering establishing concentration-based TCLP standards developed from data on the leachability of slags. These concentration-based standards could also be potentially established at the characteristic levels for D004–D011 wastes. EPA has, however, been investigating the potential for establishing a universal set of metals standards for all hazardous wastes that have undergone HTMR. Standards for fourteen different metals based on TCLP analysis were proposed for HTMR residues from the processing of K061 high zinc wastes. See the proposed rule for K061 electric arc furnace dust containing high zinc (56 FR 15020 (April 12, 1991)). Depending on the outcome of the final rule, EPA may propose to extend the final K061 standards to all slags or residues from HTMR or similar thermal processes.

b. Hydrometallurigcal Recovery

Several hydrometallurgical technologies (based primarily on leaching) have been tested and documented by the Bureau of Mines as capable of concentrating valuable metals from low-grade ores or from tailings. The residual (i.e., extracted material) is often then capable of being further processed. Other literature reports the use of similar leaching practices to extract metals from ashes, wastewater treatment sludges, and soils. The extracted metals in solution are then precipitated in a form suitable for further refinement/recovery or in a relatively nonleachable form that is more suitable for land disposal. For example, one company claims to have a leaching process (the Cashman Process) that extracts valuable metals from copper flue dusts while converting arsenic compounds to ferric arsenate in the residual waste, thus producing a material that can be land disposed. (EPA is soliciting specific comment on the applicability of this technology to other arsenic-containing wastes.)

While EPA does not currently have a significant amount of data on the use of these technologies, concentration-based TCLP standards based on leaching recovery processes or other hydrometallurgical processes are potentially viable for mineral processing wastes containing metals. These may be established based on data that become available or could be established at the characteristic levels for D004–D011 wastes.

EPA has, however, established treatment standards based on acid leaching for the listed wastes identified as K071. These wastes are listed as "brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used." Treatment standards based on the amount of reachable mercury left in the leached residue were established. (Mercury in solution is then precipitated as a sulfide, which is then retorted for the recovery of mercury.) These standards may be applicable to other mercury-bearing wastes from the mineral processing industries.

c. Stabilization

Stabilization technologies are designed to immobilize hazardous metal constituents in a waste.The basic principle underlying this technology is that stabilizing agents (e.g., cement, lime, pozzolans, silicates, aluminates, and iron salts) are added to a waste for chemical (and thermal) reaction with the waste matrix. The reduction is leachability of the hazardous metal constituents of the wastes is accomplished by the formation of a lattice structure (i.e., chemical bonds) that binds or entraps the metals in a solid matrix. Before addition of the stabilizing agents, the forms of the metals in the wastes need to identified. Often pretreatment involving chemical conversion of the metals in the wastes to a more favorable oxidation state or to a different metallic salt must be performed or the stabilization could be relatively ineffective or incomplete.

Most conventional chemical stabilization processes utilized by the commercial treatment industry involve cementitious or pozzolanic reactions and are typically operated at ambient temperatures. A good number of companies also use additives (often proprietary) to enhance the structural stability, shorten the curing time, or reduce the leachability of the hazardous metals. For most wastes, individual stabilization recipes are developed in order to minimize the amount of reagents needed.

EPA has established many concentration-based TCLP treatment standards (40 CFR 268.41) based on data from conventional chemical stabilization processes. Most metal standards for RCRA hazardous wastes were based on treatment data for: Cadmium (Cd), chromium (Cr), nickel (Ni), lead (Pb), and silver (Ag) in F006 electroplating sludges; Cr and Pb in K062 lime sludge from steel-derived pickle liquor; Cr and Ni in incinerator ash from the burning of K048–K052 petroleum refining sludges; Cr, Pb, and Ni in incinerator ash from the burning of F024 chlorinated aliphatic wastes; Cd

and Pb in K061 electric arc furnace dust; and Pb in K046 wastes from the explosives industry. Additional stabilization data for various types of EP toxic D004–D011 wastes were submitted to EPA during the development of standards for the Third Third wastes. All of these data indicated that the characteristic levels for the D004–D011 wastes could be achieved.

All of these standards and data were developed as part of the land disposal restrictions program for First, Second, and Third Third wastes promulgated August 17, 1988 (53 FR 31138), June 23, 1989 (54 FR 26594), and June 1, 1990 (55 FR 22520), respectively. Background documents and data for the development of the treatment standards for these wastes can be found in the docket for each rule. (For information on accessing this information, contact the EPA RCRA Docket at the phone number in the **ADDRESSES** section, above.)

Vitrification and calcining processes can be considered stabilization processes that occur at elevated temperatures. Calcining typically converts metal hydroxides to metal oxides (which, for some metals, are often less soluble than the hydroxides). Vitrification processes use thermally assisted chemical reactions between hazardous metal constituents and compounds such as silicates, alumina, and iron. Both processes use elevated temperatures to control properties of the residuals and, thus, maximize the reduction in leachability.

Concentration-based TCLP treatment standards for all D004 arsenic wastes were established based on vitrification data for wastes containing up to 25 percent total arsenic. Data for other conventional chemical stabilization processes indicated that they were generally only applicable for relatively low levels of untreated arsenic and relied on pretreatment with iron salts in order to stabilize the arsenic chemically.

EPA is examining all of the aforementioned stabilization data with respect to their potential transfer to metal-bearing nonwastewaters from mineral processing industries. EPA is soliciting additional stabilization data for these wastes, particularly on: the stabilization of wastes containing high concentrations of metals (i.e., percent levels); potential treatability problems for stabilizing wastes containing mercury, selenium, barium, or arsenic; and potential treatability problems that might arise from the presence of high concentrations of anions from the mineral processing wastes.

E. Potential BDAT Technologies for Other Characteristic Wastes

1. Corrosive Wastes

EPA believes that many of the mineral processing wastes are corrosive wastewaters containing sulfuric acid resulting from the reduction of sulfur dioxide emissions from the smelting processes.

Sulfuric acid is one of the most widely used acids in the United States. Hence, recovery technologies appeal quite promising as treatment for these wastes. EPA has information indicating that recovery processes such as solvent extraction, crystallization and incineration can recover the sulfuric acid for reuse. One sulfuric acid recovery process evaporates the sulfuric acid in the waste acid, separates the solid metal sulfates from the vapor phase, and produces 93–96 percent sulfuric acid by condensation.

EPA requests comment on any recovery process for the acidic wastes from mineral processing. Information submitted should include limitations based on waste specifications and performance data showing untreated and treated concentrations of the metal impurities found in these corrosive wastes.

Since many of the corrosive wastes are generated as a consequence of cleaning off-gases, EPA is particularly interested in reviewing the types of air pollution control devices or acid plant treatment operations used by primary and secondary metal processing units. EPA is soliciting information on any innovative scrubbing technologies that may be more efficient in cleaning off-gases than those normally used by the mineral processing industry. EPA is also interested in the potential for using air pollution control devices that generate sulfur or other solid wastes rather than acidic wastewaters. While this apparently leads to what may be considered a cross-media transfer, the solids created would be less mobile and could have less potential for ecological damage when land disposed as opposed to the potential for release of the acidic wastewaters into aqueous environments, including groundwater, waterways, and wetlands.

While source reduction and recovery are preferred processes for corrosive wastes, it is likely that not all corrosive wastes will be economically reduced to zero generation. EPA is, therefore, considering establishing neutralization as the treatment standard for corrosive wastes from the mineral processing industry. EPA is, however, soliciting information on where neutralization may not be possible for some corrosive wastes because of the large volume of neutralizing agents that may be required.

Treatment of acidic wastes using neutralization involves the addition of alkaline reagents to achieve a pH greater than 2 in the aqueous residuals. This neutralization reaction utilizes a chemical change to achieve neutral pH with the anions either remaining in solution or precipitating as a sludge. When selecting neutralizing reagents, it is important to consider the solubility of the salts produced as a result of neutralization. For instance, chemical neutralization of sulfuric acid with caustic (sodium hydroxide) will generate very soluble salt (sodium sulfate) while treatment with lime (calcium hydroxide) will generate a relatively insoluble, nontoxic sludge. The more soluble the material, the more likely it is to cause damage to the ecosystem and potentially to contaminate groundwater.

2. Other Inorganic Constituents

EPA is concerned, as mentioned in section VI.D.1 above, that the presence of fluoride, sulfide, sulfate, chloride, nitrate, and/or other dissolved solids may interfere with the selection of BDAT for the mineral processing wastes. EPA is interested in information about technologies capable of treating wastes containing any or all of these ionic constituents and requests data and information on successful attempts to resolve these treatability issues.

EPA is concerned that the presence of dissolved solids may interfere specifically with the selection of BDAT for the mineral processing wastes containing significant levels of cyanides.

Conventional treatment of cyanide wastes includes alkaline chlorination or treatment with other chemical oxidizing agents. The selection and use of these reagents appear, however, to cause problems with respect to water reuse in remote, arid mining areas. The build-up of residual anions from the reagents used to treat the cyanides may interfere with the efficiency of further mineral processing.

EPA has developed treatment standards for many RCRA listed hazardous wastes containing cyanides from electroplating and heat treating industries. These standards are, however, based primarily on alkaline chlorination. EPA is, therefore, soliciting comment on the achievability of the standards for both total and amenable cyanides in both wastewaters and nonwastewaters forms of F006. These standards were promulgated in the final rule for Third Third wastes and are listed in 40 CFR 268.43.

F. Potential Process Modifications as BDAT

EPA is considering establishing BDAT standards based on potential process modifications that generate certain mineral processing wastes (see section VI.C., above).This alternative is only likely where other treatment or recovery technologies appear to be very difficult to establish. The following examples give potential situations where such modifications could be investigated as alternative BDAT. EPA is soliciting information on the potential need for such standards and on wastes for which this type of standard may be more appropriate than standards based on treatment and/or recovery.

(1) Longer residence times and higher operating temperatures could be used that may result in more metals being extracted from the ores and may, therefore, leave lower concentrations of total metals in the slag that have the potential to leach.

(2) Certain reducing and fluxing compounds could be used that may result in the extraction of more of one metal and could change the distribution of other metals into either the slags or into air pollution control device residues.

(3) Many secondary smelting operations can potentially alter the additives they currently use (or begin using) and change operating conditions to produce "vitrified" slags that leach below the characteristic levels.

(4) Many primary operations could simply send their slags and other residuals to further processing in secondary operations.

(5) Patented processes could be used that are capable of generating a glassified slag by adding silica additives directly into the air pollution control device.

G. Currently Available Capacity Information

EPA believes that approximately 39 industrial sectors/processes currently generate 97 different waste streams that may be classified as hazardous and may require alternative treatment capacity, if they are land disposed. Exhibit 1 summarizes estimates of former Bevill waste volumes generated, volumes land disposed, and the RCRA hazardous waste code that most likely applies. The information presented is based on the most current information available to EPA.

The quality and types of data available for these waste streams are highly variable. The most comprehensive and up-to-date data are for wastes designated as special wastes in the 1989 National Survey of Solid Wastes from Mineral Processing Facilities (the SWMPF Survey). Overall, available data on waste volumes and characteristics are good for mineral processing wastes associated with the production of copper, lead, zinc and zinc oxide, aluminum, and bauxite. Data on other sectors are generally lacking. The SWMPF Survey did not include most of the low-volume mineral processing waste streams that comprise the largest proportion of the potentially hazardous wastes. In particular, waste management data are lacking and data on the availability of on-site or captive treatment capacity are very limited. EPA requests comments on these analyses and additional data on the generation and management of these wastes.

Because of the absence of more current and more complete data, EPA may perform capacity analyses using existing data coupled with assumptions about the generation, characteristics, and management of waste streams for which only incomplete data are available. For example, for waste streams where no data on management practices are available, EPA could assume a "typical" waste-to-product ratio to estimate the volume land disposed.

H. Listed Mineral Processing Wastes Formerly under the Bevill Exclusion (K064, K065, K066, K090, and K091)

EPA will also be evaluating the data available for mineral processing wastes identified as K064, K065, K066, K090, and K091. These five wastes were listed by EPA in 1988, following the *EDF* decision discussed above, which declared these wastes to be no longer subject to the Bevill exclusion. In 19990, however, the U.S. Court of Appeals for the D.C. Circuit remanded EPA's decision to list these wastes back to the Agency for further explanation of the basis for listing. *American Mining Congress* v. *EPA*, 907 F.2d 1179 (DC Circ. 1990). (The sixth waste listed, K088, was not remanded, and is discussed in section V.B. above.)

EPA has not yet decided how it will respond to the Court's remand. It may decide to provide the required explanation and maintain the listing of some or all of the five wastes, or it may decide that some or all of the wastes no longer meet the listing criteria under 40 CFR 261.11. In the interim, the hazardous waste characteristics continue to apply to these wastes, since they are outside the Bevill exclusion.

Since EPA may decide that these five wastes should remain listed, EPA is continuing to include them as wastes that could potentially require treatment standards under the land disposal restrictions, and solicits comments on the data discussed below.

The notice of proposed rulemaking for the listing of these wastes in 1985 (50 FR 40292) estimates the volumes of these wastes that were generated, recycled, and land disposed in 1984. Approximately 25,000 tons of K064, 35,000 tons of K066, 3,700 tons of K090, and 210,000 tons of K091 were land disposed in 1984. (More recent information suggests, however, that K064 is no longer technically generated owing to changes made by the industry.) According to EPA's data, 100 percent of K065 was recycled in 1984.

EPA has recently updated its data on K066, K090, and K091. These updated data indicate that approximately 43,000 tons of K066 were generated in 1989. Only 15,000 tons were placed in units considered to be land disposal units, and the generator who used this management practice has informed EPA that the waste will be recycled rather than land disposed if K066 is relisted. In 1989, 900 tons of K090 were generated and have, historically, been landfilled. Although one of the two facilities generating K091 has since stopped, 5,400 tons were generated in 1989. The other facility is currently solidifying its K091 wastes.

In the absence of more recent data on waste generation and management practices, EPA may make preliminary assessments of capacity based on the data from 1984 and the updated data on K066, K090, and K091. Data currently available for K064, K065, K066, K090, and K091 indicate that there is sufficient stabilization capacity available to treat these five wastes if stabilization is selected as BDAT. In the Third Third final rule (55 FR 22635, 22647 (June 1, 1990)), EPA estimated that 1,250,000 tons of stabilization was available. It appears, therefore, that there is likely to be sufficient capacity to treat these wastes. EPA requests additional data on the generation and management of mineral processing wastes removed from the Bevill exclusion.

Dated: October 9, 1991.

William K. Reilly,

Administrator.

[FR Doc. 91–25324 Filed 10–23–91; 8:45 am]

BILLING CODE 6560–50–M

federal register

Thursday
October 24, 1991

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1952

Termination of Operational Status Agreement for North Carolina State Plan; Change in Level of Federal Enforcement; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Termination of Operational Status Agreement for North Carolina State Plan

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Change in level of federal enforcement.

SUMMARY: Pursuant to paragraph 8 of the Operational Status Agreement, which was entered into under section 18 of the Occupational Safety and Health Act (the Act) by the State of North Carolina and the Occupational Safety and Health Administration (OSHA) in 1975, OSHA hereby announces the termination, effective October 24, 1991, of that agreement and the reinstitution of limited concurrent Federal jurisdiction to the degree necessary to assure occupational safety and health protection to employees of the State of North Carolina. This reinstitution of enforcement authority will assist the State of North Carolina, which will continue to operate its own occupational safety and health program.

Federal enforcement will be exercised in specifically defined areas, including, safety and health complaints and referrals brought to OSHA's attention; referrals from North Carolina Governor Martin's "hot line;" and, as requested by the State of North Carolina, all currently pending and new discrimination complaints under section 11(c) of the Act, 29 U.S.C. 660(c), filed either with OSHA or North Carolina's OSHA program.

EFFECTIVE DATE: October 24, 1991.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8148.

SUPPLEMENTARY INFORMATION:

A. Background

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 667, provides that States which wish to assume responsibility for developing and enforcing their own occupational safety and health standards, may do so by submitting, and obtaining Federal approval of, a State plan. On February 1, 1973, notice was published in the **Federal Register** (38 FR 3041) announcing the approval of the North Carolina State plan and the adoption of subpart I to 29 CFR part 1952 containing the decision.

Under the Act and OSHA's regulation, State plan approval occurs in stages which include initial approval under section 18(b) of the Act and, ultimately, final approval under section 18(e). After initial approval, but prior to final approval of a State plan, section 18(e) of the Occupational Safety and Health Act provides for a period of concurrent Federal/State jurisdiction within a State operating an approved plan. Section 1954.3 of this chapter provides guidelines and procedures for the exercise of discretionary concurrent Federal authority to enforce Federal standards during that period. In determining the appropriate level of Federal enforcement, OSHA must consider the effectiveness of State enforcement, the coordinate utilization of Federal and State resources throughout the Nation, and current worker protection needs in the State. If Federal Monitoring shows that a State program has developed its program to a degree sufficient to justify suspension of duplicative Federal enforcement, regulations provide that OSHA through its Regional Administrator may enter into a procedural agreement with the State, usually referred to as an "operational status agreement," setting forth areas of Federal and State enforcement responsibility 29 CFR 1954.3(f).

On February 20, 1975, an Operational Status Agreement was entered into between OSHA and the State of North Carolina. Notice of this agreement was published in the **Federal Register** on April 15, 1975 (40 FR 16843), as amended on December 18, 1979 (44 FR 74819), and as redesignated on January 17, 1986 (51 FR 2488) the pertinent provisions thereof relating to the level of Federal enforcement in the State were codified at 29 CFR 1952.155.

Among other provisions, paragraph 8 of the operational status agreement provided that the agreement was subject to revision or termination by the Assistant Secretary of Labor, when there has been a "susbstantial failure by the State to comply with any of its provisions" or when the State operations covered by the agreement fail "to be at least as effective as the Federal program". Under such circumstances, the agreement provided that "Federal enforcement authority may be exercised to the degree necessary to assure occupational safety and health protection to employees".

On September 3, 1991, a tragic workplace fire at Imperial Food Products, Inc. in Hamlet, North Carolina resulted in the death of 25 workers. The weeks following the Hamlet fire have seen an intensive reexamination by OSHA and by the State itself of the level of employee safety and health protection presently afforded North Carolina workers. In response to the Hamlet fire, the Secretary of Labor has charged OSHA with responsibility to conduct a complete reevaluation of State operations under the North Carolina State plan as well as all other approved plans, and to take all other necessary steps to assure complete protection to the State's workers. The State of North Carolina has recently acknowledged in a variety of ways the need for additional resources from Federal OSHA for the North Carolina program. In letters dated September 19, 1991, North Carolina requested Federal assistance in terms of providing $1,059,912 in additional Federal funds to match State money made available on an emergency basis by Governor Martin. The State also requested the "loan" of twelve safety and twelve health Federal compliance officers to work as inspectors for the North Carolina Department of Labor and the identification of Federal staff who would be available to work for North Carolina under Intergovernmental Personnel Act (IPA) agreements. The only legally permissible mechanism for lending Federal staff to North Carolina is through the IPA. The IPA provides that all three parties—the State, the Federal government, and the employee—must consent to such an assignment. OSHA has polled its available technical staff, and as of this date, there are no Federal OSHA volunteers willing to enter into agreements to work as North Carolina compliance officers.

At an October 15, 1991 meeting, Regional Administrator Davis Layne offered an amendment to the existing Operational Status Agreement which would have allowed OSHA to provide assistance to North Carolina by providing supplemental Federal enforcement assistance in North Carolina, without the need for the revocation or issue-specific amendment of the agreement. North Carolina Commissioner of Labor Brooks declined to sign the proposed amendment.

Section 18(e) of the OSH Act specifically empowers the Secretary of Labor to exercise Federal enforcement authority in State plan States which, like North Carolina, have not yet received final approval. Since the Act provides that "the Secretary may, but shall not be required to" exercise this authority, the nature and extent of Federal

enforcement is a matter of discretion; however, because the Act requires the Secretary to "assure so far as possible every working man and woman in the nation safe and healthful working conditions," this concurrent jurisdiction must be exercised to the degree necessary to provide maximum protection to employees in States whose programs have not yet attained final approval. Regulations at 29 CFR 1952.155 specifically requires the OSHA Regional Administrator be responsible for monitoring the North Carolina plan to "make a prompt recommendation for resumption of the exercise of Federal enforcement authority * * * whenever and to the degree necessary to assure occupational safety and health protection to employees in the State of North Carolina."

Assistant Secretary Scannell, in a letter dated October 23, 1991, to Commissioner Brooks determined that it would be necessary to reinstitute a limited level of concurrent Federal jurisdiction in North Carolina to assure worker protection. In that letter, Assistant Secretary Scannell notified the State that, as provided by paragraph 8 of the February, 1975, Operational Status Agreement, Federal OSHA is "hereby unilaterally terminating that agreement." In taking this action OSHA is in effect providing the assistance that North Carolina requested in the only manner that currently is available. This supplemental Federal assistance should free the North Carolina staff to devote their efforts to addressing pending complaints, the investigation of the Imperial Food fire, and of the other recent fatalities, and, importantly, the resumption of targeted high hazard (programmed) safety and health inspections. OSHA recognizes that a significant number of allocated field compliance staff positions in North Carolina remain unfilled or filled by trainees. A significant number of complaints, both new and backlogged, remain to be investigated. North Carolina is now devoting staff resources to the investigation of the fire that occurred at Imperial Food Products.

B. Decision

After careful consideration, notice is hereby given that the operational status agreement between OSHA and the State of North Carolina, has been terminated. Notice is also hereby given that, until the State receives final approval under section 18(e) or until subsequent determinations are made by Federal OSHA affecting the level of Federal enforcement in North Carolina, discretionary Federal concurrent enforcement authority will be exercised in the following manner:

In general, Federal enforcement authority will not be initiated with respect to issues covered by the North Carolina State plan. The U.S. Department of Labor will, however, exercise enforcement authority with regard to section 11(c), the anti-discrimination provisions of the Federal Act, all issues of occupational safety or health in private sector maritime employment, and on military bases, which employment has been excluded from coverage by the State plan.

In addition, notice is hereby given that, effective today and until further notice in the **Federal Register**, Federal enforcement authority will be exercised with respect to all currently pending and new complaints of discrimination under section 11(c) of the Act, 29 U.S.C. 660(c), filed either with OSHA or the State; all complaints of unsafe or unhealthful working conditions brought to OSHA's attention on or after the date of this notice by employees or referred by others; and referrals from North Carolina Governor James Martin's 800 "hot line". Federal OSHA will also retain the following general enforcement authority:

(1) The right to exercise, without notice to the employer, full concurrent Federal enforcement authority over any establishment for which, such establishment having refused entry to the State, the State is unable to obtain a warrant to enforce the right of entry.

(2) The right to exercise Federal enforcement authority to enforce any safety or health standard which Federal OSHA has promulgated until such time as the State has adopted a comparable standard.

(3) When, in the opinion of the Assistant Secretary, a new safety or health standard is so unique or complex that it requires a uniform enforcement policy, the Assistant Secretary will consult with the State and a mutually agreeable strategy will be developed for the conduct of the initial inspections under the new standards. Appropriate training and assistance may be provided for both Federal and State compliance officers. The inspection itself will be conducted by a Federal compliance officer alone, or if the State so desires, working as a team with a State compliance officer. If the inspection is a joint inspection, unless there is a compelling reason for the issuance of a Federal citation, the citation issued will be a State citation, and enforcement procedures will be in accordance with State policy. If the inspection is a Federal only inspection, a Federal citation will be issued.

(4) On occasion and in extraordinary circumstances, the State may not be able fully or effectively to exercise its enforcement authority. Examples of these circumstances include, among others, a substantial, temporary reduction of State resources or staff, jurisdictional limitations on State enforcement authority, worksites which lie within more than one State, or State inability to enforce effectively a particular standard. Such circumstances may call for a limited resumption of Federal enforcement authority, which may occur at the State's request or upon the Assistant Secretary's determination, after consideration of all relevant factors that resumed Federal enforcement authority is necessary to protect the safety and health of workers in the State. The Assistant Secretary shall publish notice of resumed Federal enforcement authority in the **Federal Register**, describing the limitations thereon and the reasons therefor. Where specific circumstances require that Federal enforcement activity begin without delay, such activity may occur prior to publication of the **Federal Register** notice. In all cases of resumed Federal enforcement authority, the State may accompany the Federal inspector(s).

C. Notification of Location for Filing Complaints

Discrimination complaints under section 11(c) of the Act (29 U.S.C. 660(c)), and occupational safety and health complaints and complaints may be filed with the Regional Administrator, Occupational Safety and Health Administration, 1375 Peachtree Street NE., suite 587, Atlanta, Georgia 30367. Occupational safety and health complaints may also be filed with the Area Director, Occupational Safety and Health Administration, Century Station, 300 Fayetteville Mall, room 104, Raleigh, North Carolina 27601.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Signed at Washington, DC this 22nd day of October, 1991.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 91-25834 Filed 10-23-91; 8:45 am]

BILLING CODE 4510-26-M

Reader Aids

Federal Register

Vol. 56, No. 206

Thursday, October 24, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

7 CFR

17 50809
24 54531
46 51825
75 51319
245 52120
271 ..... 54775, 55052
272 ..... 54775, 55052
273 ..... 54775, 55052
278 54775
301 52445
905 51971
932 49667
985 51826
987 50647
944 49669
966 51147
981 51149
989 51150
1106 52446
1120 52446
1126 52446
1132 52446
1138 52446
1210 51320
1230 51635
1902 50648
2400 54531

Proposed Rules:

Ch. VI 51868
271 ..... 51854, 54799
272 54799
273 51854
274 54799
278 54799
319 52004
360 52005
905 50677
907 51345
908 51345
931 51180
979 52481
1209 50283
1900 54790
1951 54790

8 CFR

100 50810
103 49671
208 50810
212 50033
235 50810
242 50810
245 49839
299 49671
392 49671
499 49671

9 CFR

53 51973
72 51974
73 52462
78 54532
112 51975

Proposed Rules:

91 52007
312 52218
318 52218
322 52218
327 52218
381 52218

10 CFR

2 51321
13 49945
15 51829
16 51829
150 54778
715 55062

Proposed Rules:

32 51182
440 54932
1004 55036

12 CFR

202 51322
208 51152
213 51322
225 51152
226 51322
338 50034
1680 52160

Proposed Rules:

Ch. X 51854
359 50529
1620 50829

13 CFR

101 54779
121 ..... 49672, 49841, 52463
122 52187

Proposed Rules:

102 52482
120 54802

14 CFR

21 54779
25 54779
39 ..... 50042, 50048, 50649, 50650, 51156–51162, 51322–51327, 51637–51646, 52188, 54781, 54783, 55064, 55066
71 ..... 49842–49844, 51166, 51327, 52464–52466, 54784, 54785, 55028
91 ..... 51167, 51257, 51618
107 54917
108 54917
161 51257

Proposed Rules:

39 ..... 50294–50301 50678–50682, 51346–51351, 52485–52490, 54804, 54810
71 ..... 49855, 50066, 51352, 51353, 52491, 54811, 55018, 55101
73 52492

15 CFR

19 51257
771 51833
772 55068
773 55068
774 51833
787 55068
1160 51257
1170 51257
400 50790

Proposed Rules:

928 ..... 52220, 52493
932 ..... 52220, 52493

16 CFR

305 50812

Proposed Rules:

435 50419
453 54814

17 CFR

30 51650

Proposed Rules:

4 50067

18 CFR

2 52330
37 54534
154 52330
157 ..... 50235, 52330
284 ..... 50235, 52330
375 52330
380 52330

Proposed Rules:

284 50072

19 CFR

111 55072

Proposed Rules:

4 ..... 51168, 51762
10 ..... 49844, 51762
101 55102
102 51762
134 51762
177 51762

20 CFR

200 50246
236 55072
240 55072
404 ..... 50157, 52466
416 55073
422 50157
629 54708
636 54708
655 54720
656 ..... 54708, 54920
658 54708
725 54708
801 54538
802 54538

Proposed Rules:

345 55102
404 ..... 52231, 55157
416 55157

21 CFR

5 51169
175 49673
176 49673
429 50248
510 ..... 49845, 50652
520 ..... 50652, 50654, 50813
522 ..... 50652, 50814
524 50652
540 50652
558 ..... 49846, 50049, 50652, 50655
1220 50249
1313 55076

Proposed Rules:

211 51354
314 51354
333 ..... 50754, 52008
514 51354

22 CFR

42 ..... 49675–49678, 51170, 51172, 55077
43 49821

Proposed Rules:

41 49729–49821
312 50684

23 CFR

1205 50250

24 CFR

91 49683
103 55077
200 ..... 50814, 52414
201 52414
202 52414
235 49683
888 51834
966 51560

Proposed Rules:

81 51854
961 50772

26 CFR

1 52120
5c 51175
301 49684
602 52120

Proposed Rules:

1 ..... 50754, 50755, 51184, 51258, 52120, 52240, 54918
53 54918
301 ..... 50831, 50833, 51258, 51855–51860

27 CFR

9 52190
70 55078

28 CFR

2 51176
51 51834
68 50049

Proposed Rules:

11 49729
16 50833
32 50160

29 CFR

6 54708
18 54708
40 54786
41 54786
96 50784
102 ..... 50820, 54538
500 ..... 54708, 54787
507 54720
541 50256
579 54708
580 54708
1952 55192
2570 54708
2610 ..... 51820, 52192
2622 51820
2644 51821
2676 51822

Proposed Rules:

541 50302

30 CFR

56 52193
57 52193
75 51610
935 52469
938 55080
948 50256

Proposed Rules:

701 ..... 51861, 52494, 55103
773 55103
778 55103
780 52494
784 52494
785 51861
816 52494
817 52494

840.....55103
843.....55103
845.....51184
904.....51188
935.....49856
870.....50741

31 CFR

515.....49846

32 CFR

93.....51328
162.....50270
199.....50273, 52193–52198
290.....49685
292.....55087
293.....51976
295.....49693
312.....51976
726.....55088

Proposed Rules:

806b.....50303

33 CFR

100.....50655, 51331, 51332, 51980
117.....49705, 54787
165.....50274, 51980, 54539
242.....54712
330.....51837

Proposed Rules:

Ch. II.....51868
165.....55104

34 CFR

301.....54686
303.....54686
304.....54686
305.....54686
307.....51582
309.....54686
315.....54686
316.....54686
319.....54686
320.....54686
324.....54686
326.....54686
327.....54686
330.....54686
331.....54686
332.....54686
333.....54686
338.....54686

Proposed Rules:

208.....54650
400.....51448
401.....51448
402.....51448
403.....51448
405.....51448
406.....51448
407.....51448
408.....51448
409.....51448
410.....51448
411.....51448
412.....51448
413.....51448
414.....51448
415.....51448
416.....51448
417.....51448
418.....51448
419.....51448
421.....51448
422.....51448
423.....51448
424.....51448
425.....51448
426.....51448
427.....51448
428.....51448
791.....51122

36 CFR

327.....49706

Proposed Rules:

51.....54554
254.....49948

37 CFR

2.....54917
201.....50657

38 CFR

3.....51651, 52473
4.....51651
17.....52474

Proposed Rules:

21.....49735, 51663, 51861

39 CFR

111.....51838, 51981
233.....55157

40 CFR

52.....50172, 50659, 51982, 52205, 52476, 54789
136.....50758
180.....51841
186.....51841
257.....50978
258.....50978
271.....51762
272.....51762
281.....51333

Proposed Rules:

Ch. I.....51868
52.....49857, 52008–52011, 54554
80.....52316
82.....50693
88.....50196,52013
112.....54612
141.....52241
142.....52241
185.....50190, 50466
228.....49858
261.....51592
268.....55160
271.....51592
302.....51592
764.....49863

41 CFR

302–6.....51177

42 CFR

110.....51798
400.....50058
406.....50058
407.....50058
413.....54539
414.....50821
417.....51984
482.....54539
483.....54539
484.....51334

Proposed Rules:

36.....51189
413.....50834

43 CFR

Public Land Orders:

6831 (Corrected by PLO 6885).....50059
6883.....50058
6884.....49847
6885.....50059
6886.....50661
6887.....50824
6888.....50661
6889.....51177
6890.....51334
6891.....51986
6892.....52210
6893.....52210
6894.....52211
6895.....52212
6896.....52477
6897.....54796

Proposed Rules:

4.....55157
2090.....49962
2200.....49962
3800.....54815

44 CFR

65.....51335, 51337
67.....51338

Proposed Rules:

65.....50838, 51358
67.....51362
72.....50838, 51358

45 CFR

402.....49706
1160.....49848, 51842

46 CFR

28.....49822
30.....52122
67.....51653
151.....52122
153.....52122
189.....50754
197.....52122
327.....50274
504.....50662
550.....50824, 54796
580.....51987
581.....51987
583.....51987

Proposed Rules:

550.....50841

47 CFR

1.....51178
2.....51178, 51655
69.....51656, 51843
73.....49707, 50277, 50278, 50419, 50827, 50828, 51657–51659, 51844, 51845, 52477, 52478, 54546, 54547
74.....50662
76.....49707, 52479
78.....50662
87.....51655
97.....51762

Proposed Rules:

2.....52496
22.....52496
61.....52496
69.....51666, 51869, 52496
73.....50303, 50304, 50842, 50843, 51667, 51870, 52497
74.....52496
90.....49875, 52496

48 CFR

233.....52440
352.....54797
509.....51659
525.....52479
552.....51659, 52479
705.....52212
706.....52212
719.....52212
726.....52212
752.....52212
1825.....52213

Proposed Rules:

225.....52497
246.....50693
252.....50693, 52497
503.....50073
552.....50073

49 CFR

71.....51997
171.....49831, 49980
172.....49980
173.....49980, 50664
174.....49980
195.....50665
385.....51342
571.....50666, 51845
639.....51786
1105.....49821
1152.....49821

Proposed Rules:

107.....51294
171.....51294
192.....54816
225.....52241
245.....52498
350.....50305
396.....50305
533.....50694
544.....51871
564.....52242
571.....52242, 52499

50 CFR

17.....49850, 54950
23.....49708, 50059
204.....50061
216.....50278, 50672
247.....50278
265.....55090
285.....50061, 54797, 55095
642.....49853
646.....52479
651.....50063
661.....51660–51662
663.....49727, 50063
672.....50157, 50279–50281, 51179, 51848, 52213, 54798, 55096
675.....52214, 55097
685.....51849, 52214

Proposed Rules:

Ch. I.....51868
Ch. IV.....51868
17.....50075, 50701, 51668, 52500–52506, 55107
80.....50844
251.....50305
611.....50084
630.....51367, 54819
641.....51367
652.....51368
658.....50844

663.....50084
649.....51191
672.....51669
675.....51669

LIST OF PUBLIC LAWS

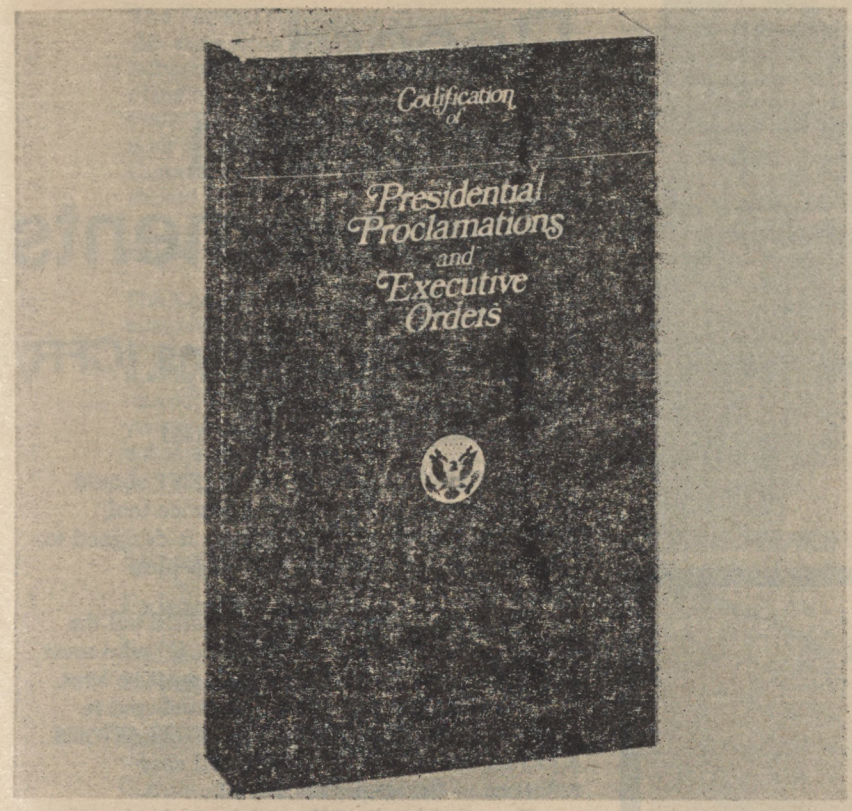
This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

H.J. Res. 230/Pub. L. 102-134

Designating October 16, 1991, and October 16, 1992, each as "World Food Day". (Oct. 21, 1991; 105 Stat. 633; 2 pages) Price: $1.00

Last List October 23, 1991

New edition .... Order now !



For those of you who must keep informed about **Presidential Proclamations and Executive Orders,** there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1945–1989 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325

Order Processing Code:
***6661**

Superintendent of Documents **Publications** Order Form

P3

Charge your order. It's easy!

To fax your orders and inquiries–(202) 275-0019

☐ **YES,** please send me the following indicated publication:

_____ copies of the CODIFICATION OF PRESIDENTIAL PROCLAMATIONS AND EXECUTIVE ORDERS, S/N 069-000-00018-5 at $32.00 each.

The total cost of my order is $_____. (International customers please add 25%.) Prices include regular domestic postage and handling and are good through 1/90. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

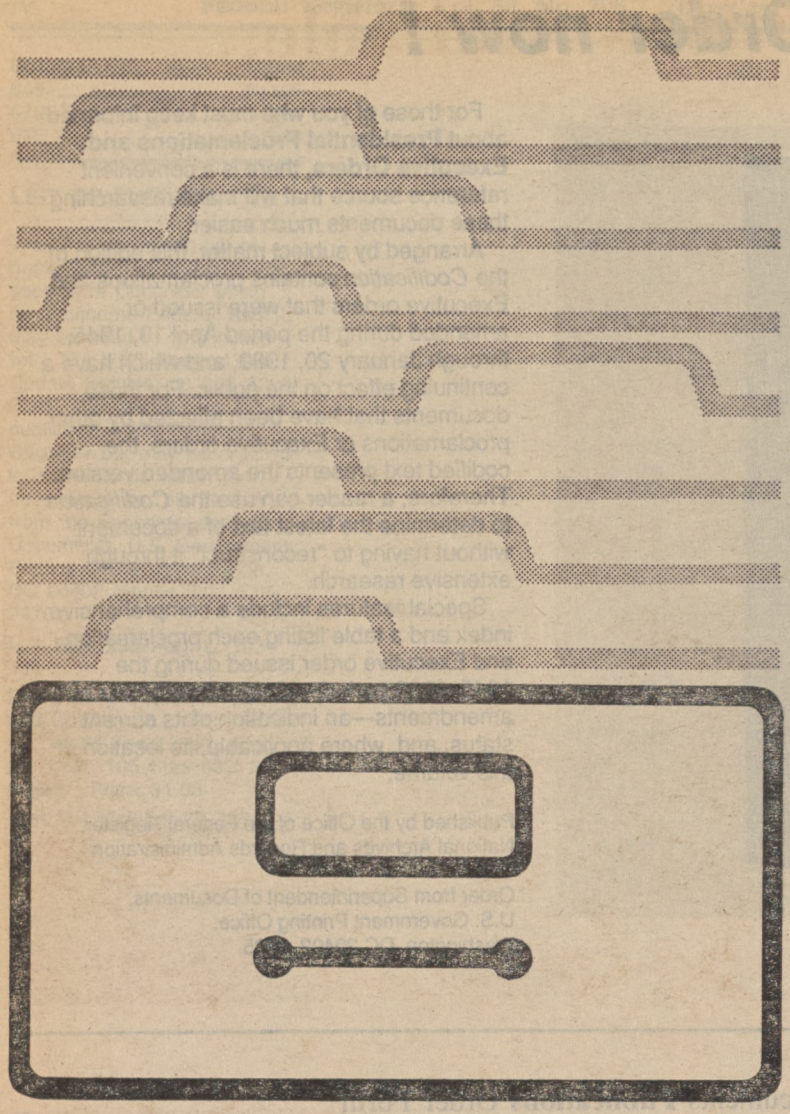
(Credit card expiration date)

Thank you for your order!

(Signature)

7 89

Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325



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.

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325.

Superintendent of Documents Publication Order Form

Order Processing Code: ***6788**

Charge your order. It's easy!

To fax your orders and inquiries. 202–275–2529

☐ **YES,** please send me the following indicated publication:

_____copies of the 1989 GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR S/N 069–000–00020–7 at $12.00 each.

_____copies of the 1991 SUPPLEMENT TO THE GUIDE, S/N 069–000–00038–0 at $1.50 each.

1. The total cost of my order is $_____ (International customers please add 25%). All prices include regular domestic postage and handling and are good through 9/91. After this date, please call Order and Information Desk at 202–783–3238 to verify prices.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
_____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

3/91

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325

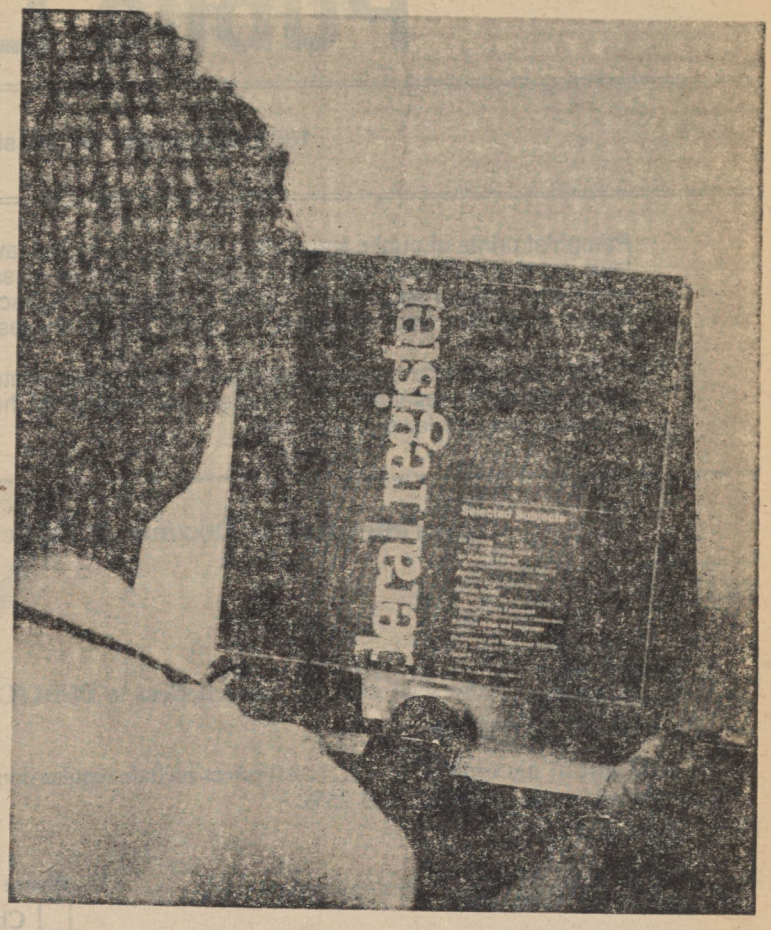
Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 196 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.



Microfiche Subscription Prices:

Federal Register:

One year: $195
Six months: $97.50

Code of Federal Regulations:

Current year (as issued): $188

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
*** 6462**

Charge your order. It's easy! MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

24x MICROFICHE FORMAT:

_____ **Federal Register:** _____ One year: $195 _____ Six months: $97.50

_____ **Code of Federal Regulations:** _____ Current year: $188

1. The total cost of my order is $_____ . All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371 **(Rev. 2/90)**

Public Laws

102d Congress, 1st Session, 1991

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 102d Congress, 1st Session, 1991.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws and prices).

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
***6216**

Charge your order. It's easy!

To fax your orders and inquiries–(202) 275-0019

☐ **YES,** please send me ____ subscriptions to **PUBLIC LAWS** for the 102d Congress, 1st Session, 1991 for $119 per subscription.

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. **Please choose method of payment:**

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

1/91

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371