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Tuesday
November 19, 1991

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: November 25, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.
DIRECTIONS: North on 11th Street from Metro Center to southwest corner of 11th and L Streets

Contents

Federal Register

Vol. 56, No. 223

Tuesday, November 19, 1991

Agricultural Marketing Service
RULES
Melons grown in Texas, 58302
PROPOSED RULES
Onions grown in—
Texas, 58324

Agriculture Department
See Agricultural Marketing Service; Cooperative State Research Service; Farmers Home Administration; Federal Crop Insurance Corporation; Forest Service

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Lowes Inc. et al., 58399
National cooperative research notifications:
Bell Communications Research, Inc., 58400
OSINET Corp., 58400

Army Department
See Engineers Corps

Blackstone River Valley National Heritage Corridor Commission
NOTICES
Meetings; Sunshine Act, 58417

Census Bureau
NOTICES
Survey determinations, etc.:
Manufacturing area; annual, 58352

Children and Families Administration
NOTICES
Meetings:
Developmental Disabilities Interagency Committee, 58388

Commerce Department
See Census Bureau; Foreign-Trade Zones Board; International Trade Administration; National Institute of Standards and Technology; National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Macau, 58369
Malaysia, 58369
Philippines, 58370
Turkey, 58371
Textile consultation; review of trade:
Colombia, 58372

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 58417
(4 documents)

Cooperative State Research Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Special research grants—
Water quality program, 58484

Defense Department
See Engineers Corps

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Footerman, Harold, M.D., 58400

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Educational research program
Field-initiated studies, 58373
National English literacy demonstration program for individuals of limited English proficiency, 58480

Employment and Training Administration
NOTICES
Adjustment assistance:
Crystal Brands Men's Sportswear Group, 58402
Grants and cooperative agreements; availability, etc.:
Job Training Partnership Act—
Dislocated workers employment and training assistance, 58402

Energy Department
See also Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
Purdue Research Foundation, 58374

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Santa Paula Creek Flood Control Study, CA; correction, 58373

Environmental Protection Agency
RULES
Hazardous waste:
Identification and listing—
Exclusions, 58312
PROPOSED RULES
Water pollution control:
Clean Water Act—
Priority toxic pollutants, numeric compliance; State compliance, 58420

Executive Office of the President
See National Drug Control Policy Office; Presidential Documents; Trade Representative, Office of United States

Farmers Home Administration
PROPOSED RULES
Program regulations:
Servicing and collections—
Multiple family housing; servicing cases where unauthorized financial assistance was received, 58325

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
Gulfstream, 58328

Federal Communications Commission
RULES
Common carrier services—
Cellular applications using random selection or lotteries instead of comparative hearings; CFR correction, 58315
Radio stations; table of assignments:
Washington et al., 58315
NOTICES
Committees; establishment, renewal, termination, etc.:
Advanced Television Service Advisory Committee, 58375
Meetings; Sunshine Act, 58417

Federal Crop Insurance Corporation
RULES
Crop insurance endorsements, etc.:
Corn, grain sorghum, and soybeans, 58301
PROPOSED RULES
Crop insurance; various commodities:
Peanuts, 58323

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
New York et al., 58313
NOTICES
Committees; establishment, renewal, termination, etc.:
National Urban Search and Rescue System Advisory Committee, 58376
Disaster and emergency areas:
Maine, 58377
Massachusetts, 58378
(2 documents)
Grants and cooperative agreements; availability, etc.:
Individual and family programs, and public assistance program; amounts adjustments, 58378

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Granite State Gas Transmission, Inc., 58374
Southern Natural Gas Co., 58375
Texas Eastern Transmission Corp., 58375
Williston Basin Interstate Pipeline Co., 58375

Federal Maritime Commission
NOTICES
Agreements filed, etc., 58378

Federal Reserve System
RULES
Extensions of credit by Federal Reserve banks (Regulation A):
Discount rates—
Change, 58303
NOTICES
Agency information collection activities under OMB review, 58379
Meetings; Sunshine Act, 58417
Applications, hearings, determinations, etc.:
First Banks, Inc., et al., 58383
Johnson, Mark Oliver, 58383
Lanier Bankshares, Inc., 58384

Federal Trade Commission
PROPOSED RULES
Trade regulation rules:
Funeral industry practices; oral presentations and staff documents availability, 58330
NOTICES
Prohibited trade practices:
Alpha Acquisition Corp. et al., 58384
Elexis Corp., 58384
Phillips, Wayne, et al., 58387
Sentinel Group, Inc., 58388

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Privacy Act:
Systems of records, 58414

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Oregon chub, 58348
Parish's daisy, etc. (five limestone endemic plants from Southern California, 58332
Upland combshell, etc. (freshwater mussels in Mobile River drainage), 58339
NOTICES
Endangered and threatened species permit applications, 58394

Food and Drug Administration
NOTICES
Biological products:
Export applications—
Genie HIV-1/HIV-2 EIA test, 58389
Human drugs:
Patent extension; regulatory review period determinations—
Fludara, 58388

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
California—
Apple Computer, Inc., electronic data processing and communications equipment manufacturing plant, 58354
Connecticut—
NorMag, Inc., electric transformer parts manufacturing facility, 58354
Hawaii, 58355

Forest Service
NOTICES
Appealable decisions; legal notice:
Pacific Northwest Region; correction, 58352
Environmental statements; availability, etc.:
Francis Marion National Forest, SC, 58352

Klickitat National Recreation River, WA, 58352
White Salmon National Scenic River, WA, 58352

Geological Survey
NOTICES
Agency information collection activities under OMB review, 58394

Health and Human Services Department
See also Children and Families Administration; Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration; National Institutes of Health; Social Security Administration
RULES
Acquisition regulations:
Insurance; liability to third persons limitation, 58315
NOTICES
Organization, functions, and authority delegations:
Health Care Financing Administration, 58390

Health Care Financing Administration
NOTICES
Agency information collection activities under OMB review, 58390

Health Resources and Services Administration
NOTICES
Meetings; advisory committees:
December, 58391

Hearings and Appeals Office, Interior Department
PROPOSED RULES
Hearings and appeals procedures:
Surface coal mining; special rules, 58330

Interior Department
See Fish and Wildlife Service; Geological Survey; Hearings and Appeals Office, Interior Department; Land Management Bureau; National Park Service; Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Meetings:
Information Reporting Program Advisory Committee, 58416

International Trade Administration
NOTICES
Antidumping:
Circular welded carbon steel pipes and tubes from Thailand, 58355
Potassium permanganate from Spain, 58361
Short supply determinations:
Hexagonal trilobe steel tubes, 58366

International Trade Commission
NOTICES
Import investigations:
Uranium from U.S.S.R., 58397

Interstate Commerce Commission
RULES
Practice and procedure:
Recyclable commodities, railroad rates; compliance procedures, 58317
Tariffs and schedules:
Railroad transportation contracts, 58320
NOTICES
Rail carriers:
Cost ratio for recyclables; determination, etc., 58398
Railroad operation, acquisition, construction, etc.:
CMX Trucking, Inc., 58398

Justice Department
See also Antitrust Division; Drug Enforcement Administration
RULES
Privacy Act; implementation, 58304
NOTICES
Privacy Act:
Systems of records, 58399

Labor Department
See also Employment and Training Administration
NOTICES
Agency information collection activities under OMB review, 58401

Land Management Bureau
NOTICES
Closure of public lands:
California, 58393

National Aeronautics and Space Administration
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
StressTel Corp., 58405

National Archives and Records Administration
RULES
NARA facilities:
Motion picture, sound, and video research room procedures, 58311

National Drug Control Policy Office
NOTICES
Senior Executive Service:
Performance Review Board; membership, 58408

National Institute of Standards and Technology
NOTICES
Meetings:
Integrated Services Digital Network (ISDN), users and implementors; workshop, 58367

National Institutes of Health
NOTICES
Meetings:
National Heart, Lung, and Blood Institute, 58392 (2 documents)
Patent licenses; non-exclusive, exclusive, or partially exclusive:
2' 3'-didehydro-2', 3'dideoxycytidine (dideoxycytidine), 58392

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Pacific Coast groundfish, 58321
NOTICES
Fishery management councils; hearings:
Gulf of Mexico—
Coast migratory pelagic resources, 58367
Shrimp, 58368

South Atlantic—
Mackerel, 58368
Meetings:
Pacific Fishery Management Council, 58368

National Park Service
NOTICES
Concession contract negotiations:
Jadwin Canoe Rental, Inc.; correction, 58395
Southern Highland Handicraft Guild, Inc., 58395
Environmental statements; availability, etc.:
Petrified Forest National Park, AZ, 58395
Meetings:
Jazz Preservation Advisory Commission, 58395
Mississippi River Corridor Study Commission, 58396
Upper Delaware Citizens Advisory Council, 58396
National Register of Historic Places:
Pending nominations, 58397

National Science Foundation
NOTICES
Meetings:
Undergraduate Science, Engineering, and Mathematics Education Proposal Review Panel, 58405

Nuclear Regulatory Commission
NOTICES
Meetings:
Uniform low-level radioactive waste manifest development, 58405
Applications, hearings, determinations, etc.:
BP Chemicals America, Inc., 58406
Sacramento Municipal Utility District, 58407

Office of United States Trade Representative
See Trade Representative, Office of United States

Oversight Board
NOTICES
Meetings; regional advisory councils:
Regions IV through VI, 58408

Physician Payment Review Commission
NOTICES
Meetings, 58409

Presidential Documents
PROCLAMATIONS
Special observances:
Dutch-American Heritage Day (Proc. 6375), 58299
Philanthropy Day, National (Proc. 6376), 58489

Public Health Service
See Food and Drug Administration; Health Resources and Services Administration; National Institutes of Health

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 58409
Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 58411
Midwest Stock Exchange, Inc., 58411
Philadelphia Stock Exchange, Inc., 58411
Applications, hearings, determinations, etc.:
Public utility holding company filings, 58412

Social Security Administration
NOTICES
Organization, functions, and authority delegations, 58393

State Department
NOTICES
Bridge permit applications:
Brownsville, TX, 58413

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
West Virginia, 58306

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Thailand:
Copyright enforcement, 58416

Transportation Department
See also Federal Aviation Administration
NOTICES
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 58413
Hearings, etc.—
Pan American World Airways, Inc., 58413

Treasury Department
See Fiscal Service; Internal Revenue Service

Separate Parts In This Issue

Part II
Environmental Protection Agency, 58420

Part III
Department of Education, 58480

Part IV
Department of Agriculture, Cooperative State Research Service, 58484

Part V
The President, 58489

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.

3 CFR

Proclamations:

6375..... 58299
6376..... 58489

7 CFR

401..... 58301
979..... 58302

Proposed Rules:

425..... 58323
959..... 58324
1951..... 58325

12 CFR

201..... 58303

14 CFR

Proposed Rules:

39..... 58328

16 CFR

Proposed Rules:

453..... 58330

28 CFR

16..... 58304

30 CFR

948..... 58306

36 CFR

1254..... 58311

40 CFR

261..... 58312

Proposed Rules:

131..... 58420

43 CFR

Proposed Rules:

4..... 58330

44 CFR

64..... 58313

47 CFR

22..... 58315
73..... 58315

48 CFR

328..... 58315
352..... 58315

49 CFR

1145..... 58317
1313..... 58320

50 CFR

663..... 58321

Proposed Rules:

17 (3 documents)..... 58332–58348

Federal Register
Vol. 56, No. 223
Tuesday, November 19, 1991

Presidential Documents

Title 3—

The President

Proclamation 6375 of November 14, 1991

Dutch-American Heritage Day, 1991

By the President of the United States of America

A Proclamation

On November 16, 1776, a small American warship, the ANDREW DORIA, sailed into the harbor of the tiny Dutch island of St. Eustatius in the West Indies. Only 4 months before, the United States had declared its independence from Great Britain. The American crew was delighted when the Governor of the island, Johannes de Graaf, ordered that his fort's cannons be fired in a friendly salute. The first ever given by a foreign power to the flag of the United States, it was a risky and courageous act. Indeed, angered by Dutch trading of contraband with the rebellious colonies, the British seized the island a few years later. De Graaf's welcoming salute was also a sign of respect, and today it continues to symbolize the deep ties of friendship that exist between the United States and The Netherlands.

After more than 200 years, the bonds between the United States and The Netherlands remain strong. Our diplomatic ties, in fact, constitute one of the longest unbroken diplomatic relationships with any foreign country.

Fifty years ago, during the Second World War, Dutch and American servicemen fought side by side to defend the universal cause of freedom and democracy. As NATO allies, we have continued to stand together to keep the transatlantic partnership strong and to maintain the peace and security of Europe. In the Persian Gulf, we joined as coalition partners to repel aggression and to uphold the rule of law.

While the ties between the United States and The Netherlands have been tested by time and by the crucible of armed conflict, the Dutch-American heritage is even older than our official relationship. Indeed, it dates back to the early 17th century, when the Dutch West India Company founded New Netherland and its main settlements, New Amsterdam and Fort Orange—better known today as New York City and Albany.

From the earliest days of our Republic, men and women of Dutch ancestry have made important contributions to American history and culture. The influence of our Dutch ancestors can still be seen not only in New York's Hudson River Valley but also in Pennsylvania along the Schuylkill River and in communities like Holland, Michigan, where many people trace their roots to settlers from The Netherlands. Generations of Dutch immigrants have enriched the United States with the unique customs and traditions of their ancestral homeland—a country that has given the world great artists, celebrated philosophers, and leaders of international business.

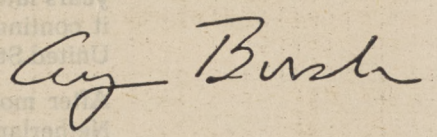
On this occasion, we also remember many celebrated American leaders of Dutch descent. Three Presidents, Martin Van Buren, Theodore Roosevelt, and Franklin D. Roosevelt, came from Dutch stock. Arthur Vandenberg, who after World War II played a crucial role in the development of our bipartisan foreign policy, the strategy of containment, and the establishment of NATO, also traced his roots to The Netherlands.

Our Dutch heritage is seen not only in our people but also in our experience as a Nation. Our traditions of religious freedom and tolerance, for example, have spiritual and legal roots among such early settlers as the English Pilgrims and the French Huguenots, who first found refuge from persecution in Holland. The Dutch Republic was also among those systems of government that inspired our Nation's Founders as they shaped our Constitution.

In celebration of the long-standing friendship that exists between the United States and The Netherlands, and in recognition of the many contributions that Dutch-Americans have made to our country, the Congress, by House Joint Resolution 177, has designated November 16, 1991, as "Dutch-American Heritage Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim November 16, 1991, as Dutch-American Heritage Day. I encourage all Americans to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of November, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



[FR Doc. 91-27930
Filed 11-15-91; 1:57 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 56, No. 223
Tuesday, November 19, 1991

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 45; Doc. No. 0270s]

General Crop Insurance Regulations; Corn, Grain Sorghum, and Soybean Endorsements

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1992 crop year only, by amending the Corn Endorsement (7 CFR 401.111), Grain Sorghum Endorsement (7 CFR 401.113), and the Soybean Endorsement (7 CFR 401.117), to extend the contract change date for these crops to January 31, 1992. The intended effect of this rule is to extend the contract change date, that date by which all contract changes must be on file in the service office.

DATES: This interim rule is effective on November 19, 1991. Written comments, data, and opinions on this interim rule must be submitted not later than December 19, 1991, to be sure of consideration.

ADDRESSES: Written comments on this interim rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (703) 235–1168.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the Corn, Grain Sorghum, and Soybean Endorsement regulations affected by this rule under those procedures. The sunset review date established for Corn is April 1, 1992; for Soybeans, October 1, 1992; and for Grain Sorghum, July 1, 1992.

James E. Cason, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith amends the General Crop Insurance Regulations (7 CFR part 401) to extend the contract change date for Corn, Grain Sorghum, and Soybeans to January 31, 1992. The contract change date, included in the crop insurance policy, is the date by which all contract changes must be on file in the service office. The current earliest contract change date for Corn, Grain Sorghum and Soybeans is November 30.

FCIC has under consideration amendments to the Corn, Grain Sorghum, and Soybean endorsements to add provisions for Prevented Planting and Late Planting to such policies which would make these provisions part of the policy and readily available to the policyholder, should the need arise. In addition, utilization of the Prevented Planting and Late Planting provisions should reduce the need for disaster payments in the event that the insured crop is not planted, due to conditions beyond control of the policyholder.

There would not be sufficient time for FCIC to publish a forthcoming notice of proposed rulemaking amending such policies; solicit public comment, and publish a final rule before the contract change date. Therefore, James E. Cason, Manager, FCIC, has determined that extension of the contract change date is necessary to provide sufficient time for FCIC to publish a notice of proposed rulemaking amending the Corn, Grain Sorghum, and Soybean Endorsements in the near future; such extension not being detrimental to any program recipient, and that publication of the extended contract change date as a proposed rule for notice and comment is impracticable, unnecessary, and contrary to the public interest. Therefore, good cause is shown for making this rule effective upon publication.

FCIC is soliciting comments on this rule for 30 days following publication in the **Federal Register**. This rule will be scheduled for review so that any amendment made necessary by public comments made be published as soon as possible.

Written comments should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this interim rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop Insurance: Corn, Grain Sorghum, Soybeans.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the provisions of the General Crop Insurance Regulations (7 CFR part 401), effective for the 1992 crop year only, in the following instances:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 401.111 is amended by revising subsection 9 of the policy to read as follows:

§ 401.111 Corn endorsement.

* * * * *

9. Contract changes.

Contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date (January 31, 1992, for the 1992 crop year only), and by November 30 preceding the cancellation date (January 31, 1992, for 1992 crop year only), for all other counties.

3. Section 401.113 is amended by revising subsection 9 of the policy to read as follows:

§ 401.113 Grain sorghum endorsement.

* * * * *

9. Contract changes.

Contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date (January 31, 1992, for the 1992 crop year only), and by November 30 preceding the cancellation date (January 31, 1992, and for 1992 crop year only), for all other counties.

4. Section 401.117 is amended by revising subsection 9 of the policy to read as follows:

§ 401.117 Soybean endorsement.

* * * * *

9. Contract changes.

Contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date (January 31, 1992, for the 1992 crop year only), and by November 30 preceding the cancellation date (January 31, 1992, and for 1992 crop year only), for all other counties.

Done in Washington, DC on November 6, 1991.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 91-27726 Filed 11-18-91; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV-91-436]

Melons Grown in South Texas; Expenses

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures under Marketing Order No. 979 for the 1991–92 fiscal period. Authorization of this budget enables the South Texas Melon Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: October 1, 1991, through September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–2020.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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

There are approximately 27 handlers of South Texas melons under this marketing order, and approximately 27 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of South Texas melon producers and handlers may be classified as small entities.

The budget of expenses for the 1991–92 fiscal period was prepared by the South Texas Melon Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of South Texas melons. They are familiar with the committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget.

The committee, in a mail vote which was completed on September 19, 1991, unanimously recommended a 1991–92 budget of $93,187 for personnel, office, and travel expenses, the same as last year. The assessment rate and funding for the research and promotion projects will be recommended at the committee's organization meeting tentatively scheduled for November 26, 1991. Funds in the reserve at the beginning of the 1991–92 fiscal period, estimated at $307,039, were within the maximum permitted by the order of two fiscal periods' expenses. These funds will be adequate to cover any expenses incurred by the committee prior to the approval of the assessment rate.

Since no assessment rate is being recommended at this time, no additional costs will be imposed on handlers. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on October 21, 1991 (56 FR 52481). This document contained a proposal to add § 979.214 to authorize expenses for the committee. This rule provided that interested persons could file comments through October 31, 1991. No comments were filed.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the 1991 fiscal period began on October 1, 1991, and the committee needs approval to pay its

expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is hereby amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

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

2. A new § 979.214 is added to read as follows:

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

§ 979.214 Expenses.

Expenses of $93,187 by the South Texas Melon Committee are authorized for the fiscal period ending September 30, 1992. Unexpended funds may be carried over as a reserve.

Dated: November 13, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–27719 Filed 11–18–91; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A—Extensions of Credit by Federal Reserve Banks to reflect its recent approval of a reduction in discount rates at each Federal Reserve Bank. The discount rate is the interest rate that is charged depository institutions when they borrow from their district Federal Reserve Banks. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

EFFECTIVE DATES: The amendments to Regulation A were effective November 13, 1991. The discount rate changes were effective on the dates specified in §§ 201.51 and 201.52.

FOR FURTHER INFORMATION CONTACT: William W. Wiles, Secretary of the Board (202/452–3257); for the hearing impaired *only*, Telecommunications Device for the Deaf (TTD) (202/452–3544), Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Reserve Bank extensions of credit. The discount rate is the interest rate that is charged depository institutions when they borrow from their district Federal Reserve Banks.

The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks effective on the dates specified below. The Board took this action against the background of sluggish expansion of the monetary and credit aggregates in an environment of abating inflationary pressures. The reduction, in part, also realigns the discount rate with other short-term market rates.

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of these amendments because the Board for the "good cause" stated above finds that delaying the changes in the discount rates listed in Regulation A to allow notice and public comment on the changes is impracticable, unnecessary, and contrary to the public interest.[1]

The provisions of 5 U.S.C. 553(d) generally prescribing 30 days' prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the discount rates listed in Regulation A is contrary to the public interest.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 5 U.S.C. 601 et seq.), the Board certifies that the changes will not have a significant adverse economic impact on a substantial number of small entities. The changes reduce rates of interest charged to borrowers from Reserve Banks, and the amendments will have no general effect on regulatory burdens for all depository institutions, no specific effect on such burdens for small depository institutions, and have no particular adverse effect on other small entities.

List of Subjects in 12 CFR Part 201

Credit, Federal Reserve System.

PART 201—[AMENDED]

For the reasons outlined above, the Board of Governors amends 12 CFR part 201 as set forth below:

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: Secs. 10(a), 10(b), 13, 13a, 14(d) and 19 of the Federal Reserve Act (12 U.S.C. 347a, 347b, 343 et seq., 347c, 348 et seq., 357, 374, 374a and 461); and sec. 7(b) of the International Banking Act of 1978 (12 U.S.C. 347d).

2. Section 201.51 is revised to read as follows:

§ 201.51 Short-term adjustment credit for depository institutions.

The rates for short-term adjustment credit provided to depository institutions under § 201.3(a) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	4.5	Nov. 6, 1991.
New York	4.5	Nov. 6, 1991.
Philadelphia	4.5	Nov. 6, 1991.
Cleveland	4.5	Nov. 6, 1991.
Richmond	4.5	Nov. 6, 1991.
Atlanta	4.5	Nov. 6, 1991.
Chicago	4.5	Nov. 6, 1991.
St. Louis	4.5	Nov. 7, 1991.
Minneapolis	4.5	Nov. 6, 1991.
Kansas City	4.5	Nov. 6, 1991.
Dallas	4.5	Nov. 6, 1991.
San Francisco	4.5	Nov. 6, 1991.

3. Section 201.52 is revised to read as follows:

§ 201.52 Extended credit for depository institutions.

(a) *Seasonal credit.* The rates for seasonal credit extended to depository institutions under § 201.3(b)(1) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	4.5	Nov. 6, 1991.
New York	4.5	Nov. 6, 1991.
Philadelphia	4.5	Nov. 6, 1991.
Cleveland	4.5	Nov. 6, 1991.
Richmond	4.5	Nov. 6, 1991.
Atlanta	4.5	Nov. 6, 1991
Chicago	4.5	Nov. 6, 1991.
St. Louis	4.5	Nov. 7, 1991.
Minneapolis	4.5	Nov. 6, 1991.
Kansas City	4.5	Nov. 6, 1991.
Dallas	4.5	Nov. 6, 1991.
San Francisco	4.5	Nov. 6, 1991.

[1] The Board's Rules of Procedure provide that advance notice and deferred effective date will ordinarily be omitted in the public interest for changes in discount rates. 12 CFR 262.2(e).

(b) *Other extended credit.* The rates for other extended credit provided to depository institutions under sustained liquidity pressures or where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	4.5	Nov. 6, 1991.
New York	4.5	Nov. 6, 1991.
Philadelphia	4.5	Nov. 6, 1991.
Cleveland	4.5	Nov. 6, 1991.
Richmond	4.5	Nov. 6, 1991.
Atlanta	4.5	Nov. 6, 1991.
Chicago	4.5	Nov. 6, 1991.
St. Louis	4.5	Nov. 7, 1991.
Minneapolis	4.5	Nov. 6, 1991.
Kansas City	4.5	Nov. 6, 1991.
Dallas	4.5	Nov. 6, 1991.
San Francisco	4.5	Nov. 6, 1991.

These rates apply for the first 30 days of borrowing. For credit outstanding for more than 30 days, a flexible rate will be charged which takes into account rates on market sources of funds, but in no case will the rate charged be less than the basic discount rate plus one-half percentage point. Where extended credit provided to a particular depository institution is anticipated to be outstanding for an unusually prolonged period and in relatively large amounts, the 30-day time period may be shortened.

By order of the Board of Governors of the Federal Reserve System, November 13, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-27740 Filed 11-18-91; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 57-91]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is amending 28 CFR part 16, §§ 16.71, 16.72 and 16.81, to effect miscellaneous changes and to reflect the reassignment of responsibility for three Privacy Act systems of records. The reassignment involves records of the Offices of the Deputy Attorney General and Associate Attorney General, and the Executive Office for United States Attorneys.

Miscellaneous changes to these Sections include (1) format and/or editorial changes to clarify or effect minor corrections; (2) where appropriate, additional reasons for retaining certain exemptions; and (3) the removal of the exemptions from subsections (e)(4)(G) and (H) as they pertain to the General Files Systems (JUSTICE/DAG-013 and JUSTICE/AAG-001) which are maintained, respectively, by the Offices of the Deputy Attorney General and Associate Attorney General. The exemptions are removed because the Offices are complying with the requirements of these subsections for the General Files Systems.

The reassignment of responsibility for three Privacy Act systems of records is the result of organizational changes within the Department. First, management responsibility for the Organized Crime Drug Enforcement Task Force has been reassigned from the Office of the Associate Attorney General to the Office of the Deputy Attorney General. Consistent with this organizational change, a Privacy Act system of records entitled "Drug Enforcement Task Force Evaluation and Reporting System of the Office of the Associate Attorney General (JUSTICE/AAG-002)" is removed from § 16.72; it is redesignated "Drug Enforcement Task Force Evaluation and Reporting System (JUSTICE/DAG-003)" and is added to § 16.71. Second, management responsibility for Assistant United States Attorney applicant and personnel records has been moved from the Office of the Deputy Attorney General to the Executive Office for United States Attorneys. Consistent with this organizational change, two Privacy Act systems of records entitled "Assistant United States Attorneys Applicant Records System (JUSTICE/DAG-003)" and "Appointed Assistant United States Attorneys Personnel System (JUSTICE/DAG-002)" are removed from § 16.71. They are redesignated "Assistant United States Attorneys Applicant Records System (JUSTICE/USA-016)" and "Appointed Assistant United States Attorneys Personnel System (JUSTICE/USA-017)," respectively, and are added to § 16.81.

The effects of the changes described above are internal only; they will have no effect on the public.

EFFECTIVE DATE: November 19, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely (202) 514-6329.

SUPPLEMENTARY INFORMATION: The character of the systems of records that are the subject of this rule may be reviewed by referring to the **Federal Register** cites where they were last published under their previous designations. The systems may be found in the **Federal Register** as indicated below:

The General Files Systems (JUSTICE/DAG-013 and JUSTICE/AAG-001) and the Drug Enforcement Task Force Evaluation and Reporting System of the Office of the Associate Attorney General (JUSTICE/AAG-002) were last published on September 12, 1985 (50 FR 37295, 37297, and 37298, respectively).

Appointed Assistant United States Attorneys Personnel System (JUSTICE/DAG-002) and Assistant United States Attorneys Applicant Records System (JUSTICE/DAG-003) were last published on October 21, 1985 (50 FR 42603 and 42604, respectively).

While the systems will be republished in full text at a future date, notice of the reassignment and renaming of these systems can be found in the Notice Section of today's **Federal Register**.

This Order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

In addition, pursuant to 5 U.S.C. 553(b)(B) and (d)(3), it has been determined that it is impracticable and unnecessary to provide for public comment and that it is not in the public interest to delay the effective date of this rule.

List of Subjects in 28 CFR Part 16

Administrative practice and procedures, Courts, Freedom of Information, Privacy and Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, 28 CFR part 16 is amended as set forth below.

Dated: November 5, 1991.

Harry H. Flickinger,

Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g).

553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Section 16.71 is revised as follows:

§ 16.71 Exemption of the Office of the Deputy Attorney General System—limited access.

(a) The following systems of records and exempt from 5 U.S.C. 552a(d)(1) and (e)(1):

(1) Presidential Appointee Candidate Records System (JUSTICE/DAG–006).

(2) Presidential Appointee Records System (JUSTICE/DAG–007).

(3) Special Candidates for Presidential Appointments Records System (JUSTICE/DAG–008).

(4) Miscellaneous Attorney Personnel Records System (JUSTICE/DAG–011).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d)(1) because many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning a candidate for a Presidential appointee or Department attorney position. Access could reveal the identity of the source of the information and constitute a breach of the promise of confidentiality on the part of the Department of Justice. Such breaches ultimately would restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(2) From subsection (e)(1) because in the collection of information for investigative and evaluative purposes, it is impossible to determine in advance what exact information may be of assistance in determining the qualifications and suitability of a candidate. Information which may appear irrelevant, when combined with other seemingly irrelevant information, can on occasion provide a composite picture of a candidate for a position which assists in determining whether that candidate should be nominated for appointment.

(c) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (2), (3) and (5); and (g):

(1) Drug Enforcement Task Force Evaluation and Reporting System (JUSTICE/DAG–003).

(2) General Files System of the Office of the Deputy Attorney General (JUSTICE/DAG–013).

(d) In addition, the Drug Enforcement Task Force Evaluation and Reporting System is exempt from 5 U.S.C. 552a(e)(4)(G) and (H). The exemptions for the Drug Enforcement Task Force Evaluation and Reporting System apply only to the extent that information is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (K)(2). The exemptions for the General Files System apply only to the extent that information is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) and (k)(5).

(e) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her could reveal investigative interest on the part of the Department of Justice, as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel. Further, making available to a record subject the accounting of disclosures could reveal the identity of a confidential source. In addition, release of an accounting of disclosures from the General Files System may reveal information that is properly classified pursuant to Executive Order 12356, and thereby cause damage to the national security.

(2) From subsection (c)(4) because these systems are exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) because the records contained in these systems relate to official Federal investigations. Individual access to these records could compromise ongoing investigations, reveal confidential informants and/or sensitive investigative techniques used in particular investigations, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. In addition, release of records from the General Files System may reveal information that is properly classified pursuant to Executive Order 12356, and thereby cause damage to the national security. Amendment of the records in either of these systems would interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (e)(5) because in the course of law enforcement investigations information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede any investigative process, whether civil or criminal, if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(5) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and may therefore be able to avoid detection, apprehension, or legal obligations or duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsections (e)(4) (G) and (H) because no access to these records is available under subsection (d) of the Privacy Act. (This exemption applies only to the Drug Enforcement Task Force Evaluation and Reporting System.)

(8) From subsection (g) because these systems of records are exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

3. Section 16.72 is revised as follows:

§ 16.72 Exemption of Office of the Associate Attorney General System—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4); (d); (e)(1), (2), (3) and (5); and (g):

(1) General Files System of the Office of the Associate Attorney General (JUSTICE/AAG–001).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) and (k)(5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her could reveal investigative interest on the part of the Department of Justice, as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidence,

intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel. Further, making available to a record subject the accounting of disclosures could reveal the identity of a confidential source. In addition, release of an accounting of disclosures may reveal information that is properly classified pursuant to Executive Order 12356, and thereby cause damage to the national security.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j)(2), (k)(1), (k)(2) and (k)(5) of the Privacy Act.

(3) From subsection (d) because the records contained in this system relate to official Federal investigations. Individual access to these records could compromise ongoing investigations, reveal confidential informants and/or sensitive investigative techniques used in particular investigations, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. In addition, release of these records may reveal information that is properly classified pursuant to Executive Order 12356, and thereby cause damage to the national security. Amendment of the records in this system would interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (e)(5) because in the course of law enforcement investigations information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede any investigative process, whether civil or criminal, if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(5) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and may therefore be able to avoid detection, apprehension, or legal obligations or duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsection (g) because this system of records is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2), (k)(1), (k)(2) and (k)(5) of the Privacy Act.

4. Section 16.81 is amended by redesignating paragraph (c) as paragraph (g); by redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively; and by adding paragraphs (e) and (f) as follows:

* * * * *

(e) The following systems of records are exempt from 5 U.S.C. 552a(d)(1) and (e)(1):

(1) Assistant U.S. Attorneys Applicant Records System (JUSTICE/USA-016).

(2) Appointed Assistant U.S. Attorneys Personnel System (JUSTICE/USA-017).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d)(1) because many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning a candidate for an Assistant U.S. Attorney position. Access could reveal the identity of the source of the information and constitute a breach of the promise of confidentiality on the part of the Department of Justice. Such breaches ultimately would restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(2) From subsection (e)(1) because in the collection of information for investigative and evaluative purposes, it is impossible to determine in advance what exact information may be of assistance in determining the qualifications and suitability of a candidate. Information which may appear irrelevant, when combined with other seemingly irrelevant information, can on occasion provide a composite picture of a candidate for a position which assists in determining whether that candidate should be nominated for appointment.

* * * * *

[FR Doc. 91-27689 Filed 11-18-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Regulatory Program; Civil Penalty Assessment Procedures

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with certain exceptions, of a proposed amendment to the West Virginia regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment contains revisions to the State's civil penalty assessment procedures as set forth in the West Virginia Code of State Regulations (CSR) at 38-2-20.5, 38-2-20.6 and 38-2-20.7.

EFFECTIVE DATE: November 19, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office; Office of Surface Mining Reclamation and Enforcement; 603 Morris Street; Charleston, West Virginia 25301; Telephone (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. Information concerning the general background of the West Virginia program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the initial conditions of the approval of the West Virginia program can be found in the January 21, 1981, **Federal Register** (46 FR 5915-5956). Subsequent actions concerning the conditions of approval and previous program amendments are codified at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of Amendment

By letter dated July 12, 1991 (Administrative Record No. WV 866), the West Virginia Division of Energy

(WVDOE) submitted a proposed amendment to its surface mining reclamation regulations at CSR 38–2–20.5, 38–2–20.6 and 38–2–20.7, which deal with civil penalty assessment procedures.

OSM announced receipt of the proposed amendment in the July 22, 1991, **Federal Register** (56 FR 33399–33401), and opened the public comment period and provided for a public hearing on the adequacy of the proposed amendments. The public comment period closed on August 21, 1991.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment submitted by the WVDOE on July 12, 1991. Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. CSR 38–2–20.5: Civil Penalty Determination

(a) Cessation Order Assessments

The State proposes to revise CSR 38–2–20.5(b) by adding the requirement that civil penalties for imminent harm cessation orders be initially assessed using the formula set forth in CSR 38–2–20.7, which, at present, is only used in assessing penalties for notices of violation. Imminent harm cessation orders are currently assessed $750 per day per violation as required by section 22A–3–17(a) of the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA), which provides that "any" cessation order issued by the State must be assessed a mandatory civil penalty of $750 per day per violation.

Under the Federal rules in 30 CFR part 845, civil penalties for Federal notices of violation and cessation orders are processed identically, with the exception of the stipulation in 30 CFR 845.12(a) that all cessation orders must be assessed a penalty and the provision in 30 CFR 845.15(b) requiring that, whenever a violation in a notice or order is not abated within the prescribed time, an additional civil penalty of not less than $750 per day be assessed for each day the failure to abate continues.

The additional provisions pertinent to cessation orders are in paragraphs (a) and (h) of section 518 of SMCRA, which contains language virtually identical to 30 CFR 845.12(a) and 845.15(b), respectively. Section 518(i) of SMCRA and the Federal regulations at 30 CFR 840.13(a) require that the civil and criminal penalty provisions of each State program contain penalties no less stringent than those set forth in section 518 of SMCRA. Section 518(i) of SMCRA and 30 CFR 840.13(c) also require that the procedural requirements of each State program relating to penalties and sanctions be the same as or similar to those provided in sections 518 and 521 of SMCRA. Additionally, 30 CFR 840.13(c) provides that State programs shall include civil penalty requirements procedurally similar to those in 30 CFR parts 843 and 845 and Subchapters G and J, although the Federal point system need not be adopted.

If this subsection of the State rules is revised as proposed, the State program would no longer require that imminent harm cessation orders always be assessed a penalty, as required by section 518(a) of SMCRA. Nor would it require that violations in imminent harm cessation orders which are not abated within the prescribed time be assessed an additional penalty of not less than $750 for each day the failure to abate continues, as required by section 518(h) of SMCRA. Therefore, the Director finds that the proposed amendment would render the State program inconsistent with section 518(i) of SMCRA and the Federal regulations at 30 CFR 840.13(a) and (c). Accordingly, he is not approving the proposed revision and he is requiring that the State either amend CSR 38–2–20.5(b) of its rules to remove this provision or revise its program to include penalty provisions no less stringent than those of section 518 of SMCRA. If the State wishes to use the penalty formula established in CSR 38–3–20.7 for cessation orders, it will also need to submit a legal opinion concluding that such procedures are consistent with State law, specifically section 22A–3–17(a) of the WVSCMRA.

(b) Alternative Enforcement

Subsection 20.5(b) of the proposed State rules provides that if a cessation order has not been abated or modified within the thirty (30) day period, the Commissioner shall initiate (alternative enforcement) action pursuant to subsections (b), (f), or (h) of Section 22A–3–17 of the WVSCMRA as appropriate.

The Federal regulations at 30 CFR 845.15(b)(2) contain a nearly identical requirement, but they also include criminal penalties assessed pursuant to section 518(e) of SMCRA in the list of alternative enforcement actions to be taken to ensure that abatement occurs or that there will not be a reoccurrence of the failure to abate.

By failing to reference the criminal penalty provisions of State law, the proposed State rules do not provide for sanctions no less stringent than those required by the Federal rules. Therefore, the Director finds that CSR 38–2–20.5(b) does not meet the standards for approval specified in 30 CFR 840.13(b). Accordingly, he is requiring the State to amend this rule to include criminal penalties in the list of alternative enforcement options available to the Commissioner if a cessation order is not abated or modified within thirty days.

(c) Assessment of Daily Penalty

CSR 38–2–20.5(b) provides that the Commissioner shall, for each cessation order, assess a civil penalty in accordance with Section 22A–3–17(a) of WVSCMRA for each day of continuing violation, except that such penalty shall not be assessed for more than thirty (30) days.

The Federal regulations at 30 CFR 845.15(a) provide that the regulatory authority may assess separately a civil penalty for each day from the date of "issuance" of the notice of violation or cessation order to the date set for abatement of the violation. Subsection 20.5(a) of the proposed State rules allows daily assessment of a civil penalty for a notice of violation from the issuance date of the notice to the abatement date of the violation. However, neither CSR 38–2–20.5(b) nor section 22A–3–17(a) of WVSCMRA provides when civil penalty assessments are to begin for cessation orders. It is a common practice in West Virginia to begin assessing civil penalties for cessation orders from the service date of the order instead of the issuance date. Since it sometimes takes three to five days to serve a cessation order by certified mail, this practice usually results in a reduction of the civil penalty.

Because the proposed State civil penalty assessment procedures are not similar procedurally to the Federal requirements, as required by 30 CFR 840.13 (a) and (c), the Director is requiring the State to amend its program to require that civil penalty assessments begin on the date of issuance of the cessation order and continue until the violation cited in the cessation order has been abated.

2. CSR 38–2–20.6: Procedure for Assessing Civil Penalties

(a) Assessment Officer—Duties

The State proposes to revise CSR 38–2–20.6(a) regarding the assessment officer's duties by adding a requirement

that the findings of the violation inspection required by the Commissioner prior to determining the penalty assessment are to be submitted to the assessment officer in writing. The proposal further provides that the assessment officer may continue conferences, conduct investigations, and interview witnesses, as necessary. While there are no direct Federal counterparts to these proposals, the Director finds that they are not inconsistent with the Federal civil penalty assessment procedures at 30 CFR 845.17.

(b) Notice of Assessment

The State proposes to revise CSR 38–2–20.6(c) by adding a provision whereby the service requirements of CSR 38–2–20.6 will be deemed to have been complied with if the copy of the proposed assessment and accompanying worksheet are tendered at the address of the person set forth on the sign required under CSR 38–2–14.1(a), or at any address at which that person is in fact located, whether or not he or she accepts or collects such mailing. The proposal further provides that failure by the Commissioner to serve any proposed assessment within 30 days shall not be grounds for dismissal of all or part of the assessment unless the person assessed proves actual prejudice due to the delay, and makes a timely objection to the delay. A timely objection is one made within the normal course of administrative review. The revised civil penalty procedures at CSR 38–2–20.6(c) are similar to the Federal procedures in 30 CFR 845.17(b). Therefore, the Director finds that the proposal meets the standards for approval established in 30 CFR 840.13(c).

(c) Notice of Informal Assessment Conference

The State proposes to revise CSR 38–2–20.6(d) by adding a provision allowing any person, other than the operator and WVDOE, to submit a written request to present evidence concerning the violation being conferenced. The proposal further provides that the assessment officer shall grant the request only for the specific violation(s), and he or she may continue the conference to a later time and/or date as deemed necessary to honor other scheduled conferences.

There is no direct Federal counterpart to this proposed amendment, but the Director finds that the proposal is not inconsistent with SMCRA or any Federal regulation, except to the extent that public participation is limited to "only" the specific violation(s) which are the subject of the conference, thereby apparently prohibiting public participation at the conference as it relates to penalties and/or penalty assessment. The Federal regulations at 30 CFR 845.18(b)(2) provide that any person shall have a right to attend and participate in the assessment conference. The Director finds that restricting public participation to only the violation renders the proposal less effective than the Federal rules. Therefore, the Director is not approving the proposal to the extent that public participation is so restricted, and he is requiring the State to amend its program accordingly.

(d) Informal Conference

The State is proposing to revise CSR 38–2–20.6(e) by deleting the phrase which references the State's failure to serve a proposed assessment notice pursuant to CSR 38–2–20.6(c). Since the deleted material is proposed to be added to CSR 38–2–20.6(c), where it is more appropriately located, the Director finds that the deletion of the material from CSR 738–2–20.6(e) does not render the State program inconsistent with any Federal requirements.

In addition, the State proposes to change the title of "conference officer" to "assessment officer" throughout CSR 38–2–20.6(e). The Director finds this to be a nonsubstantive change with no programmatic implications.

(e) Mitigation

The State proposes to revise CSR 38–2–20.6(k) by deleting the provision that inability to comply may be considered in establishing the length of a permit suspension. Although the corresponding Federal rule at 30 CFR 843.18(c) contains a similar provision, the Director finds that its deletion from the State rule is approvable since it would not weaken the State's permit suspension sanction. The State program thus would continue to meet the standards of 30 CFR 840.13(b), which requires that the enforcement provisions of each state program contain sanctions which are no less stringent than those set forth in section 521 of SMCRA.

3. CSR 38–2–20.7: Assessment Rates

History of Violation

West Virginia proposes to revise CSR 38–2–20.7(a) to provide that the amount to be assessed, based on a history of violations, shall be determined by multiplying the number of violations written on the subject operation in the previous twelve months by a factor of 100. The current State rule uses a specific dollar rate per violation based upon an escalating range of violations, and appears to produce a lesser amount than that which would result from application of the proposed rule.

Seriousness of Violation

The State also proposes to revise CSR 38–2–20.7(b) which sets forth ratings and penalty amounts based upon the seriousness of the violation. The proposal reorganizes the seriousness ratings by giving a rating of 7–8 to that category of violations which can reasonably be expected to result in significant imminent environmental harm or to create an imminent danger to the health and safety of the public, as opposed to its current rating of 9–10. In addition, the proposal provides that any violation with an initial seriousness rating of 7 or higher is one which is an imminent harm violation and requires an imminent harm cessation order, consistent with the definition of imminent harm cessation order contained in CSR 38–2–20.3(a). Finally, the proposal sets forth minor adjustments in the penalty amounts for seriousness.

Operator Negligence

The State proposes to revise CSR 38–2–20.7(c) which sets forth ratings and penalty amounts based upon the degree of operator negligence. In addition to increasing the amount of penalty assigned to the various operator negligence ratings, the State is revising the narrative descriptions for 4 of the 5 rating categories. The 1–2 rating is being revised to include a violation that may have been avoided if more conscientious effort and/or (rather than just or) reasonable care was given. The rating of 3–4 is being revised to include a violation that was obvious and/or (rather than just and) no action was taken by the operator to prevent (rather than correct) the problem. The rating of 5–6 is being revised to include situations where the operator failed to adequately respond to previous written instructions (as opposed to previous enforcement action) of the inspector to prevent the event. Finally, the rating of 7–8 is being revised to include situations where the operator has been notified, in writing, of the problem, and made no effort to correct it.

Operator's Good Faith

The State proposes to revise CSR 38–2–20.7(d) regarding an operator's good faith in resolving violations. The State proposes to express good faith in terms of a percentage rather than dollars. The proposal excludes the amount assessed for history of violations from the total against which the good faith percentage

is to be applied. The proposal also provides for rounding the good faith amount to the nearest dollar. In addition, the State proposes to revise the narrative for the various categories which describe the level of an operator's good faith. For the lowest rating level, which gives no good faith reduction due to an operator's failure to take appropriate action, the proposal adds the criterion that the violation was modified to a cessation order. For the highest rating of 7–8, the proposal clarifies that the violation is abated before the original abatement date.

The State also proposes to revise the amount of the good faith adjustment contained in CSR 38–2–20.7(d) from the current dollar amount ranging from $0 to $2120, to a proposed percentage amount ranging from 0% to 40%.

Determination of Penalty Amount

Finally, West Virginia proposes to revise CSR 38–2–20.7(e) which presents a worksheet for computing the penalty amount. The proposal removes the amount for number of previous violations from the subtotal against which the good faith percentage is applied, and adds the amount after the good faith amount has been subtracted. In addition, the proposal changes the "No. Previous Violations" title to "History of Violations".

West Virginia is proposing numerous technical revisions of the formula it uses to determine the amount of the civil penalty to be assessed for a violation. As discussed in the August 4, 1980, **Federal Register** notice (45 FR 51547–51550), the Secretary suspended 30 CFR 732.15(b)(7) and 840.13(a) insofar as they require that State programs (1) establish a point system for assessing civil penalties, and (2) require that State civil penalty assessments be no less stringent than those which would result from use of the Federal point system. The United States District Court for the District of Columbia had previously remanded those Federal regulations in In re: Permanent Surface Mining Regulation Litigation, 14 Env't. Rep. Cas. 1083, 1089 (D.D.C. February 26, 1980), holding that section 518(i) of SMCRA, like section 521(d), requires State programs to incorporate penalties and procedures that are no less stringent than those set forth in the Act. But because neither the penalties referenced in section 518(i) nor the procedures relative to those penalties refer to a point system, the court found it arbitrary to require the States to exactly parallel the Secretary's civil penalty assessment system. Instead the court concluded that a State need only develop a penalty assessment system that incorporates the four criteria (history of violations, seriousness, negligence and good faith) enumerated in section 518(a) of SMCRA. See also In re: Permanent Surface Mining Regulation Litigation, 19 Env't. Rep. Cas. 1477, 1503 (D.D.C. May 16, 1980) (point system itself is not required by section 518(i) of SMCRA.)

Therefore, since the proposed revisions to CSR 38–2–20.7 continue to rely upon the four statutorily required factors to determine the amount of the civil penalty assessment, the Director finds that it meets the Federal standards for approval of State civil penalty programs at 30 CFR 840.13(a), as modified by the August 4, 1980, suspension notice, except to the extent discussed below.

Since the revisions to CSR 38–2–20.7 delete all references to the monetary units (dollars, cents, etc.) associated with penalty amounts, the Director finds that it lacks the specificity required by 30 CFR 731.14(g)(7), which provides that State program submissions must describe systems for assessing and collecting civil penalties. Therefore, he is requiring that the State further amend this rule to specify that the monetary denomination which will be associated with the number generated by the assessment formula prescribed in CSR 38–2–20.7 will be in dollars.

In addition, for the good faith rating categories 1–2, 3–4 and 5–6, contained in CSR 38–2–20.7(d), the proposals would award the operator with good faith reductions ranging from 5 percent to 30 percent simply for abating the violation no sooner than the time originally given, or extended, for abatement. For these three rating categories, the State also proposes to delete the statement, "(V)iolation was abated before the required date". The Federal rule at 30 CFR 845.13(b)(4) allows for points to be added based on the degree of good faith of the person to whom the notice or order was issued. 30 CFR 845.13(b)(4)(ii)(A) defines rapid compliance to mean that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement. Normal compliance, on the other hand, is defined in 30 CFR 845.13(b)(4)(ii)(B) to mean that the person to whom the notice or order was issued abated the violation within the time given for abatement. Furthermore, under no circumstances can good faith be awarded by the State during initial or final assessment review until abatement of the violation has been accomplished by the operator. Therefore, the Director is not approving the State's proposal at CSR 38–2–20.7(d) to the extent that good faith may be granted where abatement is not achieved before the time set for abatement, and he is requiring the State to amend its civil penalty assessment procedures to be the same or similar to those provisions in section 518 of SMCRA and consistent with 30 CFR 840.13(c) and 845.13(b)(4).

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing was announced in the July 22, 1991 **Federal Register** (56 FR 33399–33401). The comment period closed on August 21, 1991. No one requested an opportunity to testify at the scheduled public hearing so no hearing was held. However, on August 20, 1991, the West Virginia Mining and Reclamation Association (WVMRA) requested that a public meeting be held on the proposed amendment. The public meeting was held on September 3, 1991, at the Charleston Field Office.

Representatives from the WVMRA, OSM, and WVDOE attended the meeting. The WVMRA requested the meeting to express its displeasure with OSM's decision to process the amendment separately from the proposed amendment that was submitted by the State on May 1, 1991. As explained in OSM's proposed rule of July 22, 1991, the WVDOE submitted the proposed civil penalty amendment because of unexpected delays in processing the earlier amendment and to expedite the approval of its proposed civil penalty regulations. In addition, the WVMRA reiterated its comments that were filed on August 20, 1991, in response to the proposed rules. The nature and disposition of those comments are summarized below.

CSR 38–2–20.5(a): Notice of Violation Assessments

The WVMRA requested that the phrase "issuance of a notice of", and language regarding "assessment of civil penalties of less than $1,000" be reinserted in CSR 38–2–20.5(a). Because the proposed amendment submitted by the State on July 12, 1991, does not contain any revisions to CSR 38–2–20.5(a) and the language referred to by the WVMRA is still contained in the State regulations, the Director finds that no action is required. However, the Director notes that on August 14, 1990, former Commissioner Larry George issued a policy determination that all

civil penalties in the amount of $1,000 or less would be assessed (Administrative Record No. WV 877). This State policy which requires the assessment of all civil penalties regardless of amount, is still in effect as of the date of this notice.

CSR 38–2–20.6(d): Notice of Informal Assessment Conference

The WVMRA requested clarification regarding the proposed addition to CSR 38–2–20.6(d) which allows public participation at the informal assessment conference. In particular, the WVMRA inquired about the origin of the proposal, whether it had a basis in the Federal rules, and whether the proposal was granting authority to persons without standing in the procedure.

In the preamble to 30 FR 845.18 (44 FR 15308, March 13, 1979), responding to a suggestion that "assessment conferences not be opened to 'any person' who wished to attend", the Secretary said, "[t]his comment was rejected because it would limit the right of citizens to participate in the conference. The Office is obligated under section 102(i) of the Act to assure that 'appropriate procedures are provided for the public participation in * * * enforcement of the regulations'." The right of the public to attend and participate in assessment conferences is specifically provided for in the Federal regulations at 30 CFR 845.18(b)(2).

The Director feels that the concerns raised by WVMRA are adequately addressed by the above discussion. However, as explained in Finding 2(c) herein, the Director also has concerns regarding the State's proposal, and he is not approving the revision to CSR 38–2–20.6(d) to the extent that it limits public participation to the specific violation in question.

CSR 38–2–20.7(b): Seriousness of Violation

The WVMRA requested that the State delete the requirement that "a violation with a seriousness rating of 7 or higher shall be a cessation order." Under the Federal regulations at 30 CFR 840.13(b), States programs must include sanctions no less stringent than those set forth in section 521 of SMCRA. Section 521(a) requires, in part, that a cessation order be issued when there is an imminent danger to the health or safety of the public or when significant environmental harm is imminent or occurring. Since CSR 38–2–20.7(b) defines a seriousness rating of 7 in similar terms, the State's requirement for issuance of a cessation order is appropriate and necessary for the State program to remain in compliance with 30 CFR 840.13(b).

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the West Virginia program. The Mine Safety and Health Administration, U.S. Bureau of Mines, U.S. Fish and Wildlife Service, and U.S. Army Corps of Engineers either considered the amendment to be acceptable or submitted an acknowledgement with no comments.

V. Director's Decision

Based on the above findings, the Director is approving, with certain exceptions, the proposed program amendment submitted by West Virginia on July 12, 1991. The Federal regulations at 30 CFR part 948 codifying decisions concerning the West Virginia program are being amended to implement this decision. The Director is approving these proposed rules with the understanding that they will be promulgated in a form identical to that submitted to OSM and reviewed by the public. Any differences between these rules and the State's final promulgated rules will be processed as a separate amendment subject to public review at a later date.

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

Finding No.	Code of State Regulations
1(a)	38–2–20.5(b)
1(b)	38–2–20.5(b)
1(c)	38–2–20.5(b)
2(c)	38–2–20.6(d)
3	38–2–20.7 and 38–2–20.7(d)

This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

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 that 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.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

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 the State program are not enforceable under SMCRA 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 West Virginia program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives or other materials, and he will require the enforcement by West Virginia of only such provisions.

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 No. 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 would not have a significant economic impact 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 which require

approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 8, 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 948—WEST VIRGINIA

1. The authority citation for Part 948 continues to read as follows:

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

2. In section 948.15, a new paragraph (m) is added to read as follows:

§ 948.15 Approval of regulatory program amendments.

* * * * *

(m) The following amendment submitted to OSM on July 12, 1991, is approved as set forth in paragraph (m)(1) effective November 19, 1991 with the exception of those provisions identified in paragraph (m)(2).

(1) Revisions of the following rules in the West Virginia Code of State Regulations (CSR):

CSR 38–2–20.5: Civil Penalty Determinations (with the exception noted in paragraph (m)(2) below).

CSR 38–2–20.6: Procedure for Assessing Civil Penalties (with the exception noted in paragraph (m)(2) below).

CSR 38–2–20.7: Assessment Rates (with the exception noted in paragraph (m)(2) below).

(2) Revisions to the following provisions of the West Virginia Code of State Regulations are not being approved to the extent indicated:

CSR 38–2–20.5(b): Cessation Order Assessments—to the extent that it provides that imminent harm cessation orders shall have an initial assessment in accordance with CSR 38–2–20.7.

CSR 38–2–20.6(d): Notice of Informal Assessment Conference—to the extent that public participation at assessment conference is restricted.

CSR 38–2–20.7(d): Operator's Good Faith—to the extent that the operator is awarded good faith where abatement is not achieved before the time set for abatement.

3. In section 948.16, paragraphs (ddd), (eee), (fff), (ggg), (hhh) and (iii) are added to read as follows:

§ 948.16 Required regulatory program amendments.

* * * * *

(ddd) By June 1, 1992, West Virginia shall submit proposed revisions to CSR 38–2–20.5(b) to provide initial and mandatory civil penalty assessment procedures for imminent harm cessation orders that are consistent with Federal requirements. Also, if West Virginia wishes to use the civil penalty assessment formula at CSR 38–2–20.7 for cessation orders, it must submit a legal opinion concluding that it has the authority to do so under State law.

(eee) By June 1, 1992, West Virginia shall submit proposed revisions to CSR 38–2–20.5(b) to allow the Commissioner to initiate action pursuant to West Virginia Code 22A–3–17(e) if a cessation order is not abated or modified within thirty days.

(fff) By June 1, 1992, West Virginia shall submit proposed revisions to CSR 38–2–20.5(b) to require that civil penalty assessments begin to accumulate on the date of issuance of the cessation order and continue until the violation cited in the cessation order has been abated.

(ggg) By June 1, 1992, West Virginia shall submit proposed revisions to CSR 38–2–20.6(d) to remove any restrictions on public participation at assessment conferences.

(hhh) By June 1, 1992, West Virginia shall submit proposed revisions to CSR 38–2–20.7 to specify that the monetary denomination which will be associated with the number generated by the assessment formula prescribed in CSR 38–2–20.7 will be in dollars.

(iii) By June 1, 1992, West Virginia shall submit proposed revisions to CSR 38–2–20.7(d) to insure that the operator is awarded good faith only where abatement is achieved before the time set for abatement.

[FR Doc. 91–27731 Filed 11–18–91; 8:45 am]

BILLING CODE 4310–05–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1254

Use of Motion Picture, Sound, and Video Research Room

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration (NARA) is revising its research room regulations to require researchers using the Motion Picture, Sound, and Video Research Room in the National Archives Building to follow the same "clean research room" procedures that are in force in other research rooms in the National Archives Building. Under this regulation, researchers will no longer be allowed to bring personal audio or video copying equipment into the Motion Picture, Sound, and Video Research Room. The purpose of this regulation is to ensure that statutory and other limitations on the reproduction of materials under NARA's legal custody, including agency and copyright restrictions on Federal records and donated historical materials, are not violated.

EFFECTIVE DATE: This regulation is effective on November 19, 1991.

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

SUPPLEMENTARY INFORMATION: In 1936, NARA established by regulation certain "clean" research rooms at the National Archives Building and the Washington National Records Center. The reason for this action was to ensure the physical security of Federal records and other materials over which NARA exercised legal custody.

The Motion Picture, Sound, and Video Research Room (then known as the Motion Pictures Research Room) was exempted from this regulation at the time of its promulgation because researchers used reference copies of original records, rather than the records themselves, in performing their research. At some point after 1986, NARA began permitting researchers, on an informal basis and for their convenience, to bring privately owned audio and video copying equipment into the Motion Picture, Sound, and Video Research Room.

The use of this personal copying equipment has not been unlimited in scope. Some of the materials available for public research in the Motion Picture, Sound, and Video Research Room may not be freely duplicated because of copyright or other restrictions. NARA has always attempted to enforce these restrictions by, among other things, not allowing researchers to use personal copying equipment to reproduce restricted materials. A recent review conducted by the Motion Picture, Sound, and Video Research Room staff has determined, however, that this particular limitation is being circumvented by researchers, thereby resulting in the unauthorized copying of restricted materials. For example, NARA has found that researchers with personal copying equipment are obtaining access to restricted materials by having researchers without personal copying equipment make the desired reference requests.

NARA lacks the resources to prevent abuses of the personal copier privilege from occurring. In addition, the continued, unauthorized reproduction of restricted materials exposes NARA to liability for copyright infringement and other contractual or statutory violations. Therefore, NARA is amending its research room regulations to bar personal copying equipment from the Motion Picture, Sound Recording, and Video Research Room. Researchers will still be able to obtain audio and video reproductions of unrestricted materials at the fees established pursuant to 44 U.S.C. 2116(c), NARA's fee-setting statute. These fees were recently reduced by a significant amount for most audio and video reproductions.

This regulation is being promulgated without prior notice of proposed rulemaking to protect NARA from the potential liability to which the unauthorized copying of restricted audio and video materials exposes it. It has been determined that no effective controls on the use of personal copying equipment short of their absence from the Motion Picture, Sound Recording, and Video Research Room can prevent the intentional, unauthorized copying of restricted materials. Under the provisions of the Administrative Procedures Act (5 U.S.C. 553(a)(2)), regulations relating to public property, including Federal records and donated historical materials, are exempt from the requirements of notice-and-comment rulemaking.

The only changes being made to 36 CFR 1254.26 are (1) removing the Motion Picture, Sound, and Video Research Room as an exception to the "clean research room" procedures contained in that section and (2) adding personal audio and video reproduction equipment to the personal copying equipment excluded from clean research rooms. Tape recorders will continue to be admitted to research rooms other than the Motion Picture, Sound, and Video Research Room as a note-taking device under exception (e)(3).

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

List of Subjects in 36 CFR Part 1254

Archives and records; Confidential business information; Freedom of information; Micrographics.

For the reasons set forth in the preamble, part 1254 of chapter XII of title 36 of the Code of Federal Regulations is amended as follows:

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

1. The authority citation for part 1254 is revised to read as follows:

Authority: 44 U.S.C. 2101–2118; 5 U.S.C. 552; and E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

2. Section 1254.26 is amended by revising paragraphs (b) and (e) introductory text to read as follows:

§ 1254.26 Additional rules for use of certain research rooms in the National Archives and the Washington National Records Center buildings.

* * * * *

(b) The procedures in paragraphs (c) through (g) of this section shall apply to all research rooms in the National Archives and Washington National Records Center buildings, except the Microfilm Research Room in the National Archives Building. These procedures are in addition to the procedures specified elsewhere in this part.

* * * * *

(e) Researchers may not bring into the research rooms overcoats, raincoats, hats, or similar apparel; personal copying equipment, including personal paper-to-paper copiers and audio and video reproduction devices; briefcases, suitcases, daypacks, purses, or similar containers of personal property; notebooks, notepaper, notecards, folders or other containers for papers. These items may be stored at no cost in lockers available in the hallway adjacent to the various research rooms. The following exceptions may be granted:

* * * * *

Dated: October 11, 1991.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 91–27830 Filed 11–18–91; 8:45 am]

BILLING CODE 7515–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-4031-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Removal of final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is removing the Agency's final rule appearing at 55 FR 38058 (September 17, 1990) regarding the petition received from Allegan Metal Finishing Company for exclusion of wastes under 40 CFR 260.20 and 260.22. That rule denied a petition for the exclusion of hazardous waste (a "delisting petition") under section 3001(f) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6921(f).

EFFECTIVE DATE: November 19, 1991.

ADDRESSES: The RCRA regulatory docket for this notice is located in room M2427 at the U.S. Environmental Protection, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260–9327 for an appointment to review the docket. The docket for this notice contains all materials included in the original docket compiled for the Agency's previously published proposed and final rule regarding Allegan Metal Finishing Company. The reference number for the docket is 91–ALDW–FFFFF. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll free at (800) 424–9346, or Robert Kayser, Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–2224.

SUPPLEMENTARY INFORMATION:

I. Removal of Final Rule

On September 17, 1990, the Environmental Protection Agency (EPA or the Agency) denied a final exclusion, pursuant to the Resource Conservation and Recovery Act (RCRA) section 3001(f), 42 U.S.C. 6921(f), and to 40 CFR 260.20 and 260.22, to Allegan Metal Finishing Company for a one-time upfront exclusion (for wastes that have not yet been generated) of wastewater treatment sludges (Hazardous Waste No. F006) that were proposed to be treated. The wastes proposed to be treated are in two on-site lagoons at Allegan's facility in Allegan, Michigan. See 55 FR 38058 (September 17, 1990). On December 14, 1990, Allegan Metal Finishing Company filed a petition for review of the Agency's September 17, 1990 rulemaking with the United States Court of Appeals for the District of Columbia Circuit, No. 90–1598.

The parties reached a settlement agreement which provided that EPA would withdraw the final rule. Accordingly, EPA withdraws the final rule appearing at 55 FR 38058 (September 17, 1990). Because the State of Michigan has been authorized for the delisting program pursuant to RCRA (See 56 FR 18517, April 23, 1991) Allegan Metal Finishing Company will now pursue its delisting petition with the State. Allegan Metal Finishing Company must continue to treat its F006 wastes as hazardous until such time as it may, in the future, be granted an exclusion for these wastes.

II. Effective Date

This rule is effective November 19, 1991. There is good cause to omit notice and the opportunity to comment because they are unnecessary: The only party directly affected by the rule has agreed in a settlement agreement. 5 U.S.C. 553(b). There is good cause to make the rule immediately effective because the only party affected has agreed and because this withdrawal does not affect Allegan Metal Finishing Company's existing obligation to manage the waste as hazardous. 5 U.S.C. 553(d). In addition, the company does not need six months to come into compliance because the waste must continue to be managed as hazardous. 42 U.S.C. 6930(b).

III. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The withdrawal of a previously published final denial decision will not impose an economic burden on this facility since the withdrawal does not affect the manner in which the petitioned wastes must be handled. Despite the withdrawal of the denial decision, this facility is to continue managing its wastes as hazardous. There is no additional economic impact, therefore, due to today's rule. This notice is not a major regulation, thus no Regulatory Impact Analysis is required.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organization, and small governmental jurisdictions) The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This notice will not have an adverse economic impact on small entities. The facility included in this notice may be considered a small entity, however, this rule only affects one facility in one industrial sector and does not change existing requirements for the management of its waste. The overall economic impact, therefore, on small entities would be minimal. Accordingly, I hereby certify that this notice will not have a significant economic impact on a substantial number of small entities. This notice, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: October 31, 1991.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 91–27521 Filed 11–18–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 7525]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

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

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

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 et seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

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

listed on the date shown in the last column.

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

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the communities will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

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

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

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

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

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

§ 64.6 List of Eligible Communities.

State and Location	Community No.	Effective date authorization/ cancellation of sale of Flood Insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Regular Program Conversions				
Region II				
New York:				
Bainbridge, town of, Chenango County	361085	Mar. 18, 1976, Emerg.; Nov. 18, 1983, Reg.; Dec. 3, 1991, Susp.	Dec. 3, 1991.	Dec. 3, 1991.
North Norwich, town of, Chenango County	361089	May 25, 1976, Emerg.; Aug. 24, 1984, Reg.; Dec. 3, 1991, Susp.	.....do.....	Do.
Region III				
West Virginia:				
Beverly, town of, Randolph County	540267	Sept. 25, 1975, Emerg.; Dec. 3, 1991, Reg.; Dec. 3, 1991, Susp.	.....do.....	Do.
Region IX				
California:				
Santa Barbara, city of, Santa Barbara County	060335	Feb. 25, 1972, Emerg.; Dec. 15, 1978, Reg.; Dec. 3, 1991, Susp.	.....do.....	Do.
Region II				
New York:				
Stanford, town of, Dutchess County	361145	Mar. 19, 1976, Emerg.; Jan. 21, 1983, Reg.; Dec. 17, 1991, Susp.	Dec. 17, 1991.	Dec. 17, 1991.
Sandyston, township of, Sussex County	340455	Apr. 11, 1985, Emerg.; Dec. 17, 1991, Reg.; Dec. 17, 1991, Susp.	.....do.....	Do.
Region V				
Ohio:				
Wood County, unincorporated areas	390809	Mar. 16, 1977, Emerg.; Jan. 5, 1984, Reg.; Dec. 17, 1991, Susp.	.....do.....	Do.
Illinois:				
Sunnyside, village of, McHenry County	170486	Jun. 27, 1975, Emerg.; Jun. 18, 1980, Reg.; Dec. 17, 1991, Susp.	.....do.....	Do.
Region X				
California:				
Ada County, unincorporated areas	160001	May 8, 1975, Emerg.; Dec. 18, 1984, Reg.; Dec. 17, 1991, Susp.	.....do.....	Do.
Minimal Conversions				
Region V				
Ohio:				
Baltimore, village of, Fairfield County	390159	Jun. 28, 1990, Emerg.; Dec. 17, 1991, Reg.; Dec. 17, 1991, Susp.	.....do.....	Do.
Florida, village of, Henry County	390263	Aug. 15, 1975, Emerg.; Dec. 17, 1991, Reg.; Dec. 17, 1991, Susp.	.....do.....	Do.

Code for reading fourth column: Emerg.—Emergency, Reg.—Regular, Susp.—Suspension.

C.M. "Bud" Schauerte,
Administrator, Federal Insurance Administration.

[FR Doc. 91-27768 Filed 11-18-91; 8:45 am]
BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings

CFR Correction

In title 47 of the Code of Federal Regulations, parts 20 to 39, revised as of October 1, 1990, on page 185, in § 22.917 paragraph (b)(2) was inadvertently omitted and should appear after § 22.917(b)(1)(ii) as follows:

§ 22.917 Demonstration of financial qualifications.

* * * * *

(b) * * *
(1) * * *
(ii) * * *

(2) *Modified Facilities.* Applications for modified facilities in markets beyond the top-120 shall demonstrate the applicant's financial ability in accordance with the requirements of paragraph (a), above.

* * * * *

BILLING CODE 1505-01-D

47 CFR Part 73

[MM Docket No. 91-114; RM-7457]

Radio Broadcasting Services; Othello, East Wenatchee and Cashmere, WA, and Wallace, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of P-N-P Broadcasting, Inc., substitutes Channel 248C1 for Channel 248C2 at Othello, Washington, and modifies its construction permit for Station KZLN-FM accordingly. We also substitute Channel 266A for Channel 249A at East Wenatchee, Washington, and modify the license of Station KYSN accordingly; substitute Channel 294A for Channel 266A at Cashmere, Washington, and modify the construction permit for Station KZPH accordingly; and downgrade the vacant and unapplied for Channel 248C at Wallace, Idaho, to Channel 248C2. See 56 FR 19072, April 25, 1991. See also Supplementary Information, *infra.*

EFFECTIVE DATE: December 23, 1991.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-114, adopted October 24, 1991, and released November 4, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC. 20036.

Channel 248C1 can be allotted to Othello in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.0 kilometers (8.7 miles) southwest to avoid a short-spacing to the proposed allotment of Channel 247A at Davenport, Washington, at coordinates North Latitude 46-45-28 and West Longitude 119-19-10. Channel 266A can be allotted to East Wenatchee with a site restriction of 4.1 kilometers (2.6 miles) south to avoid a short-spacing to Station KEYF(FM), Channel 266C, Cheney, Washington, at coordinates North Latitude 47-22-52 and West Longitude 120-17-16. Channel 294A can be allotted to Cashmere with a site restriction of 4.2 kilometers (2.6 miles) west to avoid a short-spacing to Station KKNW, Channel 295C1, Bremerton, Washington, at coordinates North Latitude 47-30-35 and West Longitude 120-31-24. Channel 248C can be downgraded to Channel 248C2 at Wallace with a site restriction of 1.3 kilometers (0.8 miles) northeast to avoid a short-spacing to Station KISC, Channel 251C, Spokane, Washington, at coordinates North Latitude 47-28-40 and West Longitude 115-54-38. Since Othello, East Wenatchee, Cashmere and Wallace are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been obtained. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 248C and adding Channel 248C2 at Wallace.

3. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 248C2 and adding Channel 248C1 at Othello; by removing Channel 249A and adding Channel 266A at East Wenatchee; and by removing Channel 266A and adding Channel 294A at Cashmere.

Federal Communications Commission.
Michael C. Ruger,
Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-26962 Filed 11-18-91; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Parts 328 and 352

Acquisition Regulation; Insurance—Liability to Third Persons

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services, is amending its acquisition regulation (48 CFR chapter 3) by adding a contract clause that modifies the Federal Acquisition Regulation (FAR) clause at 52.228-7, Insurance—Liability to Third Persons, to limit the Government's liability under the clause to the Limitation of Cost or Limitation of Funds clause included in cost reimbursement contracts. This action is being taken because the FAR Secretariat authorized agencies to prescribe their own contract clauses in accordance with agency regulations in the final rule published in the **Federal Register** at 55 FR 52782 dated December 21, 1990 (see 48 CFR 28.311-3). We also are deleting the clause at HHSAR 352.228-70, Required Insurance since the new clause at 352.228-7 will replace the Required Insurance clause.

EFFECTIVE DATE: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Norman Audi (202) 245-0326.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the **Federal Register** on August 28, 1991 at 56 FR 42587. No comments were received in response to the proposed rule. Therefore, the Department is not

revising the regulatory coverage which was published in the proposed rule.

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

This document does not contain information collection requirements which require the approval of the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Part 328 and 352

Government procurement.

Therefore, 48 CFR chapter 3 is amended in the manner set forth below.

Dated: November 8, 1991.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

1. Part 328, Bonds and Insurance, is added consisting of Subpart 328.3, Insurance, to read as follows:

PART 328—BONDS AND INSURANCE

Subpart 328.3—Insurance

Sec.

328.301 Policy.
328.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
328.311–2 Contract clause.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 328.3—Insurance

328.301 Policy.

(a) It is the policy of this Department to limit the Government's reimbursement of its contractors' liability to third persons for claims not covered by insurance in cost-reimbursement contracts to the Limitation of Funds or Limitation of Cost clause of the contract.

(b) In addition to the limitations in paragraph (a) of this section, the amount of the Government's reimbursement will be limited to final judgments or settlements approved in writing by the Government.

328.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

328.311–2 Contract clause.

(a) The contracting officer shall insert the clause at 352.228–7, Insurance—Liability to Third Persons, in all solicitations and resulting cost-reimbursement contracts, in lieu of the clause at FAR 52.228–7.

2. The authority citation for part 352 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

3. Part 352, subpart 352.2, is amended by adding 352.228–7 as follows:

PART 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 352.2—Texts of Provisions and Clauses

§ 352.228–7 Insurance—Liability to third persons.

As prescribed in 328.311–2, contracting officers shall include the following clause in all cost-reimbursement contracts, in lieu of the clause at FAR 52.228–7:

Insurance—Liability to Third Persons (DEC 1991)

(a)(1) Except as provided in subparagraph (2) immediately following, or in paragraph (h) of this clause (if the clause has a paragraph (h)), the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

(b) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Contractor in connection with performance of this contract and for which the Contractor seeks reimbursement.

(c) Except as provided in paragraph (h) of this clause (if the clause has a paragraph (h)), the Contractor shall be reimbursed—

(1) For that portion (i) of the reasonable cost of insurance allocable to this contract, and (ii) required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise within the funds available under the Limitation of Cost or the Limitation of Funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Government. These liabilities are for—

(i) Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or

(ii) Death or bodily injury.

(d) The Government's liability under paragraph (c) of this clause is limited to the amounts reflected in final judgments, or settlements approved in writing by the Government, but in no event to exceed the funds available under the Limitation of Cost or Limitation of Funds clause of this contract. Nothing in this contract shall be construed as implying that, at a later date, the Government will request, or the Congress will appropriate, funds sufficient to meet any deficiencies.

(e) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)—

(1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract;

(2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or

(3) That result from willful misconduct or lack of good faith on the part of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(f) The provisions of paragraph (e) of this clause shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; *provided*, That such cost is allowable under the Allowable Cost and Payment clause of this contract.

(g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall—

(1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(3) Authorize Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

Alternate I (APR 1984). If the solicitation includes the provision at 52.228–6, Insurance-Immunity from Tort Liability, and the successful offeror represents in the offer that the offeror is partially immune from tort liability as a State agency or as a charitable institution, add the following paragraph (h) to the basic clause:

(h) Notwithstanding paragraphs (a) and (c) of this clause—

(1) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract; and

(2) The contractor need not provide or maintain insurance coverage as required by paragraph (a) of this clause; *provided,* that the Contractor may obtain any insurance coverage deemed necessary, subject to approval by the Contracting Officer as to form, amount, and duration. The Contractor shall be reimbursed for the cost of such insurance and, to the extent provided in paragraph (c) of this clause, to liabilities to third persons for which the contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount.

(End of clause)

Alternate II (APR 1984). If the solicitation includes the provision at 52.228–6, Insurance-Immunity from Tort Liability, and the successful offeror represents in the offer that the offeror is totally immune from tort liability as a State agency or as a charitable institution, substitute the following paragraphs (a) and (b) for paragraphs (a) through (g) of the basic clause:

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract.

(b) If any suit or action is filed, or if any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, the Contractor shall immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received by the Contractor. The Contractor shall, if required by the Government, authorize Government representatives to settle or defend the claim and to represent the Contractor in or take charge of any litigation. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

352.228 [Removed]

3. Section 352.228–70, Required Insurance, is removed.

[FR Doc. 91–27700 Filed 11–18–91; 8:45 am]

BILLING CODE 4150–04–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1145

[Ex Parte No. 394 (Sub-No. 3)]

Cost Ratios for Recyclables; Compliance Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rules.

SUMMARY: The Commission has revised its regulations governing railroad freight rates on recyclable commodities. The final rules provide that statutory caps (revenue-to-variable cost ratios) will be determined for regions and individual carriers, in addition to a national cap, to reflect the differing carrier cost variabilities under the Uniform Railroad Costing System (URCS). Each annual proceeding will be initiated by a decision of the Commission containing a procedural schedule, rather than be governed by a schedule of specific dates contained in the regulations. Cap ratios will be announced at the beginning of each annual proceeding, as soon as the necessary cost data become available, rather than in the final decision in the proceeding.

EFFECTIVE DATE: November 18, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245, (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: The regulations in part 1145 were adopted by a notice of final rule published October 17, 1989 (54 FR 42509). The proposed revisions to the rules were published January 4, 1991 (56 FR 410).

The Commission anticipates inaugurating the first annual proceeding under the regulations in Ex Parte No. 394 (Sub-No. 9), Cost Ratio for Recyclables—1992 Determination, which will govern shipments moving in 1992.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc. room 2229, Interstate Commerce Commission, Washington, DC, 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Regulatory Flexibility Analysis

We certify that this action will not have a significant economic impact on a substantial number of small business entities. We are adopting only technical changes to existing regulations and not imposing new regulatory requirements on any entity.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

List of Subjects in 49 CFR Part 1145

Railroads, Reporting and Recordkeeping Requirements.

Decided: November 8, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1145 of the Code of Federal Regulations is amended as follows:

PART 1145—RAILROAD RATES ON RECYCLABLE COMMODITIES

1. The authority citation for part 1145 continues to read as follows:

Authority: 49 U.S.C. 10321, 10731, and 10707a; 5 U.S.C. 553.

2. Sections 1145.1 and 1145.2 are revised to read as follows:

§ 1145.1 Definitions.

(a) For the purpose of this part, *recyclable commodities* means recyclable material as defined at 49 U.S.C. 10731(a)(1), other than recyclable or recycled iron or steel. Commodities are to be specified at the five digit Standard Transportation Commodity Code (STCC) level, unless exceptions are requested and justified as provided in § 1145.4(a). The five digit STCC code level for a given recyclable commodity means the aggregate of all movements whose identifying STCC codes contain the same five leading digits. Thus, the R/VC ratio for a recyclable commodity group will be the sum of the revenues of all movements whose identifying STCC codes contain the same five leading digits divided by the sum of the variable costs of those movements.

(b) *Costs determined pursuant to 49 U.S.C. 10705a(m) means unadjusted costs* calculated pursuant to the procedures developed in Ex Parte No. 389, *Procedures for Requesting Rail Variable Cost and Revenue Determinations for Joint Rates Subject to Surcharge and Cancellation*, as amended, with two exceptions. For the purpose of this part, parties are to use actual shipment weight as shown in the waybill file (rather than tariff minimum weight), and route miles as calculated in the Princeton Transportation Network Model and entered in the waybill file for the year at issue (rather than short line miles increased for circuity).

(c) *Statutory cap levels* means the railroad revenue-to-variable-cost ratio level referred to in 49 U.S.C. 10731(e), determined:

(1) As a national ratio;

(2) As regional ratios for the Eastern and Western regions; and

(3) As individual carrier ratios for each Class I railroad.

These cap ratios are intended to be compared to actual revenue/variable cost ratios produced by railroad rates, computed as national, regional, and in some cases individual carrier, averages. See § 1145.4 (b) and (f).

(d) *Pertinent statutory cap level* means the cap ratio level that is computed on the same territorial or carrier basis as the actual ratio to which it is compared. For example, the cap level pertinent to an actual ratio produced by rates of all carriers in the Eastern region is the cap level for the Eastern region. The cap level pertinent to an actual ratio produced by the rates of a single Class I carrier is the cap level for that carrier.

(e) *Above-cap rate* means an individual rate that produces a revenue/variable cost ratio above the pertinent statutory cap level.

(f) *Above-cap rate group* means a rate group specified in § 11.45.4(b) that produces an average revenue/variable cost ratio above the pertinent statutory cap level. The term may relate either to a railroad industry rate group or to an individual carrier rate group for which a determination is made under § 1145.5(a).

(g) *Rate (or rate group) determined to be above the cap level* means a rate (or rate group) that had or would have an above-cap status as of the effective date of an increase in the a rate, under the latest effective determination made by the Commission concerning the status of the rate on that date, whether made in an annual proceeding under § 1145.5 or in another proceeding.

(h) *Below-cap rate (or rate group)* means a rate (or rate group) that produces a revenue/variable cost ratio equal to or below the pertinent statutory cap level.

§ 1145.2 Purpose.

This part establishes procedures by which the Interstate Commerce Commission will ensure continued compliance by the nation's railroads with the statutory cap on freight rates for recyclable commodities established in 49 U.S.C. 10731(e). The Commission will:

(a) Determine annually the statutory cap levels to apply for the ensuing calendar year;

(b) Determine annually the regional and national average revenue/variable cost ratios produced by rates on recyclable commodities and identify the recyclable commodities having territorial average ratios above the statutory cap levels;

(c) Determine annually, in response to shipper requests, the revenue/variable cost ratios produced by rates on individual movements of recyclable commodities and identify the movements having ratios above the statutory cap levels; and

(d) Regulate rate increases on recyclable commodities, including increases under 49 U.S.C. 10707a(a)–(d), to prohibit increases in rates with ratios above the statutory cap levels and to prevent increases in other rates from raising the ratios on those rates above the cap levels.

3. Sections 1145.3, 1145.4, 1145.5, 1145.6, and 1145.7 are redesignated as §§ 1145.4, 1145.5, 1145.6, 1145.7 and 1145.8. A new §§ 1145.3 is added, and newly designated §§ 1145.4, 1145.5, 1145.6(c) and 1145.7 are revised to read as follows:

§ 1145.3 Annual proceedings: announcement of cap ratios and initiation of proceedings.

(a) *Announcement of cap ratios.* Each calendar year, as soon as the Commission has received and processed the railroads' cost and revenue data from the previous year and announced the Uniform Railroad Costing System (URCS) unit costs for the previous year, the Commission will state the statutory cap levels required by 49 U.S.C. 10731(e), to apply for the ensuing calendar year. These cap levels will be stated:

(1) As a national ratio;

(2) As regional ratios for the Eastern and Western regions; and

(3) As individual carrier ratios for each Class I railroad.

(b) *Initiation of proceedings.* In the same decision in which the Commission states the statutory cap levels, it will announce the institution of a proceeding under these rules and provide a schedule for the filing of evidence and the issuance of a final decision consistent with the time intervals stated in §§ 1145.4 and 1145.5. For the purpose of the stated time intervals, the date of service of the decision announcing the institution of the proceeding is Day 0 (zero).

§ 1145.4 Annual proceedings: submission of evidence.

(a) *Initial railroad submission.* By Day 30 (the 30th day after the service date of the Commission's decision described in § 1145.3(b)), railroads shall file, jointly or separately, certified average revenue/variable cost ratios as described in paragraph (b) of this section for all single-line, joint, and combination rates applicable to each recyclable commodity. Such ratios will be computed on the basis of the railroads' revenues for each commodity and the railroads' costs for that particular transportation determined pursuant to 49 U.S.C. 10705a(m). The Commission's most recently published I.C.C. Waybill Sample will be an acceptable source for computing the average revenue/variable cost ratios determined under this paragraph subject to correction for overstatement of revenues due to 49 U.S.C. 10713 contracts at the option of participating railroads. The recyclable commodity ratios shall be for the applicable five digit STCC code groups. Parties may petition for reconsideration of the STCC level described in § 1145.1(a) by identifying, with adequate

justification, specific exceptions that may be appropriate.

(b) *Regional and national average revenue/variable cost ratios required.* The computations described in paragraph (a) of this section will be made so that for each commodity there will be computed a separate average revenue/variable cost ratio for two regional rate groups and one national rate group as follows:

(1) Intra-East;

(2) Intra-West; and

(3) Nationally.

The Commission decision under § 1145.5 for each commodity will be based upon the revenue/variable cost ratios computed for the two regional rate groups wherever the car samples used in computing the regional ratios comprise ten or more cars. Wherever the car sample used in computing a regional ratio comprises nine or fewer cars, the national revenue/variable cost ratio for that commodity will be used for that regional rate group instead of the regional ratio.

(c) *Initial railroad submission available to shippers.* By Day 30, the railroads shall make available to shippers, at a convenient time and a place provided by the railroads, the certified average revenue/variable cost ratios described in paragraph (b) of this section, including the underlying workpapers. The certified average revenue/variable cost ratios submitted by the railroads and the underlying workpapers shall also be made available to shippers during business hours in the Interstate Commerce Commission Building, Docket File Reading Room. The underlying workpapers shall be presented to shippers at a level of aggregation sufficient to assure that specific shipper contract or shipment information is not disclosed.

(d) *Shippers to present to appropriate railroads disagreement with certified average revenue/variable cost ratios.* If a shipper disagrees with the certified average revenue/variable cost ratios submitted by the railroads pursuant to paragraph (a) of this section, it shall present its disagreement to the railroads in writing within 7 days of the railroads' filing, or by Day 37, whichever is earlier.

(e) *Railroads and shippers to negotiate changes in submitted certified average revenue/variable cost ratios and submit revised ratios.* Upon receipt of a shippers' written disagreement with any certified average revenue/variable cost ratio submitted by the railroads pursuant to paragraph (a) of this section, the railroads shall negotiate in good faith with the shipper to resolve the disagreement. The railroads and shippers shall submit to the Commission by Day 60 and agreed adjustments to the railroads' initial submissions pursuant to paragraph (a) of this section. To the extent that disagreement remains, the railroads and shippers shall, by Day 60, submit evidence and argument supporting their respective positions.

(f) *Alternate railroad filing in lieu of filing under paragraph (a) of this section.* Any individual railroad or railroad system may satisfy the requirements of paragraph (a) of this section with respect to some or all recyclable commodities by submitting by Day 30 the revenue/variable cost ratios produced by single-line or combination rates for movements of the commodities over its lines only. A submission under this paragraph shall be made available to shippers pursuant to paragraph (c) of this section and the provisions of paragraphs (d) and (e) of this section shall also apply.

(g) *Individual rates.* A shipper may establish in any annual proceeding that the rate it actually pays for an individual movement of a recyclable commodity exceeds the pertinent statutory cap level. Submission of evidence on individual rate issues will be governed by the following schedule:

(1) By Day 30, shippers shall file their statements, if any, on individual rates with the Commission and serve them on the railroads. These shall be sworn statements supported by cost evidence, which may be either adjusted or unadjusted, and evidence of actual revenues paid to railroads for shipments made.

(2) The railroads may respond to the shippers' individual rate statements on or before Day 60 by filing sworn statements supported by cost evidence, which may be either adjusted or unadjusted, and evidence of revenues actually collected for shipments transported.

§ 1145.5 Annual proceedings: final Commission decision.

(a) *Date and content of decision.* In a decision to be issued by Day 90 (the 90th day after service of the Commission's decision described in § 1145.3(b)), based on the evidence submitted:

(1) For regional and national rate groups, the Commission will state the regional and national average revenue/variable cost ratio levels produced by the rates for each recyclable commodity and determine which, if any, regional and national rate groups produce ratios exceeding the previously announced statutory cap levels. These rate group determinations will be made not only in relation to rates for the railroad industry overall but also in relation to the rates of any railroad that has made an acceptable alternative submission under § 1145.4(f).

(i) *Joint line through rates within a region* (including MIFTR and proportional rates) will be compared to the regional cap.

(ii) *Joint line through rates between regions* (including MIFTR and proportional rates) will be compared to the national average cap.

(iii) *Local/Single line rates* of a single carrier will be compared to that carrier's individual cap.

(iv) *Joint line through rates on individual movements*, whether within a region or between regions (including MIFTR and proportional rates) will be compared to the weighted average of the individual R/VC ratios of the participating carriers. The weighting will be based on each carrier's percentage of the total variable cost of the movement, applying each carrier's percentage to its individual R/VC ratio and adding the results to determine the weighted average R/VC ratio for the movement.

(2) For individual rates, the Commission will state the revenue/variable cost ratios produced by individual rates and will determine which, if any, of those rates produce ratios exceeding the pertinent statutory cap levels as described above.

(b) *Contingencies.* (1) If for any reason the Commission experiences delay in issuing the final decision, the prior year's final decision shall remain in effect until the issuance of a new decision. At such time as the new decision is issued, its determinations and their consequences (described in § 1145.6) shall apply retroactively, if necessary, so as to cover all recyclable commodity movements transported during the calendar year they govern (the second year after the year of the data on which the determinations are based).

(2) If the Commission is unable to make a requested individual rate determination by the date of the annual decision described in paragraph (a) of this section, it will provide in the decision either:

(i) That the determination will be made in a subsequent decision in the same annual proceeding; or

(ii) That the issue will be transferred to a separate proceeding for disposition.

(3) On the basis of our experience generally or in a particular case, we will make any necessary adjustments (with appropriate opportunity for comment) for the sake of accuracy or administrative manageability.

(c) *Limited scope.* No rate reductions or damages will be ordered and no rate increases will be approved in the annual proceedings conducted under this part, which are solely for determination of the statutory cap levels, revenue/variable cost ratio levels, and above-cap rates and rate groups.

§ 1145.6 Regulation of rate increases.

* * * * *

(c) *Standard of maximum reasonableness.* The reasonable maximum rate level on a recyclable commodity produces a revenue/variable cost ratio equal to the pertinent statutory cap level determined in annual proceedings under this part. A rate increase violates this standard to the extent that it raises a below-cap rate above the cap level, or if it applies to a rate that is already above the cap level.

* * * * *

§ 1145.7 Prospective effect.

The rules established in this part are prospective only. Claims relating to periods prior to adoption of this part are not affected by this part. Nevertheless, determinations of statutory cap levels on national, regional and individual carrier bases, as described in § 1145.1(c), apply for calendar year 1989, the first year for which cap ratios were determined under URCS, and for later years, and will serve as the statutory cap levels for rate complaints relating to those years.

[FR Doc. 91-27756 Filed 11-18-91; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1313

[Ex Parte No. 387 (Sub-No. 963)]

Railroad Transportation Contracts

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission modifies its confidential rail contract filing regulations to preclude the reinstatement of any contract more than 180 days after its expiration date, and to require that notices or amendments be filed when contracts are terminated before the expiration date, if any, specified therein. The modified regulations will resolve a file storage problem caused by the Commission's inability to determine from filed contracts which ones are in effect or might be reinstated, while continuing to provide carriers and shippers with needed flexibility.

EFFECTIVE DATE: This rule is effective May 17, 1992.

FOR FURTHER INFORMATION CONTACT: James W. Greene (202) 275-1795 or Charles E. Langyher, III (202) 275-7739. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: By notice of proposed rulemaking served May 29, 1991 (56 FR 24365, May 30, 1991), the Commission proposed to modify its regulations to preclude the amendment of any contract more than 90 days after its expiration date and to require that contracts be amended to reflect any automatic extensions of expiration dates. The modifications were proposed to alleviate the Commission's storage problem for confidential rail contracts and improve the integrity of its files.

Comments were received from six carriers and carrier organizations, and from eleven shippers and shipper organizations. While the commenters generally agreed that some changes were warranted in the regulations, they opposed the 90 day limitation on reinstating expired contracts and/or the requirement to file amendments to extend contracts that provided for automatic extension. Most commenters suggested that at least 180 days should be allowed to reinstate expired contracts, and that the Commission should require the filing of notices when contracts that provide for automatic renewal are cancelled, rather than requiring amendments when they are extended.

Upon review of the comments, the Commission has determined that the proposed regulations can be modified to overcome the objections expressed by commenters, without having a significant adverse impact on the objectives it seeks to achieve. The Commission thus adopts final rules that will resolve the storage problem, while continuing to provide carriers and shippers with the flexibility they say they need.

Energy and Environmental Considerations

This action will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

This action will not have a significant impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1313

Administrative practice and procedure, Agricultural commodities, Forest and forest products, Railroads.

Decided: November 6, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1313 of the Code of Federal Regulations is amended as follows:

PART 1313—RAILROAD CONTRACTS ENTERED INTO PURSUANT TO 49 U.S.C. 10713.

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

Authority: 49 U.S.C. 10321 and 10713; 5 U.S.C. 553.

2. In § 1313.7, paragraph (d) is redesignated as paragraph (e), a new paragraph (d) is added and the heading and paragraph (e)(1) of newly designated paragraph (e) are revised to read as follows:

§ 1313.7 Contract filing, title pages, and numbering.

* * * * *

(d) *Modification of contract termination dates.* (1) An amendment extending a contract expiration date must be filed with the Commission prior to such expiration date. An amendment reactivating an expired contract will not be accepted more than 180 days after such expiration date.

(2) Whenever a contract provides for automatic renewal or extension, absent unilateral action terminating it, the filing carrier must file a notice with the Commission when the contract is terminated. Said notice must be filed not more than 180 days after the termination of the contract.

(3) Whenever a contract is to be terminated before the termination date, if any, specified therein, the filing carrier must advise the Commission not more than 180 days after such termination. If the contract is terminated through unilateral action provided for therein, the filing carrier must file a notice announcing such termination; if the termination results from an agreement among the parties, an amendment must be filed to implement such termination.

(e) *Application for relief from requirements of paragraphs (a), (b), (c) or (d) of this section.* (1) Application for relief from one or more of the requirements of paragraphs (a), (b), (c) or (d) of this section shall be submitted to the Suspension/Special Permission Board.

* * * * *

[FR Doc. 27753 Filed 11-18-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 910763-1212]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of reopening and request for comments.

SUMMARY: NOAA announces modification of the prohibition on processing Pacific whiting at-sea so that an additional 7,000 metric tons (mt) of Pacific whiting caught by fishing vessels that do not also process fish will be made available for processing at sea (by motherships) in the exclusive economic zone (EEZ) off Washington, Oregon, and California, and requests public comment on this action. This action is authorized by the regulations at 50 CFR 663.23(b)(3) implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), and is intended to provide for full utilization of the Pacific whiting resource in 1991.

DATES: Effective from 0001 hours, November 17, 1991, until noon November 22, 1991 (local times), unless modified, superseded, or rescinded. Comments will be accepted until December 4, 1991.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140; or Rodney R. McInnis at (213) 514-6202.

SUPPLEMENTARY INFORMATION: The regulations regarding allocation of Pacific whiting in 1991, at 50 CFR 663.23(b)(3), established an initial limit of 104,000 metric tons (mt) of the 1991 Pacific whiting quota of 228,000 mt for fishing vessels that process fish (catcher/processors), and 88,000 mt for fishing vessels that do not process fish (whether delivering shoreside or to motherships at sea) (56 FR 43718; September 4, 1991). The remaining 36,000 mt was to be held in reserve for later release to either or both categories of vessels at the discretion of the Regional Director (Northwest Region, NMFS). In addition, if the Regional Director determines that any part of the reserve is needed to allow shoreside processing to continue through the end of the fishing year, he is authorized to limit the amount of whiting from the reserve that may be processed in the fishery management area.

Consistent with these regulations, NOAA prohibited the further taking and retention of whiting by catcher/processor effective August 29, 1991 (56 FR 43718; September 4, 1991) based on the determination that catcher/processors had harvested 117,000 mt of whiting, exceeding the 104,000 mt initial limit by 13,000 mt.

Effective September 6, 1991 (56 FR 46240, September 11, 1991), NOAA also prohibited further processing at sea in 1991 and released the remaining reserve for use by fishing vessels that do not process. At that time, it was projected that the 88,000 mt limit for fishing vessels that do not process would be exceeded by almost 5,000 mt by September 6, 1991. Approximately 14,000 mt had been delivered to shoreside processors through September 6 and it was projected that a total of 27,000 to 31,000 mt would be needed by shoreside processors in 1991. Thus, the remaining 18,000-mt reserve was released to fishing vessels that do not process and further at-sea processing was prohibited.

The Regional Director now has determined that 7,000 mt of the Pacific whiting quota of 228,000 mt will not be utilized in 1991 unless it is made available for processing at sea. Shoreside processors have confirmed their intent to use only 26,000 mt of Pacific whiting in 1991, and have taken approximately 18,000 mt as of November 1, 1991. At-sea processors already had taken over 195,000 mt of Pacific whiting before at-sea processing was prohibited. Exploratory fisheries for jack mackerel and shortbelly rockfish already have been conducted, and resulted in insignificant bycatch of Pacific whiting. Therefore approximately 7,000 mt of Pacific whiting remains that is surplus to shore-based processing needs.

NOAA has determined that the 7,000 mt of Pacific whiting that is surplus to shoreside processing needs may be processed at-sea in order to achieve full utilization of the 1991 Pacific whiting quota. Harvest of Pacific whiting continues to be limited only to those fishing vessels that do not process. NOAS has decided not to reopen harvesting to catcher/processors for several reasons. First, allowing catcher/processors to resume harvesting whiting, when only 7,000 mt is available, would encourage more harvesting capacity in the fishery than is manageable and the risk that the 7,000 mt would be exceeded is excessive. Second, catcher/processors exceeded their 104,000 mt initial allocation by almost 13,000 mt, taking a total of 117,000 mt in 1991. In contrast, motherships received approximately only 78,000 mt of the 88,000 mt allocation for fishing vessels that do not process fish. Third, the Pacific Fishery Management Council recommended that mothership operations be given priority access to whiting that is surplus to shore-based processing needs.

The Regional Director has assessed the expected participation and performance by at-sea processors and has determined that the 7,000-mt surplus to shoreside processing needs is likely to be harvested and processed at sea in about 5 days. Therefore, NOAA has determined that at-sea processing of Pacific whiting may resume between November 17, 1991, the earliest practicable date, and noon November 22, 1991. Because further processing will be prohibited after noon November 22, the last delivery of Pacific whiting to at-sea processors must be made prior to that time.

The Regional Director will monitor the progress of the fishery and may make adjustments to the number of days at-sea processing is allowed either to avoid exceeding or to fully utilize the 7,000 mt limit. Any such adjustments will be made by actual notification to the vessels or vessels' representatives (by fax, phone, and/or U.S. Coast Guard Notice to Mariners radio broadcast) and in the **Federal Register**. As announced at 56 FR 46240, any Pacific whiting processed in state ocean waters will be counted toward the EEZ processing limits.

Secretarial Action

For the reasons stated above, the Secretary of Commerce announces that:

Beginning 0001 hours, November 17, 1991 (local time), and additional 7,000 mt of Pacific whiting may be processed at sea in the EEZ. At-sea processing vessels may not process Pacific whiting after noon (local time) November 22, 1991, unless otherwise announced by the Regional Director.

Classification

This action is taken under the authority of, and in accordance with, 50 CFR 663.23(b)(3). The determination to release additional Pacific whiting for processing at sea is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see Addresses) during business hours until the end of the comment period.

An environmental assessment/regulatory impact review (EA/RIR) was prepared for the authorizing regulations. The environmental impacts of the action taken in this notice were considered in the EA/RIR. Therefore this action is categorically excluded from the National Environmental Policy Act requirements to prepare an environmental assessment in accordance with paragraph 6.02c.3 of NOAA Administrative Order 216–6 because this action is within the scope of the authorizing rule and its EA/RIR.

This action is in compliance with Executive Order 12291.

The public has had the opportunity to comment on the rule that provides the authority for this action. The public participated in Groundfish Management Team, Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Council meetings in March, April, and July, 1991, at which the rule authorizing allocations of Pacific whiting was discussed. Additional public comments will be accepted for 15 days after publication of this notice in the Federal Register (see "ADDRESSES").

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: November 13, 1991.

David S. Crestin,

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

[FR Doc. 91–27706 Filed 11–13–91; 3:29 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 223
Tuesday, November 19, 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.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 425

[Amdt. No. 3; Doc. No. 0129S]

Peanut Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of additional proposed rulemaking.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) publishes this notice of additional proposed rulemaking to seek public comment on a proposal to change the method of quality adjustment of insured peanuts contained in the proposed rule published on February 6, 1991, at 56 FR 4738.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than December 19, 1991, to be sure of consideration.

ADDRESSES: Written comments should be sent to Peter F. Cole, Secretary, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (703) 235–1168.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 1996.

James E. Cason, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, February 6, 1991, FCIC published a notice of proposed rulemaking in the **Federal Register** at 56 FR 4738, to revise and reissue the Peanut Crop Insurance Regulations (7 CFR part 425) as follows:

1. Section 4—Remove language applying to unharvested acreage production guarantee reduction by deletion section 4.b.

2. Section 5—Change the year reference in subsection 5.c.(1) to read "1992," to reflect that premium discount has been extended beyond the earlier 1989 expiration year.

3. Section 8—Revise language in subsection 8.a.(1)(i) to increase acreage qualifications for a replant payment from 10 acres and 10 percent to 20 acres and 20 percent.

Section 9—Change language in 9.f.(2) to provide that peanuts damaged due to insurable causes must have a value per pound of less than 90 percent of the average price support price per pound to be considered eligible for quality adjustment.

Remove the "excess appraisal" language in 9.f.(4)(iii) previously used for acreage having an unharvested guarantee. Unharvested guarantees are no longer applicable (see change. No. 1, above). Provide language in 9.g. to specify minimum acreage or percentage of acreage necessary to qualify for a replant payment consistent with the replant payment requirements for other crops (20 acres or 20 percent) (see change No. 3, above), and provide that the payment will be a fixed dollar amount (actual cost per acre for replanting but not to exceed $80.00 per acre) instead of an amount determined through a calculation method used previously.

5. Section 17—Add definitions (c) for "Average price per pound," (d) "Average price support per pound." and (n) Replant payment." Redefine "harvest" to eliminate the requirement to dig at least 250 pounds or 20 percent of production guarantee to qualify for the harvested production guarantee (see change No. 1, above). Redefine "value per pound" to clarify the term with respect to Segregation II and III peanuts and a 1.25 cents reduction discount when Segregation II and III peanuts are transferred under quota loan.

FCIC solicited public comment on the proposed rule for 30 days following its publication. On Monday, March 18, 1991, FCIC published a notice in the **Federal Register** at 56 FR 11375 to extend the comment period from the original expiration date of March 8, 1991, to April 17, 1991.

FCIC proposed to eliminate quality adjustment on preanuts with a value of 90 percent or more of the applicable average quota support price per pound. As a result of comments submitted on this proposal, FCIC will not implement this change because it would drastically alter a long standing method of adjustment; create dissatisfaction among insureds; and, while possibly providing a reduction in administrative costs of the program with fewer quality determinations, would do so with relatively few benefits for FCIC at the expense of the insured.

FCIC believes that it is more equitable to adjust for quality on a unit basis. This change requires that the value per pound, used to determine adjustments for quality, will be computed by dividing

the total value of all mature peanut production from the unit by the total production of all mature peanuts. Adjustments for quality in these computations may be reduced in some instances because peanuts with values exceeding the average support price will be included in our determinations. Presently, peanut production with value in excess of the average support price is not used in such computation.

In addition, the definitions of "average price per pound," and "value per pound," have been amended to clarify these terms in light of this new proposal.

FCIC is extending the public comment period on the proposed rule to solicit public comment on this additional proposal, as well as any additional comment on the proposed rule as a whole, or any part thereof, for 30 days following publication of this notice in the **Federal Register**. Written comments, data, and opinions should be sent to Peter F. Cole, Secretary, Federal Crop Insurance Corporation, room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250. Written comments received pursuant to this notice will be available for public inspection and copying at the above address.

List of Subjects in 7 CFR Part 425

Crop insurance, Peanuts.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to further amend the Peanut Crop Insurance Regulations (7 CFR part 425) as described herein, effective for the 1992 and succeeding crop years, in the following instances:

7 CFR 425.7(d)9.(f)(2), 425.7(d)17(c) and (r) (proposed in the **Federal Register** at 56 FR 4738, February 6, 1991), are revised to read as follows:

§ 425.7 The application and policy.

* * * * *

9. *Claim for indemnity.*

* * * * *

(f) * * *

(2) Mature peanut production will be adjusted if, due to insurable causes, the average value per pound for all peanuts on the unit is less than the average price per pound for all peanuts on the unit. The adjustment will be made by:

(i) Dividing the average value per pound for the insured type of peanuts on the unit by the average price per pound for the type; and

(ii) Multiplying the result by the number of pounds of such production.

* * * * *

17. *Meaning of Terms.*

* * * * *

(c) *Average price per pound*—means:

(1) The average Commodity Credit Corporation (CCC) price support per pound, by type, for Segregation I peanuts and for Segregation II and III peanuts which are eligible to be valued as quota peanuts; and

(2) The highest non-quota price election as contained in the actuarial table for this purpose all non-quota (additional) Segregation II and III peanuts.

* * * * *

(r) *Average value per pound*—means:

(1) The average "Value Per Pound Including LSK (loose shell kernels)," (Section II, Line P Total) as shown on the United States Department of Agriculture (USDA) "Inspection Certification and Sales Memorandum," for Segregation I peanuts and for Segregation II and III peanuts which are valued as quota peanuts (for Segregation II and III peanuts valued as quota peanuts, the total on Line P will be adjusted, if required by the "Discount for Segregation 2 and 3 Peanuts Transferred to Quota" on USDA/ASCS/ASCS 1014.1); and/or;

(2) the average per pound "value of the segment for loan additional peanuts," as established by the USDA "Inspection Certification and Sales Memorandum," (total, column Q) for all other Segregation II and III peanuts.

* * * * *

Done in Washington, DC, on November 6, 1991.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 91-27727 Filed 11-18-91; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV-91-438]

South Texas Onions; Amended Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the level of authorized expenses and established the assessment rate under Marketing Order No. 959 for the 1991-92 fiscal period. Authorization of the budget would permit the South Texas Onion Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by November 29, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC. 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-720-2020.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 143 and Order No. 959 (7 CFR Part 959), regulating the handling of onions grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

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

There are approximately 34 handlers of South Texas onions under this marketing order, and approximately 47 producers. Small agricultural procedures have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of South Texas onion producers and handlers may be classified as small entities.

The budget of expenses for the 1991-92 fiscal period was prepared by the South Texas Onion Committee, the

agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of South Texas onions. They are familiar with the committee's needs and with costs of goods and services in their local area and are thus is a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses.

Committee administrative expenses of $91,237, recommended in a mail vote completed August 5, 1991, were approved on September 24, 1991, and published in the **Federal Register** on September 30, 1991, (56 FR 49391). The committee subsequently met on October 15, 1991, and unanimously recommended funding for numerous research and promotion projects and adjustments to a number of the previously approved administrative items. The 1991–92 budget of $341,605.67 is $43,605.67 more than the previous year. Major increases are in the manager and field salaries, rent and utilities, field travel, promotion, and research categories.

The committee also unanimously recommended an assessment rate of $0.07 per 50-pound container or equivalent of onions, the same as last season. This rate, when applied to anticipated shipments of 5,019,054 50-pound containers or equivalents, would yield $351,333.78 in assessment income. This, along with $15,759.84 in interest income, would be adequate to cover budgeted expenses. Funds in the reserve as of September 30, 1991, estimated at $342,401, were within the maximum permitted by the order of two fiscal periods' expenses.

While this action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1991–92 fiscal period for the program began on August 1, 1991, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable South Texas onions handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found and determined that a comment period of 10 days is appropriate because the amended budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 959 be amended as follow:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 959 continues to read as follows:

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

2. Section 959.232 is revised to read as follows:

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

§ 959.232 Expenses and assessment rate.

Expenses of $341,605.67 by the South Texas Onion Committee are authorized and an assessment rate of $0.07 per 50-pound container or equivalent quantity of assessable onions is established for the fiscal period ending July 31, 1992. Unexpended funds may be carried over as a reserve.

Dated: November 13, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–27721 Filed 11–18–91; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1951

Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multiple Family Housing

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations governing the Servicing of Unauthorized Assistance—Multiple Family Housing. This action is taken to acknowledge the role of the tenant as the end user (beneficiary) of subsidy benefits and to clarify when the recipient (borrower or grantee) is or is not liable when the tenant or beneficiary provides false or inaccurate information which is relied upon to advance unauthorized subsidies. The intended effect of this action is to inform FmHA staff members and program participants of their responsibilities with regard to servicing of unauthorized assistance for Multiple Family Housing programs.

DATES: Comments must be received on or before January 21, 1992.

ADDRESSES: Send written comments in duplicate to the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, Telephone: (202) 382–9725. All written comments will be available for public inspection during normal working hours.

FOR FURTHER INFORMATION CONTACT: Ernest W. Harris, Loan Officer, Multiple Housing Servicing and Property Management Division, Farmers Home Administration, USDA, room 5321–S, Washington, DC 20250, Telephone: (202) 382–1613.

SUPPLEMENTARY INFORMATION:

Classification

This action was reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be "non-major." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. In addition, there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This proposed rule has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public

Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The undersigned has determined that this action will not have a significant impact on a substantial number of small entities because the revisions provide a clarification of existing regulations concerning recipients of unauthorized assistance, the number of which is expected to be minimal.

Intergovernmental Consultation

For reasons set forth in the Final Rule related to Notice(s), this program/activity is subject to provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, subpart V, 48 FR 29115, June 24, 1983).

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance: 10.405, "Farm Labor Housing Loans and Grants," 10.411, "Rural Housing Site Loans," 10.415, "Rural Rental Housing Loans" and 10.427, "Rural Rental Assistance Payments."

Background

The existing regulation addresses actions to be taken by Farmers Home Administration (FmHA) when unauthorized subsidies have been advanced, but does not address the extent of the recipient's (borrower/grantee's) liability when the unauthorized subsidy was advanced due to inaccurate or falsified information furnished by the tenant. This amendment acknowledges the tenant's role as the end user in the flow of subsidy benefits and identifies him/her as a "beneficiary." Also, the change clarified that the beneficiary is liable for repayment of unauthorized subsidies paid based on false or inaccurate information he/she has provided. This amendment also establishes when the recipient is or is not liable when unauthorized assistance has been advanced due to inaccurate or falsified information furnished by the beneficiary. If the recipient has relied upon information from the beneficiary and has complied with the FmHA procedure on income certification/recertification, they are not liable for repayment of the unauthorized subsidy. However, if the recipient has not complied with the certification/recertification procedure, they are liable for repayment of the unauthorized subsidy. The existing regulation also does not address what is to be done when the recipient either misrepresents or causes the tenant to misrepresent income or number of occupants in a living unit. This amendment states the actions to be taken by FmHA in this situation. FmHA will consult with the OGC, require restitution or cancel and reassign the assistance, as appropriate, depending upon the type of assistance and the circumstance.

List of Subjects in 7 CFR Part 1951

Accounting Servicing, Loan programs-Agriculture, Loan Programs-Housing and community development, Low- and Moderate-income housing loans-Servicing.

Therefore, FmHA proposes to amend Part 1951, subpart N, chapter XVIII, title 7, Code of Federal Regulations as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 42 U.S.C. 1480, 42 U.S.C. 2942, 5 U.S.C. 301, Sec. 10. Pub. L. 93–357, Stat 392, 7 CFR 2.70, 29 FR 14764, 32 FR 9850.

Subpart N—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multiple Family Housing

2. Section 1951.652 is amended by redesignating paragraphs (c) through (h) as paragraphs (d) through (i), adding a new paragraph (c), and revising the newly redesignated paragraphs (h) and (i) to read as follows:

§ 1951.652 Definitions.

* * * * *

(c) *Beneficiary.* An occupant of a MFH living unit who benefits from any Federal subsidy program, to emphasize that he/she is the end user on whose behalf a subsidy is paid to the recipient.

* * * * *

(h) *Recipient.* Recipient refers to a borrower or grantee who received unauthorized assistance. For purposes of this instruction, "recipient" also refers to the management agent, if applicable. A tenant is not a recipient in this sense, but is a "beneficiary."

(i) *Unauthorized assistance.* Any loan, subsidy, or grant, or any portion thereof, received by a borrower or grantee for which there was no regulatory authorization, or for which the recipient, or beneficiary, as appropriate, was not eligible. Subsidy includes interest credits (IC), rental assistance (RA) and subsidy benefits received because a loan was made at a lower interest rate than that to which the recipient was entitled, whether the incorrect interest rate was selected erroneously by the approval official, or the documents were prepared in error. The receipt of unauthorized assistance will be established according to procedures detailed at § 1951.656 of this subpart. Once the unauthorized assistance is finally determined according to the provisions of this subpart, it will be referred to as an Audit Receivable in Subpart K of this Part, § 1951.504(d), and is repayable in not more than ten years at the current rate or note rate of interest, whichever is higher. Audit Receivables cannot be transferred or capitalized. If the project is transferred, the Audit Receivables are collected from the transferor or become a Collection Only account for the transferor.

* * * * *

3. Section 1951.653 is revised to read as follows:

§ 1951.653 Policy.

When unauthorized assistance has been received, every effort must be made by the District Director to collect from the recipient the sum determined to be unauthorized, regardless of amount, unless any applicable Statute of Limitations has expired. This includes interest subsidy advanced due to improprieties of the beneficiary.

4. Section 1951.654 is revised to read as follows:

§ 1951.654 Categories of unauthorized assistance.

Unauthorized assistance includes, but is not limited to, these categories:

(a) The recipient or beneficiary was not eligible for the assistance.

(b) The property, as approved, does not qualify for the program. For example: An RRH/RCH or LH project which clearly is above modest in size, design, and/or cost or, in the case of the RRH/RCH project, was not located in an area designated as rural when the initial loan or grant was made.

(c) The loan or grant was made for unauthorized purposes. For example: Purchase of an excessive amount of land.

(d) The recipient and/or beneficiary, as appropriate, was granted unauthorized subsidy in the form of:

(1) IC on an RRH/RCH loan;

(2) RA in connection with an RRH/RCH or LH loan; and/or

(3) A subsidy benefit received through use of an incorrect interest rate.

5. Section 1951.656 is amended by revising the first sentence of the introductory text and paragraphs (a), (b) and (c) to read as follows:

§ 1951.656 Initial determination that unauthorized assistance was received.

Unauthorized assistance may be identified through audits conducted by the United States Department of Agriculture Office of the Inspector General (OIG), or General Accounting Office (GAO) or through reviews made by FmHA personnel which document that unauthorized assistance has been received by a recipient either directly or on behalf of a beneficiary. * * *

(a) Submission of inaccurate and/or false information by the recipient; or

(b) Submission of inaccurate and/or false information by a beneficiary; or

(c) Submission of inaccurate and/or false information by another party on the recipient's behalf such as a loan packager, developer, real estate broker, or professional consultants such as engineers, architects, management agents and attorneys, when the recipient did not know the other party had submitted inaccurate or false information; or

* * * * *

6. Section 1951.657 is amended by revising the introductory text of paragraph (a) and paragraph (a)(2) to read as follows:

§ 1951.657 Notification to recipient.

(a) Collection efforts will be initiated by the District Director by a letter substantially similar to FmHA Guide Letter 1951–N–1 and mailed by the servicing official to the recipient by "Certified Mail, Return Receipt Requested," with a copy to the State Director, and for a case identified in an audit report by OIG or GAO, a copy to the OIG office or office of GAO, as appropriate, which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will be sent to all recipients who received unauthorized assistance, regardless of amount. If a beneficiary is involved, it is the recipient's responsibility to notify and collect. The letter will:

* * * * *

(2) State the amount of unauthorized assistance to be repaid as determined by using Exhibit A of this subpart (available in any FmHA State or District Office); and

* * * * *

7. Section 1951.658 is amended by revising paragraphs (a), (b), (c), and (e)(1)(iii) to read as follows:

§ 1951.658 Decision on servicing actions.

* * * * *

(a) *Payment in full.* If the recipient agrees with FmHA's determination or will pay in a lump sum, the District Director may allow a reasonable period of time (usually not to exceed 90 days) for the recipient to arrange for repayment. The amount due will be the amount stated in the letter referenced in § 1951.657(a) of this subpart. The District Director will remit collections according to applicable portions of paragraph III of Exhibit C of Subpart K of this part (available in any FmHA State or District Office).

(b) *Continuation with recipient.* A determination will be made as to whether continuation with the recipient is feasible. If continuation is not authorized, the account will be serviced according to the servicing provisions of paragraphs (c) through (e) of this section.

(1) *Continuation with recipient authorized.* If the recipient agrees with FmHA's determination and/or is willing to pay the amount in question, but cannot repay the unauthorized assistance within a reasonable period of time, continuation is authorized and servicing actions outlined in § 1951.661 of this subpart will be taken provided all of the following conditions are met:

(i) The recipient did not provide false information or cause the beneficiary to provide false information as defined in § 1951.652 of this subpart;

(ii) It would be highly inequitable to require prompt repayment of the unauthorized assistance;

(iii) Failure to collect the unauthorized assistance in full will not adversely affect FmHA's financial interests; and

(iv) Recipient agrees to obtain certification or recertification of income from beneficiaries, as specified in § 1951.661(a)(3)(ii) (A) and (B) of this subpart, when the unauthorized assistance received was due to improprieties of the beneficiary.

(2) *Continuation not authorized.* (i) Continuation is not authorized if the unauthorized assistance is in the form of unauthorized rental subsidies advanced due to false information, as defined in § 1951.652 of this subpart, provided by the beneficiary concerning income and/or number of occupants in the household, and recipient refuses to obtain certification or recertification of income from said beneficiary, or

(ii) The recipient either knowingly misrepresented or caused the beneficiary to misrepresent income and/or number of occupants in the household.

(c) *Notice of determination when agreement is not reached.* If the recipient does not agree with FmHA's determination, or if the recipient fails to respond to the initial letter prescribed in § 1951.657 of this subpart within 30 days, the District Director will notify the recipient by a letter substantially similar to FmHA Guide Letter 1951–N–2 (sent by Certified Mail, Return Receipt Requested), with a copy to the State Director, and for a case identified in an OIG audit, a copy to the OIG office which conducted the audit and to the Planning and Analysis Staff of the National Office.

* * * * *

(e) * * *

(1) * * *

(iii) When forced liquidation would be initiated except that the loan is being handled under paragraphs (e)(1)(i) of this section, account adjustments will be made by FmHA without the signature of the recipient according to applicable portions of Exhibit C of Subpart K of this part (available in any FmHA State or District Office).

* * * * *

8. Section 1951.661 is amended by removing paragraph (a)(4) and redesignating paragraph (a)(5) as (a)(4) and revising the introductory text, paragraphs (a)(1)(ii), (a)(2), and (a)(3), to read as follows:

§ 1951.661 Servicing options in lieu of liquidation or legal action to collect.

When all of the conditions outlined in § 1951.658(b)(1) of this subpart are met, unauthorized assistance will be serviced according to this section and applicable portions of Exhibit C of Subpart K of this part (available in any FmHA State or District Office) provided the recipient has the legal and financial capabilities.

(a) * * *

(1) * * *

(ii) *Continuation on existing terms.* When there is no specific or practical correction to an identified problem, continuation on the existing terms is authorized.

(2) *Unauthorized subsidy benefits received through use of incorrect interest rate.* When the recipient was eligible for the loan but should properly have been charged a higher interest rate than that shown in the debt instrument, resulting in the receipt of unauthorized subsidy benefits, the interest rate must be corrected to that which was in effect when the loan was approved in accordance with applicable portions of paragraph II A of Exhibit C of Subpart K of this part. A delinquency which is created will be serviced according to paragraph A of Exhibit B of this subpart (available in any FmHA State or District Office). After reapplication of payments, the loan will be serviced as an authorized loan. When the recipient is a public body with loans secured by bonds on which the interest cannot be legally changed or payments reversed or

reapplied, continuation on existing terms is authorized.

(3) *Unauthorized interest credit (IC) and/or unauthorized rental assistance (RA).* In cases involving RA and/or IC, the subsidy benefit should be terminated as provided in the IC and RA Agreement. Unauthorized RA will be serviced as a delinquent account according to paragraph XB of Exhibit E of Subpart C of Part 1930 of this chapter and applicable portions of Exhibit C of Subpart K of this part. Unauthorized IC will be handled according to Exhibit B of this subpart.

(i) *Improperties of Recipient.* When improperties by the recipient concerning unauthorized IC or RA have been discovered, either by OIG, GAO or through regular FmHA servicing efforts, the District Director should make every effort to collect the unauthorized assistance.

(A) *Recipient knowingly misrepresented or caused the beneficiary to misrepresent income and/or number of occupants.* If the recipient either knowingly misrepresented or caused the beneficiary to misrepresent information regarding income and/or number of occupants in the household, the District Director should service the account according to provisions of § 1951.658 (c) through (e) of this subpart.

(B) *Unauthorized interest credit and/or rental assistance paid due to recipient's error.* Whether unauthorized RA or unauthorized IC was received by the recipient, the recipient is required to make restitution to FmHA. This restitution will not be charged to any beneficiary or to the project as part of the operating budget or operating expense.

(C) *RA assigned to wrong household.* When the beneficiary has correctly reported income and/or household size, but RA was assigned by the recipient to the wrong household in error, the beneficiary's RA benefit will be cancelled and reassigned.

(*1*) *Notification and cancellation.* Before the recipient notifies the beneficiary, he/she should review the case with the District Director. If the District Director verifies that an error was made based on information available at the time the unit was assigned, the beneficiary will be given a 30-day written notice by the recipient that the RA unit was assigned in error and that the RA benefit will be cancelled effective on the next monthly rental payment due after the end of the 30-day notice period. The written notice will provide that:

(*i*) The beneficiary has the right to cancel the lease based on the loss of the subsidy benefit.

(*ii*) The RA granted in error will not be recaptured.

(*iii*) The beneficiary may meet with the recipient to discuss the cancellation and the facts on which the decision was based.

(*iv*) The beneficiary has appeal rights under subpart L of part 1944 of this chapter.

(*2*) *Reassignment of RA.* RA will be reassigned in accordance with Paragraph XII of exhibit E of subpart C of part 1930 of this chapter.

(D) *Rental assistance in excess of contract.* When RA is advanced in excess of the RA contract limit, the District Director will send a report of the facts and a recommendation of proposed action through the State Director to the Assistant Administrator, Housing. The Assistant Administrator will determine the disposition of the case and notify the State Director, who will instruct the District Director of the required action.

(ii) *Improprieties by the Beneficiary.* When the beneficiary either failed to report changes of income or knowingly misrepresented income and/or number of occupants, the recipient will provide the beneficiary with a notice of intent to recoup improperly advanced rental subsidy benefits. Such notice must state the lump sum or monthly amount that will be added to the beneficiary's monthly rent or occupancy charge to recoup the improperly advanced subsidy. The notice will advise the beneficiary of their right to appeal the finding as provided in subpart L of part 1944 of this chapter. The recipient will inform the District Director of the unauthorized benefits and of the agreement made by the beneficiary to repay.

(A) *Amounts of $500.00 or more.* For amounts of $500.00 or more, if the beneficiary does not repay through active collection efforts, and the recipient has made a dilligent effort to collect, the recipient will report the facts to the District Director, who will recommend that the State Director obtain assistance from OGC.

(*1*) If the recipient has fully complied with the procedure on certification/recertification of income, as applicable according to paragraph VII F 5 of Exhibit B of Subpart C of Part 1930 of this chapter, the recipient is not liable for repayment of the unauthorized rental subsidy.

(*2*) If the recipient has not fully complied with paragraph VII F 5 of Exhibit B of subpart C of 1930 of this chapter, the recipient is liable for repayment of the unauthorized rental subsidy repayment and the repayment is not to come from project income.

(B) *Amounts less than $500.00.* For amounts of less than $500.00, if the beneficiary does not repay through active collection efforts and the recipient has made a diligent effort to collect, the recipient will report the facts to the District Director who will recommend that no further action be taken by the State Director.

(C) *Notification of recipient.* After final decisions have been made pursuant to § 1951.661(a)(3)(ii) (A) or (B) of this subpart, as applicable, the District Director will notify the recipient that no further action on their part is required.

(D) *Collections.* Money collected will be remitted in accordance with applicable portions of paragraph III of Exhibit C of subpart K of this part.

* * * * *

§ 1951.668 [Removed and Reserved]

9. Section 1951.668 is removed and reserved.

Dated: October 17, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-27722 Filed 11-18-91; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-66-AD]

Airworthiness Directives; Gulfstream American Model GA-7 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Gulfstream American Model GA-7 airplanes. The proposed action would require an inspection of the elevator hinge for cracks, replacement of the elevator if cracks extend into certain areas, and the installation of Service Kit No. 12. There have been several field reports and service difficulty reports of cracks in the elevator spar center hinge area of the affected airplanes. The actions specified by this AD are intended to prevent elevator binding and loss of pitch control, which could result in loss of control of the airplane.

DATES: Comments must be received on or before January 23, 1992.

ADDRESSES: GA-7/Cougar Aircraft Service Kit No. 12 and its instructions that are discussed in this AD may be obtained from American General Aircraft Corporation, Route 1, AB 306, P.O. Box 5757, Greenville, Mississippi 38703. The instructions also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–66–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. David Cundy, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–2910; Facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rule Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–66–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

There have been several field reports and two service difficulty reports of cracks in the elevator spar center hinge area of certain Gulfstream American Model GA–7 airplanes. These cracks are located between stabilizer stations 41.50 and 44.66. The reports indicate that cracks primarily occur on airplanes that are used for training purposes, when the yoke is pulled aft and then released, which allows the elevator to fall against the downstop.

In addition, there have been five service difficulty reports in England of elevator spar hinge support cracks at stabilizer stations 41.50 and 44.66. Pursuant to a bilateral airworthiness agreement, the Civil Aviation Authority (CAA), which is the airworthiness authority for England, has kept the FAA totally informed of the above incidents.

The manufacturer's licensee, American General Aircraft Corporation, has issued instructions for GA–7/Cougar Aircraft Service Kit No. 12 which specifies an inspection of the elevator spar for cracks, replacement if cracks are found that extend past certain limits, and the installation of Service Kit No. 12 for Gulfstream American Model GA–7 airplanes. After examining and reviewing all available information related to incidents described above including that communicated by the CAA, the FAA has determined that AD action should be taken in order to continue to assure the airworthiness of certain Gulfstream American Model GA–7 airplanes that are certificated for operation in the United States.

Since the condition described is likely to exist or develop in other Gulfstream Model GA–7 airplanes of the same type design, the proposed AD would require an initial inspection of the elevator hinge for cracks; replacement of the elevator if cracks are found that extend inboard of stabilizer station 41.0, outboard of stabilizer station 45.0, or into the spar caps; and the installation of Service Kit No. 12. The proposed actions would be accomplished in accordance with the Modification Instructions that are contained in the instructions for GA–7/Cougar Aircraft Service Kit No. 12.

It is estimated that 115 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 16 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $200 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $124,200.

The regulations proposed herein would 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 proposal would 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) if promulgated, 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 draft regulatory evaluation prepared for this action has been placed 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, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Gulfstream American: Docket No. 91–CE–66–AD.

Applicability: Model GA–7 airplanes (serial numbers GA7–0001 through GA7–0115), certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent elevator binding and loss of pitch control, which could result in loss of control of the airplane, accomplish the following:

(a) Dye penetrant inspect the elevator spar between stabilizer station 41.0 and 45.0 for cracks by accomplishing paragraphs A–1, A–2, A–3, B–1, B–2, and B–3 of the Modification Instructions in the instructions for GA–7/Cougar Aircraft Service Kit No. 12.

(1) If cracks are found that extend inboard from station 41.0, outboard of station 45.0, or into the spar caps, prior to further flight, replace the elevator and accomplish the following:

(i) Install Service Kit No. 12 by accomplishing paragraphs B–5 through B–20 of the Modification Instructions in the instructions for GA–7/Cougar Aircraft Service Kit No. 12.

(ii) Balance the new elevator in accordance with Gulfstream American Model GA–7 Maintenance Manual, chapter 27–1–1.

(iii) Install the new elevator in accordance with Gulfstream American Model GA–7 Maintenance Manual, chapter 27–3–1.

(2) If cracks are found that do not extend inboard from station 41.0, outboard of station 45.0, or into the spar caps, prior to further flight, accomplish the following:

(i) Stop drill any cracks found.

(ii) Install Service Kit No. 12 by accomplishing paragraphs B–5 through B–20 of the Modification Instructions in the instructions for GA–7/Cougar Aircraft Service Kit No. 12.

(iii) Balance the elevator in accordance with Gulfstream American Model GA–7 Maintenance Manual, chapter 27–1–1.

(iv) Reinstall the elevator in accordance with Gulfstream American Model GA–7 Maintenance Manual, chapter 27–3–1.

(3) If no cracks are found, prior to further flight, accomplish the following:

(i) Install Service Kit No. 12 by accomplishing paragraphs B–5 through B–20 of the Modification Instructions in the instructions for GA–7/Cougar Aircraft Service Kit No. 12.

(ii) Balance the elevator in accordance with Gulfstream American Model GA–7 Maintenance Manual, chapter 27–1–1.

(iii) Reinstall the elevator in accordance with Gulfstream American Model GA–7 Maintenance Manual, chapter 27–3–1.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349. The request should be be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

(d) All persons affected by this directive may obtain the service kit or copies of the instructions to the service kit that are referred to herein upon request to the American General Aircraft Corporation, Route 1, AB 306, P.O. Box 5757, Greenville, Mississippi 38703. The instructions may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 8, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–27751 Filed 11–18–91; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 453

Funeral Industry Practice Trade Regulation Rule; Change in Time for Beginning Oral Presentations

AGENCY: Federal Trade Commission.

ACTION: Notice of change in time for oral presentations before the Commission.

SUMMARY: The Federal Trade Commission has decided to change the time for beginning oral presentations before the Commission in the Funeral Rule Review proceeding. The oral presentations will begin at 11 a.m., instead of the originally scheduled 10 a.m. The date of the oral presentations, November 21, 1991, has not been changed.

DATES: Oral presentations before the Commission will be heard at the Commission's open meeting on November 21, 1991, beginning at 11 a.m.

ADDRESSES: The meeting will be held in room 532, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Daynard, Federal Trade Commission, Washington, DC 20580, at (202) 326–3291.

SUPPLEMENTARY INFORMATION: On October 23, 1991, the Commission published its announcement in the **Federal Register** (56 FR 54814) that oral presentations in the Funeral Rule Review proceeding would be held on November 21, 1991 and that the Commission granted the requests of seven interested parties, who had previously participated in the proceeding, to make oral presentations, pursuant to § 1.13(i) of Commission's Rules of Practice. The Commission has changed the time for beginning those oral presentations.

The meeting before the Commission will now commence at 11 a.m. on November 21, 1991, in room 532, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

List of Subjects in 16 CFR Part 453

Funeral homes, Price disclosure, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91–27793 Filed 11–18–91; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1094–AA43

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Hearings and Appeals proposes to amend several existing rules that govern procedures for hearings and appeals under the Surface Mining Control and Reclamation Act of 1977 in order to bring the rules up to date. Because of events that have occurred since they were adopted, the existing rules omit references or contain incorrect references, are inconsistent with other rules, or fail to provide necessary information or procedures. The amendments are needed to remedy these defects.

DATES: Written comments are due on or before December 19, 1991.

ADDRESSES: Written comments on the proposed rules may be mailed or delivered in person to Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., Arlington, Virginia 22203. Telephone: 703–235–3750.

SUPPLEMENTARY INFORMATION: The Office of Hearings and Appeals (OHA) is proposing the following amendments to existing procedural rules governing hearings and appeals under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (1988), because rules subsequently adopted or cases decided have rendered the existing rules out of date or shown them to be incomplete or inaccurate. The proposed amendments are explained under headings for each rule involved.

Proposed Amendment of 43 CFR 4.1100

As a result of the recent amendments of 43 CFR 4.1109(a) to provide current addresses and jurisdictions of field solicitors who are to be served documents (see 56 FR 2139, 2142–43 (Jan. 22, 1991), 56 FR 5061 (Feb. 7, 1991)), the definition of "field solicitor" in 43 CFR 4.1100(d) is superfluous. It is proposed to remove that definition and redesignate

the following definitions in alphabetical order.

Proposed Amendment of 43 CFR 4.1105(a)

30 CFR 842.15(d) provides a right of appeal to the Interior Board of Land Appeals (IBLA or the Board) under 43 CFR 4.1280 *et seq.* of the written determination, after informal review by the Director of the Office of Surface Mining Reclamation and Enforcement (OSM) or his or her designee, concerning the decision of an authorized representative of the Secretary not to inspect or take enforcement action concerning an alleged violation that is the subject of a request for a federal inspection under 30 CFR 842.12.

Similarly, 30 CFR 843.12(i) provides that any determination by an authorized representative of the Secretary granting or denying an abatement period exceeding 90 days under 30 CFR 842.12(h) shall contain a right of appeal to IBLA under § 4.1280 *et seq.*

As the Board has had occasion to observe, however, 43 CFR 4.1105 does not name the permittee of the operation that is the subject of a determination of the Director or an authorized representative, or any person whose interests might be adversely affected by the outcome on appeal and who participated before OSM, as a party who must be served with a copy of the notice of appeal and statement of reasons under 43 CFR 4.1283(a) and who may participate under §§ 4.1284 and 4.1286. See Save Our Cumberland Mountains, Inc., 108 IBLA 70, 83 n.7, 96 I.D. 139, 146 n.7 (1989). OHA therefore proposes to amend 43 CFR 4.1105(a) by adding subsection (5) naming such permittees and persons as parties.

Proposed Amendment of 43 CFR 4.1151(b)

OSM has recently amended 30 CFR 723.19(a) and 845.19(a) to provide 30 rather than 15 days in which a person may file a petition for review of a proposed civil penalty with the Hearings Division of OHA after the date of service of notice of an assessment conference officer's action. *See* 56 FR 10060, 10063 (Mar. 8, 1991). OHA therefore proposes to amend the corresponding procedural rule, 43 CFR 4.1151(b), to provide the same time and to add a reference to 30 CFR 845.17.

Proposed Amendments of 43 CFR 4.1152, 4.1154, and 4.1157

The references to 30 CFR part 723 in 43 CFR 4.1152(a)(2); to 30 CFR 723.15 in 43 CFR 4.1154(a); and to 30 CFR 723.12 and 723.13 in 43 CFR 4.1157(a) and (b) need to be updated by correcting the references in 43 CFR 4.1154(a) and in 43 CFR 4.1157(a) and (b) and by adding references to the corresponding sections in 30 CFR part 845. OHA proposes to amend 43 CFR 4.1152, 4.1154, and 4.1157 for this purpose.

Proposed Amendment of 43 CFR 4.1271(a)

When 43 CFR part 4, subpart L was originally promulgated in 1978, 43 CFR 4.1271(a) provided that an aggrieved party could file a "notice of appeal" from an order or decision of an administrative law judge disposing of a proceeding "under this subpart, except a civil penalty proceeding under § 4.1150." This is still the language of the rule. Since 1978, however, other rules have been added to subpart L that provide for a "petition for discretionary review," rather than a notice of appeal, as the document to file with IBLA when seeking review of the initial decision of an administrative law judge. See 43 CFR §§ 4.1309, 4.1369 (56 FR 2139, 2144, Jan. 22, 1991; 56 FR 5061, Feb. 7, 1991).

Recently proposed rules also provide for petitions for discretionary review. See 43 CFR 4.1377, 4.1387 (56 FR 45806, Sept. 6, 1991).

Further, special procedures for seeking IBLA review exist for other proceedings in subpart L. See 43 CFR §§ 4.1187, 4.1196, 4.1391.

Although it is possible for IBLA to clarify by decision which avenue of appeal is appropriate for each proceeding, see *The Hopi Tribe* v. *Office of Surface Mining Reclamation & Enforcement*, 107 IBLA 329 (1989), it is preferable for the procedural rules themselves to contain this information. OHA therefore proposes to amend 43 CFR 4.1271(a) so that the rule will specify for which proceedings a notice of appeal is appropriate. Proceedings not covered by the procedural rules set forth in the revised § 4.1271(a) contain special provisions for seeking review of initial decisions.

Determination of Effects

Because these rules only set forth the details of procedures for conducting hearings and appeals of decisions of OSM under the Surface Mining Control and Reclamation Act of 1977, the Department has determined that they are not major, as defined by Executive Order 12291, and 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.*).

National Environmental Policy Act

The Department has determined that these rules will not significantly affect the quality of the human environment on the basis of the categorical exclusion of regulations of a procedural nature set forth in 516 DM 2, appendix 1, section 1.10.

Paperwork Reduction Act

These rules contain no information collection requirements requiring Office of Management and Budget approval under 44 U.S.C. 3501 *et seq.*

Takings Implication Assesment

These rules do not pose any takings implications requiring preparation of a Takings Implication Assessment under Executive Order No. 12630 of March 18, 1988.

Drafting Information

The primary author of these proposed regulations is Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Mines, Public lands, Surface mining.

For the reasons set forth in the preamble, it is proposed to amend subpart L of part 4 of title 43 of the Code of Federal Regulations as set forth below:

Dated: September 16, 1991.

Roger E. Middleton,

Director.

43 CFR part 4 is amended as follows:

PART 4—[AMENDED]

Subpart L—Special Rules Applicable to Surface Coal Mining Hearings and Appeals

1. The authority citation for part 4, subpart L, continues to read as follows:

Authority: 30 U.S.C. 1256, 1260, 1261, 1264, 1268, 1271, 1272, 1275, 1293; 5 U.S.C. 301.

§ 4.1100 [Amended]

2. Section 4.1100 is proposed to be amended by removing paragraph (d) and redesignating paragraphs (e) and (f) as paragraphs (d) and (e) respectively.

3. Section 4.1105 is proposed to be amended by adding paragraph (a)(5) to read as follows:

§ 4.1105 Parties.

(a) * * *

(5) In an appeal to the Board in accordance with 43 CFR 4.1280–4.1286 from a determination of the Director of OSM or his or her designee under 30 CFR 842.15(d) or a determination of an authorized representative under 30 CFR

843.12(i), the permittee of the operation that is the subject of the determination and any person whose interests may be adversely affected by the outcome on appeal and who participated before OSM.

* * * * *

4. Section 4.1151 is proposed to be amended by revising paragraph (b) to read as follows:

§ 4.1151 Time for filing.

(a) * * *

(b) If a timely request for a conference has been made pursuant to 30 CFR 723.17 or 845.17, a petition for review must be filed within 30 days from service of notice by the conference officer that the conference is deemed completed.

* * * * *

5. Section 4.1152 is proposed to be amended by revising paragraph (a)(2) to read as follows:

§ 4.1152 Contents of petition; payment required.

(a) * * *

(2) If the amount of penalty is being contested based upon a misapplication of the civil penalty formula, a statement indicating how the civil penalty formula contained in 30 CFR Part 723 or 845 was misapplied, along with a proposed civil penalty utilizing the civil penalty formula;

* * * * *

6. Section 4.1154 is proposed to be amended by revising paragraph (a) to read as follows:

§ 4.1154 Review of waiver determination.

(a) Within 10 days of the filing of a petition under this part, petitioner may move the administrative law judge to review the granting or denial of a waiver of the civil penalty formula pursuant to 30 CFR 723.16 or 845.16.

* * * * *

7. Section 4.1157 is proposed to be amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 4.1157 Determination by administrative law judge.

(a) The administrative law judge shall incorporate in his decision concerning the civil penalty, findings of fact on each of the four criteria set forth in 30 CFR 723.13 or 845.13, and conclusions of law.

(b) If the administrative law judge finds that—

(1) A violation occurred or that the fact of violation is uncontested, he shall establish the amount of the penalty, but in so doing, he shall adhere to the point system and conversion table contained in 30 CFR 723.13 and 723.14 or 845.13 and 845.14, except that the administrative law judge may waive the use of such point system where he determines that a waiver would further abatement of violations of the Act. However, the administrative law judge shall not waive the use of the point system and reduce the proposed assessment on the basis of an argument that a reduction in the proposed assessment could be used to abate other violations of the Act; or

* * * * *

8. Section 4.1271 is proposed to be amended by revising paragraph (a) to read as follows:

§ 4.1271 Notice of appeal.

(a) Any aggrieved party may file a notice of appeal from an order or decision of an administrative law judge disposing of a proceeding under §§ 4.1160–4.1171, 4.1200–4.1205, 4.1260–4.1267, 4.1290–4.1296, and 4.1350–4.1356.

* * * * *

[FR Doc. 91–27652 Filed 11–18–91; 8:45 am]

BILLING CODE 4310–79–M

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB73

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Five Limestone Endemic Plants From Southern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine endangered status for *Erigeron parishii* (Parish's daisy), *Eriogonum ovalifolium* var. *vineum* (Cushenbury buckwheat), *Astragalus albens* (Cushenbury milk-vetch), *Lesquerella kingii* ssp. *bernardina* (San Bernardino Mountains bladderpod) and *Oxytheca parishii* var. *goodmaniana* (Cushenbury oxytheca). These five plant species are endemic to the calcium carbonate deposits (limestone and dolomite) of the San Bernardino Mountains in southern California. Most of the limestone deposits in this mountain range are within actively used mining claims or mining claims which are identified for future mining. The open or terraced mining techniques that are used result in destruction of the plants' habitat. This proposed rule, is made final, would implement Federal protection under the Endangered Species Act of 1973, as amended (Act), for these five plants. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by January 21, 1992. Public hearing requests must be received by January 3, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, Southern California Field Station, Ventura 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: Dr. Steven Chambers at the above address or at (805) 644–1766 or FTS 983–6039.

SUPPLEMENTARY INFORMATION:

Background

The San Bernardino Mountains in southern California have been recognized for supporting a wide diversity of natural habitats that have resulted from their geographic position between desert and coastal environments, elevational zonation, and uncommon elements such as limestone outcrops. The San Bernardino National Forest, which encompasses most of the San Bernardino Mountains, constitutes less than 1 percent of the land area of the State, yet contains populations of over 25 percent of all plant species that occur naturally in California.

Outcrops of calcium carbonate, primarily limestone, occur in several bands running on an east-west axis along the desert-facing slopes of the San Bernardino Mountains, with disjunct patches occurring to the south as far as Sugarlump Ridge and to the east as far as the Sawtooth Hills. These outcrops are a remnant of an ancient formation of sandstone, shale, and limestone through which the granitic core of the Transverse Ranges has emerged (Fife 1988).

The species proposed herein for listing, *Erigeron parishii* (Parish's daisy), *Eriogonum ovalifolium* var. *vineum* (Cushenbury buckwheat), *Astragalus albens* (Cushenbury milk-vetch), *Lesquerella kingii* ssp. *bernardina* (San Bernardino Mountains bladderpod), and *Oxytheca parishii* var. *goodmaniana* (Cushenbury oxytheca), are restricted to calcium carbonate deposits, or soils derived from them, and hence are commonly referred to as "limestone endemics." They span a range of approximately 35 miles (56 kilometers (km)), ranging in elevation from 4,000 feet (ft) (1,219 meters (m)) at the base of

the mountains to approximately 8,000 ft (2,438 m) in elevation and occur as components in the understory of pinyon-juniper woodland communities.

Pinyon-juniper woodland communities dominate the desert-facing slopes above 4,000 ft (1,219 m) in elevation and grade into a Joshua tree woodland at lower elevations (Vasek and Thorne 1988). Pinyon-juniper woodlands extend up to almost 8,000 ft (2,438 m) in elevation, where they intergreade with an open forest of white fir (*Abies concolor*) and limber pine (*Pinus Flexilis*). The latter community has been referred to as southern California white fir forest by Holland (1986). Within the pinyon-juniper woodland, there is a wide variation in the species composition. Pinyon pine (*Pinus monophylla*) or California juniper (*Juniperus californica*), and more rarely western juniper (*Juniperus occidentalis*), or Utah juniper (*Juniperus osteosperma*) are the structurally dominant species, occasionally occurring together. Holland (1986) has referred to separate Mojavean pinyon woodland and Mojavean juniper woodland and scrub communities. The understory varies with slope and elevation, but typically includes such species as mountain mahogany (*Cercocarpus ledifolius*), Mormon tea (*Ephedra viridis*), Mohave yucca (*Yucca schidigera*), and encelia (*Encelia virginensis*). Patches of local dominance by blackbrush (*Coleogyne ramosissima*) on desert facing slopes or manzanita (*Arctostaphlos* sp.) on more interior canyons are common.

Erigeron parishii (Parish's daisy) is a small perennial herb of the daisy family (Asteraceae) that reaches 4–12 inches (in) (1–3 decimeters (dm)) in height. The linear leaves are covered with soft, silvery hairs. Up to 10 solitary flower heads are borne on cauline stalks; ray flowers are deep rose to lavender, and heads have greyish green and glandular phyllaries. *Erigeron parishii* was first described by Gray in 1884 based on specimens collected by S.B. Parish in Cushenbury Canyon in 1881.

Erigeron parishii is the most widely ranging of the limestone endemics, spanning a range of 35 miles (56 km). The plant is known from fewer than 25 occurrences, with the total population numbering approximately 16,000 individuals. Less than a third of the occurrences support more than 1,000 individuals (Barrows 1988a). From White Knob at the western terminus, populations occur primarily along the belt of carbonaceous substrates southeast to Pioneertown. The plant is typically found associated with pinyon and juniper woodlands from 4,000 to 6,400 ft (1,219 to 1,951 m) in elevation. It is usually found on dry rocky slopes, shallow drainages, and outwash plains on substrates derived from limestone. Some populations occur on a granite/limestone interface, usually a granitic parent material overlain with an outwash of limestone materials. Two small outlying populations at the eastern edge of its range occur on quartz monzonite substrates.

Eriogonum ovalifolium var. *vineum* is a low, densely-matted perennial of the buckwheat family (Polygonaceae). The flowers are whitish-cream, darken to a reddish or purple with age, and are borne on flowering stalks reaching 4 inches (1 dm) in height. The plant flowers from May through June. The round to ovate leaves are white-wooly on both surfaces and are less than 1 inches (7-15 millimeter (mm)) long. The diameter of mats is typically 6–10 inches (1.5–2.5 dm), but may reach up to 20 inches (5 dm) on particularly well-developed individuals.

Eriogonum ovalifolium var. *vineum* was first collected in 1894 by S.B. Parish near Rose Mine, San Bernardino Mountains and was described in 1898 by J.K. Small as *Eriogonum vineum* (Small 1898). In 1911, Nelson published a combination changing the name to *Eriogonum vineum* Nuttal *vineum* (Small). Jepson published the combination *Eriogonum ovalifolium* var. *vineum* in 1943 (Jepson 1943). Munz (1959) accepted the work of Stokes (1936), which revised the name to *Eriogonum ovailifolium* ssp. *vineum*. In 1968, Reveal clarified its relationship to var. *nivale*, with which it had been confused, and re-established its name as *Eriogonum ovalifolium* var. *vineum*. (Reveal and Munz 1968).

Eriogonum ovalifolium var. *vineum* is also limited in distribution to the belt of limestone substrates of the north slopes of the San Bernardino Mountains. The species is currently known from fewer than 20 occurrences that span a range of approximately 25 miles (40 km). Only 4 of those occurrences support more than 1,000 individuals, with the total population numbering approximately 10,000 individuals (Barrows 1988b). *Eriogonum ovalifolium* var. *vineum* ranges from White Knob east to Rattlesnake Canyon. Recent surveys by Barrows (1988b) resulted in a slight range extension of the species in the Rattlesnake Canyon drainage.

This plant occurs within openings of pinyon pine and juniper woodland communities between 4,600 and 7,900 ft (1,402 and 2,408 m) in elevation. In addition to carbonate rock substrates, other habitat characteristics include open areas with little accumulation of organic material, a canopy cover generally less than 15 percent, and powdery fine soils with rock cover exceeding 50 percent. The plant typically occurs on moderate slopes, though a few occurrences are on slopes over 60 percent. On midler northfacing slopes, it co-occurs with *Astragalus albens*.

Astragalus albens (Cushenbury milk-vetch) is a small silvery-white perennial herb of the pea family (Fabaceae). The slender stems are decumbent to 12 inches (30 centimeters (cm)) in length. The purple flowers occur towards the ends of the branches in 5 to 14 flowered racemes. This plant blooms from March to May. *Astragalus albens* was first described by Greene (1885) based on a collection made by Parish & Parish 3 years earlier. Ryberg (1927) recognized the name *Hamosa albens* that Jones had used 4 years earlier. Barneby (1964) eliminated the genus name *Hamosa* and restored the plant to the genus *Astragalus*.

Astragalus albens is currently known from fewer than 20 occurrences scattered throughout the eastern half of the limestone belt, running from Furnace Canyon southeast to Burns Canyon, a range of 25 miles. Recent surveys by Barrows (1988c) indicated that 6 of the occurrences had fewer than 50 individuals present, with the total population numbering approximately 2,000 individuals. The total number of individuals is likely to be greater in years of substantial rainfall.

The plant is typically found on limestone substrates along rocky washes and gentle slopes within pinyon pine and juniper woodland communities. Parish's daisy and Cushenbury buckwheat co-occur with Cushenbury milk-vetch at several locations.

Most occurrences are found between 5,000 and 6,000 ft (1,524 and 2,012 m) in elevation on soils derived directly from decomposing limestone bedrock. Three occurrences are found below 5,000 ft (1,524 m) in elevation in rocky washes that have received limestone outwash from erosion higher in the drainages. Other habitat characteristics include an open canopy cover with little accumulation of organic material, rock and cover exceeding 75 percent, and gentle to moderate slopes (5–30 percent).

Lesquerella kingii ssp. *bernardina* is a silvery perennial of the mustard family (Brassicease) reaching 8 inches (1–2 dm) in height. The plant has yellow flowers which occur toward the ends of the stems. The basal leaves are ovate and occur on the ends of long petioles. The type material was collected by Peirson

at the east end of Bear Valley in 1924. In 1932, Munz described this plant as *Lesquerella bernardina* (Munz 1932). Later, Munz (1959) combined *Lesquerella kingii* and *Lesquerella bernardina* and retained the taxon under consideration here (*Lesquerella kingii* ssp. *benardina).*

This plant is currently known from 6 occurrences, with the total population numbering approximately 15,000 individuals (California Natural Diversity Data Base (CNDDB) 1990). This plant is less widely distributed than the three previously discussed limestone endemic species. One cluster of occurrences is near the east end of Bertha Ridge, adjacent to the community of Big Bear, and is subject to impacts from urbanization. The other cluster is centered on the north-facing slope of Sugarlump Ridge, approximately 4 miles (6.4 km) to the south of the Bertha Ridge occurrences. These latter occurrences were discovered during spring 1990 on, and adjacent to, a proposed downhill ski area (CNDDB 1990).

The habitat for *Lesquerella* is characterized by limestone substrates, either brown sandy soils with white carbonate rocks or outcrops of large carbonate rock. Slopes are typically gentle to moderate and are both north- and south-facing between 6,800 and 7,800 ft (2,073 and 2,377 m) in elevation. Within pinyon and juniper woodlands, as well as white fir forest in some locations, it is found in open areas with little accumulation of organic material.

The limestone substrates that support *Lesquerella* lay south and west of those that support most of the populations of the four other limestone endemic species. However, near the east end of Bertha Ridge, the southernmost population of *Eriogonum ovalifolium var vineum* occurs in close proximity to one colony of Lesquerella.

Oxytheca parishii var. *goodmaniana* is a small wiry annual of the buckwheat family (Polygonaceae). The type material was collected by Parish & Parish in 1881 near Cushenbury Spring. For a number of years, historical collections were mistakenly identified as *Oxytheca parishii* var. *abramsii* and *Oxytheca watsonii.* In 1980, Ertter published the combination *Oxytheca parishii* var. *goodmaniana* in honor of Goodman, who was the first to recognize both the distinctiveness of the variant and its close relationship to *Oxytheca parishii* (Ertter 1980).

Oxytheca parishii var. *goodmaniana* is the most restricted of the limestone endemic species of the San Bernardino Mountains. Recent surveys brought the total number of known occurrences to four (CNDDB 1990). One historic location near Cushenbury Spring is located near an active limestone mine. Two more occurrences are located near the abandoned Green Lead gold mine, one of which is bisected by a road. The fourth occurrence is located near the north side of Holcomb Valley. All populations occur on limestone, though at some locations the limestone is in a mosaic with quartz and granitic substrates. In 1990, the total number of individuals was estimated to be under 3,000. Since it is an annual species, the number of individuals might be higher in years with substantial rainfall. The low number of occurrences, however, as well as individuals, also subjects the species to the possibility of stochastic extinction.

Federal action on these plants began when the Secretary of the Smithsonian Institution, as directed by section 12 of the Act, prepared a report on those native U.S. plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94–51), which included *Erigeron parishii* and *Lesquerella kingii* ssp. *bernardina* as threatened and *Eriogonum ovalifolium* var. *vineum* as endangered, but not *Astragalus albens* or *Oxytheca parishii* var. *goodmaniana*, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act and of the Service's intention thereby to review the status of the plant taxa named therein, including *Erigeron parishii, Eriogonum ovalifolium* var. *vineum*, and *Lesquerella kingii* ssp. *bernardina.*

On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. This list, which did not include any of the species under consideration here, was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975 **Federal Register** publication (43 FR 17909).

In 1978, amendments to the Endangered Species Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. Subsequently, on December 10, 1979, the Service published a notice (44 FR 70796) of the withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Eriogonum ovalifolium* var. *vineum* and *Lesquerella kingii* ssp. *bernardina* as category 1 candidates (species for which data in the Service's possession is sufficient to support proposals for listing) for Federal listing, and *Erigeron parishii* 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).

On February 15, 1983, the Service published a notice (48 FR 6752) of its prior finding that the listing of *Eriogonum ovalifolium* var. *vineum* and *Lesquerella kingii* ssp. *bernardina* was warranted but precluded in accordance with section 4(b)(3)(B)(iii) of the Act as amended in 1982. Pursuant to section 4(b)(3)(C)(i) of the Act, this finding must be recycled on an annual basis, until the species is either proposed for listing, or the petitioned action is found to be not warranted. In October 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990, further findings were made that the listing of *Eriogonum ovalifolium* var. *vineum* and *Lesquerella kingii* ssp *bernardina* was warranted, but that the listing of these species was precluded by other pending proposals of higher priority. In the September 27, 1985 (50 FR 39526) and February 21, 1990 (55 FR 6184) Plant Notices of Review, *Eriogonum ovalifolium* var. *vineum* and *Lesquerella kingii* ssp. *bernardine* were again included as category 1 candidates, and *Erigeron parishii* as a category 2 candidate. The February 21, 1990, notice also included *Astragalus albens* in category 1 and *Oxytheca parishii* var. *goodmaniana* in category 2. Since the publication of that notice, additional survey work has been completed for *O. parishii* var. *goodmaniana*, providing new information on the status of that species. Similarly, the Service is aware of increased threats to *Erigeron parishii* in the form of two new pending mining operations which would likely adversely impact this species. The Service therefore believes that sufficient information is now available to support the proposed listing of these two species. Publication of the present proposal constitutes the final 1-year finding for the three petitioned species.

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 *Erigeron parishii* Gray (Parish's daisy), *Eriogonum ovalifolium* Nuttal var. *vineum* (Small) A. Nelson (Cushenbury buckwheat), *Astragalus albens* Green (Cushenbury milk-vetch), *Lesquerella kingii* Wats ssp. *bernardina* (Munz) Munz (San Bernardino Mountains bladderpod), and *Oxytheca parishii* var. *goodmaniana* Ertter (Cushenbury oxytheca) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* All five species proposed for listing, *Erigeron parishii* (Parish's daisy), *Eriogonum ovalifolium* var. *vineum* (Cushenbury buckwheat), *Astragalus albens* (Cushenbury milk-vetch), *Lesquerella kingii* ssp. *bernardina* (San Bernardino Mountains bladderpod), and *Oxytheca parishii* var. *goodmaniana* (Cushenbury oxytheca), are restricted to carbonate and adjacent carbonate/granitic substrates occupied by pinyon-juniper woodland on the northern side of the San Bernardino Mountains. The imminent and primary threat facing these species is the ongoing destruction of the carbonaceous substrates on which they grow by activities associated with limestone mining, including direct removal of mined materials, disposal of overburden on adjacent unmined habitat, and road construction.

The first burst of mining activity in the San Bernardino Mountains occurred in the 1860s, with the discovery of gold in Holcomb Valley. Historically, gold was extracted both by underground mining and by placer mining. Only small scale and weekend prospecting for gold continues today. However, gold-bearing alluvium in Holcomb Valley has a low to medium potential for development in the future, and a good potential exists for a large gold extraction operation in the Blackhawk area (U.S. Forest Service 1988). Several silver mines were also in operation during the late 1800s in Cushenbury Canyon and near Blackhawk Mountain.

The existence of *Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Astragalus albens, Lesquerella kingii* ssp. *bernardina*, and *Oxytheca parishii* var. *goodmaniana* is being threatened primarily by the mining of limestone. Limestone, as are gold and silver, is considered a locatable mineral and therefore open to claim under the 1872 Mining Laws. Virtually all of the approximately 28,000 acres of limestone within the San Bernardino Mountains is currently under claim. Most of the limestone is currently being processed by four processing plants that are located along the base of the north slope of the mountains. Because of the limited availability of limestone in the western United States, those claims currently not under production are still being maintained in anticipation of a future market.

In the surrounding Lucerne Valley mining district, the first limestone mines started operation in the 1940s; the current annual production of limestone is approximately 3,300,000 tons (U.S. Forest Service 1988). Annual production, however, typically represents only the fraction of material that is trucked off the mine site as product. The ratio of disturbed material to product material may range from 1:1 up to 5:1. Thus, for every ton of limestone product, as much as five times that volume may be impacted. A typical mine site consists of an open pit or terraced pit, haul roads on which the blasted rock is hauled to a processing plant, and the processing plant itself, which sorts and crushes the material. The overburden, that is, materials that need to be removed to reach the underlaying limestone, as well as low-grade limestone that is currently not being marketed, is redistributed in piles onsite. It appears that in the future, less low-grade limestone will be left onsite as the market for limestone products changes. The direct impacts to the limestone endemic species from limestone mining include the removal and destruction of habitat from mining, the construction of haul roads, and the deposition of overburden piles on top of currently occupied habitat. Secondary impacts include the destruction of habitat through increased off-road vehicle and other recreational use that departs from currently used as well as abandoned mine roads.

Aside from impacts associated with gold and limestone mining, several species are potentially threatened by destruction of habitat by other activities. Sand and gravel mining has been proposed for several washes on the lower desert-facing slopes and may impact at least one occurrence of Parish's daisy. Urban development has encroached upon several occurrences of San Bernardino Mountains bladderpod near Big Bear City, and threatens to encroach upon an occurrence of Parish's daisy near Pioneertown. The proposed expansion of a downhill ski run on the north side of Sugarlump Ridge may eliminate portions of an occurrence of San Bernardino Mountains bladderpod.

Since the location of the limestone endemics is tied primarily to the location of calcium carbonate deposits, it is useful to discuss such threats as they occur adjacent to their primary population centers. A description of the primary population centers of limestone endemics and the threats in each area follows:

The westernmost occurrences of limestone endemic species are in the vicinity of White Mountain, an outcrop that rises to 6,900 ft (2,103 m) in elevation above the desert community of Lucerne Valley. The third largest of the limestone mines is located here, with an annual production of approximately 500,000 tons. The proximity of occurrences of Parish's daisy and Cushenbury buckwheat to current mining operations indicate that individuals of these two species have likely already been extirpated from the site. Populations of these two species, which both reach their western limits here, will soom be eliminated under a recently approved mining plan of operations. As compensation, the County of San Bernardino has directed the mining company to sponsor experimental reseeding on reclaimed portions of the mine site.

Approximately 6 miles (9.7 km) to the east of White Mountain, the north side of Holcomb Valley drops off abruptly into Furnace Canyon. The second largest operating limestone mine, with an annual production of 800,000 tons, is operating in the vicinity of Furnace Canyon. Parish's daisy and Cushenbury buckwheat have been impacted by the construction of haul roads and the dumping of overburden at this site. Three small outlying populations of Cushenbury milk-vetch are also found in this area.

Four miles to the east of Furnace Creek is the deeply incised Cushenbury Canyon. The mining operation located at this site has an annual production of 2,000,000 tons of limestone, the largest of the four currently operating limestone mines. Parish's daisy, Cushenbury buckwheat, and Cushenbury milk-vetch are found on the rocky slopes surrounding Cushenbury Canyon and adjacent Marble Canyon. A number of populations have already been impacted by mining and road construction. Up until several years ago, cement dust from the crushing operation was settling on the slopes downwind from the operation. The resultant crust that formed on the slopes is thought to have inhibited the growth and survival of a number of plant species, including the limestone endemics. The easternmost population of Cushenbury oxytheca, one

of the most restricted of the limestone endemics, was also rediscovered in this area in 1978. Owing to continuing drought conditions, the species was not searched for in a 1990 survey at this location. A few populations of Parish's daisy are found on alluvial substrates below the mouth of the Canyon. A recent proposal to mine these alluvia for sand and gravel threatens these populations.

To the east another 5 miles (8 km), Blackhawk Mountain rises up to an elevation of 6,700 ft (2,042 m). Parish's daisy, Cushenbury buckwheat, and Cushenbury milk-vetch occur here. Historically, gold and silver were mined near Blackhawk Mountain. New gold mining activity has been proposed for the north slope of Blackhawk Mountain, though to date only exploratory drilling has been done. Blackhawk Mountain currently supports one of the best assemblages of the limestone endemic species. Old roads bisect the habitat, but the lack of limestone mining has left much of the landscape intact.

The east flank of Blackhawk Mountain drops down into Blackhawk Canyon and Grapevine Creek. On the east side of Grapevine Creek, the terrain rises up to the twin peaks of East Knob and West Knob. Three species, Parish's daisy, Cushenbury buckwheat, and Cushenbury milk-vetch, occur in this area. Currently, the smallest of four limestone mines, with an annual production of 40,000 tons, is in operation just below East Knob and West Knob. The proximity of occurrences of all three limestone endemic species to current quarry operations indicates that habitat destruction has already occurred. The 5 year plan of operations being submitted by the current operators would eliminate occurrences of all three species on East Knob (Lilburn Corporation 1990).

Heading south and east from Blackhawk Mountain, the limestone belt parallels the Helendale Fault, which is drained by Arrastre Creek. A cluster of occurrences of Parish's daisy and Cushenbury buckwheat are scattered on the rocky slopes adjacent to Horsethief Flat. Further up the Arrastre Creek drainage, another dozen occurrences of these two species are scattered along a rocky ridge for a distance of approximately 4 miles (6.4 km). There is currently no active mining along the Helendale fault, though historic mining may have impacted certain occurrences, and new proposals for mining have recently been received by the Forest Service. Some of the densest stands of Cushenbury buckwheat have been bisected by motorcycle and jeep trails near Rose Mine Valley (Krantz 1979b); such use of the area continues.

Still heading south and east, the tributaries of Arrastre Greek run off the north and west slopes of Tip Top Mountain, which rises to an elevation of 6,700 ft (2,042 m). On the south and east side of Tip Top Mountain, tributaries flow into the Rattlesnake Canyon drainage. Along this drainage is another cluster of occurrences of Parish's daisy and Cushenbury buckwheat. Historic mining has impacted the two plants; Krantz (1979b) noted that a dirt road leading to an abandoned quarry had bisected habitat for both plants. Parish's daisy may be able to tolerate some disturbance, as evidenced by its occurrence along roadsides, while Cushenbury buckwheat remains absent from such areas (Krantz 1979a, 1979b). Off-road vehicle traffic currently adversely impacts plants in this area.

About 15 miles (24 km) south and east of Tip Top Mountain, the mountains give way to the broad alluvial fans of the upper desert. Near Burns Pinyon Reserve, and Pioneertown nearby, a few disjunct occurrences of Parish's daisy are found. The Burns Pinyon Preserve is protected by the State of California through the auspices of the Reserve System of the University of California. The Pioneertown site has been proposed for urban development. The Nature Conservancy has secured a voluntary agreement with the landowner to protect Parish's daisy at this site.

Scattered patches of limestone substrate occur outside of the main belt that traverses the San Bernardino Mountains. On the east end of Bertha Ridge, north of the eastern tip of Big Bear Lake, several small patches of San Bernardino Mountains bladderpod and Cushenbury buckwheat occur. These populations are adjacent to the community of Big Bear and are subject to impacts associated with urban development. Surveys by Myers and Barrows (1988) indicated that several occurrences of San Bernardino Mountains bladderpod have been reduced in size since the previous surveys were performed in 1980 (Wilson and Bennett 1980).

At the northern edge of Holcomb Valley, Cushenbury oxytheca is found near an old gold mine site. There is a low to medium potential for reactivating mining activity in this area in the future, depending on the price of gold (U.S. Forest Service 1988).

On the north-facing slope of Sugarlump Ridge on the south side of Big Bear Lake, several large populations of San Bernardino Mountains bladderpod were recently discovered. Several of these populations may be impacted by a currently proposed expansion of a downhill ski run.

In summary, virtually all of the limestone outcrops where these five species occur are under claim and subject to being mined. The only sizable limestone outcrop not under claim is located on the south side of Big Bear Lake. Those claims that are not currently being mined are being maintained in anticipation of expanding operations once current quarry supplies are depleted.

A limited number of occurrences of each of the five species is noted. These occurrences are located in an area of active and potential mining claims; occurrences of two of the species are also subject to urbanization. Due to the limited number of occurrences; the current, proposed, and potential mining; and other threats, the species' habitats are subject to destruction.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although these species are not presently sought-after by collectors, they are vulnerable to taking, owing especially to their limited distribution. The increased public attention that may be brought to bear as a result of this proposal could potentially increase the desirability of these species, thereby increasing the threat of collection.

C. *Disease or predation.* No data exist to substantiate whether disease threatens any of the five plants. The seed capsules of *Lesquerella kingii* ssp. *bernardina* were recently observed to have been broken open by unknown seed predators (Rutherford and Lardner, pers. obs.) at one of the Big Bear occurrences. It is unknown whether seed predation would affect the viability of the species. In the vicinity of Round Mountain, several occurrences of *Astragalus albens* are known to occur within a grazing allotment administered by the Bureau of Land Management. The effects of cattle grazing on this species have not yet been investigated.

D. *The inadequacy of existing regulatory mechanisms.* All five plants are on List 1B of the California Native Plant Society, indicating that, in accordance with section 1901, chapter 10 of the California Department of Fish and Game Code, they are eligible for State listing. Even if State listing were pursued, however, 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 evidently 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 1913). About a quarter of the occurrences of *Erigeron parishii* and *Eriogonum ovalifolium* var. *vineum* occur on private land. The mining of limestone on private land is under the purview of the County of San Bernardino, which is responsible for administering regulations in accordance with the California Environmental Quality Act (CEQA) and the California Endangered Species Act (CESA). As such, the County has included Terms and Conditions in the granting of certain operating permits that have directed the applicants to undertake efforts to restore the habitat for and re-introduce Parish's daisy and Cushenbury buckwheat to the site. The remaining occurrences of these two species, as well as almost all the occurrences of the other three species are primarily on lands managed by the U.S. Forest Service and, to a lesser degree, by the Bureau of Land Management.

In the recently released Management Plan for the San Bernardino National Forest (1988), the Forest Service recommends establishing refugia for conserving selected occurrences of these limestone endemic species as part of a regional conservation plan. This would entail securing refugia sites either by withdrawal from mineral entry or by transferring claim rights. However, the Forest has not yet initiated development of such a regional conservation plan.

E. *Other natural or manmade factors affecting its continued existence.* Populations made up of a small number of individuals always face the possibility of stochastic extinction (extinction due to random events, including fire, flood, drought, landslide, disease, or predation). As the total known populations of *Astragalus albens* and *Oxytheca parishii* var. *goodmaniana* currently consist of fewer than 3,000 individuals each, the possibility of stochastic extinction is high.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these five species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Erigeron parishii, Erogonum ovalifolium, Astragalus albens, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana* as endangered. The destruction of their habitat by activities associated with limestone mining, sand and gravel mining, and off-road vehicle and other recreational use, as well as their vulnerability to stochastic events, makes these five plant species in danger of extinction throughout all or a significant portion of their ranges. These species thus fit the Act's definition of endangered.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be listed as endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species. As discussed in the Summary of Factors Affecting the Species, all of the limestone endemic plants are threatened by taking, an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, damaging, or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of precise maps and descriptions of critical habitat would increase the degree of threat to these plants from take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. The proper agencies have been notified of the location and importance of protecting these species' habitat. Protection of these species' habitat will be addressed through the recovery process and through the section 7 consultation process. Therefore, the Service finds that the designation of critical habitat for the five plants is not prudent at this time, because such designation likely would increase the degrees of threat from vandalism, collecting, 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 practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Federal activities potentially impacting one or more of the five plants likely will include the approval of mining plans of operations, rights of way, and grazing allotments. Populations of all five plant species occur in large part on Federal land. *Erigeron parishii, Eriogonum ovalifolium* var. *vineum,* and *Astragalus albens* occur on land managed by the San Bernardino National Forest and the California Desert District of the Bureau of Land Management. *Lesquerella kingii* ssp. *bernardina* and *Oxytheca parishii* var. *goodmaniana* occur entirely on land managed by the San Bernardino National Forest.

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) 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.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to the five limestone endemics from southern California, 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 these species 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 endangered plant 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 of 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, 4401 North Fairfax Drive, room 432, 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 these species;

(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 one or more public hearings 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 Field Supervisor at the Southern California Field Station (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, or Environmental Impact Statement, 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).

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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					
*	*	*	*	*	*	
Asteraceae—Aster family:						
*	*	*	*	*	*	
Erigeron parishii	Parish's daisy	U.S.A. (CA)	E		NA	NA
*	*	*	*	*	*	
Brassicaceae—Mustard family:						
*	*	*	*	*	*	
Lesquerella kingii ssp. *bernardina*	San Bernardino Mountains bladderpod.	U.S.A. (CA)	E		NA	NA
*	*	*	*	*	*	
Fabaceae—Pea family:						
*	*	*	*	*	*	
Astragalus albens	Cushenbury milk-vetch	U.S.A. (CA)	E		NA	NA
*	*	*	*	*	*	
Polygonaceae—Buckwheat family:						
*	*	*	*	*	*	
Eriogonum ovalifolium var. *vineum*	Cushenbury buckwheat	U.S.A. (CA)	E		NA	NA
*	*	*	*	*	*	
Oxytheca parishii var. *goodmaniana*	Cushenbury oxytheca	U.S.A. (CA)	E		NA	NA
*	*	*	*	*	*	

Dated: October 21, 1991.

Richard N. Smith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-27685 Filed 11-18-91; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB66

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Eight Freshwater Mussels and Proposed Threatened Status for Three Freshwater Mussels in the Mobile River Drainage

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes the upland combshell (*Epioblasma metastriata*), southern acornshell (*Epioblasma othcaloogensis*), Coosa moccasinshell (*Medionidus parvulus*), southern clubshell (*Pleurobema decisum*), dark pigtoe (*Pleurobema furvum*), southern pigtoe (*Pleurobema georgianum*), ovate clubshell (*Pleurobema perovatum*), and triangular kidneyshell (*Ptychobranchus greeni*) to be endangered species; and the fine-lined pocketbook (*Lampsilis altilis*), orange-nacre mucket (*Lampsilis perovalis*), and Alabama moccasinshell (*Medionidus acutissimus*) to be threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). these eleven species are found in localized portions of the Mobile River drainage in Alabama, Georgia, Mississippi and Tennessee. They have been eliminated from much of their former ranges by impoundments, channel modification, and water quality degradation. Habitat alteration and water quality degradation continue to threaten the remaining populations. There is also a presently developing threat from incidental take associated with commercial mussel harvesting. This proposal, if made final, would implement the protection of the Act for these species. The Service seeks relevant data and comments from the public.

DATES: Comments from all interested parties must be received by March 18, 1992. Public hearing requests must be received by January 3, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to Complex Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, MS 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Hartfield at the above address (telephone 601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

The Mobile River basin drains approximately 43,700 square miles and is the largest Gulf Coast drainage east of the Mississippi River. The basin is composed of seven major river systems: The Mobile Delta (Mobile and Tensaw Rivers), Tombigbee, Black Warrior, Alabama, Cahaba, Coosa, and Tallapoosa Rivers and their tributaries. These rivers drain a variety of physiographic provinces, including the Appalachian Plateau, Alabama Valley and Ridge, Piedmont Upland, and East Gulf Coastal Plain. The basin's size, diversity of habitat, and geographical isolation, have resulted in a high degree of variation and endemism in the unionid mussel (mussels) fauna. This proposed rule addresses 11 species that are known to have been collected from the Mobil drainage within the past 20 years. These species are believed to currently exist in the drainage. Historic distributions are bases on the scientific literature, technical reports, and museum records. The names used in this rule follow mollusk nomenclature suggested by the American Fisheries Society (Turgeion *et al.* 1988).

The upland combshell (*Epioblasma metastriata* (Conrad 1838)] is a bivalve mollusk that rarely exceeds 60 millimeters (mm) (2.4 inches (in.)] in length. The shells are rhomboidal to quadrate in outline and are sexually dimorphic. Males are moderately inflated with a broadly curved posterior ridge. Females are considerably inflated, with a sharply elevated posterior ridge that swells broadly post-ventrally forming a well-developed sulcus (the groove anterior to the posterior ridge). The posterior margin of the female is broadly rounded and comes to a point anterior to the posterior extreme. Periostracum (the epidermis) color varies from yellowish-brown to tawny, and may or may not have broken green rays, or small green spots. Hinge teeth are well-developed and heavy. Johnson (1978) considered the upland combshell to be a variation of the southern combshell (=penitent mussel, *Epioblasma penita*) and synonymized the two. Stansbery (1983a) recognized consistent morphological differences between the two and considered both

species to be valid taxa. The upland combshell is distinguished from the southern combshell by the diagonally straight or gently rounded posterior margin of the latter, which terminates at the post-ventral extreme of the shell (Stansbery 1983a). The U.S. Fish and Wildlife Service (Service) recognizes *Unio metastriatus* Conrad and *Unio compactus* Lea as synonyms of *Epioblasma metastriata.*

The upland combshell was described from the Mulberry Fork of the Black Warrior River near Blount Springs, Alabama. The historic range included the Black Warrior River and tributaries (Mulberry Fork and Valley Creek); Cahaba River and tributaries (Little Cahaba River, Buck Creek); and the Coosa River and tributaries (Choccolocco Creek, Etowah, Conasauga, and Chatooga Rivers). The present range has declined substantially and this species now appears to be restricted to the Conasauga River in Georgia. It is possible that small populations may exist in portions of the upper Black Warrior and Cahaba River drainages. Hurd (1974) did not find the upland combshell during a 1971–73 mussel survey of the Coosa River drainage. However, he noted that Stansbery and Athearn had collected the species from that drainage during a 1966–68 survey. The most recent record from the Coosa River drainage is a Conasauga River collection of a single specimen by a Service biologist in 1988 (Richard Biggins, U.S. Fish and Wildlife Service, pers. comm., 1990). Pierson (1991) did not locate the species during his 1990 survey of the Coosa River drainage. The most recent records of the upland combsell in the Cahaba River drainage were made by Baldwin (1973). He reported the species to be greatly reduced as compared to a 1938 Cahaba River survey by van der Schalie. Pierson (1991) failed to find the species during a 1990 survey of the Cahaba River drainage. The most recent Black Warrior River drainage collections of the upland combshell were made by H.H. Smith in the early 1990's. More recent surveys of the drainage, conducted in 1974 (J. Williams, U.S. Fish and Wildlife Service, *in litt.*), 1980–82 (R. Hanley, Greenville, SC, *in litt.* 1990), 1985 (Dodd *et al.* 1986), and 1990 (Hartfield 1991), did not encounter the species.

The southern acornshell (*Epioblasma othcaloogensis* (Lea 1857)) is a small species that may grow up to 30 mm (1.2 in.) in shell length. The shells are round to oval in outline and sexually dimorphic, with a swollen posterior ridge in females. The periostracum is smooth, shiny, and yellow in color. Johnson (1978) included *Edioblasma othcaloogensis* in his synonymy of Epioblasma penita, and considered the southern acornshell to be an ecomorph of the latter. Stansbery (1983a) believed *Epioblasm othcaloogenis* was district, and belonged in a different subgenus. The southern acornshell is distinguished from the upland combshell and the southern combshell by its smaller size, round outline, a poorly developed sulcus, and its smooth, shiny, yellow periostracum. The Service recognizes *Unio othcaloogensis* Lea and *Unio modicellus* Lea as synonyms of *Epioblasma othcaloogensis.*

The southern acornshell was described from Othcalooga Creek, Gordon County, Georgia. Historically, the species occurred in the upper Coosa River system, including the Conasauga River, Cowan's Creek, and Othcalooga Creek. Collections from the Cahaba River above the fall line have also been reported. The present range of the southern acornshell appears to be restricted to streams in the Coosa River drainage in Alabama and Georgia. The most recent collections from this drainage were by Stansbery and Athearn in 1966–68 (Hurd 1974) and by Hurd (1974). However, the continued presence of the species in the Coosa River drainage has not been recently confirmed (Biggins, pers. comm., 1990; Williams, pers. comm., 1991; Pierson 1991). Several Cahaba River records exist in the literature and museum collections. The most recent of these was made by van der Schalie (1938), who collected two specimens from the Cahaba River at Lily Shoals in Bibb County which he tentatively identified as southern acornshells. Several specimen lots taken by Smith during the early 1900's from the Cahaba River tributary of Buck Creek, Shelby County, Alabama, are in the Florida Museum of Natural Science mollusk collection. Surveys of the Cahaba River drainage by Baldwin (1973) and Pierson (1991) have not relocated the species in that drainage.

The fine-lined pocketbook (*Lampsilis altilis* (Conrad 1834)) is a medium-sized mussel, suboval in shape, and rarely exceeds 100 mm (4 in.) in length. The ventral margin of the shell is angled posteriorly in females, resulting in a pointed posterior margin. The periostracum is yellow-brown to blackish and has fine rays on the posterior half. The nacre is white, become iridescent posteriorly. The fine-lined pocketbook can be distinguished from a similar species, the orange-nacre mucket (*Lampsilis perovalis*) by its more elongate shape, thinner shell, white nacre, pointed posterior, and ray ornamentation. The Service recognizes *Unio altilis* Conrad, *Unio clarkianus* Lea, and *Unio gerhardtii* Lea as synonyms of *Lampsilis altilis.*

The fine-lined pocketbook was described from the Alabama River near Claiborne, Monroe County, Alabama. This species was historically recorded from the Sipsey and Buttahatchee Rivers in the Tombigbee River drainage; Black Warrior River and tributaries (Sipsey Fork, Brushy and Capsey Creeks); Cahaba River and tributaries (Little Cahaba and Buck Creeks); Alabama River and a secondary tributary, Tatum Creek; Chewacla and Opintlocco Creeks in the Tallapoosa River drainage; and the Coosa River and tributaries (Choccolocco and Talladega Creeks). The current distribution of the fine-lined pocketbook appears to be limited to the headwaters of the Sipsey Fork of the Black Warrior River drainage; Tatum Creek in the Alabama River drainage; Conasauga River in the Coosa River drainage and one site in the main channel; and Chewacla and Opintlocco Creeks in the Tallapoosa drainage. The species has not been reported from the Tombigbee River drainage since H.H. Smith's early 1900 collections from the Buttahatchee and Sipsey Rivers (Stansbery 1983b). The species had not been reported from the Black Warrior River since the early 1900's. However, Dodd *et al.* (1986) made recent collections of this species from the Black Warrior River tributaries Sipsey Fork, Brushy and Capsey Creeks. The species was not relocated during 1990 survey of these streams by Service biologists (Hartfield 1991). Baldwin's (1973) survey of the Cahaba River drainage reported the fine-lined pocketbook to be fairly abundant in the main channel and tributaries. Hanley (*in litt.* 1990) collected a single shell from the Cahaba River in 1979, and Pierson (1991) did not encounter the species during his Cahaba River survey. The most recent Alabama River records of the species are the type collections in 1834. However, R. Hanley (*in litt.* 1990) collected two shells of the fine-lined pocketbook in 1981 from Tatum Creek, a tributary of Bogue Chitto Creek in the Alabama River drainage. Hurd (1974) recorded collections of the fine-lined pocketbook from 24 sites in the Coosa River drainage. Pierson's (1991) more recent survey of 15 sites in the Coosa River drainage found weathered dead shells in a short reach of the main channel below Jordan Dam, and fresh dead shells in a reach of the Conasauga River. Pierson (1991) also found the species in Chewacla and Opintlocco Creeks in the Tallapoosa

River drainage. Van der Schalie (1938), Baldwin (1973) and Williams (*in litt.* 1991) reported that the fine-lined pocketbook primarily inhabited small river and creek habitats. With the exception of Pierson's (1991) recent Coosa and Conasauga River records, this species may be eliminated from most river habitat throughout its range. Currently, it appears to be restricted to creek habitat.

The orange-nacre mucket (*Lampsilis perovalis* (Conrad 1834)) is a medium-sized mussel, 50–90 mm (2–3.6 in.) in length. The shell is oval in shape, moderately thick, and inflated. The posterior margin of the shell of mature females is obliquely truncate. The nacre is usually rose colored, pink, or occasionally white. Its periostracum varies from yellow to dark reddish brown, and with or without green rays. Hurd (1974) included the orange-nacre mucket under *Lampsilis altilis*; however, he provided no justification for his synonymy. Stansbery (1983b) and Hanley (1983) have presented information that indicates both species deserve recognition. As noted previously, this species may be distinguished from the fine-lined pocketbook, *Lampsilis altilis*, by subtle shell characters, including shell shape and nacre color. When present, the rays are generally much wider in the orange-nacre mucket than they are in the fine-lined pocketbook. The Service recognizes the following names as synonyms of *Lampsilis perovalis:*

Unio perovalis Conrad
Unio doliaris Lea
Unio placitus Lea
Unio spillmani Lea

The orange-nacre mucket was described from the Alabama River near Claiborne, Monroe County, Alabama. It is historically known from Lubbub Creek, Buttahatchee, Sipsey and East Fork Tombigbee Rivers in the Tombigbee River drainage; Brushy Creek, Mulberry and Sipsey Forks in the Black Warrior River drainage; the Alabama River; and the Little Cahaba River in the Cahaba River drainage. The species continues to occur in the Buttahatchee River and in a short reach of the East Fork Tombigbee River (Hartfield and Jones 1989, 1990), the headwaters of the Sipsey Fork (Dodd *et al.* 1986) and in the Sipsey and Little Cahaba Rivers (Pierson 1991). A recent survey by Service biologists indicates the orange-nacre mucket may have been eliminated from the Mulberry Fork of the Black Warrior River (Hartfield 1991). The species has not been reported from the Alabama River since its description. Limited searches by Service biologists tend to confirm its absence from this river.

The Alabama moccasinshell (*Medionidus acutissimus* (Lea 1831)) is a small, delicate species, approximately 30 mm (1.2 in.) in length. The shell is narrowly elliptical, thin, with a well-developed, acute, posterior ridge terminating in an acute point on the posterior ventral margin. The posterior slope is finely corrugated. The periostracum is yellow to brownish yellow, with broken green rays across the entire surface of the shell. The thin nacre is translucent along the margins and salmon-colored in the umbos (beak cavity). The Alabama moccasinshell is distinguished from a similar species, the Coosa moccasinshell (*Medionidus parvulus*) by its acute posterior ridge, sharply pointed posterior apex, salmon colored nacre, and smaller size. The Service recognizes *Unio acutissimus* Lea and *Unio rubellinus* Lea as synonyms of *Medionidus acutissimus.*

The Alabama moccasinshell was described from the Alabama River, Alabama. Literature and collection records of the species are known from the Alabama River; Tombigbee River and tributaries (Luxapallila Creek, Buttahatchee and Sipsey Rivers); Black Warrior River and tributaries (Mulberry Fork, Brushy Creek); Cahaba River; and Coosa River and tributaries (Talladega, Choccolocco Creeks, Chatooga River). The species occurs in the Luxapallila Creek, Buttahatchee and Sipsey Rivers in the Tombigbee River drainage; the headwaters of the Sipsey Fork (Brushy Creek) in the Black Warrior River drainage; and the Conasauga River. It has not been found in the Tombigbee River since construction of the Tennessee-Tombigbee Waterway. Recent surveys of the Black Warrior River drainage (Hartfield 1991) and the Cahaba River and tributaries (Pierson 1991) have failed to locate the Alabama moccasinshell. As recently as 1985, Dodd *et al.* (1986) collected the species from Brushy Creek, a Sipsey Fork tributary. The last known collections in the Cahaba River drainage were in 1973 (Baldwin 1973). In 1974, Hurd (1974) collected only four lots from the Coosa River drainage. Service biologists collected a single specimen from the Conasauga River in 1990. Pierson (1991) did not find the species in the Coosa River drainage.

The Coosa moccasinshell (*Medionidus parvulus* (Lea 1860)) is a small species occasionally exceeding 40 mm (1.6 in.) in length. The shell is thin and fragile, elongate and elliptical to rhomboidal in outline. The posterior ridge is inflated, smoothly rounded, terminating in a broadly rounded point; the posterior slope is finely corrugated. The periostracum is yellow-brown to dark brown and has fine green rays. The nacre is blue, occasionally with salmon-colored spots. As noted previously, the Coosa moccasinshell can be distinguished from the Alabama moccasinshell by its size, broadly rounded posterior ridge and apex, and nacre color. The Service recognizes *Unio parvulus* Lea as equivalent to *Medionidus parvulus.* The Coosa moccasinshell was described from the Coosa River, Alabama, and the Chatooga River, Georgia. The species has been collected from the Cahaba River; the Sipsey Fork of the Black Warrior River; and the Coosa River and tributaries (Choccolocco Creek, Chatooga, Conasauga and Little Rivers). In 1985, a Service biologist (J. Pulliam) collected a single specimen in the headwaters of the Sipsey Fork (Black Warrior River drainage). The most recent collection from the Little River is a single specimen taken by Hanley (*in litt.* 1990) in 1981. The existence of the Conasauga River population has been confirmed by Pierson (1991) and a collection made by Service biologists in 1990. Other Coosa River drainage records have not been recently confirmed. Mussel surveys in the Cahaba River by van der Schalie (1938), Baldwin (1973) and Pierson (1991) did not find the species.

The southern clubshell (*Pleurobema decisum* (Lea 1831)) is a medium sized mussel about 70 mm (2.8 in.) long, with a thick shell, and heavy hinge plate and teeth. The shell outline is roughly rectangular, produced posteriorly with the umbos terminal with the anterior margin, or nearly so. The posterior ridge is moderately inflated and ends abruptly with little development of the posterior slope at the dorsum of the shell. The periostracum is yellow to yellow-brown with occasional green rays or spots on the umbo in young specimens. The southern clubshell is distinguished from a closely related species, the black clubshell (= Curtus' pearly mussel, *Pleurobema curtum*) by its elongate shape, lighter color, and the presence of a well-defined sulcus in the latter species. The Service recognizes the following names as synonyms of *Pleurobema decisum*:

Unio decisus Lea
Unio anaticulus Lea
Unio crebrivittatus Lea
Unio pallidovulvus Lea

The southern clubshell was described from the Alabama River, Alabama. Except for the Mobile Delta, this species was formerly known from every major

stream system in the Mobile River basin. This includes the Alabama River and Bogue Chitto Creek; Tombigbee River and tributaries (Buttahatchee, East Fork Tombigbee, and Sipsey Rivers and Bull Mountain, Luxapallila, and Lubbub Creeks); Black Warrior River; Cahaba and Little Cahaba Rivers; two Tallapoosa tributaries, Uphapee and Chewacla Creeks; and the Coosa River and tributaries (Oostanaula, Conasauga, Etowah, Chatooga, and Coosawattee Rivers and Kelly, Talladega and Shoal Creeks). Currently, the species is known in Bogue Chitto Creek in the Alabama River drainage; Buttahatchee, East Fork Tombigbee and Sipsey Rivers in the Tombigbee River drainage; and Chewacla Creek in the Tallapoosa River drainage. The most recent Coosa River drainage records are from the late 1960's and 1970's in the Conasauga River, and Shoal and Kelly Creeks. The most recent Cahaba River drainage records were Baldwin's (1973) collections in the Cahaba River. Pierson (1991) was unable to confirm the continued existence of the species in either the Coosa or Cahaba River drainages.

The dark pigtoe (*Pleurobema furvum* (Conrad 1834)) is a small to medium-sized mussel, occasionally reaching 60 mm (2.4 in.) in length. The shell is oval in outline, and moderately inflated. Beaks are located in the anterior portion of the shell. The posterior ridge is abruptly rounded and terminates in a broadly rounded, subcentral, posterior point. The periostracum is dark, reddish brown with numerous and closely spaced, dark growth lines. The hinge plate is wide and the teeth are heavy and large, especially in older specimens. The nacre approaches white in the umbos, and is highly iridescent on the posterior margin. Specimens of the dark pigtoe are occasionally confused with the Warrior pigtoe, *Pleurobema rubellum* (Conrad 1834). This confusion can be attributed to a paucity of recent specimens of either species, and an incorrect association of the nomenclature with specimens. The Warrior pigtoe is a smaller species, suborbicular in outline, with the beaks more centrally located, and with pink or purplish nacre. The dark pigtoe may also be confused with old specimens of the southern pigtoe, *Pleurobema georgianum*. The latter is more elliptical in outline, is not as pointed posteriorly, and is more compressed than the dark pigtoe. Its hinge plate and teeth are smaller than those of the black pigtoe. The southern pigtoe has yellow to yellow-brown periostracum, and occasionally has broken green rays along the posterior slope and ridge. It has a white nacre. The Service recognizes *Unio furvus* Conrad as equivalent to *Pleurobema furvum*.

The dark pigtoe was described from the Black Warrior River, Alabama. The historic distribution of the dark pigtoe was probably restricted to the Black Warrior River above the fall line. Dodd *et al.* (1986) recently collected this species, misidentified as *Pleurobema rubellum* (Hartfield pers. obs., February 1990), from the headwaters of the Sipsey Fork. Shells from this population were collected by a Service biologist in 1990 (Hartfield 1991). Badly weathered specimens were also found in the Locust Fork of the Black Warrior River near the Jefferson-Blount County line.

The southern pigtoe (*Pleurobema georgianum* (Lea 1841)) is a small to medium-sized mussel occasionally exceeding 60 mm (2.4 in.) in length. The shell is elliptical to oval in outline and somewhat compressed. The posterior slope is smoothly rounded. The pseudocardinal teeth are small but well-developed, and the nacre is white. The periostracum is yellow to yellow-brown. Growth lines are numerous and may be dark brown. Small specimens may have green spots at the growth lines along the posterior ridge and near the umbo. As discussed for the previous species, older specimens of the southern pigtoe may be confused with the dark pigtoe, *Pleurobema furvum*. The Service recognizes *Unio georgianus* as equivalent to *Pleurobema georgiana*.

The southern pigtoe was described from the upper Costa River drainage in Georgia. The historic distribution appears to have been restricted to the Coosa River drainage. Service biologists have examined museum records of this species from the Coosa River, Shoal Creek, and the Chatooga and Conasauga Rivers. The most recent record of the species is a single specimen taken by a Service biologist (Richard Biggins) from the Conasauga River in 1990. Hurd (1974) reported collecting seven lots of southern pigtoes, and examined 35 museum lots from the Coosa River and its tributaries. However, Pierson (1991) did not encounter the species in the Coosa River drainage.

The ovate clubshell (*Pleurobema perovatum* (Conrad 1834)) is a small to medium-sized mussel that rarely exceeds 50 mm (2.0 in.) in length. The shell is oval to elliptical in shape, and has nearly terminal, inflated umbos. The posterior ridge is well-developed, broadly rounded, and often concave. The posterior slope is produced well beyond the posterior ridge. Periostracum color varies from yellow to dark brown, and occasionally has broad green rays that may cover most of the umbo and posterior ridge. The nacre is white. Due to the nearly terminal umbos in some specimens, ovate clubshells may be mistaken for young southern clubshells (*Pleurobema decisum*). They may be distinguished from the latter by their thinner shells, and a gently sloping, well developed posterior slope. The Service recognizes the following names as synonyms of *Pleurobema perovatum:*

Unio perovatus Conrad
Unio nux Lea
Unio cinnamonicus Lea
Unio pinkstoni Wright
Unio concolor Lea
Unio flavidulus Lea
Unio johannis Lea

The ovate clubshell was described from small streams in Greene County, Alabama. The species occurred in the Tombigbee River and tributaries (Buttahatchee and Sipsey Rivers; Luxapallila, Coalfire and Lubbub Creeks); Black Warrior River and tributaries (Locust Fork; Village, Prairie, Big Prairie, Brushy and Blackwater Creeks); Alabama River; Cahaba River and the tributary Buck Creek; Chewacla, Uphapee and Opintlocco Creeks in the Tallapoosa drainage; and the Coosa River and tributaries (Conasauga and Etowah Rivers, and Holly Creek). Currently, the species is known from the Buttahatchee and Sipsey Rivers in the Tombigbee River drainage; Blackwater Creek and Locust Fork in the Black Warrior drainage; and Chewacla Creek in the Tallapoosa drainage (Dodd *et al.* 1986, Hartfield and Jones 1989, Pierson 1991). The most recent records from the Coosa drainage are two lots collected by Hurd (1974). The ovate clubshell was last collected in the Cahaba River in 1978 by Hanley (*in litt.* 1990). Pierson (1991) did not find the ovate clubshell in the Coosa River drainage or the Cahaba River drainage.

The triangular kidneyshell (*Ptychobranchus greeni* (Conrad 1834)) is oval to elliptical in outline, and may approach 100 mm (4.0 in.) in length. The shell is generally compressed, and may be flattened ventral to the umbos. The posterior ridge is broadly rounded and terminates in a broad round point post-ventrally. The pseudocardinal teeth are heavy, and the laterals are heavy, gently curved and short. The periostracum is straw-yellow in young specimens, but becomes yellow-brown in older ones. It may have fine and wavy, or wide and broken, green rays anterior to the posterior ridge. This species is morphologically variable and may be confused with some species of *Pleurobema*. Ecomorphs of this species

are best identified by a process of elimination. The Service recognizes the following names as synonyms of *Ptychobranchus greeni:*

Unio greenii Conrad
Unio brumbleyanus Lea
Unio brumbyanus Lea
Unio foremanianus Lea
Unio woodwardius Lea
Unio woodwardianus Lea
Unio trinacrus Lea
Unio flavescens Lea
Unio simplex Lea

The triangular kidneyshell was described from the headwaters of the Black Warrior River, Alabama. The historic range includes the Black Warrior River and tributaries (Mulberry Fork, Locust Fork, North and Little Warrior Rivers, Brushy Creek, Sipsey Fork); Cahaba River; and the Coosa River and tributaries (Choccolocco Creek; Chatooga, Conasauga, and Etowah Rivers). The species is currently known from the headwaters of the Sipsey Fork and Little Warrior River in the Black Warrior River drainage (Dodd *et al.* 1986, Hartfield 1991); and in the Conasauga River in the Coosa drainage (Pierson 1991). The triangular kidneyshell was last collected from the Cahaba River in 1979 by Hanley (*in litt.* 1990). Recent surveys have failed to find other historically known populations (Hartfield 1991; Pierson 1991; J. Williams, pers. comm., 1991).

All of these mussels are usually found on stable gravel and sandy-gravel substrates in high quality lotic habitats. Little else is known of the habitat requirements of these species. Their life histories are presumed to follow that of other, better known, related species. Sexes in unionid mussels are usually separate. Males release sperm into the water column, which enter the incurrent siphons of females through normal respiratory and feeding activities. Eggs are held in the females gills where they may come into contact with the sperm. Fertilized eggs develop into larva called glochidia. Mature glochidia are released into the water column and they must find and attach to the gills or fins of a suitable host fish species. Once attached, they metamorphize to a juvenile mussel. The duration of the parasitic stage varies with water temperature, mussel species, and perhaps host species. After metamorphosis, the juvenile mussels release from the host. To survive, they must drop onto a suitable substrate (Oesch 1984). Host species and duration of the parasitic stage are unknown for the mussel species considered in this proposed rule.

The orange-nacre mussel (*Lampsilis perovalis*) was included as a category 2 species in the May 22, 1984, **Federal Register** (49 FR 21675). This species was again included as a category 2 species in the January 6, 1989, **Federal Register** (54 FR 578–579), along with the upland combshell (*Epioblasma metastriata*), southern combshell (*E. othcaloogensis*), and fine-lined pocketbook (*Lampsilis altilis*). Category 2 species are those for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at the time the notice is published. There are no Service actions in the public record for any of the other species in this proposal.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the upland combshell *(Epioblasma metastriata)*, southern acornshell (*Epioblasma othcaloogensis*), Coosa moccasinshell (*Medionidus parvulus*), southern clubshell (*Pleurobema decisum*), dark pigtoe (*Pleurobema furvum*), southern pigtoe (*Pleurobema georgianum*), ovate clubshell (*Pleurobema perovatum*), triangular kidneyshell (*Ptychobranchus greeni*), fine-lined pocketbook (*Lampsilis altilis*), orange-nacre mucket (*Lampsilis perovalis*), and Alabama moccasinshell (*Medionidus acutissimus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Habitat modification, sedimentation, and water quality degradation represent the major threats to the 11 species discussed above. None of the species are known to tolerate impoundments. More than 1000 miles of large and small river habitat in the Mobile River drainage has been impounded for navigation, flood control, water supply, and/or hydroelectric production purposes. Impoundments adversely affect riverine mussels by: Killing them during construction and dredging; suffocation by accumulating sediments; lowered food and oxygen availability by the reduction of water flow; and the local extirpation of host fish. Other forms of habitat modification such as channelization, channel clearing and de-snagging, and gravel mining result in stream bed scour and erosion, increased turbidity, reduction of groundwater levels, sedimentation, and changes in the aquatic community structure. Sedimentation may cause direct mortality by deposition and suffocation (Ellis 1936) and eliminate or reduce recruitment of juvenile mussels (Negus 1966). Suspended sediments can also interfere with feeding (Dennis 1984). Activities that historically and currently cause sedimentation of streams and rivers in the drainages where these mussel species occur include: channel modification, agriculture, forestry, mining, and industrial and residential development.

Other types of water quality degradation from both point and non-point sources affect these mussel species. Stream discharge from these sources may result in decreased dissolved oxygen concentration, increased acidity and conductivity, and other changes in water chemistry which may impact mussels and/or their host fishes. Point sources of water quality degradation include municipal and industrial effluents, and coalbed methane produced water discharge. Non-point sources include runoff from cultivated fields, pastures, private wastewater effluents, agricultural feedlots and poultry houses, active and abandoned coal mine sites, and highway and road drainage.

The orange-nacre mucket, Alabama moccasinshell, southern clubshell, and ovate clubshell have been found in the Tombigbee River and some of its tributaries (van der Schalie 1981; Hartfield and Jones 1989, 1990; U.S. Army Corps of Engineers 1975). Six lock and dams, constructed by the U.S. Army Corps of Engineers (COE) between Coffeeville, Alabama and Aberdeen, Mississippi, have impounded the Tombigbee River. Almost 300 miles of free-flowing riverine habitat has been eliminated. The lower portions of the Sipsey, Buttahatchee, and East Fork Tombigbee Rivers have also been affected by these impoundments. The COE (1990) estimated that approximately 200 linear miles of streams had been channelized in the Tombigbee River basin by Federal agencies, and an additional 321 miles of future channel modifications were authorized.

The southern clubshell has been collected from Bull Mountain Creek in the upper Tombigbee River drainage (Pierson 1991). The canal section of the Tennessee-Tombigbee Waterway (Waterway) bisected Bull Mountain Creek, impounding and isolating a

portion of the stream that provided habitat for this species.

The East Fork Tombigbee River provides habitat for the southern clubshell and the orange-nacre mucket in a short reach between the confluence of Bull Mountain Creek and the Waterway's Lock B spillway (Hartfield and Jones 1989). Bull Mountain Creek flood flows have been redirected by the Waterway from the natural creek drainage at the upper end of this reach to the Lock B spillway at the lower end. This change in the hydrological regime will eventually result in the accumulation of finer sediments over the gravel substrates above the spillway that the mussels now occupy (COE 1988). Western tributaries draining into the East Fork Tombigbee River have been channelized, have degraded, and as a result, have contributed almost two million tons of sediment into the river annually (COE 1989). Sedimentation of the upper river has resulted in channel blockage in the near past. The COE currently conducts annual channel maintenance in the East Fork Tombigbee River above the mussel habitat. This maintenance project may contribute to siltation in that portion of the river that provides mussel habitat.

The Buttahatchee River provides habitat for the orange-nacre mucket, Alabama moccasinshell, southern clubshell and ovate clubshell (Hartfield and Jones 1990). However, these species have been eliminated from the lower reach of the river (below U.S. Highway 45) by impoundment of the Tombigbee River and stream capture by gravel mines (Hartfield and Jones 1990). Above Highway 45, the mussels are affected by runoff from abandoned kaolin mines. These mines are estimated to deliver as much as 27,000 tons of fine sediments into the system per year (COE 1990). The COE has been authorized to do a 59 mile channel modification project in the Buttahatchee River (COE 1977) that would impact existing mussel habitat.

Luxapallila Creek provided habitat for the southern clubshell near its confluence with the Tombigbee River (Pierson 1991). This portion of the creek has been affected by impoundment of the Waterway. It has also been dredged and channeled for flood control. The Alabama moccasinshell has been collected from the middle reaches of the Luxapallila Creek in Mississippi (Hartfield, pers. obs., 1984). The COE (1985) has been authorized and funded to do channel modification and desnagging for flood control in this portion of Luxapallila Creek. Upstream of the Alabama State line, the creek has been extensively channelized, has aggraded, and has sedimentation problems.

The lower half of Sipsey River in Tuscaloosa and Greene Counties, Alabama, provides habitat for the orange-nacre mucket, southern clubshell, and ovate clubshell (Pierson 1991). Historic populations of these species and the fine-lined pocketbook in the upper half of the drainage (van der Schalie 1981) have not been recently found (Hartfield, pers. obs.). The Alabama Department of Environmental Management (ADEM) has received permit applications for discharge of produced waters from coalbed methane wells into the Sipsey River. The effect of these discharges on mussel survival and reproduction is unknown. The COE (1977) has been authorized to modify 84.5 miles of Sipsey River channel. This action will impact existing mussel habitat.

The Black Warrior River basin provided habitat for the upland combshell, fine-lined pocketbook, orange-nacre mucket, Alabama moccasinshell, Coosa moccasinshell, southern clubshell, dark pigtoe, ovate clubshell and triangular kidneyshell (van der Schalie 1981, Hartfield 1991). Mussel surveys over the past 20 years suggest some of these species may be extirpated, and others have been severely restricted in distribution (Hartfield 1991). More than 170 miles of the main channel of the Black Warrior River, and portions of its lower tributaries, have been impounded by a series of four locks and dams. None of these species have been collected from the main channel of the Black Warrior River, or its coastal plain tributaries, for at least 20 years (Williams, pers. comm., 1990; Hartfield 1991). The effects of the upper-most structure, John Hollis Bankhead Lock and Dam, extend at least 20 miles into the lower Locust Fork and over 40 miles into the lower Mulberry Fork.

North River, a Black Warrior River tributary, provided habitat for the triangular kidneyshell (van der Schalie 1981). At least 30 miles of the North River was impounded in 1969 by the City of Tuscaloosa to create a municipal water supply. This impoundment, as well as point and non-point pollution, has apparently eliminated most riverine mussel species from the North River (Hartfield 1991).

Another tributary of the Black Warrior River, Sipsey Fork, was impounded by Alabama Power Company in 1961 for hydroelectric generation. This impoundment has affected over 60 miles of river and stream habitat. The Coosa and Alabama moccasinshells exist in a short reach of the unimpounded headwaters of the Sipsey Fork (Hartfield 1991). The fine-lined pocketbook, orange-nacre mucket, dark pigtoe, and triangular kidneyshell have recently been collected from the same portion of the Sipsey Fork, as well as from an unimpounded headwater reach of its tributary, Brushy Fork (Dodd *et al.* 1986, Hartfield 1991).

Additional smaller impoundments have also been constructed in the Black Warrior River drainage, and other major impoundments are planned. The Birmingham Water Works and Sewer Board is planning to construct a dam on the Locust Fork near the Blount-Jefferson County line that would impound about 3000 acres. Construction of this reservoir will likely impact the only location where the ovate clubshell and triangular kidneyshell have recently been collected in the main channel of the Locust Fork (Dodd *et al.* 1986).

Pollution is a major problem in the Black Warrior River basin. Pollution sources are located throughout the area, but are particularly concentrated in and around the Birmingham-Jefferson County area. Organic pollution from poultry and cattle feedlot operations has been implicated in the decline of native mollusks of the free-flowing Mulberry and Locust Forks in Cullman and Blount Counties (Hartfield 1991). The upper Black Warrior River basin is underlaid by the Black Warrior and Plateau coal fields. Surface coal mines have had a significant impact on the aquatic resources of the basin. Acidification, increased mineralization, and sediment loading from surface mines has resulted in the local exclusion of fish species (Mettee *et al.* 1989b). The enforcement of recent, more stringent, mining regulations has reduced the impact of mines in compliance with the new regulations. However, past mining practices, mines that are not in compliance, and abandoned mines may still be contributing sediment and chemical pollution to the streams in this portion of the basin.

The Alabama River drainage provided historic habitat for the fine-lined pocketbook, orange-nacre mucket, Alabama moccasinshell, southern clubshell, and ovate clubshell (Conrad 1834; Lea 1831, 1860). Dredging of the Alabama River channel began in 1878 and has continued to the present. Locks and dams on this river were completed in the 1960's, impounding more than 200 miles of the main channel from Claiborne, Alabama, to the confluence of the Coosa and Tallapoosa Rivers. Many Alabama River tributaries in the impounded portion of the drainage are

affected in their lower reaches by backwater. Of the species listed above, only the fine-lined pocketbook (Tatum Creek) and the southern clubshell (Bogue Chitto Creek) have been recently confirmed to continue to exist in the Alabama River drainage (Hanley, *in litt.*, 1990; Pierson 1991).

The upland combshell, southern combshell, fine-lined pocketbook, Alabama moccasinshell, Coosa moccasinshell, southern clubshell, southern pigtoe, ovate clubshell, and triangular kidneyshell were known from the Coosa River and tributaries (Hurd 1974). Recent records of these seven species in the Coosa River drainage are from the Conasauga River above Dalton, Georgia. Only one species, the fine-lined pocketbook mussel, has recently been collected in the Coosa River (Pierson 1991). Approximately 230 river miles of the Coosa River has been impounded for hydropower by a series of six dams. The Coosawattee River has been impounded in Murray and Gilmer Counties, Georgia, and a dam on the Etowah River in Bartow County, Georgia, has impounded a significant portion of that drainage.

Hurd (1974) noted the local extirpation of historically known mussel communities from several streams due to water quality degradation. These streams included the Conasauga River below Dalton, Georgia, the Chatooga River and Tallaseehatchee Creek. These waters polluted by textile and carpet mill wastes. He also noted that the unionid fauna had been extirpated, perhaps because of organic pollution and siltation, from the Etowah River, Talladega and Swamp Creeks, and from many of the lower tributaries of the Coosa River.

None of the 11 species considered in this review are known to have been collected in the Tallapoosa River. However, three species (fine-lined pocketbook, southern clubshell, ovate clubshell) are known from the Uphapee Creek and its tributary, Chewacla Creek, in the Tallapoosa River drainage (Jenkinson 1973, Pierson 1991). Uphapee Creek populations of the southern clubshell and the ovate clubshell have not been recently confirmed. Sand and gravel mining operations along Uphapee Creek have caused an increase in siltation and shifting sand in the stream channel (Pierson 1991). All three species, however, have been recently collected in Chewacla Creek (Pierson 1991).

The upland combshell, southern acornshell, fine-lined pocketbook, orange-nacre mucket, Alabama moccasinshell, Coosa moccasinshell, southern clubshell, ovate clubshell and triangular kidneyshell were known from the Cahaba River system (van der Schalie 1938, Baldwin 1973). Of these nine species, only the orange-nacre mucket has been recently found in the drainage (Pierson 1991). The most recent records of the southern acornshell, ovate clubshell and the Coosa moccasinshell were made by van der Schalie (1938). Van der Schalie also noted that the southern clubshell was the most abundant species of *Pleurobema* encountered in the Cahaba River drainage at that time. Baldwin (1973) reported an apparent decline in the numbers of southern clubshells in the Cahaba River since van der Schalie's earlier collections. In 1990, Pierson (1991) found only a few badly weathered and eroded southern clubshell shells from two locations in the Cahaba River drainage. Baldwin's (1973) collections of the upland combshell, fine-lined pocketbook, Alabama moccasinshell and triangular kidneyshell are the most recent records of these species in the drainage.

Water quality degradation is a major problem in the Cahaba River basin (Pierson 1991). There are 10 municipal wastewater treatment plants, 35 surface mining areas, one coalbed methane operation and 67 other permitted discharges in the Cahaba River Basin (ADEM, *in litt.*, 1990). Water quality in the drainage is also affected by siltation from surface mining, road construction, and site preparation for drilling operations. No major impoundments have been constructed in the main channel of the Cahaba River. However, the lowermost reach of the river has been affected by the impoundment of the Alabama River, and one headwater channel, the Little Cahaba River, has been impounded as a water supply for the City of Birmingham. Current plans to enlarge this impoundment have the potential to alter low water flows in the upper river.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* These species may be dislodged from the substrate, or taken in routine commercial mussel harvest. Commercial mussel harvest is expanding in Alabama, and Mississippi has recently passed legislation that may eventually result in the opening of selected State waters to commercial harvest of mussels. The small rivers and streams where these species occur have not traditionally supported a commercial mussel harvest. However, a dramatic increase in the price of shell and increased competition is attracting commercial shellers to these areas. As these species become more uncommon, the interest of scientific and recreational collectors increases. Populations of the mussels considered in this rule are generally localized, exposed during low flow periods, and are vulnerable to take for fish bait, curiosity, or vandalism.

C. *Disease or predation.* Diseases of freshwater mussels are virtually unknown. However, an unidentified disease may be implicated in a series of localized mussel dieoffs that occurred primarily in the Mississippi River basin during the past ten years. Juvenile and adult mussels are prey items for some invertebrate predators and parasites, and provide prey for a few vertebrate predators. Predation by native animals is a normal aspect of the population dynamics of a healthy mussel population. However, Neves and Odum (1989) have suggested that muskrat predation may jeopardize the recovery of some endangered mussels and might cause local extirpation of rare mussel species. Muskrat predation on mussels has been observed in all of the drainages where these 11 mussel species are found.

D. *The inadequacy of existing regulatory mechanisms.* None of these species are given any special consideration when project impacts are reviewed for compliance with existing State and Federal environmental laws and regulations. All the States where these species occur require scientific collecting permits. However, enforcement of these permit requirements is difficult.

E. *Other natural or manmade factors affecting its continued existence.* The ranges of these species have been fragmented by reservoirs, resulting in the isolation of populations within and among drainages. Isolation may also cause a decrease in genetic diversity and reduce the reproductive and recruitment potential. All extant populations of these species are susceptible to extirpation by a single catastrophic event, such as a chemical spill or major channel modification.

These endemic Mobile basin mussels would be adversely affected by the loss of the fish hosts essential to their parasitic glochidial stage. Although their fish hosts are unknown, the host is usually a specific component of the ecosystem where the mussel species is found. Impoundment, water quality degradation, and siltation have been identified as factors in the fragmentation, isolation and local extirpation of fish species in the Mobile River basin (Mettee *et al.* 1989a, 1989b; Boschung 1989; Pierson *et al.* 1989).

The rapid spread of the introduced asiatic clam, *Corbicula fluminea*, may impact the native bivalve mussels in the Mobile River basin. This species may actively compete with native mussels

for space and nutrients (Clarke 1988). Hurd (1974) was concerned that the introduction of the asiatic clam would disrupt the cyclical prey-predator balance between muskrats and native mussels. Prior to the introduction of the asiatic clam, muskrat predation on native mussels was probably naturally regulated by the migration of muskrats when the mussel populations declined. Hurd suggested the high reproductive and growth potential of asiatic clams might eliminate the need for muskrats to migrate when native mussel numbers decreased. Consequently, predation pressure would continue regardless of the abundance of native mussels. He was also concerned that large numbers of asiatic clams would allow the muskrat population to expand, thus increasing predatory pressure on native mussels. Recently, it has been noted that in many drainages the only shells found in muskrat middens are asiatic clams (Hartfield 1991, Pierson 1991).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these 11 species of freshwater mussels in determining to propose this rule. Based on this evaluation, the preferred action is to list the upland combshell (*Epioblasma metastriata*), southern combshell (*Epioblasma othcaloogensis*), Coosa moccasinshell (*Medionidus parvulus*), southern clubshell (*Pleurobema decisum*), dark pigtoe (*Pleurobema furvum*), southern pigtoe (*Pleurobema georgianum*), ovate clubshell (*Pleurobema perovatum*), and triangular kidneyshell (*Ptychobranchus greeni*) as endangered. It is also the preferred action to list the fine-lined pocketbook (*Lampsilis altilis*), orange-nacre mucket (*Lampsilis perovalis*), and the Alabama moccasinshell (*Medionidus acutissimus*) as threatened. Endangered status is appropriate for eight of these species because of the loss of habitat to impoundment, channelization and water quality degradation, and the increased vulnerability to take. The currently known populations of these species are fragmented, isolated, and threatened by channel modification projects and water quality degradation. The remaining three species are confronted with similar threats, but are more widely distributed throughout their historical range making threatened status more appropriate. Critical habitat is not proposed for these species for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is proposed to be endangered or threatened. The Service does not believe that the designation of critical habitat is presently prudent for any of these 11 mussel species. As discussed under Factor B in the Summary of Factors Affecting the Species, these mussels are subject to take by scientific and recreational collectors, and take incidental to commercial harvest. Publicity generated by the listing and publication of critical habitat descriptions and maps can be expected to make these mussels more vulnerable by exacerbating the potential for take. These species co-occur with commercial mussel species, and are indicative of high quality, relatively undisturbed mussel habitat. The identification of this habitat by the designation of critical habitat could attract the commercial mussel industry and increase incidental commercial take. Such taking is difficult to control, and even if intentional collection is avoided, listed mussels dislodged by the take of commercial species are likely to have reduced survival. Publication of critical habitat maps would only contribute to a difficult enforcement situation and increase the potential for unregulated take. All appropriate agencies have been notified of the location of these mussel species and the importance of protecting their habitat. Since there are potential negative effects, the Service concludes that critical habitat designation presently is not prudent for the upland combshell, southern combshell, Coosa moccasinshell, southern clubshell, dark pigtoe, southern pigtoe, ovate clubshell, triangular kidneyshell, fine-lined pocketbook, orange-nacre musket, and Alabama moccasinshell. Protection of these species' habitat will be addressed through the recovery process, the section 7 consultation process, and section 9 prohibitions on take.

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 practices. 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 ad requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm 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) 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 involvement is expected to include the Environmental Protection Agency through the Clean Water Act's provisions for pesticide registration and waste management actions. The Corps of Engineers will consider these species in project planning and operation and during the permit review process. The Federal Highway Administration will consider impacts of federally funded bridge and road construction when known habitat may be impacted. Continuing urban development within the drainage basins may involve the Farmers Home Administration and their loan programs. The Soil Conservation Service will consider the species during project planning and under their farmer's assistance programs.

The Act and implementing regulations found at 50 CFR 17.21 for endangered species, and 17.21 and 17.31 for threatened species set forth a series of general prohibitions and exceptions that apply to all endangered or threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the

Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered or threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23 and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purpose of the Act.

In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. Though these species coexist with commercial mussels, they are not currently the target of trade. Therefore, no permit requests are expected.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be 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 these species;

(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.

Final promulgation of the regulations on these species 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. Request 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 Complex Field Supervisor (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

A complete list of all references cited herein, as well as others, is available upon request from the Complex Field Supervisor (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Paul Hartfield (see **ADDRESSES** section).

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 § 17.11(h) by adding the following, in alphabetical order under "CLAMS", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
Acornshell, southern	*Epioblasma othcaloogensis*	U.S.A. (AL, TN, GA)	NA	E		NA	NA
Clubshell, ovate	*Pleurobema perovatum*	U.S.A. (AL, GA, MS, TN)	NA	E		NA	NA
Clubshell, southern	*Pleurobema decisum*	U.S.A. (AL, GA, MS, TN)	NA	E		NA	NA
Combshell, upland	*Epioblasma metastriata*	U.S.A. (AL, GA, TN)	NA	E		NA	NA
Kidneyshell, triangular	*Ptychobranchus greeni*	U.S.A. (AL, GA, TN)	NA	E		NA	NA
Moccasinshell, Alabama	*Medionidus acutissimus*	U.S.A. (AL, GA, MS)	NA	T		NA	NA
Moccasinshell, Coosa	*Medionidus parvulus*	U.S.A. (AL, GA, TN)	NA	E		NA	NA
Mucket, orange-nacre	*Lampsilis perovalis*	U.S.A. (AL, MS)	NA	T		NA	NA
Pigtoe, dark	*Pleurobema furvum*	U.S.A. (AL)	NA	E		NA	NA
Pigtoe, southern	*Pleurobema georgianum*	U.S.A. (AL, GA, TN)	NA	E		NA	NA
Pocketbook, fine-lined	*Lampsilis altilis*	U.S.A. (AL, GA)	NA	T		NA	NA

Dated: October 16, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-27818 Filed 11-18-91; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

RIN 1018-AB73

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Oregon Chub

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine the Oregon chub (*Oregonichthys crameri*) an endangered species throughout its range, pursuant to the Endangered Species Act of 1973, as amended (Act). The Oregon chub is a small cyprinid fish that formerly inhabited sloughs and overflow ponds throughout the Willamette River drainage in Oregon. The only remaining established populations are restricted to a 30 kilometer (18.6 mile) stretch of the Middle Fork Willamette River drainage. Remaining populations occur near rail, highway, and power transmission corridors and within public park and campground facilities. These populations continue to be threatened by (1) direct mortality from chemical spills; (2) competition or predation from nonindigenous fishes; and (3) loss of habitat from siltation, unauthorized fill activities, and changes in water level or flow conditions. This proposed rule, if made final, would extend the Act's protection to the Oregon chub. The Service seeks data and comments from the public on this proposed rule.

DATES: Comments from all interested parties must be received by January 21, 1992. Public hearing requests must be received by January 3, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Portland Field Station, 2600 S.E. 98th Avenue, suite 100, Portland, Oregon, 97266. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Russell D. Peterson, Field Supervisor, at the above address (503/231-6179 or FTS 429-6179).

SUPPLEMENTARY INFORMATION:

Background

Taxonomy and Life History Summary

The genus *Oregonichthys* has recently been recognized as taxonomically distinct from *Hybopsis* (Mayden 1989) and is thus the only endemic genus of fish in the State of Oregon. In the past, the common name "Oregon chub" has been used to refer to all *Oregonichthys* from both the Umpqua and Willamette River drainages. However, the Umpqua River form of *Oregonichthys* has been formally described (Markle *et al.* 1991) as a full species (Umpqua chub, *O. kalawatseti*) distinct from the *Oregonichthys* in the Willamette River drainage which retains the earlier name *O. crameri*. Use of the term "Oregon chub" therefore refers only to *O. crameri*.

The Oregon chub was formerly distributed throughout the lower elevation backwaters of the Willamette River drainage (Pearsons 1989). Known established populations of the Oregon chub are now restricted to a 30 kilometer (18.6 mile) stretch of the Middle Fork Willamette River in the vicinity of Dexter and Lookout Point Reservoirs in Lane County, Oregon. Small numbers of chubs (one to four fish) have also been observed in recent years on the lower North Santiam River which forms the boundary between Linn and Marion Counties and in Gray Creek within the Finley National Wildlife Refuge in Benton County. The size and viability of the potential Gray Creek and North Santiam River populations remain unknown.

Decline of the Oregon chub is attributed to changes in and elimination of its backwater habitats. The mainstem of the Willamette River was formerly a braided channel with numerous secondary channels, meanders, oxbows, and overflow ponds which may have provided habitat for the chub. However, the construction of flood control projects and revetments have altered historical flooding patterns and eliminated much of the braided channel pattern of the river (Corps of Engineers 1970, Li *et al.* 1987). The period of construction of flood control structures coincides with the period of decline. In addition, the introduction of nonindigenous species (e.g., bass, crappie, mosquito fish) may have exacerbated the species decline and limit the potential for the Oregon chub to expand beyond its present restricted range.

Habitat at all remaining population sites of the Oregon chub is typified by low- and zero-velocity water flow conditions, depositional substrates, and abundant aquatic vegetation. Life history information on the Oregon chub was derived primarily from observations made at the Shady Dell Pond in Lane County, Oregon (Pearsons 1989). Spawning occurred from the end of April through early August when water temperatures ranged from 16° to 28°C. Males greater than 25 mm in standard length (SL) were involved in spawning. Males over 35 mm SL defended territories in or near aquatic vegetation (mostly *Fontinalis antipyretica*). The number of eggs produced per female ranged from 147 to 671. During the May sampling period, adult Oregon chub (27 to 58 mm SL) fed most heavily on copepods, cladocerans, and chironomid larvae (Markle *et al.* 1991).

Petition and Listing History

On April 10, 1990, the Service received a petition to list the Oregon chub, *Oregonichthys crameri*, as an endangered species and to designate all waters and tributaries of the Middle Fork of the Willamette River from the base of Dexter Dam upstream to its confluence with the North Fork of the Middle Fork as critical habitat. The petition and supporting documentation were submitted by Dr. Douglas F. Markle and Mr. Todd N. Pearsons, both of Oregon State University. The petitioners submitted taxonomic, biological, distributional, and historic information and cited numerous scientific articles in support of the petition. The petition and accompanying data described the Oregon chub as endangered because of a 98 percent reduction in the range of the species and potential threats at existing known population sites. The Service made a 90-day finding that substantial information had been presented which indicated that the requested action may be warranted and published this finding in the **Federal Register** on November 1, 1990 (55 FR 46080). A status review was initiated at that time.

The Service included the Oregon chub on the December 30, 1982, Notice of Review for vertebrate wildlife as a category 2 candidate species (47 FR 58454). A category 2 candidate species is one for which information contained in Service files indicates that proposing to list is possibly appropriate but additional data is needed to support a listing proposal. The Oregon chub was also included in the September 18, 1985 (50 FR 37958) and January 6, 1989 (54 FR 554) Animal Notices of Review as a category 2 candidate. All inclusions on the Notice of Review have been under the earlier name *Hybopsis crameri*. Important new data on the ecology, distribution, and taxonomic status of

Oregonichthys crameri (Pearsons 1989, Markle *et al.* 1991) has provided the Service with substantial information to support this proposed rule. The best available scientific and commercial data have now been analyzed and evaluated as a result of the recent status review for the Oregon chub. The review included pertinent data available from both published and unpublished sources. Unpublished sources include solicited draft reports, letters, and personal contacts with agencies, organizations, and individuals. This proposed rule to list the Oregon chub as endangered constitutes the 12-month finding that the petitioned action is warranted, in accordance with section 4(b)(3)(B) of the Act.

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 the Oregon chub (*Oregonichthys crameri*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Based on a 1987 survey (Markle *et al.* 1989) and compilation of all known historical records, it is apparent that presently established populations of the Oregon chub (Dexter Reservoir, Shady Dell Pond and Buckhead Creek near Lookout Point Reservoir, and possibly Elijah Bristow State Park) represent a small fraction (estimated as 2 percent based on stream miles) of their formerly extensive distribution within the Willamette River drainage.

Based on the date of last capture at a site, Pearsons (1989) estimated that the most severe decline of the Oregon chub occurred during the 1950s and 1960s. Eight of 11 flood control projects in the Willamette River drainage were completed between 1953 and 1968 (Corps of Engineers 1970). Structural changes along the Willamette River corrider such as revetment and channelization, diking and drainage, and the removal of floodplain vegetation may also have removed or altered the slack water habitats of the Oregon chub. Other threats to remaining habitat include siltation from logging and construction activities; direct loss of habitat from unauthorized fill activities; and changes in water level or flow conditions from construction, diversions, or natural dessication.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be applicable.

C. *Disease or predation.* The establishment of nonindigenous species in Oregon may have contributed to the decline of the Oregon chub and limit the ability of the species to expand beyond its current restricted range. Nonindigenous fishes and amphibians (bass, crappie, mosquito fish, bullfrogs) are now a significant element of the pond and slough habitats of the Willamette River drainage. Many sites formerly inhabited by the Oregon chub are now inhabited by nonindigenous species (Markle *et al.* 1989). Of the sites where remaining populations occur, Shady Dell Pond and Buckhead Creek are not known to have nonindigenous fish populations and Elijah Bristow State Park had only a single juvenile largemouth bass (Oregon Department of Fish and Wildlife 1990). Though a number of otherwise similar habitats were sampled on Finley National Wildlife Refuge, the site where the single Oregon chub was collected was apparently the only site within the refuge where nonindigenous fishes were absent. Nonindigenous fish populations are present in Dexter and Lookout Point Reservoirs. However, the Oregon chub population in Dexter is relatively isolated and the population in Lookout Point "has diminished greatly since the 1950s" (Oregon Department of Fish and Wildlife 1990).

The specific interactions responsible for this relative mutual exclusivity in the distributions of the Oregon chub and nonindigenous species is not clear in all cases. for game fishes, such as bass, crappie, and bullhead, predation seems likely. However, the failure to find Oregon chub in waters also inhabited by mosquito fish (Dr. Douglas Markle, Oregon State University, pers. comm., 1990), is not understood. Nonindigenous fishes may also serve as sources of parasites and diseases. However, disease and parasite problems of the Oregon chub need further study.

D. *The inadequacy of existing regulatory mechanisms.* The Oregon chub is not currently listed under Oregon's Endangered Species Act. The Oregon chub is listed as a "sensitive" species by the Oregon Department of Fish and Wildlife (ODFW Adm. Rule 635–100–040). This designation is similar to the Service's category 2 designation in that it highlights the possibly precarious status of a species but provides no protection measures. The Oregon chub is listed as a sensitive species by Region 6 of the U.S. Forest Service and as a threatened species by the American Fisheries Society (Williams *et al.* 1990). All of these designations were made when the Oregon chub was believed to include populations from the Umpqua River drainage as well as those of the Willamette River drainage.

The Oregon chub has been considered a candidate species by the Service (54 FR 554). Candidate species receive no legal protection under the Act. Federal agencies whose projects may affect candidate species are not required to consult with the Service. This proposed rule, if made final, would extend the Act's protection to the Oregon chub.

E. *Other natural or manmade factors affecting its continued existence.* All known extant populations of the Oregon chub occur near rail, highway, and power transmission corridors and within public park and campground facilities. These populations are threatened by chemical spills from overturned truck or rail tankers, runoff or accidental spills of brush control chemicals, and overflow from chemical toilets in campgrounds. There is public pressure to develop additional sport fisheries in Lookout Point and Dexter Reservoirs for larger piscivorous game species than are now present. Because all remaining population sites are easily accessible, there also continues to be a potential for unauthorized introductions of nonindigenous species, particularly mosquito fish and game fishes such as bass and walleye.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. The distribution of the Oregon chub has declined to 2 percent of its historic range and remaining populations continue to be threatened by direct mortality from chemical spills, competition or predation from nonindigenous fishes and amphibians, and loss of habitat from siltation, unauthorized fill activities, and changes in water level or flow conditions. Based on this evaluation, the preferred action is to list the Oregon chub 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 presently determinable for this species.

The petitioners recommended that "all waters and tributaries of the Middle Fork of the Willamette River from the base of Dexter Dam upstream to its confluence with the North Fork of the Middle Fork be designated as critical habitat." Since the petition was received, one additional population of the Oregon chub has been located in this same vicinity but downstream of the Dexter Dam within Elijah Bristow State Park. Special management of a diversity of areas within the geographical range of a species is important for effective contingency planning for the conservation and recovery of a species. At present, the suitability of Elijah Bristow State Park and the sites of possible remnant populations on Finley National Wildlife Refuge and in the North Santiam River as habitats which might support the long-term survival of the species are not known. The Service provided funding to the Oregon Department of Fish and Wildlife to determine, during fiscal year 1991, the suitability of these habitats for the conservation of the Oregon chub. Therefore, the Service finds that designation of critical habitat is not presently determinable for this species. The Service will be able to effectively determine the critical habitat of the Oregon chub within 1 year from the date of this proposed rule. During the comment period on the proposed listing, the Service will also seek additional agency and public input on critical habitat, along with information on the biological status of and threats to the Oregon chub.

Available Conservation Measures

Conservaton 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 taking and harm 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 insure 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. Road construction activity, timber sales, and alterations of current campgrounds on the Willamette National Forest and water management practices of the Army Corps of Engineers at Dexter and Lookout Point Reservoirs may require section 7 consultations with the Service.

The Act and implementing regulations found at 40 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, delivery, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, to alleviate economic hardship in certain circumstances, and/or for incidental take in connection with otherwise lawful activities.

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 are sought particularly concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this 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 this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Any 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 Field Supervisor, Portland Field Station (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

Corps of Engineers. 1970. Flood plain information, Willamette River, Johnson, Kellogg and Mt. Scott Creeks. U.S. Army Engineering District, Portland, Oregon. 55pp.

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Markle, D.F., T.N. Pearsons, and D.T. Bills. 1989. Taxonomic status and distributional survey of the Oregon chub, *Oregonichthys crameri*. Final report to Oregon Department of Fish and Wildlife (Contract No. OSU 30–262–9714). 29pp.

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Oregon Department of Fish and Wildlife. 1990. Draft conservation agreement for the Oregon Chub in the Willamette Valley, Oregon. 18pp.
Pearsons, T.N. 1989. Ecology and decline of a rare western minnow: the Oregon Chub (*Oregonichthys crameri*). Masters Thesis, Oregon State University, Corvallis, Oregon. 89pp.
Williams, J.E., J.E. Johnson, D.A. Hendrickson, S. Contreras-Balderas, J.D. Williams, M. Navarro-Mendoza, D.E. McAllister and J.E. Deacon. 1990. Fishes of North America endangered, threatened, or of special concern: 1989. Fisheries 14(6):2–20.

Author

The primary author of this proposed rule is Dennis R. Lassuy, U.S. Fish and Wildlife Service (see ADDRESSES section); telephone 503/231–6179 or FTS 429–6179.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation 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; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under Fishes, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Chub, Oregon	*Oregonichthys crameri*	U.S.A. (OR)	Entire	E		NA	NA

Dated: October 15, 1991.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–27787 Filed 11–18–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 223
Tuesday, November 19, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for Pacific Northwest Region, OR and WA

AGENCY: Forest Service, USDA.

ACTION: Correction notice.

SUMMARY: This is a correction to the notice which appeared in the **Federal Register** on October 16, 1991 (56 FR 51875). This notice listed four newspapers as the principal newspapers for Columbia River Gorge National Scenic Area Manager decisions. This should be corrected to state that The Oregonian, (Portland, Oregon) will be the principal newspaper. Newspapers providing additional notice for Area Manager decisions will be the Hood River News, (Hood River, Oregon), The Dallas Chronicle, (Dallas, Oregon), Columbian, (Vancouver, Washington).

FOR FURTHER INFORMATION CONTACT: James L. Schuler, Regional Appeals Coordinator, Pacific Northwest Region, PO Box 3623, Portland, OR 97204–3623, phone: (503) 326–2322.

Dated: November 13, 1991.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 91–27732 Filed 11–18–91; 8:45 am]

BILLING CODE 3410–11–M

Draft Environmental Impact Statement and Revised Land and Resource Management Plan for the Francis Marion National Forest, Berkeley and Charleston Counties, SC

AGENCY: Forest Service, USDA.

ACTION: Notice of revised availability dates for draft and final environmental impact statements.

SUMMARY: The Francis Marion National Forest is revising the projected availability dates of the draft and final environmental impact statements (EIS) and Revised Land and Resource Management Plan (LRMP).

FOR FURTHER INFORMATION CONTACT: Al McDonald, Planning Staff Officer, (803) 765–5222, Francis Marion National Forest, 1835 Assembly Street, Room 333, Columbia, South Carolina 29201.

SUPPLEMENTARY INFORMATION: On June 19, 1990, a Notice of Intent (NOI) to prepare a draft and final EIS was published in the **Federal Register** (55 FR 24915–24916). The Notice of Intent indicated the draft EIS was scheduled to be filed with the Environmental Protection Agency and available for public review by December 1991. Due to the need for additional time to complete the analysis, it is now expected to be available by August 1992. The final EIS was scheduled to be completed by August 1992. It is now expected to be completed by June 1993.

Dated: November 13, 1991.

Marvin C. Meier,

Deputy Regional Forester.

[FR Doc. 91–27735 Filed 11–18–91; 8:45 am]

BILLING CODE 3410–11–M

Management Plan for the Klickitat National Recreation River, Klickitat County, WA

AGENCY: Forest Service, USDA.

ACTION: Revision of a notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service published a Notice of Intent to prepare an environmental impact statement in the **Federal Register** (54 FR 14370) on April 11, 1989, for the Lower Klickitat River in Klickitat County, Washington. This segment of the Klickitat River was designated a National Recreation River by the Columbia River Gorge National Scenic Area Act (Pub. L. 99–663, Nov. 17, 1986). That Notice of Intent is revised to show that the responsible official for this river planning has been hereby delegated to the Columbia River Gorge National Scenic Area Manager.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Stephan Mellor, Project Manager, Columbia River Gorge National Scenic Area, 902 Wasco Avenue, Hood River, Oregon 97031, telephone (503) 386–2333.

Dated: November 13, 1991.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 91–27733 Filed 11–18–91; 8:45 am]

BILLING CODE 3410–11–M

Management Plan for the White Salmon National Scenic River, Klickitat County, WA

AGENCY: Forest Service, USDA.

ACTION: Revision of a notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service published a Notice of Intent to prepare an environmental impact statement in the **Federal Register** (53 FR 43248) on October 26, 1988 for the Lower White Salmon River in Klickitat County, Washington. This segment of the White Salmon River was designated a National Scenic River by the Columbia River Gorge National Scenic Area Act (Pub. L. 99–663, Nov. 17, 1986). That Notice of Intent is revised to show that the responsible official for this river planning has been hereby delegated to the Columbia River Gorge National Scenic Area Manager.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Stephan Mellor, Project Manager, Columbia River Gorge National Scenic Area, 902 Wasco Avenue, Hood River, Oregon 97031, telephone (503) 386–2333.

Dated: November 13, 1991.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 91–27734 Filed 11–18–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 911064–1264]

Annual Surveys in Manufacturing Area

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In conformity with title 13, United States Code (Sections 131, 182, 224, and 225), I have determined that annual data to be derived from the surveys listed below are needed to aid

the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Gaylord Worden on (301) 763–5850.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by title 13, United States Code. These surveys will provide continuing and timely national statistical data on manufacturing for the period between economic censuses. The next economic censuses will be conducted in 1992. The data collected in these surveys will be within the general scope and nature of those inquires covered in the economic censuses.

Most of the following commodity or product surveys provide data on shipments or production; some provide data on stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all or a sample of establishments engaged in the production of the items covered by the following list of surveys.

These surveys have been approved by the Office of Management and Budget (OMB Control Numbers 0607–0392, 0607–0395, 0607–0476, 0607–0560, 0607–0625, and 0607–0650) in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

Annual Current Industrial Reports

MA22F—Yarn production
MA22K—Knit fabric production
MA22Q—Carpets and rugs
MA23D—Gloves and mittens
MA24T—Lumber production and mill stocks
MA28A—Inorganic chemicals
MA28B—Inorganic fertilizer materials and related products
MA28C—Industrial gases
MA28F—Paint and allied products
MA28G—Pharmaceutical preparations, except biologicals
MA31A—Footwear
MA32C—Refractories
MA32E—Consumer, scientific, technical, and industrial glassware
MA33A—Ferrous castings
MA33B—Steel mill products
MA33E—Nonferrous castings
MA33L—Insulated wire and cable
MA35A—Farm machinery and lawn and garden equipment
MA35D—Construction machinery
MA35F—Mining machinery and mineral processing equipment
MA35J—Selected industrial air pollution control equipment
MA35L—Internal combustion engines
MA35M—Air-conditioning and refrigeration equipment
MA35N—Fluid power products
MA35P—Pumps and compressors
MA35Q—Antifriction bearings
MA35R—Computers and office and accounting machines
MA36A—Switchgear, switchboard apparatus, relays, and industrial controls
MA36E—Electric housewares and fans
MA36F—Major household appliances
MA36H—Motors and generators
MA36K—Wiring devices and supplies
MA36M—Radios, televisions, and phonographs
MA36P—Communication equipment
MA36Q—Semiconductors and printed circuit boards
MA36R—Electromedical equipment
MA37D—Aerospace orders
MA38B—Selected instruments and related products

The following list of surveys represents annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed or do not report in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

M20A—Flour milling products
MQ22D—Consumption on the woolen system and worsted combing
MQ23A—Apparel (short form)
MQ23X—Sheets, pillowcases, and towels
MQ32A—Flat glass
MQ32D—Clay construction products
M32G—Glass containers
M33D—Aluminum producers and importers
M33J—Inventories of steel producing mills
MQ34E—Plumbing fixtures
MQ34H—Closures for containers
MQ34K—Steel shipping drums and pails
MQ36B—Electric lamps
MQ36C—Fluorescent lamp ballasts
M37G—New complete aircraft and aircraft engines, except military
M37L—Truck trailers

Annual Survey of Manufactures

The Annual Survey of Manufactures collects industry statistics such as total value of shipments, employment, payroll, work hours, capital expenditures, cost of materials consumed, supplemental labor costs, and so forth. This survey, while conducted on a sample basis, covers all manufacturing industries, including data on plants under construction but not yet in operation.

This survey has been approved by the Office of Management and Budget (OMB Control Number 0607–0449) in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

Annual Survey of Research and Development

A survey of research and development (R&D) activities is conducted. The major data obtained in this survey include total R&D expenditures by source of funds, the number of scientists and engineers employed, the amounts spent for pollution abatement and energy R&D and, for comparative purposes, the total net sales and receipts and the total employment of the company.

This survey has been approved by the Office of Management and Budget (OMB Control Number 3145–0027) in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

Annual Survey of Pollution Abatement Costs and Expenditures

The Annual Survey of Pollution Abatement Costs and Expenditures is designed to collect from manufacturers the total expenditures by industry and geographic area to abate pollutant emissions. The survey covers current operating costs and capital expenditures to abate air and water pollution and solid waste. This survey also will obtain the costs recovered from abatement activities.

This survey has been aprpoved by the Office of Management and Budget (OMB Control Number 0607–0176) in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

Annual Survey of Plant and Equipment Expenditures

The Annual Survey of Plant and Equipment Expenditures is designed to collect total actual and planned expenditures by industry for new plant and equipment. This survey covers the part of total nonfarm business not surveyed each quarter by the quarterly survey of plant and equipment expenditures.

The annual counterpart of the quarterly survey of plant and equipment expenditures will cover only those companies that do not report in the quarterly survey. Accordingly, there will be no duplication in reporting. Annual and quarterly expenditures and planned annual expenditures on new plant and equipment will be collected.

These surveys have been approved by the Office of Management and Budget (OMB Control Number 0607–0641) in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

The report forms will be furnished to firms included in these surveys. Copies

of survey forms are available on request to the Director, Bureau of the Census, Washington, DC 20233.

Conclusion

I have, therefore, directed that these annual surveys be conducted for the purpose of collecting the data as described.

Dated: November 12, 1991.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 91-27761 Filed 11-18-91; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Docket 71-91]

Foreign-Trade Zone 56—Oakland, CA; Application for Subzone Apple Computer Plant, Fremont, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Oakland, California, grantee of FTZ 56, requesting special-purpose subzone status for the electronic data processing and communications equipment manufacturing plant of Apple Computer, Inc. (Apple), located in Fremont, Alameda County, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 5, 1991.

Apple is an international producer of personal computers and related products with annual sales of over $5 billion. It has plants in the United States, the United Kingdom, and Singapore.

The Apple plant (160,000 sq. ft. bldg. on 20-acre site) is located at 46233 Warm Springs Boulevard, Fremont, California. The facility is used to produce electronic data processing and communication products including computers, word processors, printers, displays, telecommunications equipment, instruments, and other related products and components.

Some of the components are purchased from abroad including computer processing units, keyboards, disc drives, monitors, flat panel displays, printers, power supplies, motors, batteries, transformers, circuit boards, diodes, integrated circuits, resistors, capacitors, switches, optical fibers, recording media, plastic and rubber parts, glass envelopes, springs, fasteners, cable and other related computer components and supplies.

Zone procedures would exempt Apple from Customs duty payments on the foreign components used in products made for export. On domestic sales, the company wishes to be able to choose the duty rate on the finished products (0.0–10.0 percent). The rates on components range from 0.0 to 15.0 percent. The application indicates that zone savings will help improve the international competitiveness of Apple's Fremont plant.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Andrews, District Director, U.S. Customs Service, Pacific Region, P.O. Box 2450, San Francisco, CA 94126; and Lt. Colonel Stanley Phernambucq, District Engineer, U.S. Army Engineer District San Francisco, 211 Main Street, San Francisco, CA 94105.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 7, 1992.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

Dated: November 13, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-27807 Filed 11-18-91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 72-91]

Foreign-Trade Zone 76—Bridgeport, CT; Application for Subzone; NorMag, Inc., Steel Electric Transformer Parts Plant, Bridgeport, CT

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Bridgeport, grantee of FTZ 76, requesting special-purpose subzone states for the electric transformer parts manufacturing facility of NorMag, Inc. (NorMag) (subsidiary of Surahammars Bruks AB, Sweden), located in Bridgeport, Connecticut. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 5, 1991.

The NorMag manufacturing plant (25,000 sq. ft.) is located at 250 Bishop Avenue in the City of Bridgeport. The facility (50 employees) is used to manufacture distributed-gap, steel, electrical transformer cores, electrical steel toroids and cut-to-length steel shunts for the domestic market and export. The primary material used to produce the transformer parts is silicon electrical steel, which the company purchases from both domestic and foreign sources.

Zone procedures would exempt NorMag from Customs duty payments on the foreign materials used in its export production. On its domestic sales, the company would be able to choose duty rates that apply to finished transformer cores (3.0%), whereas the foreign-sourced silicon electrical steel is dutiable at either 5.8 or 7.0 percent. The applicant indicates that subzone status would help improve the company's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Victor G. Weeren, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 10 Causeway Street, suite 801, Boston, Massachusetts 02222–1056; and, Colonel Philip Harris, Division Engineer, U.S. Army Engineer Division New England, 424 Trapelo Road, Waltham, Massachusetts 02254–9149.

Comments concerning the proposed foreign-trade subzone are invited from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 7, 1992.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, 120 Middle Street, Bridgeport, Connecticut 06609.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street and Constitution Avenue, NW. Washington, DC 20230.

Dated: November 13, 1991.
John J. Da Ponte, Jr.
Executive Secretary.
[FR Doc. 91-27808 Filed 11-18-91; 8:45 am]
BILLING CODE 3510-DS-M

[Dockets 73-91 and 74-91]

Foreign-Trade Zone 9—Honolulu, HI; Applications for Expansion to Include Sites at Kihei (Maui County) and Hilo (Hawaii County), HI

Applications have been submitted to the Foreign-Trade Zones Board (the Board) by the State of Hawaii's Department of Business, Economic Development & Tourism, on behalf of the State of Hawaii, grantee of Foreign-Trade Zone 9, requesting authority to expand the zone to include a site in Kihei (Maui County), Hawaii, adjacent to the Kahului Customs port of entry (Doc. 73-91), and a site in Hilo (Hawaii County), Hawaii, within the Hilo Customs port of entry (Doc. 74-91). The applications were submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). They were formally filed on November 5, 1991.

On February 15, 1965, the Board authorized the State of Hawaii to establish a foreign-trade zone in Honolulu (Board Order 65, 30 FR 2377, 2/20/65). The zone project was relocated in 1982 (Board Order 188, 47 FR 18014, 4/27/82), and expanded in 1987 and 1988 (Board Order 359, 52 FR 33458, 9/3/87, and Board Order 399, 53 FR 47842, 11-28-88). The general-purpose zone currently consists of three sites within the City and County limits of Honolulu: Site 1 (17 acres) at Pier 2 in Honolulu Harbor; Site 2 (1,050 acres) at the James Campbell Industrial park, Ewa; and Site 3 (109 acres) at the Mililani Technology Park, Mililani.

The applicant is now requesting two additional sites, one on the Island of Maui and one on the Island of Hawaii. The application for the Maui site (Doc. 73-91) requests zone status for a 60-acre parcel within the Maui Research and Technology Park (330 acres), located in Kihei on Piilani Highway, at the intersection of Lipoa Street. The park is being developed for business/research and high technology business activity. The park is owned by the Maui R&T Partners, and the Maui Economic Development Board is the managing partner for the project.

The application for the Hilo site (Doc. 74-91) requests zone status for the Hilo Industrial Park site (31 acres) in the City of Hilo. It is adjacent to the Hilo International Airport complex. The site is being developed for storage, distribution/warehousing, and light industrial/manufacturing activity. A 20,000-square foot warehouse is planned for initial zone activity. The site is owned by the State of Hawaii and will be operated by the County of Hawaii.

No manufacturing approvals are being sought for either site at this time. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the applications and report to the Board. The committee consists of John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; George Roberts, District Director, U.S. Customs Service, Pacific Region, 335 Merchant, 228 Customhouse, Honolulu, Hawaii 96813; and Lt. Colonel James T. Muratsuchi, District Engineer, U.S. Army Engineer District, Honolulu, Building 230, Fort Shafter, Hawaii 96858-5440.

As part of its investigation the examiners committee will hold public hearings in each community. The hearing on the Maui application will be held at 9:30 a.m., December 11, 1991, at the Maui Council Chamber, Maui County Building, 200 South High Street, Wailuku, Hawaii 96793. The hearing on the Hilo application will be held on December 12, 1991, 9:30 a.m., at the State Building (Conference Rooms B and C), First Floor, 75 Aupuni Street, Hilo, Hawaii 96720.

Interested parties are invited to present their views at the hearings. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by December 4, 1991. Instead of an oral presentation written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary at any time from the date of this notice through January 13, 1992.

Copies of the applications are available for public inspection at the following locations:

Office of the Port Director, U.S. Customs Service, Kahului International Airport, Kahului, Hawaii 96732.

Office of the Port Director, U.S. Customs Service, Kuhio Street, P.O. Box 912, Hilo, Hawaii 96721.

Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: November 13, 1991.
John J. Da Ponte, Jr.
Executive Secretary.
[FR Doc. 91-27809 Filed 11-18-91; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

[A-549-502]

Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On October 22, 1990, the Department of Commerce published in the **Federal Register** the preliminary results of an administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand. The review covers shipments of pipe and tube to the United States by four exporters during the period March 1, 1987 through February 29, 1988. We preliminarily found that dumping margins exist.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioners, two respondents, and several interested parties. Based on our analysis of comments received, the dumping margins have changed from the preliminary results.

EFFECTIVE DATE: November 19, 1991.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Richard Weible, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793 or telefax (202) 377-1288.

SUPPLEMENTARY INFORMATION:

Background

On October 22, 1990, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand for the period March 1, 1987 through February 29, 1988 (55 FR 42596). The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Scope of the Review

Imports covered by the review are shipments of certain circular welded carbon steel pipes and tubes with an outside diameter of 0.375 inch or more but not exceeding 16 inches. These products, which are commonly referred to in the industry as "standard pipe" or "structural tubing," are hereinafter designated as "pipe and tube." Until January 1, 1989, this merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the Tariff Schedules of the United States, Annotated ("TSUSA"). Pipe and tube is now classifiable under item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090 of the Harmonized Tariff Schedule ("HTS"). As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

This review covers shipments made by four exporters of pipe and tube from Thailand to the United States during the period March 1, 1987 through February 29, 1988. The exporters covered by this review are Saha Thai Steel Pipe Co., Ltd. ("Saha Thai"), Siam Steel Pipe Import-Export Co., Ltd. ("Siam Steel"), Thai Hong Steel Pipe Co., Ltd. ("Thai Hong"), and Thai Union Steel Co., Ltd. ("Thai Union").

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results of the review. We received timely comments from the petitioners, the Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports and its individual members; two respondents, Saha Thai and Siam Steel; and certain interested parties, Intrepid Inc. ("Intrepid") and the Ad Hoc Coalition of Pipe Importers ("the Coalition"). In addition, on January 11, 1991, we held a hearing at which interested parties had the opportunity of presenting their views orally.

Comment 1: Petitioners argue that the Department erred in accepting Saha Thai's calculation of production costs, which include revenues from sales of flat bar made from coil scrap. Citing our notice of Final Determination of Sales at Less Than Fair Value; Titanium Sponge from Japan (49 FR 38687—October 1, 1984), where a similar situation occurred, petitioners claim that revenues from sales of flat bar should be excluded from Saha Thai's production costs because (a) flat bar is not a by-product of the manufacture of pipe and tube, but rather an intermediate product, since it is manufactured on separate machinery not used in producing pipe and tube, (b) the quantity of production of flat bar is decided by management independently from the production of pipe and tube, and (c) the production of flat bar is not an unavoidable consequence of manufacturing pipe and tube (Saha Thai could, like others, simply dispose of the steel scrap on the open market). Petitioners assert, therefore, that the Department should treat the scrap transferred to Saha Thai's flat-bar department as sold to that department and substitute this revenue for revenues from sales of flat bar in Saha Thai's production-cost calculations.

Saha Thai replies that (a) flat bar is produced on a machine directly adjacent to the slitting machine used in producing pipe and tube, (b) the production of flat bar is determined entirely by the production of pipe and tube, and (c) the excess material used for flat bar is an unavoidable consequence of slitting narrow steel coils for the production of pipe and tube.

Department's Position: We agree with petitioners. Flat bar is not a by-product of the manufacture of pipe and tube; rather, it is the product of further processing of the steel scrap resulting from the manufacture of pipe and tube. Therefore, the revenues from the scrap used in the production of flat bar should not be based on the price of the finished flat bar, but rather on the revenues from the sale of scrap to unrelated purchasers. We have adjusted Saha Thai's production costs accordingly, substituting for finished flat-bar revenues the revenues from scrap sales to unrelated purchasers in Saha Thai's production-cost calculations.

Comment 2: Petitioners assert that the Department should revise the adjustment for coil costs in the calculation of production costs for Saha Thai's galvanized threaded and coupled ("GTC") pipe. Petitioners claim that the adjustment should reflect the weight of the zinc actually on the pipe, rather than the entire weight of the zinc consumed in the production of this kind of pipe.

Saha Thai argues that an adjustment to its coil costs due to zinc usage is unnecessary since its cost calculations did not reflect the total weight of zinc consumed in the production of this pipe. Saha Thai claims that the quantity of zinc actually used to meet British Standard specifications was significantly greater than the level specified. The excess use of zinc went towards a thicker than standard zinc coating on the pipe and increased dross and ash. It notes that it included the thicker zinc coating in the weight adjustment, but did not include the weight of dross and ash in its coil weight adjustment, as evidenced by the difference between the average annual gross zinc usage and the average annual net zinc on the pipe.

Department's Position: We agree with respondent that an adjustment to coil costs is unnecessary because Saha Thai's zinc cost was not based, as petitioners allege, on the total quantity of zinc consumed in the production of GTC pipe. We reviewed Saha Thai's production cost calculations and ascertained that Saha Thai's weight adjustment is net of dross and ash, thereby reflecting the weight of the zinc actually on the pipe.

Comment 3: Petitioners contend that the Department erred in applying Saha Thai's production costs for British Standard Medium ("BS–M") pipe to pipe meeting British Standard Light ("BS–L"), British Standard Heavy ("BS–H"), and British Standard Special ("BS–S") specifications. Petitioners claim that the forming and galvanizing costs for BS–S, BS–L, and BS–H pipe differ from those of BS–M pipe. Petitioners request, therefore, that the Department use information already on the record of this proceeding to adjust production costs to account for differences in labor, factory overhead, and zinc costs between BS–H, BS–L, and BS–S pipe on the one hand, and BS–M pipe on the other hand.

Saha Thai does not disagree with petitioners' point in principle, but contends that the Department should not include labor and other costs in building up the zinc cost for each type of pipe because these costs are already included in labor and factory overhead costs.

Department's Position: We agree with petitioners and have used Saha Thai's verified information to adjust respondent's production costs for BS–L, BS–H, and BS–S pipe in order to reflect differences in labor, factory overhead, and zinc costs with BS–M pipe. We do, however, agree with Saha Thai that labor and other costs used in building zinc costs are already included in labor and factory overhead costs and, therefore, have made no adjustment for these costs.

Comment 4: Petitioners argue that the Department erred in comparing galvanized fence tubing ("GFT") sold by Saha Thai in the United States to BS–S or BS–L pipe sold in the home market, because there are significant differences in wall thickness and surface area to be galvanized between BS–S or BS–L pipe and GFT. Ideally, petitioners claim, the

Department should have compared GFT to BS–M pipe and made an adjustment to foreign market value for differences in physical characteristics of the merchandise ("diffmer"). Because, however, there is no information on the record that would allow the Department to calculate diffmer adjustments between GFT and BS–M pipe, petitioners suggest, as an alternative, that the Department use information already on the record of this proceeding and calculate diffmer adjustments to reflect differences in the quantity of zinc required to coat GFT and either BS–S or BS–L pipe.

Department's Position: We agree with petitioners. We compared GFT to either BS–S or BS–L pipe in similar sizes and made adjustments for differences in zinc coating, using Saha Thai's verified data for these products.

Comment 5: Petitioners contend that, because Saha Thai reported home-market sale prices on a theoretical-weight basis and U.S. sales on an actual-weight basis, the Department should convert Saha Thai's net home-market prices to an actual-weight basis using Saha Thai's verified conversion formula, in order to permit "apples-to-apples" comparisons.

Department's Position: We agree. For purposes of calculating Saha Thai's final dumping margins, we took into account Saha Thai's verified conversion factor and converted all home-market prices to an actual-weight basis.

Comment 6: Petitioners argue that the Department erred in calculating the indirect tax liability that the exported merchandise would have incurred, had it been taxed, by applying the rate of business tax in Thailand to the c. & f. or c.i.f. packed value of the merchandise sold in the United States, since merchandise sold in the home market does not normally incur ocean freight and marine insurance charges. Therefore, petitioners claim, the Department should have calculated the business tax after, rather than before, deducting ocean freight and marine insurance from United States price.

Saha Thai contends that the Department acted properly since the business tax is calculated in Thailand on gross sales receipts, including revenues related to transportation services provided by the seller. Saha Thai argues that the statute directs the Department to adjust United States price for the amount of tax that would have been charged on U.S. sales had they not been exempted from taxation by reason of exportation, and not for the amount of tax borne by home-market sales or by U.S. sales adjusted to some basis equivalent to that of home-market sales.

Department's Position: We agree with respondent. Section 772(d)(1)(C) of the Act provides that the Department must increase United States price by:

> [t]he amount of any taxes imposed in the country of exportation directly upon the exported merchandise (* * *) which have not been collected by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation.

The amount to be added to United States price is the amount of business tax that the government of Thailand would have assessed against the exported goods had they been subject to the tax. Because Thailand does not, in practice, assess a business tax against exports, this inquiry is unavoidably hypothetical. The most reasonable assumption we can make in imputing a business tax on U.S. sales, however, is that the government of Thailand would calculate such a tax using a tax base equivalent to that used for calculating the business tax on goods sold in the home market. Therefore, we essentially attempt to apply the home-market tax law to the export sales.

To the extent possible, we attempt to calculate the U.S. tax base in the manner most comparable to the tax base for home-market sales, including in the U.S. tax base the same level of expenses (rather than the same expenses) included in the home market tax base. Therefore, if the foreign law charges the business tax against an ex-factory price, we use a U.S. ex-factory price as the U.S. tax base. Conversely, if the home-market tax is charged against a delivered price, we should use a delivered U.S. price as the U.S. tax base. Such a U.S. tax base would include home-market inland movement charges, ocean freight, the value added to the merchandise in the United States, and so forth. Once the U.S. tax base is determined, we multiply it by the home-market tax rate and add the product to United States price. We then make a circumstance-of-sale adjustment to foreign market value for differences between the home-market and the U.S. business tax.

In the instant case, in accordance with the Department's policy, we have calculated the business tax on U.S. sales based on the c. & f. or f.o.b. value of the imported merchandise, as appropriate, because the Thai business tax is calculated on gross sales receipts.

Comment 7: Petitioners argue that Thai Union significantly understated its production costs for GTC pipe by (a) assuming that the entire weight of the zinc consumed in the production of pipe is equal to the amount of zinc specified in the applicable industry standard, yet also claiming a credit for zinc dross and ash; and (b) not including the cost of couplings. Petitioners contend that the Department should use information submitted on the record by Thai Union to adjust its production cost for GTC pipe, by calculating (1) the per-ton cost of zinc coating based on the respective quantities of zinc purchased and pipe produced in 1987, and (2) the cost of couplings based on average coupling costs and the quantity of couplings consumed per ton of GTC pipe produced. Petitioners have recalculated Thai Union's production costs for GTC pipe on that basis.

The Coalition and Siam Steel, while not contesting petitioners' claim that Thai Union understated its production costs for GTC pipe on both counts, contend that petitioners' calculations grossly overstate the cost differential between galvanized and black pipe far more than Thai Union understates it. The Coalition and Siam Steel suggest that the Department consider the responses of other verified pipe producers to determine what percentage of zinc is usually lost in the galvanizing process.

Department's Position: We agree with petitioners. Thai Union's production cost calculations seriously understate the quantity of zinc actually on GTC pipe and do not include the cost of couplings. Petitioners' calculation of the production cost for GTC pipe, based on information submitted at various times by Thai Union, is the best information currently available on the record. Therefore, we have substituted the GTC production cost calculated by petitioners for that submitted by Thai Union.

Comment 8: Petitioners suggest that Thai Union offered no conclusive evidence to support its claim that it incurred no credit expense on sales to the United States. Since the record shows that there was actually a lag time between shipment and receipt of payment, petitioners argue that the Department should impute credit costs to Thai Union's U.S. sales using, as best information otherwise available, the average lending rate for Thailand as reported in the International Financial Statistics of the International Monetary Fund ("IMF").

The Coalition supports Thai Union's claim that it incurred no credit costs on U.S. sales since all such sales were made based on at-sight letters of credit. In addition, the Coalition denies that there was a substantial time lag

between shipment and payment dates. Should the Department decide to impute a credit cost to Thai Union's U.S. sales, the Coalition argues that the Department offset any adjustment for differences in circumstances of sale with respect to credit expenses by short-term interest income. The Coalition suggests that the offset be apportioned to all U.S. sales based on the value of each sales observation, or by deriving a per-ton adjustment to the cost of credit. The Coalition also asks that the Department use the actual interest rate paid by Thai Union to calculate any possible credit expense rather than the national short-term interest rate, as petitioners suggest.

Department's Position: We agree with petitioners on both counts and have imputed a credit cost to Thai Union's U.S. sales using the methodology suggested by petitioners. The record shows that there was in fact a time lag between shipment and payment dates. We have not used the interest rate suggested by the Coalition since what the Coalition claims to be Thai Union's company-specific interest rate is really an approximation thereof based on the ratio of Thai Union's interest payments in 1987 over the company's total debt outstanding in that year. This methodology is inappropriate for calculating an interest rate on short-term debt, because it ignores the fact that total debt includes both long-term and short-term debt, and does not take into account such factors as grace periods or balloon payments which may also exist. Although the Department prefers to use data from a respondent company's actual borrowing experience in its credit cost calculations, in this case the lack of information on the record as to the exact nature and terms of Thai Union's debt leads the Department to believe that the IMF's country-wide lending rate, which is the maximum rate charged by commercial banks for short-term export-related loans, is a more objective indicator of short-term commercial credit costs in Thailand than the other alternative presented. Therefore, the Department has used the IMF's lending rate as the best information otherwise available (BIA) in this case, in accordance with section 776(c) of the Act.

Furthermore, we cannot accede to the Coalition's request that we offset any imputed credit expenses on U.S. sales with interest income, since we only address this type of offset when the credit expense adjustment is based on a respondent's actual borrowing experience. In the instant case, the adjustment for differences in credit expenses is based on an estimate, using the IMF's average short-term lending rate in Thailand as BIA.

Comment 9: Saha Thai argues that the Department acted improperly in denying the upward adjustment it claimed to purchase price, pursuant to section 772(d)(1)(D) the Act, in the amount of estimated countervailing duties collected upon entry of the subject merchandise in the United States.

Department's Position: Although the Department maintains its position that such an adjustment can only be made to offset countervailing duties *imposed* at time of entry (and not to offset a cash deposit for estimated countervailing duties), this issue is now moot as a result of the Department's publication of a notice of "Final Results of Countervailing Duty Administrative Review" with respect to the subject merchandise on June 4, 1991 in the Federal Register (56 FR 25407). In accordance with section 772(d)(1)(D) the Act, we have made an upward adjustment to purchase price to offset countervailing duties imposed as a result of that notice.

Comment 10: Saha Thai argues that the Department erred in assuming that the difference-in-merchandise adjustment ("diffmer") it claimed with respect to four-inch galvanized plain-end ("GPE") pipe in the fourth quarter of 1987 was a typographical error. Consequently, the Department's "carry over" to the fourth quarter of a diffmer used in previous quarters is erroneous and should be corrected in the final results of the administrative review.

Petitioners contend that the Department was correct in assuming that the diffmer reported by Saha Thai for four-inch GPE pipe in the last quarter of 1987 was a typographical error since the figure was substantially different from those of the previous quarters.

Department's Position: We agree with respondent. After checking the verification exhibits, we found that the diffmer originally reported by Saha Thai was a correct and verified figure, and have amended our calculations accordingly.

Comment 11: Saha Thai points out that it erroneously reported a GTC sale as a BTC sale in observation 4488 of its U.S. sales listing, and requests that the Department correct this error in the final results of administrative review.

Department's Position: We agree, and have done so.

Comment 12: Siam Steel argues, for reasons that it has requested be treated as proprietary, that the Department erred in refusing to verify its response and in using information submitted by Thai Union as the best information otherwise available.

Department's Position: We disagree with Siam Steel. We stated our reasons for refusing to verify the information submitted by Siam Steel in the proprietary version of our letter of June 8, 1989 to Willkie Farr & Gallagher, which is in the official record of this proceeding.

Comment 13: Intrepid argues that certain BS–L pipe is not within the scope of the merchandise covered by the order.

Department's Position: The Court of International Trade ("CIT") recently upheld the Department's determination that this product is within the scope of the antidumping duty order (see *Intrepid* v. *United States*, Ct. Int'l Tr., Slip Op. 91–64, July 26, 1991). Therefore, this issue is now moot.

Comment 14: The Coalition argues that the Department acted arbitrarily in denying Thai Union an upward adjustment to United States price for duty drawback payments because Thai Union allegedly failed to document the amount of such payments. The Coalition contends that Thai Union submitted specific information concerning these import duty rebates.

Department's Position: We disagree. As stated in the verification report, even though Department officials spent several days at verification discussing the issue of duty drawback with Thai Union officials, none of Thai Union's representatives was able to explain the documentation contained in Thai Union's duty drawback file, to reconstruct the figures reported in the response, or even to suggest how a duty drawback figure for each individual sale should be computed. During the verification, Department officials discovered that the tax certificate chart shown to them was incomplete and that there were additional shipments not appearing on the chart. When, after several days, Thai Union representatives were still unable to document the duty drawback payments the company had received, Department officials terminated the verification.

Comment 15: The Coalition observes that U.S. sales observations 374 and 386 were duplicated in the Department's printout of Thai Union's sales listing. Because these duplicate observations may have overstated the dumping margin, the Coalition requests that this problem be corrected.

Department's Position: We have corrected this problem in our final calculations.

Comment 16: The Coalition observes that the computer program used by the

Department in its preliminary margin calculations may not have operated as intended, since the Department's weighted-average home-market price for five-inch black plain-end pipe in September 1987 excluded two sales that were more similar and contemporaneous to the U.S. sales being compared. The Coalition requests that the Department's calculations be revised to take these two sales into account.

Department's Position: We disagree. We have carefully reviewed our computer program and stand by its accuracy. The home-market sales that the Coalition correctly observes were more similar and more proximate to the U.S. sales being compared were disregarded because they were made at prices that were below the cost of production.

Comment 17: The Coalition observes that the Department was inconsistent in its application of its "90 days back/60 days forward" rule in calculating Thai Union's preliminary margins. When there was no identical match in the home market within the 90/60 "window" for a U.S. sale, the Department, in some instances, went outside the window to find a matching home-market sale and, in other instances, used constructed value. The Department's home-market comparisons, the Coalition claims, were not always the most appropriate or proximate in time. The Coalition cites certain instances where use of constructed value would have resulted in a smaller differential between United States price and foreign market value.

Department's Position: Section 773(a)(1) of the Act directs the Department to determine foreign market value "at the time" of the U.S. sale. In implementing this provision, the Department has developed the so-called 90/60 day contemporaneity rule, whereby the Department uses, if possible, a monthly weighted average of home-market or third-country prices of such merchandise in the month of the U.S. sale. If there are no home-market or third-country sales in the month of the U.S. sale, we then use sales in the prior month. If there are still no sales, we then search, in the following order, the second month before, the third month before, the month after, and, finally, the second month after, the U.S. sale. (See, e.g., Final Results of Antidumping Duty Administrative Review; Certain Valves and connections, of Brass, for Use in Fire Protection Systems from Italy (56 FR 5388; February 11, 1991), comment 4; Final Results of Antidumping Duty Administrative Review; Certain Iron Construction Castings from Brazil (55 FR 26238; June 27, 1990), comment 15; Final Results of Antidumping Duty Administrative Review; Brass Sheet and Strip from the Republic of Korea (54 FR 33257; August 14, 1989), comment 3.)

We applied the 90/60 day rule to Thai Union's home-market sales, in a manner consistent with the Department's practice as described above. In certain instances, however, we were unable to find home-market sales within the 90/60 day "window." In those cases, we used constructed value as foreign market value, consistently with the Department's past practice.

While it may be true, as the Coalition contends, that for certain transactions, comparing purchase price with constructed value rather than with sales of similar, contemporaneous merchandise in the home market would have yielded lower dumping margins, the fact that different methodologies yield different results is not *per se* a reason for the Department to depart from its normal practice, which is based on neutral, objective, and predictable criteria not specific to any particular case.

Comment 18: The coalition alleges that an excessive delay in making disclosure, combined with a multiplicity of analytical errors, violated the Department's own regulations, deprived the Coalition's members and Thai Union of sufficient time to analyze the preliminary results of the review, and violated the Coalition's right to due process under the Constitution of the United States. The coalition also alleges that, because the Department's preliminary calculations contained numerous errors, it is likely that the Coalition would have discovered additional errors if given more time.

Department's Position: We disagree with the Coalition. The Department fulfilled its obligations *vis-a-vis* the Coalition when it published, in the **Federal Register**, notices of (a) opportunity to request an administrative review on March 8, 1988 (53 FR 7383); and (b) initiation of an administrative review on April 27, 1988 (53 FR 15083).

This review was ongoing for more than two years before the Coalition first identified itself as an interested party in this proceeding. Despite the fact that Thai Union ceased to be represented by legal counsel on September 17, 1990, over two months before the publication of the preliminary results of the review, and despite the fact that the verification reports for Thai Hong and Thai Union, issued on November 7, 1989, made it apparent that the preliminary results of the review would be based on the best information otherwise available, for Thai Hong entirely and for Thai Union in part, the Coalition waited until the fifth day after the publication of the preliminary results to file a letter of appearance as an interested party in this proceeding.

The members of the Coalition were given access to our preliminary calculations under administrative protective order ("APO") on December 5, 1990, three weeks before the case briefs were due and five weeks before the date of the hearing, well within the parameters normally observed by the Department. The Department agrees with petitioners' comment that it cannot be held responsible for a party's timing as to when to apply for disclosure of APO information to computer consultants. The fact that the Coalition chose to wait until December 6, 1990, after its counsel had received disclosure of this material, before applying for an APO on behalf of its computer consultants is not a matter over which the Department has any control. In any event, when the consultants' application was ultimately submitted, the Department acted expeditiously and approved the application within 12 days of filing.

As to the Coalition's claim that its due-process rights were violated because it was not given additional time to analyze and comment on data presented to it for the first time, the Department cannot agree. The Coalition's counsel previously represented Thai Union and, in that capacity, prepared the responses, attended the verification, and, therefore, was familiar with the case.

Finally, the Coalition's claim that, because the Department's preliminary calculations contained numerous errors, it is likely that the Coalition would have discovered additional errors if given more time is speculative and largely irrelevant. The errors in our preliminary calculations were very few. The only error that had a substantial impact on the dumping margin involved packing charges and was due to Thai Union's own error in not reporting packing charges on a per-ton basis on its computer tape and in not correcting that error. For purposes of these final results, we have converted U.S. packing costs to a per-ton basis before adding them to foreign market value.

Comment 19: The Coalition contends that the Department should correct certain keypunch errors made by Thai Union in its computerized sales listing.

Department's Position: We have corrected the keypunch errors in Thai Union's data before calculating our final results.

Comment 20: Intrepid, S am Steel, and the Coalition contend that the Department erred in not converting total packing costs reported by Thai Union on U.S. sales to a per-ton basis before adding these costs to foreign market value.

Department's Position: See response to Comment 18 *supra*.

Comment 21: Siam Steel and the Coalition argue that the Department should have matched U.S. sales of ASTM 3-inch BPE or BTC pipe sold during part of 1987 to home-market sales of BS–M 3-inch BPE or GTC, instead of using constructed value as foreign market value for those sales. The parties contend that the Department's use of constructed value in those cases is inconsistent, since in other cases the Department matched one-inch BTC (ASTM) pipe sold in the United States to one-inch GTC (BS–M) pipe sold in the home market.

Department's Position: We disagree. We matched one-inch BTC (ASTM) pipe sold in the United States to one-inch GTC (BS–M) pipe sold in the home market because the home-market sales in questions were contemporaneous to the U.S. sales, as required by section 773(a)(1) of the Act, which directs the Department to determine foreign market value "at the time" of the U.S. sale. By contrast, we found no sales of 3-inch pipe in the home market that met the Department's definition of contemporaneity (*i.e.*, no home-market sales of 3-inch pipe were less than 90 days prior or 60 days later than U.S. sale being compared). Therefore, the Department used constructed value as foreign market value in those cases. This is consistent with the Department's past practice in other administrative reviews, as discussed in the response to Comment 17 *supra*.

Comment 22: Siam Steel and the Coalition argue that the Department's decision to exclude a substantial number of Thai Union's hone-market sales based on its analysis that those sales were made below cost was contrary to law, since the Department allegedly ignored the three-pronged test set forth in section 773(b) of the Act, according to which home-market sales may be disregarded in calculating foreign market value only if (1) a substantial volume of sales are made at below-cost prices over an extended period of time, and (2) sales of the subject merchandise must be at prices which do not permit the recovery of all costs within a reasonable period of time in the normal course of trade [19 U.S.C. § 1677b(b)] (emphasis added).

Siam Steel and the Coalition allege that the Department relied on an overly mechanistic application of its "ten-percent" test in disregarding all below-cost sales because they constituted over 10 percent of all home-market sales. These parties contend that the Court of International Trade, *Timken Co.* v. *United States ("Timken")* has upheld the 10 percent test only insofar as it demonstrates that a substantial volume of home-market sales were below cost, but rejected it for purposes of demonstrating that such below-cost sales occurred "over an extended period of time" and did not permit "recovery of all costs within a reasonable period of time in the normal course of trade" (673 F. Supp. 495, Ct. Int'l Trade 1987). These parties claim there is no evidence on the record that the Department even addressed the issues of whether Thai Union's below-cost sales had occurred over an extended period of time and whether those sales had been made at prices permitting the recovery of all costs within a reasonable period of time in the normal course of trade.

Furthermore, Siam Steel and the Coalition argue, the Department applied its ten-percent test in a questionable manner. These parties claim that almost all of Thai Union's below-cost sales occurred during the December 1986 to February 1987 time frame, which was outside of the review period. In addition, none of these sales were used in fair-value comparisons since there was always a more proximate or more similar home-market sale available for comparison with U.S. sales. Therefore, Siam Steel and the Coalition believe that the below-cost sales in question were not germane to the Department's ten-percent test.

Alternatively, Siam Steel and the Coalition suggest, home-market sales made in the December 1986 to February 1987 time frame should be compared not to a period-wide cost of production but rather to quarterly production costs, because coil costs, which account for two-thirds to three-quarters of the total cost of production, increased throughout the review period.

Should the Department maintain its position that Thai Union's below-cost sales had occurred over an extended period of time, Siam Steel and the Coalition further contend that Thai Union earned a profit in excess of the statutorily mandated eight percent during the period of review, a fact they suggest indicates that Thai Union's prices allowed for recovery of all costs during a reasonable period of time in the normal course of trade.

Petitioners reply that the Department correctly excluded Thai Union's below-cost sales from its fair-value comparisons, although it was unclear whether the Department implemented the two-pronged test outlined in the statute. Petitioners affirm that, after correcting the inaccuracies in Thai Union's cost of production calculation detailed *supra*, not only were a substantial majority of Thai Union's home-market sales made at less than cost, these below-cost sales met the ten-percent test in each of the months covered by the review period. In *Toho Titanium Co., Ltd.* v. *United States* ("*Toho*"), the Court of International Trade upheld the Department's finding that sales were below cost over an extended period of time when they occurred in each month of a six-month period of review (657 F. Supp. 1280, Ct. Int'l Trade 1987). Applying the Court's reasoning in *Toho* to the instant case, petitioners state, Thai Union's below-cost sales clearly occurred over a substantial period of time. With regard to the third prong of the statutory test, petitioners argue that the assertion made by Siam Steel and the Coalition that Thai Union can be deemed to have recovered its costs over a reasonable period of time in the normal course of trade if the company made a profit on overall home-market sales during the period of review fails to comport with either the language of the statute or *Timken*. According to petitioners, the statute specifically addresses whether the prices charged on below-cost sales will permit recovery of costs, not whether the seller's overall operations or home-market sales were profitable. The fact that other sales made at prices above the cost of production may have resulted in the company's overall profitability has no bearing on whether those sales that were below the cost of production meet the statutory test and need to be disregarded. Petitioners argue that Thai Union's revenue shortfall on its below-cost sales was of such magnitude as not to allow recovery of costs on those sales within a reasonable period of time and in the normal course of trade.

Department's Position: We agree with petitioners. Using Thai Union's revised cost of production figures, we found that home-market sales were below cost over an extended period of time. In fact, there were such sales during each of the 17 months covered by the review period. By any standard, even if the Department were to accept the contention put forward by Siam Steel and the Coalition that Thai Union's home-market sales made during the December 1986 to February 1987 time frame were not to be used in fair-value comparisons or compared to the cost of production, a substantial volume of sales were made

at below-cost prices over an extended period of time. Therefore, the issues of whether the December 1986 through February 1987 home-market sales were below cost and whether the Department should compare those sales to a production cost specifically calculated for the first quarter of 1987 are moot.

With respect to the third prong of the statutory test, that of whether Thai Union's below-cost home-market sales were made at prices permitting the recovery of all costs within a reasonable period of time in the normal course of trade, we agree with petitioners that the statutory test is not whether the seller's overall operations or home-market sales were profitable, but rather whether the prices charged on below-cost sales permit recovery of all costs within a reasonable period of time in the normal course of trade. (See, *Timken, supra*, 673 F. Supp. @ 516). In the instant case, Thai Union's own submissions show that home-market sales of the subject merchandise comprised a very small portion of the company's overall sales. In addition to the subject merchandise, Thai Union produces and sells steel structural channels, steel strapping and strapping coil, square and rectangular steel structural pipe, and round furniture steel tubing. In fact, Thai Union failed to provide the Department with quarterly product-specific production costs, even though it was asked to do so both in the original cost questionnaire and the deficiency questionnaire. Thai Union repeatedly has stated, both in its questionnaire responses and during verification, that it was unable to provide quarterly costs of production, much less quarterly costs specific to the different grades and sizes of pipe and tube it manufactures, because it does not keep records of production costs to that level of detail. Rather, Thai Union provided the Department with a single annual average cost of production applicable to all grades and sizes of the merchandise under review. In light of the large revenue shortfall incurred by Thai Union on its below-cost sales of the subject merchandise, we have concluded that Thai Union's below-cost sales did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. We have, therefore, continued to disregard those sales in our price-to-price comparisons.

Final Results of the Review

After analysis of the comments received, we determine that the following weighted-average margins exist for the period March 1, 1987 through February 29, 1988:

Manufacturer/producer/exporter	Margin (percent)
Saha Thai	[1] 0.49
Siam Steel	38.51
Thai Hong	38.51
Thai Steel	[2] 15.80
Thai Union	38.51
All Other Manufacturers/Producers/ Exporters	38.51

[1] the dumping margin for Saha Thai is *de minimis*.
[2] Company not covered by this review; margin carried over from the antidumping duty order.

The Department shall determine, and the United States Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

As provided by section 751(a)(1) of the Tariff Act, the Customs Service shall require a cash deposit of estimated antidumping duties based on the above margins for these firms. Because the dumping margin for Saha Thai is *de minimis*, the Customs Service shall waive the deposit requirement for all entries of pipe and tube from that producer during the review period. For any shipments of this merchandise produced or exported by the remaining known producers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the antidumping duty order for those firms. For any future entries of this merchandise from a new producer and/or exporter not covered in the original investigation or this administrative review, whose first shipment occurred after February 29, 1988, and which is unrelated to the reviewed firms or any previously investigated firm, the Customs Service will require a cash deposit of 38.51 percent *ad valorem*.

These deposit requirements are effective for all shipments of pipe and tube from Thailand which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act [19 U.S.C. 1675(a)(1)] and section 353.22 of the Commerce Department's regulations (19 CFR § 352.22).

Dated: October 31, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-27810 Filed 11-18-91; 8:45 am]

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[A-469-007]

Final Results of Antidumping Duty Administrative Review: Potassium Permanganate From Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 19, 1991.

FOR FURTHER INFORMATION CONTACT: Tracey E. Oakes or Roy A. Malmrose, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 377-3174, or 377-5414, respectively.

PERIOD OF REVIEW: January 1, 1989, through December 31, 1989.

FINAL RESULTS:

Background

On August 16, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 40865) the preliminary results of this administrative review.

On August 16, 1991, Industrial Quimica del Nalon (IQN) requested that the Department hold a public hearing to discuss the Department's preliminary results. Case briefs and rebuttal briefs were submitted on August 27 and September 30, 1991, respectively, and on October 8, 1991, the Department held a public hearing.

The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by this review are shipments of potassium permanganate. Potassium permanganate is an inorganic chemical produced in free-flowing, crystal technical, technical, and pharmaceutical grades. This merchandise is currently classifiable under item 2841.60.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

United States Price

We based United States price on purchase price because all sales to the first unrelated purchaser took place prior to importation into the United States in accordance with section 772(b) of the Act and because exporter's sales price (ESP) methodology was not indicated by other circumstances. We calculated purchase price based on the

packed, f.o.b. price to the unrelated customer in the United States. We made deductions, where appropriate, for foreign inland freight, insurance, and foreign handling charges (including port taxes and customs fees) in accordance with section 772(d)(2) of the Act. Because value-added tax (VAT) was paid on home market sales and U.S. sales were exclusive of VAT, we added to the selling price the amount of VAT that would have been collected if the merchandise had not been exported.

IQN requested that we exclude, or make a special adjustment for, sales to the U.S. distributor made pursuant to the distributor's annual bid commitments to municipalities in the United States. Because there exists no basis under the law for such an exclusion or adjustment, we rejected the request. (See Comment 4.)

Foreign Market Value

In order to determine whether there were sufficient sales of potassium permanganate in the home market to serve as the basis for calculating foreign market value (FMV), we compared the volume of home market sales to the volume of third country sales, in accordance with section 773(a)(1) of the Act. We determined that sales in the home market are the most appropriate basis for calculating FMV.

We calculated FMV based on packed, f.o.t. or delivered prices to wholesalers/distributors in Spain. We made deductions, where appropriate, for foreign inland freight and brokerage charges. For all sales, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

We made adjustments, where appropriate, for differences in circumstances of sale, including VAT, credit, technical services, trade show and advertising expenses. We recalculated advertising and trade show expenses to reflect the amount of the expense proportional to sales to wholesalers/distributors as a share of total sales.

We denied the level-of-trade adjustment requested by IQN and have compared U.S. sales to home market sales made at the same level of trade. (See Comment 3.)

Respondent requested an adjustment to home market price for the difference in quantities sold in the U.S. and home markets. We have granted the adjustment at the 10 MT discount level. (See Comment 2.)

In addition, where appropriate, we made further adjustments to FMV for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57. Because IQN included fixed costs in its calculation of expenses associated with differences in merchandise, we recalculated these expenses exclusive of fixed costs. No other adjustments were claimed or allowed. (See Comment 1.)

Interested Party Comments

Comment 1: Respondent contends that in the preliminary results, the Department erred in denying respondent's total difference in merchandise adjustment. Although the Department included all variable expenses in the difference in merchandise adjustment, respondent requests that the Department include depreciation and maintenance of certain machinery used to produce the U.S. and home market products. Respondent claims that although depreciation and maintenance costs represent fixed costs, the following circumstances warrant the inclusion of certain fixed costs.

Respondent contends that different grades of potassium permanganate are sold in the home market and the U.S. market. Respondent explains that the production of the different grades of potassium permanganate is identical up to a specific point (the split-off point) in the production process. Below the split-off point, however, the products sold in the U.S. and home markets each undergo a separate production process. Respondent asserts that the U.S. product requires the use of a "disperser" to produce the specific grade of merchandise sold in the U.S. market. Similarly, the home market product requires the use of a "crystallizer" to produce the specific grade of merchandise sold in the home market. Respondent states that the disperser and the crystallizer change the physical nature of the product in order to produce the specific grade of merchandise sold in each market. Therefore, respondent argues that the Department should include all expenses, fixed and variable, associated with the crystallizer and the disperser in the difference in merchandise adjustment.

Petitioner contends that the Department properly denied the inclusion of depreciation and maintenance costs in the difference in merchandise adjustment. Relying on Television Receivers, Monochrome and Color, from Japan, 56 FR 34177 (1991), petitioner states that the Department considers only variable costs to calculate the difference in merchandise adjustment, and that depreciation and maintenance of machinery represent fixed costs. Furthermore, petitioner argues that the fixed costs claimed by IQN do not represent costs resulting from physical differences in merchandise. Petitioner points out that IQN used two different methods to calculate the per unit depreciation expense for the U.S. and home market equipment. Petitioner claims that because the total depreciation costs for each machine are approximately equal, any cost differential results from the different methods employed by IQN to allocate the per unit costs for each piece of machinery. Furthermore, petitioner states that IQN has not adequately demonstrated that the expenses associated with the crystallizer are not joint expenses because a crystallizer is also used in the production process above the split-off point to produce all grades of potassium permanganate.

Department Position: It is the Department's practice to make a difference in merchandise adjustment on the basis of differences in materials, labor, and variable factory overhead costs attributable to physical differences in merchandise. (See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al.; Final Results of Antidumping Duty Administrative Review; 56 FR 31692, 31714 (1991); Tubeless Steel Disc Wheels from Brazil; Final Results of Antidumping Duty Administrative Review; 55 FR 26724 (1990). Fixed factory overhead costs are not included in the adjustment because the costs in question would be incurred regardless of whether the product was produced during the period of review.

Consistent with our practice, we have based the difference in merchandise adjustment on differences in materials, labor, and variable overhead costs attributable to differences in merchandise, as claimed by respondent. We excluded from the calculation of the difference in merchandise adjustment depreciation and maintenance expenses attributable to the crystallizer and the disperser. Depreciation and maintenance costs on machinery would have been incurred regardless of whether the product was produced during the period of review.

Moreover, with regard to respondent's calculation of per unit fixed costs, we note that the respondent employed two different allocation methodologies to determine the per unit fixed costs in the home market and U.S. market. The inconsistent methodologies, rather than physical differences, could account for differences in costs. Therefore, even if an adjustment was allowable, respondent has not demonstrated that it is entitled to the adjustment.

Comment 2: Respondent contends that in the preliminary decision, the Department erred in disallowing an adjustment for differences in quantities sold. Respondent requests that the Department grant a differences in quantities sold adjustment equivalent to the home market discount at the 15 MT discount level. In the alternative, IQN requests a difference in quantities sold adjustment at the 10 MT discount level.

First, respondent avers than an adjustment is warranted because IQN granted quantity discounts of at least the same magnitude on greater than 20 percent of home market sales of such or similar merchandise. Respondent contends that IQN granted quantity discounts on at least 30.56 percent of home market sales at the 10 metric ton discount level. IQN maintains, however, that the Department should adjust downward all home market sales using the 15–20 metric ton discount rate. Respondent argues that only by reducing the price of home market sales by the 15–20 metric ton discount rate can the majority of U.S. sales weighing 19 metric tons be fairly compared to home market sales.

Second, respondent argues that the Department's requirement of strict adherence to the price schedule is overly restrictive and inconsistent with commercial reality. Respondent disputes the Department's statement in the preliminary results that the respondent failed to conform consistently to the discount schedule on home market sales at the same level of trade. Respondent recognizes that some deviations from the discount schedule exist. Respondent emphasizes, however, that the deviations from the discount schedule were on only four out of twenty-four sales.

Third, respondent states that a preponderance of information demonstrates that a direct correlation between price and quantities sold during the period of review exists. Respondent contends that the Department's comparisons between sales in the United States of 19 MT to sales in the home market of 1 or 5 MT are patently unfair. Respondent urges the Department to recognize that comparisons of substantially different quantities exist. To offset the effect of comparisons of non-comparable quantities, respondent suggests that the Department either allow an adjustment for differences in quantities sold or use a quarterly or semi-annual average of FMV to compare to each USP.

Finally, respondent points out that the petitioner grants quantity discounts for large quantity purchases.

In the preliminary results, petitioner contends that the Department correctly denied the claimed quantity discount adjustment at the 15 metric ton and the 10 metric ton level because IQN did not adhere to its discount schedule. In support of its contention, petitioner points out that respondent (1) failed to adhere to the discount schedule on five out of 24 distributor sales, and (2) failed to adhere to the discount schedule on 42 out of 153 retailer and enduser sales. Petitioner claims that IQN's failure to adhere to the discount schedule with respect to endusers and retailers is particularly significant because 19 CFR 353.55 refers to adherence to price lists in the "market under consideration." In addition, petitioner states that the Department must reject respondent's claim of a quantity discount adjustment at the 15 metric ton level because IQN did not grant a quantity discount at the 15 metric ton level on 20 percent or more of such or similar merchandise sold in the home market.

The petitioner also opposes respondent's proposal to compare a quarterly or semi-annual average of FMV to each USP. Petitioner contends that the Department should reject the respondent's proposed methodology because such a methodology is merely a "back door way of avoiding the requirements of the quantity discount regulation." Finally, petitioner argues that its own discount policy is irrelevant to the issue of whether IQN satisfied the requirements of 19 CFR 353.55.

Department Position: Section 353.55(a) of the Department's regulations provides that the Department normally will compare sales of comparable quantities of merchandise. If the Department finds that sales of comparable quantities do not exist, § 353.55(a) directs the Department to make a reasonable allowance for differences in quantities sold in conformity with the methods described in § 353.55(b).

According to the requirements of section 353.55(b)(1), the section relied on by respondent, respondent must demonstrate that (1) quantity discounts were granted in the comparison market, (2) the discounts were of at least the same magnitude, and (3) the discounts were granted on at least 20 percent by quantity of such or similar merchandise sold in the comparison market. In addition, to ensure that the discounts are not a function of client-specific negotiations, we require the respondent to demonstrate that the discounts are applied on a uniform basis and are available to all customers. The typical means for a claimant to demonstrate uniformity and availability is by demonstrating adherence to an established price list.

We find in this case, that sales made in the home market were not made at quantities comparable to sales made in the U.S. market. Therefore, we must determine whether respondent satisfies the criteria set forth in § 353.55(b)(1) to qualify for a difference in quantities sold adjustment.

Respondent has failed to meet the requirements of 19 CFR 353.55(b) with respect to quantity discounts at the 15 MT discount level because respondent granted quantity discounts at the 15 MT discount level on less than 20 percent on sales of such or similar merchandise in the home market. Therefore, we have denied an adjustment for differences in quantities sold at the 15 MT discount level.

Respondent, however, has satisfied the requirements of 19 CFR 353.55(b) at the 10 MT discount level. The record demonstrates that on 30 percent of home market distributor sales, respondent granted quantity discounts at the 10 MT discount level. We recognize that in the preliminary results, we rejected respondent's request for a difference in quantities sold adjustment at the 10 MT discount level because on some sales, respondent did not adhere to the discount schedule. Further review of the arguments and the information submitted, however, revealed that most of the "non-conforming" sales resulted from the rounding of numbers, which is not indicative of a failure to adhere to the discount schedule. Therefore, because all distributors were eligible for the quantity discounts, and, except for minor deviations, the respondent substantially adhered to the discount schedule, we have granted respondent's request for an adjustment for differences in quantities sold at the 10 metric ton level.

Contrary to petitioner's argument, respondent's discount policy with respect to enduser and retailer sales is irrelevant to our analysis of respondent's compliance with 19 CFR 353.55 because (1) enduser and retailer sales were not used in determining FMV, and (2) commercial reality suggests that a manufacturer would not undercut its distributors' price by granting discounts of the same magnitude to retailers and endusers.

Comment 3: Although respondent agrees that the Department correctly compared U.S. wholesaler/distributor (distributor) sales to distributor sales in the home market, respondent contends that the Department incorrectly denied respondent's request for a level of trade adjustment. Specifically, respondent

claims that an extra level of trade exists in the U.S. market that does not exist in the home market. Respondent states that the extra level of trade occurs between the first unrelated buyer and the enduser in the U.S. market. Respondent claims that either IQN or the U.S. importer incurs additional expenses due to the "extra level of trade" in the U.S. market. To quantify the adjustment, respondent urges the Department to decrease the FMV by either the amount of the standard mark up on sales between distributors and endusers in the home market or the amount of petitioner's resale allowance for resales by distributors. Respondent relies on *American Permac, Inc., et al.* v. *United States*, 703 F. Supp. 97 (CIT 1988) and *Silver Reed America, Inc.*, v. *United States*, 699 F. Supp. 291 (CIT 1988) to support its position.

Petitioner contends that the Department properly adjusted for any differences in the level of trade by only comparing U.S. distributor sales to home market distributor sales. Furthermore, petitioner argues that no further adjustment is warranted because (1) no difference in the level of trade exists between the first unrelated buyers (distributors) in the home market and in the U.S. market, (2) the facts on the record do not indicate that the U.S. distributor is at a different level of trade than other U.S. distributors, (3) the number of levels of trade in each market is irrelevant because the Department is only comparing sales at the same level of trade, (4) respondent failed to adequately support the amount of the adjustment claimed with documentary or other supporting evidence, and (5) no evidence on the record supports respondent's proposal to use petitioner's resale allowance as a proxy for the level of trade adjustment.

Department Position: Section 353.58 of the Department's regulations states that comparisons will normally be made at the same level of trade. To determine whether sales are made at the same level of trade, the Department looks to the type and the function of the purchaser in the chain of commerce. Our analysis of level-of-trade differences does not extend beyond the first unrelated buyer in each market.

In the U.S. market, the first sale to an unrelated buyer is to a distributor. In the home market, the first sale to an unrelated buyer is to the distributor. Respondent agrees that the first unrelated buyer in each market is a distributor. As in the preliminary results, we have compared sales to distributors in the U.S. to sales to distributors in the home market. There are no intervening parties between the respondent and the first unrelated buyer in either market. Therefore, we have compared sales at the same commercial level of trade in conformity with 19 CFR 353.58.

Because we have compared only sales to distributors in both markets, no consideration of a level of trade adjustment is warranted under the facts of this case. Respondent's argument is simply that the structure of the two markets differs. The difference in market structure occurs in the chain of commerce after the first unrelated buyer in each market. Because we have compared sales to the first unrelated buyer in both markets, any difference in market structure that occurs after the level of our comparison sales does not and cannot affect our analysis.

Furthermore, respondent's suggested methods of quantifying the "level of trade adjustment" do not comport with either the Department's practice of logic. Respondent would have the Department subtract from the FMV the mark up between distributor and enduser sales in the home market. Neither the record nor commercial reality, however, demonstrates that selling expenses between a manufacturer and a distributor would be equivalent to selling expenses between a distributor and an enduser. Therefore, we have denied respondent's request for a level of trade adjustment.

Comment 4: Respondent requests that the Department either (1) exclude from the U.S. sales listing sales made to municipalities under bid contracts, or (2) allow an adjustment for these sales. Respondent explains that these sales were made by the U.S. customer to municipalities under the terms of bid contracts. Respondent states that IQN agreed, for the purpose of satisfying the terms of the 1989 bid contract, to provide merchandise to the U.S. distributor at 1988 prices. Respondent states that IQN's agreement was based on its longstanding relationship with the U.S. distributor and the fact that the distributor purchases large quantities of merchandise.

Respondent further argues that an adjustment for sales made pursuant to bid contract is appropriate because protection bid prices is a common practice in the industry. To support its request, IQN provided information to demonstrate that the petitioner engages in the same type of practice to protect bid prices.

Petitioner contends that the Department correctly denied the exclusion of, or an adjustment for, certain U.S. sales resold by the U.S. distributor to municipal customers. Petitioner agrees with the Department's preliminary results that IQN's request has no basis in the statute or the Department's regulations. Furthermore, petitioner states that IQN's implication that IQN was required to provide merchandise sold to municipalities at lower prices because of the constraints of the bidding process is without merit. Petitioner also states that even if it protects bid prices, petitioner's practice does not relieve IQN of its burden to prove entitlement to an adjustment under the law.

Department Position: As a general rule, the Department examines all U.S. sales made during the period of review by a foreign producer or reseller. Neither the Act nor the Department's regulations contain a provision for the exclusion or adjustment of U.S. sales made under a protected price arrangement. Although respondent has requested an adjustment for sales made to municipalities throughout the review period, respondent has never articulated a legal basis for the claimed adjustment or the method by which an adjustment could be made. Any adjustment for these sales would, in fact, invite abuse and evasion of the antidumping laws through protected price arrangements. Therefore, without a legal basis or a viable method for making the adjustment, the Department must deny respondent's request.

Comment 5: Respondent states that the calculations used in the preliminary results contain a clerical error. Specifically, respondent states that the payment date for home market sale number 40 should be June 15, 1989 rather than May 15, 1989. Respondent requests the Department to make the appropriate changes so that the credit expense for home market sale number 40 accurately reflects the period for which payment was outstanding.

Department Position: The Department agrees with respondent. We have corrected the payment date for sale number 40 to reflect payment on June 15, 1989.

Comment 6: Petitioner contends that the Department should reject respondent's methodology used to allocate the extra-manipulation portion of the handling and brokerage charges. Petitioner argues that by allocating the claimed extra-manipulation charges equally, on a per-ton basis over all home market sales, IQN has overstated the cost incurred to reassemble the pallets for shipment to large home market customers. Petitioner's argument is based on the assumption that if IQN assembles the product for sale in the home market on pallets of 0.90 metric

tons each, and if most home market sales are sold in units of five, ten and fifteen metric tons, then IQN must disassemble and repack only 1 pallet to round out a large purchase order. Therefore, the extra-manipulation costs attributable to large-volume distributors on a per-ton basis are significantly smaller than the extra-manipulation costs associated with smaller volume sales. Therefore, petitioner urges the Department to adopt a methodology that reflects the lower per-ton extra-manipulation costs attributable to larger sales to Spanish distributors.

Respondent requests that the Department accept IQN's methodology for allocating handling charges incurred for the dismantling and repacking of pallets associated with smaller quantity purchases by home market customers. Respondent states that IQN employs an independent contractor to dismantle and repack home market shipments. Respondent explains that the charges of the independent contractor are comprised of (1) loading charges, and (2) dismantling and repacking (extra-manipulation) charges. IQN states that in addition to the quantity of the merchandise sold, the amount of extra-manipulation of pallets necessary depends on factors such as size and number of trucks involved, and the specific requirements of the customer. Thus, because IQN is charged for the services on a monthly basis and because a number of factors enter into the amount of extra-manipulation necessary, IQN is unable to allocate charges on a per-sale basis. Therefore, IQN allocated the total payment for the handling charges, over all of its domestic sales, regardless of the number of pallets dismantled for each sale.

Department Position: The Department agrees with respondent. Respondent provided invoices from the independent contractor to document the amount of the charges incurred during the period of review pertaining to extra-manipulation charges. The charges claimed are equivalent to the charges documented on the invoices. Given that IQN has provided sufficient evidence to substantiate its claimed charges, and that IQN is billed on a monthly basis for these charges, IQN's allocation method is reasonable. Furthermore, nothing on the record negates the claims made by IQN or supports petitioner's theory.

Comment 7: Petitioner contends that the Department erred in allowing an adjustment to FMV for technical service expenses, particularly that portion of the adjustment based on the salaries of engineers in the technical service division. First, petitioner argues that IQN failed to demonstrate that the technical services rendered were directly related to the sales under review. Second, petitioner asserts that the Department should exclude salary expenses for technical service personnel from the technical service adjustment. Petitioner claims that salary expenses constitute fixed expenses and, therefore, cannot be "directly related to sales." To support this assertion, petitioner points to the job descriptions of the engineers which include activities not related to the sales under consideration. Petitioner further argues that in determining whether the services were directly related to sales under consideration, it is irrelevant that the services were performed on behalf of the customer's customer. Petitioner characterizes the "on behalf of the customer's customer" rule as an exception to the directly-related rule that applies only to advertising and promotional expenses.

Respondent contends that the Department properly adjusted home market sales for technical services incurred in the home market in the preliminary results. Respondent argues that the Department's decision to allow an adjustment for technical services is consistent with the Department's regulations and court precedent for the following reasons. First, IQN reported technical service expenses attributable only to the potassium permanganate. Second, respondent states that potassium permanganate is a fungible product and technical service expenses are the type of expenses that are not incurred until after the sale of the merchandise to the end user. Respondent argues that under such circumstances, IQN reasonably reported the costs incurred during the period of review as the best information available for the costs associated with the sales under consideration. Third, respondent contends that the technical services were rendered at the request of IQN's distributors and were provided to the distributors' customers. Furthermore, IQN notes that technical services expenses are not incurred by IQN on sales to the U.S. market. Therefore, IQN argues that the technical service expenses represent differences between U.S. and home market sales which qualify for a circumstance-of-sale adjustment.

Department Position: Section 353.56(a)(1) of the Department's regulations provides that the Department will make a reasonable allowance for differences in circumstances of sale to the extent that any price differential is wholly or partly due to such differences. We generally limit such allowances to those circumstances which bear a direct relationship to the sales compared. Section 353.56(a)(2) provides that the Secretary also will make reasonable allowances for differences in selling costs incurred by the producer or reseller on behalf of the purchaser from that producer or reseller, but normally only to the extent that such costs are assumed by the producer or reseller.

Respondent has demonstrated that an adjustment for technical service expenses (excluding salaries) is warranted under 19 CFR 353.56(a)(1). Respondent has also demonstrated with sufficient supporting documentation that an adjustment for the salary portion of the technical service expenses is warranted because the expenses represent an assumption of the initial purchaser's costs in accordance with 19 CFR 353.56(a)(2). Because IQN has claimed only that portion of the engineers' salary expenses incurred while on technical service visits to distributors' customers, we believe it is appropriate to grant the salary portion of the adjustment under 19 CFR 353.56(a)(2). The fact that the engineers' job description requires them to engage in other responsibilities is irrelevant because IQN has not claimed the expenses related to the other responsibilities. Contrary to petitioner's argument, 19 CFR 353.56(a)(2) does not apply only to advertising and promotional expenses. Therefore, we have allowed an adjustment for technical service expenses claimed by respondent.

Currency Conversion

We made currency conversions in accordance with 19 CFR 353.60(a). All currency conversions were made at the rates certified by the Federal Reserve Bank.

Final Results of the Review

As a result of our review, we determine that the following margin exists for the period of January 1, 1989, through December 31, 1989:

Manufacturer/exporter	Margin (percent)
Industrial Quimica del Nalon (IQN)	3.96
All Others	3.96

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement

instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this review for all shipments of the subject merchandise from Spain entered, or withdrawn, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for IQN will be 3.96%; (2) For merchandise exported by manufacturers or exporters not covered in this review but covered in a prior review or the final determination in the original less than fair value investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) If the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer received a company-specific rate; and (4) The cash deposit rate for all other manufacturers/exporters shall be 3.96 percent. This is the most current non-BIA rate for any firm in this proceeding. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This administrative review is published pursuant to section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 13, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-27811 Filed 11-18-91; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review; Certain Hexagonal Steel Tubes and Trilobe Steel Tubes

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of Short-Supply Review and Request for Comments; Certain Hexagonal Steel Tubes and Trilobe Steel Tubes.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 50 metric tones of certain hexagonal steel tubes and trilobe steel tube through March 31, 1992 under Article 7 of the Arrangement Between the European Economic Community and the Government of the United States of America Concerning Trade in Certain Steel Pipes and Tubes ("the U.S.-EC Arrangement").

SHORT-SUPPLY REVIEW NUMBER: 59.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and Section 357.102 of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.102 ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain hexagonal steel tubes and trilobe steel tubes.

On November 13, 1991, the Secretary received an adequate petition from AL-KO Kober Corporation ("AL-KO Kober") requesting a short-supply allowance for 50 metric tons of this product through March 31, 1992 under Article 7 of the U.S.-EC Arrangement. Al-KO Kober is requesting short supply for this material because this product is not produced in the United States and because its foreign supplier has insufficient quota of this product to meet AL-KO Kober's needs.

The requested material consists of two sizes of custom-shaped asymmetrical hexagonal tubes and two sizes of trilobe tubes. The two shapes of tubing are complimentary and used together to form a unified axle.

The exact sizes, grades and quantity requested of each tube is an follows:

Size	Steel grade	Quantity (metric tons)
Hexagonal tubes		
62×3	SAE 1012 or 1020	10
80×3	SAE 1012 or 1020	27
Trilobe tubes		
41×4	SAE 1513 or ROPS Steel.	1
56×4.7		12

The hexagonal tubes are welded but have smoothed outer seams. The cross-section of the 80×3 mm hexagonal tube consists of three 96 degree angles between which are three 144 degree angles in alternating order. The 144 degree angles tend to be sharper than the other angles, which are more rounded. The cross-section of the 62×3 mm hexagonal tube consists of three 90 degree angles, between which are three 150 degree angles, in alternating order. The 150 degree angles tend to be sharper than the other angles, which are more rounded.

The trilobe tubes are welded, but have smoothed outer seams. The cross-section of the trilobe tubes are essentially rounded equianglar, equilateral triangles comprised of three equiangular lobes. Each of the three lobes is a bell-shaped, rounded curve, the sides of which form a 60 degree angle. Between the bell-shaped lobes are shallow, U-shaped curves, and the sides of each form a 120 degree angle.

On November 13, 1991, the Secretary established an official record on this short-supply request (Case Number 59) in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address. Section 4(b)(4)(B)(i) of the Act and Section 357.106(b)(1) of Commerce's Short-Supply Procedures require the Secretary to apply a rebuttable presumption that a product is in short supply and to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed, if the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that the requested steel product is not produced in the United States. Therefore, the Secretary has applied a rebuttable presumption that this product is presently in short supply in accordance with section 4(b)(B)(i)(III) of the Act and § 357.106(b)(1)(iii) of Commerce's Short-Supply procedures.

Unless domestic steel producers provide comments in response to this notice indicating that they can and will supply this product within the requested period of time, provided it represents a normal order-to-delivery period, the Secretary will issue a short-supply allowance not later than November 27, 1991.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than November 26, 1991, to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above-noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Marissa Rauch or Laurie Lucksinger, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377–1382 or 377–3793.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91–27881 Filed 11–18–91; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology

Announcement of Workshop for Users and Implementors of Integrated Services Digital Network (ISDN)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The Computer Systems Laboratory (CSL) at the NIST announces the 1992 meeting schedule for the North American ISDN Users' Forum (NIU-Forum) and the TRanscontinental ISDN Project (TRIP '92).

The NIU-Forum was formed in 1988 under the auspices of NIST to create a strong user voice in the implementation of Integrated Services Digital Network (ISDN) (narrow and broadband) and to ensure that the emerging ISDN services meet users' application needs. The NIU-Forum consists of joint workshops for the users (IUW) and implementors (IIW). The IUW will continue work identifying, defining, and prioritizing user applications of ISDN. The IIW will continue defining implementation agreements for ISDN. Working group meetings will discuss issues related to the use and implementation of ISDN technology. Manufacturers and service providers are invited to participate in this workshop.

The NIU-Forum will cosponsor the TRanscontinental ISDN Project (TRIP '92) to celebrate the first continent-wide access to ISDN. NIST will host a node of TRIP '92. Participation in TRIP '92 is open to all interested parties. To obtain a further information on TRIP '92, attend the February 25–28, 1992 NIU-Forum or contact Dawn Hoffman at the number below.

DATES: The 1992 schedule for the North American ISDN Users' Forum (NIU-Forum) is February 25–28, Huntsville, Alabama; June 2–5 and October 27–30, NIST, Gaithersburg, Maryland. TRIP '92 will be held at various locations November 16–20, 1992.

ADDRESSES: To obtain registration forms for the workshops, companies may contact: NIU-Forum, Attn: Sara Johnson, National Institute of Standards and Technology, Building 223, room B364, Gaithersburg, MD 20899; (301) 975–4853. Upon receipt of the completed registration form, additional registration information will then be mailed to the registrant.

FOR FURTHER INFORMATION CONTACT: Dawn Hoffman, NIST, Building 223, room B364, Gaithersburg, MD 20899; (301) 975–2937.

SUPPLEMENTARY INFORMATION: Participants are expected to make their own travel arrangements and accommodations. NIST reserves the right to cancel any part of the workshops.

Dated: November 14, 1991.

John Lyons,

Director.

[FR Doc. 91–27762 Filed 11–18–91; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Hearing

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

ACTION: Notice of public hearings, and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public hearings on Draft Amendment 6 to the Coastal Migratory Pelagic Fishery Management Plan (FMP) that would: (1) Specify a period for rebuilding overfished stocks; (2) schedule stock assessments for alternate years; (3) allow additional flexibility in making seasonal adjustments; (4) allow division of Gulf group king mackerel into geographic substocks; (5) provide commercial vessel catch per trip limits for Atlantic group Spanish mackerel; (6) revise eligibility requirements for commercial permits; (7) revise the recreational bag limit mechanism to prevent closures; (8) change the fishing year for the recreational allocations; and (9) increase the minimum size limit for king mackerel to 20 inches.

DATES: Public comments must be received by January 7, 1992. See "**SUPPLEMENTARY INFORMATION**" for dates, times, and locations of hearings.

ADDRESSES: Written comments on Draft Amendment 6 to the Coastal Migratory Pelagics FMP should be addressed to Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, Florida 33609.

FOR FURTHER INFORMATION CONTACT: Terrance R. Leary, Fishery Biologist, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, Florida 33609, telephone (813) 228–2815.

SUPPLEMENTARY INFORMATION: The public hearings will be held at the following times and locations.

1. Tuesday, November 19, 1991—University of Texas, Visitor's Center Auditorium, Marine Science Institute, 750 Channel View Dirve, Port Aransas, Texas (7 p.m. to 10 p.m.).
2. Monday, November 25, 1991—Old City Hall, 204 Ann Street, Key West, Florida (7 p.m. to 10 p.m.).
3. Monday, December 2, 1991—Nichols State University, Century Club Room, G.L. Guidry Stadium, Corner of Audubon and Highway 1, Thibodaux, Louisiana (7 p.m. to 10 p.m.).
4. Wednesday, December 4, 1991, Mississippi Beach Resort, 2060 Beach Boulevard, Biloxi, Mississippi (7 p.m. to 10 p.m.).
5. Thursday, December 5, 1991—Radisson Admiral Semmes Hotel, 251 Government Street, Mobile, Alabama (7 p.m. to 10 p.m.).
6. Wednesday, December 11, 1991—National Marine Fisheries Service, Panama City Laboratory, 3500 Delwood Beach Road, Panama City, Florida (9 a.m. to 12 noon).
7. Thursday, December 12, 1991—Ramada Airport Hotel and Conference Center, 5303 West Kennedy Boulevard, Tampa, Florida (7 p.m. to 10 p.m.).

Dated: November 13, 1991.

David S. Crestin,

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

[FR Doc. 91–27702 Filed 11–18–91; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: Gulf of Mexico Fishery Management Council will convene public hearings on Draft Amendment 6 to the Shrimp Fishery Management Plan that would: (1) Bring the plan into compliance with 602 guidelines by providing a definition of overfishing for white shrimp and providing action to restore any future overfished stocks; (2) eliminate the requirement for annual reviews of the seasonal closure to shrimping off Texas and the Tortugas shrimp sanctuary, but stocks are to continue to be monitored so appropriate adjustments may be made; (3) require that vessels shrimping in federal waters have a federal permit; and (4) require that shrimp vessels designated by the Director of the Southeast Fisheries Center be required to carry an observer to monitor shrimp catch and bycatch of other species with the operator of the vessel to be reimbursed for associated expenses.

DATES: Public comments must be received by January 7, 1992. See **"SUPPLEMENTARY INFORMATION"** for dates, times, and locations of the hearings.

DATES: Public comments must be received by December 27, 1991. See **"SUPPLEMENTARY INFORMATION"** for dates, times, and locations of hearings.

ADDRESSES: Written comments on the proposed FMP should be addressed to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407, telephone (803) 571–4366.

SUPPLEMENTARY INFORMATION: The public hearings will begin at 6 p.m., and adjourn at 8 p.m., local time, and are scheduled as follows:

1. Tuesday, November 26, 1991—Royce Hotel, 1601 Belvedere Road, W. Palm Beach, FL 33406, (407) 689–6400.
2. Monday, December 9, 1991—Quality Inn Lake Wright, 6280 N. Hampton Boulevard, Norfolk, VA 23502, (804) 461–6251.
3. Monday, December 9, 1991—Cocoa Beach Hilton, 1550 N. Atlantic Avenue, Cocoa Beach, FL 32931, (407) 799–0003.
4. Tuesday, December 10, 1991—North Carolina Aquarium on Roanoke Island Airport Road, Manteo, NC 27954, (919) 473–3494.
5. Tuesday, December 10, 1991—Holiday Inn Oceanfront, 1617 N. First Street, Ocean View I & II Rooms, Jacksonville Beach, FL 32250, (904) 249–9071.
6. Wednesday, December 11, 1991—Glynn Mall Suites Hotel, Carousel/Chariot Hall Rooms, 500 Mall Boulevard, Brunswick, GA 31520, (912) 264–6100.
7. Wednesday, December 11, 1991—Carteret Community College, Joselyn Auditorium, 3505 Arendell Street, Morehead City, NC 28557, (919) 247–7147.
8. Thursday, December 12, 1991—New Hanover County Courthouse, 320 Chestnut Street, room 302, Wilmington, NC 28401, (919) 341–7147.
9. Friday, December 13, 1991—South Carolina Wildlife & Marine Resources Department, Ft. Johnson Road, Charleston, SC 29412, (803) 795–6350.

Dated: November 13, 1991.

David S. Crestin,

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

[FR Doc. 91–27704 Filed 11–18–91; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings and request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold public hearings and provide a comment period to solicit public input on Amendment 6 to the Mackerel Fishery Management Plan (FMP). The Council approved the following options on Mackerel Amendment 6 as preferred alternatives to take to public hearing: (1) Commercial trip limits for Spanish mackerel in which the Atlantic Spanish mackerel fishery would be divided into northern and southern zones at the Georgia/Florida border, with different trip limits applying to each zone, (2) consideration of alternative income requirements, (3) deletion of the provision that reverts the bag limit to zero when the recreational allocation is reached (even for overfished stocks), (4) modification of the existing fishing year for the recreational allocation, and (5) establishment of a control date for possible limited entry.

DATES: Public comments must be received by December 27, 1991. See **"SUPPLEMENTARY INFORMATION"** for dates, times, and locations of hearings.

ADDRESSES: Written comments on the proposed FMP should be addressed to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407, telephone (803) 571–4366.

SUPPLEMENTARY INFORMATION: The public hearings will begin at 6 p.m., and adjourn at 8 p.m., local time, and are scheduled as follows:

1. Tuesday, November 26, 1991—Royce Hotel, 1601 Belvedere Road, W. Palm Beach, FL 33406, (407) 689–6400.
2. Monday, December 9, 1991—Quality Inn Lake Wright, 6280 N. Hampton Boulevard, Norfolk, VA 23502, (804) 461–6251.
3. Monday, December 9, 1991—Cocoa Beach Hilton, 1550 N. Atlantic Avenue, Cocoa Beach, FL 32931, (407) 799–0003.
4. Tuesday, December 10, 1991, North Carolina Aquarium on Roanoke Island Airport Road, Manteo, NC 27054, (919) 473–3494.
5. Tuesday, December 10, 1991—Holiday Inn Oceanfront, 1617 N. First Street, Ocean View I & II Rooms, Jacksonville Beach, FL 32250, (904) 249–9071.
6. Wednesday, December 11, 1991—Glynn Mall Suites Hotel, Carousel/Chariot Hall Rooms, 500 Mall Boulevard, Brunswick, GA 31520, (912) 264–6100.
7. Wednesday, December 11, 1991—Carteret Community College, Joselyn Auditorium, 3505 Arendell street, Morehead City, NC 28557, (919) 247–7147.
8. Thursday, December 12, 1991—New Hanover County Courthouse, 320 Chestnut Street, room 302, Wilmington, NC 28401, (919) 341–7147.
9. Friday, December 13, 1991—South Carolina Wildlife & Marine Resources Department, Ft. Johnson Road, Charleston, SC 29412, (803) 795–6350.

Dated: November 13, 1991.

David S. Crestin,

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

[FR Doc. 91–27703 Filed 11–18–91; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Puget Sound Salmon Stock Review Group (PSSSRG) will hold its third public meeting on December 5, 1991, at 9:30 a.m. It will be held in room 102 of the Olympia Center, 222 North Columbia, Olympia, Washington.

The PSSSRG will examine the causes that have led to failure in attaining the spawning escapement objectives for naturally-produced Skagit River and Hood Canal coho, Skagit River spring, Stillaguamish River summer/fall, and Snohomish River summer/fall chinook

salmon stocks. The PSSSRG will report its findings and recommendations to the Pacific Fishery Management Council prior to establishment of the 1992 ocean salmon fishery management recommendations.

For more information contact John Coon, Staff Officer (Salmon), Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, Oregon 97201; telephone: (503) 326–6352.

Dated: November 13, 1991.

David S. Crestin,

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

[FR Doc. 91–27705 Filed 11–18–91; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

November 14, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 21, 1991.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6495. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and carryforward.

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 51944, published on December 18, 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

November 14, 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 December 12, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on November 21, 1991, you are directed to amend further the directive dated December 12, 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 Macau:

Category	Adjusted twelve-month limit [1]
Aggregate 200–239, 300–369, 400–469, 600–670 and 800–899, as a group.	86,025,036 square meters equivalent.
Group I 200–239, 300–369, 600–670 and 800–899, as a group.	84,591,194 square meters equivalent.
Sublevels in Group I 333/334/335/833/834/835.	198,734 dozen of which not more than 104,686 dozen shall be in Categories 333/335/833/835.
338	251,602 dozen.
339	1,062,999 dozen.
340	242,153 dozen.
341	147,890 dozen.
347/348/847	605,564 dozen.
633/634/635	398,492 dozen.
640	88,229 dozen.
641/840	160,147 dozen.
642/842	88,349 dozen.
647/648	440,613 dozen.
Group II 400–469, as a group.	1,447,599 square meters equivalent.

[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. 91–27802 Filed 11–18–91; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

November 13, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6496. 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).

In a Memorandum of Understanding (MOU) dated October 12, 1991, the Governments of the United States and Malaysia agreed to extend their current bilateral agreement for the period January 1, 1992 through December 31, 1992. A formal exchange of notes will follow.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Information regarding the 1992 CORRELATION will be published in the **Federal Register** at a later date.

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

November 13, 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; pursuant to the Memorandum of Understanding (MOU) dated October 12, 1991 between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Malaysia and exported during the twelve-month period beginning on January 1, 1992 and extending through December 31, 1992, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
218, 219, 220, 225–227, 313–315, 317, 326 and 613/614/615/617, as a group.	73,891,406 square meters.
Sublevels within the group	
218	4,750,162 square meters.
219	23,011,895 square meters.
220	23,011,895 square meters.
225	23,011,895 square meters.
226	23,011,895 square meters.
227	23,011,895 square meters.
313	27,445,380 square meters.
314	29,556,563 square meters.
315	23,011,895 square meters.
317	23,011,895 square meters.
326	3,166,774 square meters.
613/614/615/617	23,011,895 square meters.
Other Specific Limits	
200	200,312 kilograms.
237	269,519 dozen.
300/301	2,124,532 kilograms.
331/631	1,458,672 dozen pairs.
333/334/335/835	167,279 dozen of which not more than 83,639 dozen each shall be in Categories 333, 334, 335 and 835.
336/636	309,309 dozen.
338/339	766,852 dozen.
340/640	937,895 dozen.
341/641	1,215,547 dozen of which not more than 433,647 dozen shall be in Category 341.
342/642/842	291,150 dozen.
345	111,645 dozen.
347/348	314,033 dozen.
351/651	180,660 dozen.
363	5,352,902 numbers.
369–S [1]	579,730 kilograms.
435	14,410 dozen.
438–W [2]	11,793 dozen.
442	17,562 dozen.
445/446	27,876 dozen.
604	931,560 kilograms.
634/635	567,331 dozen of which not more than 247,571 dozen shall be in Category 635.
638/639	334,202 dozen.
645/646	255,618 dozen.
647/648	1,202,905 dozen of which not more than 842,033 dozen each shall be in Categories 647–K [3] and 648–K [4].
Group II	
201, 222–224, 229, 239, 330, 332, 349, 350, 352–354, 359–362, 369–O [5], 400–434, 436, 438–O [6], 439, 440, 443, 444, 447, 448, 459, 464–469, 600–603, 606, 607, 611, 618–622, 624–630, 632, 633, 643, 644, 649, 650, 652–654, 659, 665–670, 831–834, 836, 838, 839, 840 and 843–859, as a group.	29,891,573 square meters equivalent.

[1] Category 369–S: only HTS number 6307.10.2005.

[2] Category 438–W: only HTS numbers 6104.21.0060, 6104.23.0020, 6104.29.2051, 6106.20.1010, 6106.20.1020, 6106.90.1010, 6106.90.1020, 6106.90.2020, 6106.90.3020, 6109.90.1540, 6110.10.2080, 6110.30.1560, 6110.90.0074 and 6114.10.0040.

[3] Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.3014, 6112.12.0050, 6112.19.1050, 6112.20.1060 and 6113.00.0044.

[4] Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2010, 6104.63.2025, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.3026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.0052 and 6117.90.0046.

[5] Category 369–O: all HTS numbers except 6307.10.2005 Category 369–S).

[6] Category 438–O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.3020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.0072, 6114.10.0020 and 6117.90.0023.

Imports charged to these category limits for the period January 1, 1991 through December 31, 1991 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Malaysia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–27803 Filed 11–18–91; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

November 14, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: November 21, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–6735. For information on embargoes and quota re-openings, call (202) 377–3715. 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 611, the United States Government has decided to control imports in this category for the prorated period beginning on November 28, 1991 and extending through December 31, 1991.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the Philippines, further notice will be published in the **Federal Register.**

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 41831, published on August 23, 1991.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 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; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 21, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 611, produced or manufactured in the Philippines and exported during the period beginning on November 28, 1991 and extending through December 31, 1991, in excess of 335,463 square meters [1].

Textile products in Category 611 which have been exported to the United States on and after January 1, 1991 shall remain subject to the Group II limit established for the period January 1, 1991 through December 31, 1991.

Imports charged to the category limit for the ninety-day period beginning on August 30, 1991 and extending through November 27, 1991, shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

For the import period August 30, 1991 through September 26, 1991, there are no charges to be made to Category 611.

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. 91-27804 Filed 11-18-91; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after November 27, 1991.

Announcement of Import Limits for Certain Cotton, Wool, and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

November 13, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing new agreement year limits.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6582. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated July 29 and August 6, 1991, between the Governments of the United States and the Republic of Turkey establishes limits for the period beginning on January 1, 1992 and extending through December 31, 1992.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Information regarding the 1992 CORRELATION will be published in the **Federal Register** at a later date.

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

November 13, 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; pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated July 29 and August 6, 1991, between the Governments of the United States and the Republic of Turkey; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Turkey and exported during the twelve-month period which begins on January 1, 1992 and extends through December 31, 1992, in excess of the following restraint limits:

Category	Twelve-month restraint limit
219, 313, 314, 315, 317, 326, 617, 625, 626, 627 and 628, as a group.	117,660,000 square meters of which not more than 26,887,709 square meters shall be in 219; 32,862,755 square meters shall be in 313; 19,120,149 square meters shall be in 314; 25,692,700 square meters shall be in 315; 26,887,709 square meters shall be in 317; 2,987,523 square meters shall be in 326; 17,925,140 square meters shall be in 617; 2,987,523 square meters shall be in 625; 2,987,523 square meters shall be in 626; 2,987,523 square meters shall be in 627; 2,987,523 square meters shall be in 628.
Limits not in group	
200	1,134,496 kilograms.
300/301	5,523,782 kilograms.
335	238,500 dozen.
336/636	561,800 dozen.
338/339/638/639	3,498,000 dozen of which not more than 1,749,000 dozen shall be in Categories 338-S/339-S/638-S/639-S [1].

Category	Twelve-month restraint limit
340/640	1,196,000 dozen of which not more than 340,159 dozen shall be in shirts made from fabric of two or more colors in the warp and/or the filling in Categories 340-Y/640-Y [2].
341/641	1,181,107 dozen of which not more than 413,388 dozen shall be in blouses made from fabric of two or more colors in the warp and/or the filling in Categories 341-Y/641-Y [3].
342/642	625,400 dozen.
347/348	3,402,600 dozen of which not more than 1,183,573 dozen shall be in trousers in Categories 347-T/348-T [4].
350	354,697 dozen.
351/651	567,100 dozen.
361	1,192,500 numbers.
369-S [5]	1,232,818 kilograms.
410/624	1,030,200 square meters of which not more than 666,600 square meters shall be in Category 410.
448	35,350 dozen.
604	1,423,034 kilograms.

[1] Category 338-S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339-S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022; Category 638-S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639-S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

[2] Category 340-Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640-Y: only HTS numbers 6205.30.2010 and 6205.30.2020.

[3] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030; Category 641-Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025; Category 641-Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[4] Category 347-T: only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0038, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2035, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348-T: only HTS numbers 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0042, 6117.90.0042, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2035, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

[5] Category 369-S: only HTS number 6307.10.2005.

Imports charged to these category limits for the period January 1, 1991 through December 31, 1991 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-27805 Filed 11-18-91; 8:45 am]

BILLING CODE 3510-DR-F

Request for Public Comments on Bilateral Textile Consultations with Colombia on Certain Cotton Textile Products

November 14, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

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 categories for 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).

On October 31, 1991, under the terms of section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Colombia with respect to cotton textile products in Categories 314 and 315, produced or manufactured in Colombia.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Colombia, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of cotton textile products in Categories 314 and 315, produced or manufactured in Colombia and exported during the twelve-month period which began on October 31, 1991 and extends through October 30, 1992, at levels of not less than 5,093,861 square meters for Category 314 and 8,178,746 square meters for Category 315.

Summary market statements concerning Categories 314 and 315 follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 314 and 315, or to comment on domestic production or availability of products included in Categories 314 and 315, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 314 and 315. Should such a solution be reached in consultations with the Government of Colombia, further notice will be published in the **Federal Register.**

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).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Colombia

Category 314—Cotton Poplin and Broadcloth Fabric

October 1991

Import Situation and Conclusion

U.S. imports of cotton poplin and broadcloth fabrics, Category 314, from Colombia reached 4,773,082 square meters in the year ending in August

1991, 37 percent above the 3,496,048 square meters imported a year earlier. During the first eight months of 1991, Colombia shipped 3,370,966 square meters, 51 percent above their January-August 1990 level and 93 percent of their total calendar year 1990 level. In the year ending August 1991, Colombia is the largest uncontrolled supplier accounting for 2.3 percent of total Category 314 imports.

The sharp and substantial increase in Category 314 imports from Colombia is disrupting the U.S. market for cotton poplin and broadcloth fabric.

Import Penetration and Market Share

U.S. production of cotton poplin and broadcloth fabrics fell to 96,990,000 square meters in 1990, 25 percent below the 1989 level and 36 percent below the 1988 level. Production continued downward in 1991, falling to 31,088,000 square meters during January-June 1991, 47 percent below the January-June 1990 level. In contrast, U.S. imports of Category 314 from all sources have risen to 202,785,000 square meters in 1990, 26 percent above the 1988 level and 7 percent above the 1989 level. Imports continue to increase in 1991, up 5 percent in the first eight months of 1991 over the January-August 1990 level.

The U.S. producers' share of the cotton poplin and broadcloth market dropped 17 percentage points, falling from 49 percent in 1988 to 32 percent in 1990. The drop in the U.S. domestic producers' market share continued in 1991, falling to 24 percent in the first six months of 1991. The ratio of imports to domestic production doubled, increasing from 106 percent in 1988, to 209 percent in 1990. The ratio continued to increase during 1991, reaching 321 percent in first six months of 1991.

Duty-Paid Value and U.S. Producers' Price

All of Category 314 imports from Colombia during the year ending August 1991 entered the U.S. under HTSUSA numbers 5208.12.4020—85 percent or more by weight cotton poplin or broadcloth of yarn numbers 42 or lower, weighing less than 100 grams per square meter, and 5208.12.6020—85 percent or more by weight cotton poplin or broadcloth of yarn numbers 43 to 68, weighing less than 100 grams per square meter. These fabrics entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable fabrics.

Market Statement—Colombia
Category 315—Cotton Printcloth
October 1991

Import Situation and Conclusion

U.S. imports of cotton printcloth fabric, Category 315, from Colombia reached 8,251,603 square meters during the year ending August 1991, a four fold increase over the 1,526,549 square meters imported during the same period a year earlier. During the first eight months of 1991, Colombia shipped 5,671,653 square meters, three times their January-August 1990 level. Colombia is the eighth largest supplier of cotton printcloth, accounting for 2.4 percent of Category 315 imports for the year ending August 1991. In the previous year, Colombia ranked sixteenth among the major suppliers, accounting for less than one percent of total Category 315 imports.

The sharp and substantial increase in Category 315 imports from Colombia is disrupting the U.S. market for cotton printcloth.

Import Penetration and Market Share

U.S. production of cotton printcloth fell to 292,937,000 square meters in 1990, 5 percent below the 1989 level and 24 percent below the 1988 level. Production continued downward in 1991, falling to 145,175,000 square meters during January-June 1991, 5 percent below the January-June 1990 level. In contrast, U.S. imports of Category 315 from all sources have been on the rise since 1988 reaching 326,332,000 square meters in 1990, an increase of 75 percent over the 1988 level. Imports continue to increase in 1991, up 11 percent in the first eight months of 1991 over the January-August 1990 level.

The U.S. producers' share of the cotton printcloth market dropped 20 percentage points, falling from 67 percent in 1988 to 47 percent in 1990. The drop in the U.S. producers' market share continued in 1991, falling to 46 percent during the first half of 1991. The ratio of imports to domestic production more than doubled, increasing from 48 percent in 1988 to 111 percent in 1990, and reached 115 percent during the first half of 1991.

Duty-Paid Value and U.S. Producers' Price

All of Category 315 imports from Colombia during the year ending August 1991 entered the U.S. under HTSUSA number 5208.12.6060—85 percent or more by weight cotton printcloth of yarn numbers 43–68, weighing more than 100 grams per square meter. These fabrics entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable fabrics.

[FR Doc. 91–27806 Filed 11–18–91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

[No. 3710KF]

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) For the Santa Paula Creek Flood Control Study, Ventura County, California

November 13, 1991.

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent, correction.

In the November 13, 1991 **Federal Register** document # 91–27–226, Volume 56 FR 57633, Column II, paragraph 3 "Scoping Process", the public scoping meeting date of "20 November 1991" is corrected to read "3 December 1991".

Dated: November 13, 1991.

Kenneth A. Steele,

Lieutenant Colonel, Corps of Engineers, Deputy District Engineer for Civil Works.

[FR Doc. 91–27819 Filed 11–18–91; 8:45 am]

BILLING CODE 3710-KF-M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

[CFDA No.: 84.117E]

Educational Research Grant: Field-Initiated Studies

AGENCY: Department of Education.

ACTION: Extension of deadline date for transmittal of applications and change of application availability date for fiscal year 1992.

SUMMARY: On September 18, 1991, the Secretary published in the **Federal Register** (56 FR 47279) a notice inviting applications for new awards for the Educational Research Grant Program: Field-Initiated Studies. Detailed information was included in that notice.

The purpose of this notice is to extend the deadline date for transmittal of applications, to change the application availability date, and to provide potential applicants with examples of some educational topics that the Secretary considers to be of national importance.

DATES: The Secretary extends the deadline date for transmittal of applications from January 10, 1992 to January 22, 1992 and changes the application availability date from October 11, 1991 to November 22, 1991.

SUPPLEMENTARY INFORMATION: Pursuant to 34 CFR 700.23(b), the Secretary is required to determine whether the field-initiated applications propose activities that address educational problems of national importance. Listed below are some examples of educational topics that address problems that the Secretary considers to be of national importance. Research on these topics could help carry out AMERICA 2000, the President's strategy for reaching the National Education Goals. The topics identified in this notice are examples only; the Secretary also considers many other educational topics to be of national importance. Applications that propose research activities on educational topics that are listed in this notice will not receive any competitive preference.

Some examples of educational topics are:

1. Helping parents support the learning of their young children;
2. Improving the education of children whose circumstances put them at a disadvantage;
3. Identifying factors that will lead to greater student learning, at any stage from birth through post-secondary and graduate education; and
4. Identifying how school organization affects student achievement.

FOR APPLICATIONS OR INFORMATION CONTACT: Delores Monroe, U.S. Department of Education, 555 New Jersey, NW., room 620, Washington, DC 20208–5646. Telephone: (202) 219–2223. Deaf or hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1221e.

Dated: November 14, 1991.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–27813 Filed 11–18–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award Grant to Purdue Research Foundation

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14 it is making a financial assistance award to the Purdue Research Foundation under Grant No. DE–FG01–92CE15494. The proposed grant will provide funding in the estimated amount of $87,000 for the Purdue Research Foundation to perform laboratory experiments to determine the ability of lignin to adsorb and desorb n-butanol in a fermenting sugar-water solution and to set up a bench scale model to gather engineering data to be used to develop an engineering evaluation.

The results of this grant will be used to demonstrate the energy savings of the proposed project. This savings will reduce our national dependence on oil and gasoline liquid transportation fuel by producing a technology that will produce n-butanol in an economical manner.

The grant is being awarded to the Purdue Research Foundation on a noncompetitive basis, because the technology is unique and that Dr. Ladisch, the Principal Investigator, is considered essential for achievement of the proposed project objectives. Dr. Ladisch has a Ph.D. in chemical engineering and seventeen years of teaching and research experience. He has a national reputation in developing useful energy products, such as alcohol, from natural plant materials. The National Institute of Standards and Technology estimates that based on its evaluation and on its uniqueness of design that potential energy savings is to be approximately 1.6 million barrels of gasoline annually. In accordance with CFR 600.14(e)(1), it has been determined that this project represents a unique idea that is not eligible for financial assistance under a recent, current, or planned solicitation. The Energy-Related Inventions Program (ERIP) has been structured, since its beginning in 1975, to operate without competitive solicitations, because the legislation directs ERIP to provide support for worthy ideas submitted by the public. The proposed technology has a strong possibility of allowing for future reductions in the nations energy consumption.

The anticipated term of the proposed grant shall be 24 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: John Windish, PR–322.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Arnold Gjerstad,

Acting Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91–27801 Filed 11–18–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TQ92–4–4–000]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in Rates

November 12, 1991.

Take notice that on November 6, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581–5039, tendered for filing with the Commission Substitute Eighth Revised Sixth Revised Sheet No. 21 in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on November 1, 1991.

Granite State states that it filed an out-of-cycle purchased gas cost adjustment on November 1, 1991 revising its projected gas costs for the balance of the fourth quarter. According to Granite State, it received a temporary authorization in Docket No. CP91–2373–000 on October 31, 1991, authorizing an increase in the firm daily contract demand deliveries to its affiliated distribution company customers, Bay State Gas Company and Northern Utilities, Inc., effective November 1, 1991. Granite State further states that the increased contract demand deliveries were made possible by the purchase of an incremental gas supply for its system supply from a Canadian supplier, Direct Energy Marketing, Limited (Direct Energy). It is stated that neither the effect of the increased contract demands as of November 1, 1991, nor the projected costs for the purchase of the new supply from Direct Energy were reflected in the out-of-cycle purchase gas cost adjustment filed November 1. Also, Granite State states that is has reconsidered its gas supply projections for the remainder of the fourth quarter and made other adjustments including a reduction in purchases from Tennessee Gas Pipeline Company and an increase in spot-market purchases. Total projected purchases and sales for the fourth quarter have not been changed, according to Granite State.

It is stated that the proposed rate changes are applicable to Granite State's jurisdictional services rendered to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

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, NW., Washington, DC 20426 in accordance with rules 211 and 214 of the Commission's rules of practice and procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 19, 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 to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-27710 Filed 11-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-2-7-001]

Southern Natural Gas Co.; Notice of Compliance Filing

November 12, 1991.

Take notice that on November 6, 1991, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff in compliance with the Commission's Order of October 11, 1991, in the captioned docket:

Tenth Revised Sheet No. 4B.01
Tenth Revised Sheet No. 4B.02
Tenth Revised Sheet No. 4B.03

Southern states that these revised sheets are being filed, as required by the October 11 Order, to reflect the removal of $990,463, plus associated interest, from take-or-pay settlement costs totalling $29,618,712 allocated to Southern by United Gas Pipe Line Company (United) in Docket No. RP91-198-000 which were sought to be flowed through by Southern in this Docket No. TM92-2-7-000. The proposed effective date of these tariff sheets is November 1, 1991.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's rules of practice and procedure 18 CFR 385.211. All such protests should be filed on or before November 19, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-27711 Filed 11-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-119-003]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 12, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on October 31, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies each of the tariff sheets listed on appendix A of the filing.

Texas Eastern states that the tariff sheets filed herewith are in compliance with ordering paragraph (D) of the Commission's October 1, 1991 Order on Rehearing and Clarification which requires Texas Eastern to file tariff sheets to implement the order within 30 days of the date of issuance.

The proposed effective dates of the tariff sheets are as listed in appendix A of the filing.

Texas Eastern states that copies of the filing served on Texas Eastern's jurisdictional customers and interested state commissions. Texas Eastern further states that copies of the filing have also been mailed to all parties in Docket No. RP91-119 and to all parties on the restricted service list in Docket Nos. RP88-67, *et al.*, (Phase I).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before November 19, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-27712 Filed 11-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-10-013]

Williston Basin Interstate Pipeline Co.; Compliance Filing

November 12, 1991.

Take notice that on November 6, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing certain revised tariff sheets to First Revised Volume No. 1 and Original Volume Nos. 1-A and 2 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets were filed in compliance with the Commission's "Order Rejecting Compliance Filing" issued October 21, 1991 in the above referenced proceeding as more fully described in the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before November 19, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-27713 Filed 11-18-91; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Advanced Television Service

November 8, 1991.

The charter for the Advisory Committee on Advanced Television Service (Committee) has been renewed by the Federal Communications Commission with the concurrence of the General Services Administration. This action was taken in accordance with the Federal Advisory Committee Act and the GSA final rule on Federal Committee Management. The Committee will terminate September 30, 1993.

The Committee was established to advise the Federal Communications Commission on the facts and circumstances regarding advanced television systems for Commission consideration of technical and public

policy issues. The Committee is specifically tasked with recommending policies, standards and regulations that would facilitate the orderly and timely introduction of advanced television services in the United States.

The Committee has no more than twenty-five members and functions as a Parent Committee. The members of the Committee are chosen by the Commission so as to obtain diverse and representative viewpoints from parties associated with the television industry. The day-to-day work of the Committee is conducted by three subcommittees: Planning Subcommittee, Systems Subcommittee and Implementation Subcommittee. Membership in the subcommittees is open to all interested parties.

The renewal of the Committee has been found to be necessary and in the public interest. It meets the objectives identified by the Commission and the requirements of the Federal Advisory Committee Act.

Further information regarding the Advisory Committee on Advanced Television Service may be obtained by contacting William Hassinger at (202) 632–6460.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–27747 Filed 11–18–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Advisory Committee of the National Urban Search and Rescue System; Establishment

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. app 1 *et. seq.*) and after consultation with the General Services Administration, the Director of the Federal Emergency Management Agency (FEMA) has determined that the establishment of the Advisory Committee of the National Urban Search and Rescue System is in the public interest in connection with the performance of duties imposed on the Agency.

Based upon its experiences in managing Federal response efforts during the Loma Prieta earthquake and hurricane Hugo disasters in the autumn of 1989, FEMA reoriented its response planning, producing the draft Federal Response Plan (for Pub. L. 93–288, as amended (42 U.S.C. 5121 *et. seq.*)). The Federal Response Plan involves 27 Federal agencies in a concerted, national approach to responding to a catastrophic disaster in the United States or its territories. A significant event may require a broad spectrum of national assistance to immediately support State and local emergency response organizations. The Plan describes the basic mechanisms by which the Federal Government will introduce systematic, coordinated, effective and appropriate federally sponsored resources into a disaster response operation conducted by the State and the affected local jurisdictions during a major disaster or emergency. The Plan is activated through the authority of the Robert T. Stafford Disaster Assistance Act, Public Law (Pub. L.) 93–288, as amended.

Urban Search and rescue represents one of 12 major response areas covered under the Plan. These response areas are known as Emergency Support Functions, or EFS. The FEMA-coordinated National Urban Search and Rescue Response System program is the principal activity undertaken through ESF 9, Urban Search and Rescue. FEMA, in attempting to accelerate efforts toward creating a national urban search and rescue capability, requires specialized urban search and rescue expertise found principally at the State and local levels. An effective national urban search and rescue capability will require input from those State and local experts, as well as from Federal employees and private citizens trained in the multi-disciplinary functions of urban search and rescue.

The objective of the National Urban Search and Rescue System Advisory Committee is to provide advice, recommendations, and counsel on developing a national Urban Search and Rescue System to the FEMA Operations Planning and Response Branch Chief, the Designated Federal Officer for the Committee. After development, the Committee will provide continuing advice on maintaining and improving the national Urban Search and Rescue capability. Principal functions of the Advisory Committee include the following:

- Providing guidance to FEMA on the development and implementation of a national Urban Search and Rescue (US&R) capability, including criteria;
- Recommending priorities for US&R capability development;
- Establishing working groups as necessary;
- Recommending criteria for participation in a national response model; and
- Recommending policies and procedures for the organization, operation and coordination of the national response system model.

The National Urban Search and Rescue System Advisory Committee will comprise no more than 23 members, including a Chairperson, appointed by the Director of FEMA. Members are appointed for a two (2) year term, subject to renewal, and will serve at the discretion of the Director. Members will be selected to ensure a balanced representation of interests and will be recommended based on professional experience in fields such as search, rescue, medical, structural engineering and emergency management. Federal employees will be considered for membership on the Advisory Committee if they possess unique expertise which will augment effective operation of the Committee. The Advisory Committee may constitute specialized sub-committees on an ad hoc or standing basis, as necessary to meet its responsibilities.

The Advisory Committee of the National Urban Search and Rescue System will function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act.

Interested persons are invited to submit comments regarding the establishment of the Advisory Committee of the National Urban Search and Rescue System. Such comments and related inquiries may be addressed to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, room 840, 500 C Street, SW., Washington DC 20472.

Dated: November 10, 1991.

Wallace E. Stickney,

Director Federal Emergency Management Agency.

CHARTER OF THE ADVISORY COMMITTEE OF THE NATIONAL URBAN SEARCH AND RESCUE (US&R) SYSTEM

Charter and Operating Rules

I. Preamble

Major catastrophic earthquakes requiring urban search and rescue (US&R) assets have occurred with increasing frequency. The September 1985 earthquake that devastated Mexico City represented the first time that U.S. US&R experts actively participated in a concerted manner in an immediate response effort. Since then, U.S. US&R technical specialists have contributed to international earthquake response operations in El Salvador (1986), Armenia (1988), Iran (1990), and the Philippines (1990). During these responses, it became apparent to the Federal officials involved in managing

our efforts that US&R capability within the United States was limited, at best.

The need for an immediate Federal US&R response mechanism for major domestic disasters was clearly demonstrated during Hurricane Hugo and the Loma Prieta disaster operations in the autumn of 1989. When the October 1989 earthquake struck the Loma Prieta fault, affecting San Francisco and the surrounding vicinity, damage to property was considerable, but loss of life and injury were minimized due to the time of day at which the quake occurred, appropriate earthquake engineering, and other preparedness activities undertaken throughout the State of California. A disaster of equal or greater catastrophic potential, occurring with little or no warning or in another geographic location, would likely cause multiple building collapses, entrapping many victims and causing thousands of injuries and deaths.

The most crucial immediate response capability to save lives and alleviate suffering is Urban Search and Rescue. However, there currently is no national system to mobilize and deploy this time-sensitive response. Expertise in US&R is primarily found at the State/local level. An effective national US&R capability therefore will require support from those State/local experts, as well as from Federal employees and private citizens trained in the multi-disciplinary functions of US&R.

II. Establishment and Duration/ Authority

The Director of FEMA ("the Director") hereby establishes the Advisory Committee of the National Urban Search and Rescue System pursuant to the Federal Advisory Committee Act, 5 U.S.C. appendix 1. The Committee shall operate on a continuing basis, until terminated, contingent upon renewal every two (2) years.

III. Objectives and Duties

A. *Purpose:* The Advisory Committee of the National US&R System provides advice, recommendations, and counsel on developing a national US&R System to the Director of FEMA. The Chief of the Operations Planning and Response Branch—within the Federal Response Division, Office of Emergency Management, State and Local Programs and Support Directorate, FEMA—is the Designated Federal Officer for the Committee. After development, the Committee will provide continuing advice on maintaining and improving the US&R capability.

B. *Functions:* Principal functions of the Advisory Committee include:

- Providing guidance to FEMA on the development and implementation of a national Urban Search and Rescue (US&R) capability, including criteria;
- Recommending priorities for US&R capability development;
- Establishing working groups as necessary;
- Recommending criteria for participation in a national response model; and
- Recommending policies and procedures for the organization, operation, and coordination of the national response system model.

IV. Organization

A. *Membership:* This Advisory Committee shall consist of 23 members, including a Chairman who is the Designated Federal Officer for the Committee, specifically the FEMA Operations Planning and Response Branch Chief. Members are appointed for a two- (2-) year term, subject to renewal, and will serve at the discretion of the Chairman. Members will be selected to ensure a balanced representation of interests. Members will be recommended based on professional experience in fields such as search, rescue, medical, structural engineering and emergency management. Federal employees will be considered for membership on the US&R Advisory Committee if they possess unique expertise which will augment effective operation of the Committee. The Advisory Committee may constitute specialized subcommittees on an ad hoc or standing basis as it finds necessary to meet its responsibilities. The FEMA Office of General Counsel is responsible for counseling Advisory Committee members on Federal ethics rules and criminal conflict-of-interest statutes.

B. *Meetings:* The FEMA representative serving as the Chairman shall be present at all Committee meetings and is authorized to adjourn any meeting when considered to be in the public interest to do so. Meetings of the Advisory Committee will be convened by the Chairman each quarter of the calendar year, with additional meetings occurring as circumstances warrant. An agenda of the meeting, as well as other pertinent information, shall be made available by the Chairman to Committee members in a timely manner.

C. *Support:* The Chairman shall designate a person or persons to provide secretarial support for minutes, administrative needs, notices, records, and reports. The estimated annual operating cost for the Committee is $160,000. This includes $103,000 for travel and per diem for four meetings per year for Committee members; $42,000 for administrative support; and ⅓ FTE of staff support/supervision at $15,000. The Committee shall be authorized to establish subcommittees to carry out operations, subject to the approval of the Director. Subcommittees shall be subject to provisions of the Federal Advisory Committee Act.

D. *Operation:* The Advisory Committee shall operate in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) and the GSA **Federal Register** notice of April 28, 1983, (41 CFR part 101–6).

V. Termination Date

Unless renewed by appropriate action prior to its expiration, the Advisory Committee shall terminate two (2) years from the date this charter is filed with the standing committees of the Senate and House of Representatives having legislative jurisdiction of the Agency.

VI. Certification

The establishment of the Advisory Committee of the National Urban Search and Rescue (US&R) System is essential to the conduct of FEMA business and is in the public interest.

Date Charter Signed: September 5, 1991.

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91–27766 Filed 11–18–91; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–921–DR]

Maine; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maine (FEMA–921–DR), dated November 7, 1991, and related determinations.

DATED: November 7, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that, in a letter dated November 7, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288, as amended by Public Law 100–707), as follows:

I have determined that the damage in certain areas of the State of Maine, resulting from a major coastal storm on October 30 through and including November 2, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Richard H. Strome of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Maine to have been affected adversely by this declared major disaster: York County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91–27764 Filed 11–18–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–920–DR]

Massachusetts; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Massachusetts, (FEMA–920–DR), dated November 4, 1991, and related determinations.

DATED: November 5, 1991.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3606.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective November 2, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–27763 Filed 11–18–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–920–DR]

Massachusetts; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Massachusetts (FEMA–920–DR), dated November 4, 1991, and related determinations.

DATED: November 7, 1991.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3606.

NOTICE: The notice of a major disaster for the Commonwealth of Massachusetts, dated November 4, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 4, 1991: Norfolk County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–27765 Filed 11–18–91; 8:45 am]

BILLING CODE 6718–02–M

Adjustment of Disaster Grant Amounts

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, prescribes that grants made under section 411, Individual and Family Grant Program, and grants made under section 422, Simplified Procedure, relating to the Public Assistance program, shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that the maximum amount of any grant made to an individual or family for disaster-related serious needs and necessary expenses under section 411 of the Act, with respect to any single disaster, is increased to $11,500 for all disasters declared after October 1, 1991.

Notice is also hereby given that the amount of any grant made to the State, local government, or the owner or operator of an eligible private nonprofit facility, under Sec. 422 of the Act, is increased to $40,000 for all disasters declared after October 1, 1991.

The increase is based on a rise in the Consumer Price Index for All Urban Consumers of 3.8 percent for the prior 12-month period. The information was published by the Department of Labor during September, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91–27767 Filed 11–18–91; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–009847–027.
Title: U.S. Atlantic Coast/Brazil Agreement.
Parties:
Companhia de Navegacao Lloyd Brasileiro.
Companhia de Navegacao Maritime Netumar.
Companhia Maritima Nacional.
American Transport Lines, Inc.
Synopsis: The proposed amendment would require that all members of this Agreement must also be members of the Inter-American Freight Conference (FMC Agreement No. 202–009648A).

Agreement No.: 212–009848–026.
Title: U.S. Gulf Ports/Brazil Agreement.
Parties:
Companhia de Navegacao Lloyd Brasileiro.
Companhia Maritima Nacional.
American Transport Lines, Inc.
Synopsis: The proposed amendment would require that all members of this Agreement must also be members of the Inter-American Freight Conference (FMC Agreement No. 202–009648A).

Agreement No.: 212–010027–033.
Title: Brazil/U.S. Atlantic Coast Agreement.
Parties:
Companhia de Navegacao Lloyd Brasileiro.
Companhia de Navegacao Maritima Netumar.
Companhia Maritima Nacional.
American Transport Lines, Inc.
Empresa Lineas Maritimas Argentinas S/A.
A. Bottacchi S.A. de Navegacion C.F.I.I.
Synopsis: The proposed amendment would require that all members of this agreement must also be members of the Inter-American Freight Conference (FMC Agreement No. 202–009648A).

Agreement No.: 212–010320–024.
Title: Brazil/U.S. Gulf Ports Agreement.
Parties:
Companhia de Navegacao Lloyd Brasileiro.
Companhia Maritima Nacional.
American Transport Lines, Inc.
Empresa Lineas Maritimas Argentinas S/A.
A. Bottacchi S.A. de Navegacion C.F.I.I.
Synopsis: The proposed amendment would require that all members of this agreement must also be members of the Inter-American Freight Conference (FMC Agreement No. 202–009648A).

Agreement No.: 212–010388–015.
Title: U.S. Atlantic Coast/Argentina Agreement.
Parties:
American Transport Lines, Inc.
Empresa Lineas Maritimas Argentinas S.A.
A. Bottacchi S.A. de Navegacion C.F.I.I.
Synopsis: The proposed amendment provides additional terms and conditions, in article 28, to pre-existing space charter authority. In addition, the amendment deletes article 25(c), which provided for automatic effectiveness of certain amendments, from the agreement.

Agreement No.: 212–010389–015.
Title: U.S. Gulf Ports/Argentina Agreement.
Parties:
American Transport Lines, Inc.
Empresa Lineas Maritimas Argentinas S.A.
A. Bottacchi S.A. de Navegacion C.F.I.I.
Synopsis: The proposed amendment provides additional terms and conditions, in article 28, to pre-existing space charter authority. In addition, the amendment deletes article 25(c), which provided for automatic effectiveness of certain amendments, from the agreement.

Dated: November 13, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–27708 Filed 11–18–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket Nos. 7100–0128 and 7100–0244]

Bank Holding Company Reporting Requirements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final changes in agency forms.

SUMMARY: Under the Bank Holding Company Act of 1956, as amended, the Board is responsible for the supervision and regulation of all bank holding companies. The Board has approved revisions to the Consolidated Financial Statements for Bank Holding Companies With Total Consolidated Assets of $150 Million or More, or With More Than One Subsidiary Bank (FR Y–9C; OMB. No. 7100–0128) that were previously approved on an interim basis. The purpose of the revision, as approved, is to parallel changes approved by the Federal Financial Institutions Examination council and OMB to the commercial bank Reports of Condition and Income, which were effective with the March 31, 1991, reports.

As part of these revisions, the Board gave approval on an interim basis to the addition of several new line items to the FR Y–9C and to several other reports submitted by bank holding companies.[1] The Board has now approved the revisions in final form. These changes improve the monitoring of risk-based capital and provide information which will enable the Board to more effectively perform its supervisory responsibilities and more accurately inform Congress with regard to the safety and soundness of the nation's financial system. Other changes are minor and involve minimal burden.

The Board will make available upon request data reported in the FR Y–9C on Schedules HC–I, HC–IC, and HC–J as of the reporting date of December 31, 1990. These data, which were previously held confidential, provide the necessary information to calculate the risk-based capital ratio in accordance with the Risk-Based Capital Guidelines (12 CFR part 225; appendix B).

The reports are required by law and are authorized by section 5(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) and by § 225.5(b) of Regulation Y (12 C.F.R. 225.5(b)).

After consideration of the public comments, the revisions to the various forms identified in this notice, as well as the change in the Board's policy

BACKGROUND: Notice is hereby given of final approval by the Board of Governors of the Federal Reserve System ("Board") of the changes in reporting requirements that are identified below, under authority delegated to the Board by the Office of Management and Budget ("OMB"), as per 5 CFR 1320.9 (OMB Regulations on controlling Paperwork Burdens on the Public). In addition, the Board will release to the public, data previously held confidential that was submitted by bank holding companies on the forms identified herein, as of December 31, 1990, relating to risk-weighted assets of off-balance sheet items, components of tier 1 and tier 2 capital and other data elements related to the calculation of the risk-based capital ratio. The changes in reporting requirements were effective for the reporting period ending March 31, 1991. The Board has considered all public comments and has determined, on the basis of those comments, that the changes as approved on an interim basis should become final.

[1] The other reports being revised are the Parent Company Only Financial Statements for Bank Holding Companies With Total Consolidated Assets of $150 Million or More, or With More Than One Subsidiary Bank (FR Y–9LP; OMB No. 7100–0128), the Combined Financial Statements of Nonbank Subsidiaries of Bank Holding Companies (FR Y–11Q; OMB No. 7100–0244), and the Combined Financial Statements of Nonbank Subsidiaries of Bank Holding Companies, By Type of Nonbank Subsidiary (FR Y–11AS; OMB No. 7100–0244).

regarding public availability of certain 1990 data relating to risk-weighted assets, off-balance sheet items, tier 1 and tier 2 capital components and other and other deductions that were effective March 31, 1991, and for the reporting period that ended on that date, remain as approved on an interim basis.

Revisions Approved Under OMB Delegated Authority—the Approval of the Collection of the Following Reports:

1. *FR Y–9C* (OMB No. 7100–0128), Consolidated Financial Statements for Bank Holding Companies with Total Consolidated Assets of $150 million or More, or With More Than One Subsidiary Bank;

This report is to be filed by all bank holding companies that have total consolidated assets of $150 million or more and by all multibank holding companies regardless of size. The following bank holding companies are exempt from filing the FR Y–9C, unless the Board specifically requires an exempt company to file the report: bank holding companies that are subsidiaries of another bank holding company and have total consolidated assets of less than $1 billion; bank holding companies that have been granted a hardship exemption by the Board under section 4(d) of the Bank Holding Company Act; and foreign banking organizations as defied by § 211.23(b) of Regulation K. The revised report was implemented on a quarterly basis as of March 31, 1991, with a submission date of 45 days after the "as of" date.

Report Title: Consolidated Financial Statements for Bank Holding Companies with Total consolidated Assets of $150 million or More, or With More Than One Subsidiary Bank.
Agency Form Number: FR Y–9C.
OMB Docket Number: 7100–0128.
Frequency: Quarterly.
Reporters: Bank Holding Companies.
Annual Reporting Hours: 167,790.
Estimated Average Hours per Response: Range from 5 to 1,200 hours.
Number of Respondents: 1,598.
Small businesses are affected.

The information collection is mandatory (12 U.S.C. 1844) and part of the information is given confidential treatment. Confidential treatment is not routinely given to the remaining information on the form. However, confidential treatment for the remaining information, in whole or in part, can be requested in accordance with the instructions to the form.

2. *FR Y–9LP* (OMB No. 7100–0128), Parent Company Only Financial Statements for Bank holding Companies with Total Consolidated Assets of $150 million or More, or With More Than One Subsidiary Bank;

This report is to be filed on a parent company only basis by all bank holding companies that have total consolidated assets of $150 million or more, or have more than one subsidiary bank. Bank holding companies of any size that are controlled by another bank holding company that has total consolidated assets of $150 million or more, or have more than one subsidiary bank must file the FR Y–9LP. The following bank holding companies are exempt from filing the FR Y–9LP, unless the Board specifically requires an exempt company to file the report: bank holding companies that have been grated a hardship exemption by the Board under section 4(d) of the Bank Holding Company Act and foreign banking organizations as defined by § 211.23(b) of Regulation K. This report is to be submitted with the consolidated financial statements required above. The revised report was implemented on a quarterly basis as of march 31, 1991, with a submission date of 45 days after the "as of" date.

Report Title: Parent company Only Financial Statements for Bank Holding Companies with Total Consolidated Assets of $150 million or More, or With More Than One Subsidiary Bank.
Agency Form Number: FR Y–9LP.
OMB Docket Number: 7100–0128.
Frequency: Quarterly.
Reporters: Bank Holding Companies.
Annual Reporting Hours: 32,474.
Estimated Average Hours per Response: Range from 2 to 13.5 hours.
Number of Respondents: 1,933.
Small businesses are affected.

The information collection is mandatory (12 U.S.C. 1844). Confidential treatment is not routinely given to the information on the form. However, confidential treatment for the information can be requested in accordance with the instructions to the form.

3. *FR Y–11Q* (OMB No. 7100–0244), Combined Financial Statements of Nonbank Subsidiaries of Bank Holding Companies;

This report is to be filed on a quarterly basis by (1) all bank holding companies with total consolidated assets of $1 billion or more; and (2) bank holding companies with total consolidated assets of between $150 million and $1 billion that meet one or more of the following conditions: (i) The total assets of the bank holding company's nonbank subsidiaries equal or exceed 5 percent of the total consolidated assets of the bank holding company, (ii) net income of the bank holding company's nonbank subsidiaries equals or exceeds 5 percent of the bank holding company's total consolidated net income, or (iii) the bank holding company's investments in and/or loans and advances to its nonbank subsidiaries equal or exceed 5 percent of the bank holding company's total stockholder's equity. The revised report was implemented as of March 31, 1991, with a submission date of 60 days after the "as of" date.

Report Title: Combined Financial Statements of Nonbank Subsidiaries of Bank Holding Companies.
Agency Form Number: FR Y–11Q.
OMB Docket Number: 7100–0244.
Frequency: Quarterly.
Reporters: Bank Holding Companies.
Annual Reporting Hours: 3,878.
Estimated Average House per Response: Range from 1 to 6 hours.
Number of Respondents: 303.
Small business is not affected.

The information collection is mandatory (12 U.S.C. 1844). Confidential treatment is not routinely given to the information on the form. However, confidential treatment for the information can be requested in accordance with the instructions to the form.

4. *FR Y–11AS* (OMB No. 7100–0244), Combined Financial Statements of Nonbank Subsidiaries of Bank Holding Companies, by Type of Nonbank Subsidiary.

This report is to be submitted as of each December 31 by the same bank holding companies submitting the quarterly FR Y–11Q report (No. 3 above). The revised report is to be implemented as of December 31, 1991, with a submission date of 60 days after the "as of" date.

Report Title: Combined Financial Statements of Nonbank Subsidiaries of Bank Holding Companies, by Type of Nonbank Subsidiary.
Agency Form Number: FR Y–11AS.
OMB Docket Number: 7100–0244.
Frequency: Annual.
Reporters: Bank Holding Companies.
Annual Reporting Hours: 1,879.
Estimated Average House per Response: Range from 1 to 17 hours.
Number of Respondents: 303.
Small business is not affected.

The information collection is mandatory (12 U.S.C. 1844). Confidential treatment is not routinely given to the information on the form. However, confidential treatment for the information can be requested in

accordance with the instructions to the form.

FOR FURTHER INFORMATION CONTACT: Stephen M. Lovette, Manager, Policy Implementation, Division of Banking Supervision and Regulation (202/452–3622) or Arleen Lustig, Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202/452–2987). The following individuals may be contacted with respect to issues related to the Paperwork Reduction Act of 1980: Stephen Siciliano, Special Assistant to the General Counsel for Administrative Law, Legal Division, (202/452–3920); Frederick J. Schroeder, Chief, Financial Reports, Division of Research and Statistics (202–452–3829); and Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: The Board has granted final approval, under delegated authority from the Office of Management and Budget, to revisions in the following reports. The reports are:

1. *FR Y–9C* (OMB No. 7100–0128), Consolidated Financial Statements for Bank Holding Companies with Total Consolidated Assets of $150 million or More, or With More Than One Subsidiary Bank;

2. *FR Y–9LP* (OMB No. 7100–0128), Parent Company Only Financial Statements of Bank Holding Companies with Total Consolidated Assets of $150 million or More, or With More Than One Subsidiary Bank;

3. *FR Y–11Q* (OMB No. 7100–0244), Combined Financial Statements of Nonbank Subsidiaries of Bank Holding Companies;

4. *FR Y–11AS* (OMB No. 7100–0244), Combined Financial Statements of Nonbank Subsidiaries of Bank Holding Companies, by Type of Nonbank Subsidiary.

The FR Y–9C consolidated financial statements are filed by the large bank holding companies and those with more than one subsidiary bank. The report includes a balance sheet, income statement, and statement of changes in equity capital with supporting schedules providing information on securities, loans, highly leveraged transactions, risk-based capital, deposits, interest sensitivity, average balances, off-balance sheet activities, past due loans, and loan charge-offs and recoveries. The parent company statement, FR Y–9LP, is filed by the large companies that also file the FR Y–9C. The FR Y–9LP contains a balance sheet and income statement with a supporting schedule on investments in subsidiaries, a statement of cash flows and other selected items. The nonbank subsidiary financial statements, FR Y–11Q and FR Y–11AS, contain balance sheets and income items and are filed by the larger bank holding companies.

On March 27, 1991, the Board gave approval, on an interim basis, to the revisions in bank holding company reporting requirements. The notice of the new reporting requirements was published in the **Federal Register** on April 3, 1991. The comment period ended on May 2, 1991. The reporting requirements approved by the Board are listed above under Revisions Approved Under OMB Delegated Authority—the Approval of the Collection of the Following Report.

The revisions to the bank holding company reporting requirements over the last several years have been directed towards (a) strengthening the Federal Reserve's ability to monitor risk-taking between on-site inspections; (b) identifying supervisory problems at an earlier stage; and (c) monitoring the bank holding companies' capital adequacy.

In addition, the consolidated bank holding company financial statements (FR Y–9C) have been structured to lessen the bank holding companies' overall reporting burden by making the FR Y–9C identical, to the extent possible, to the commercial bank Reports of Condition and Income. This parallel format enables bank holding companies to use the structure of accounts established for subsidiary banks in reporting for the consolidated bank holding company.

The revisions to the bank holding company reporting requirements, in most cases, parallel those approved for the Reports of Condition and Income for the March 31, 1991, reporting date. The Board approved revisions to the FR Y–9C effective for the first quarter 1991 in response to a number of comments from both bank holding companies and banks requesting that the federal banking agencies make modifications to the regulatory reports effective for the same reporting period.

The Board also approved the addition of several new line items to the FR Y–9C, FR Y–9LP, FR Y–11Q, and the FR Y–11AS. The added information provided by these items enable the Federal Reserve and the other federal banking agencies to adjust the calculations for risk-based capital, to provide the Federal Reserve with information needed to respond to Board and Congressional questions, and to establish statistical support for supervisory decisions.

Finally, the Board deleted certain items that were required, under the previous capital guidelines, to calculate secondary capital. These items were no longer needed with the elimination of the primary and secondary capital adequacy measures at year-end 1990.[2]

Public Comments on the Proposal

Only two comment letters were received on the revisions to the bank holding company reporting requirements. These letters addressed a lack of sufficient lead time provided to bank holding companies prior to the implementation of revisions to reporting requirements. No comments were received on the Board's announcement to release to the public data, as of December 31, 1990, relating to risk-weighted assets, components of Tier 1 and Tier 2 capital, and other data elements related to the calculation of the risk-based capital ratio.

Both letters indicated that the short lead time did not allow for an efficient and accurate collection of the requested data by holding companies. Neither comment letter objected to the substance of the revisions proposed.

The Board has reviewed these comments and believes that, since no commenters objected to the content of the revisions and the revisions are substantially identical to the requirements presently imposed on bank subsidiaries, the revisions should receive final approval.

All of the revisions are summarized below.

Revisions Corresponding to Report of Condition Changes

The Board has approved the following changes to the consolidated bank holding company financial statements (FR Y–9C), which correspond to those made to the commercial bank Reports of Condition and Income. These revisions will lessen the reporting burden on bank holding companies by keeping the structure of the consolidated financial statements parallel to the commercial bank Reports of Condition and Income and will enhance the analysis of the reports.

In addition, the modifications will provide supplemental information for the consolidated bank holding company on activities in which the holding companies can engage outside their subsidiary banks.

1. Securities (Schedule HC–A)—

[2] The deletion of data items pertaining to secondary capital was included in the 1990 proposal to change the FR Y–9C. Approval was granted by the Board and OMB at the beginning of August 1990

Add memoranda items for

a. "Debt securities held for sale"

b. "Debt securities restructured and in compliance with modified terms."

2. Loans and Lease Financing Receivables (Schedule HC–B)—

a. Split "All other loans secured by 1–4 family residential properties," (item 1.c(2)) into two line items adding closed-end loans "Secured by junior liens" on 1–4 family residential properties.

b. Split "Loans to depository institutions" into (1) "Loans to U.S. banks and other U.S. depository institutions" and (2) "Loans to foreign banks."

c. Separate item 5, "Loans to individuals for household, family, and other personal expenditures" into (1) "Credit cards and related plans" and (2) "Other."

d. Add a memorandum item for "Loans and leases held for sale."

3. Memoranda (Schedule HC–G)—

Add "Total assets of unconsolidated subsidiaries and associated companies."

4. Past Due and Nonaccrual Loans, Lease Financing Receivables, Placements, and Other Assets (Schedule HC–H)—

a. Add "Loans to U.S. banks and other U.S. depository institutions" and "Loans to foreign banks" as subitems of "Loans to depository institutions" that are past due or in nonaccrual status.

b. Split "Loans to individuals for household, family, and other personal expenditures" into (1) "Credit cards and related plans" and (2) "Other loans to individuals for household, family, and other personal expenditures."

c. Add a line item for past due and nonaccrual "Loans to foreign governments and official institutions."

d. Split memoranda item 4.c, "Secured by 1–4 family residential properties" into (1) "Revolving, open-end loans secured by 1–4 family residential properties and extended under lines of credit" and (2) "All other loans secured by 1–4 family residential properties."

5. Highly-Leveraged Transactions (Schedule HC–K)—

Add detail on HLT's 30 to 89 days past due and still accruing.

6. Additional Detail on Capital Components (Schedule HI–IC)—

Add line items for discounting long-term preferred stock with an original maturity of 20 years or more.

This information is presently collected on the commercial bank Reports of Condition and Income on Schedule RC–R, item 2, column B.

7. Charge-offs and Recoveries and Changes in Allowance for Loan and Lease Losses (Schedule HI–B)—

a. Add "Loans to U.S. banks and other U.S. depository institutions" and "Loans to foreign banks" as subitems of a new item, "Loans to depository institutions" that have been charged-off or recovered.

b. Split "Loans to individuals for household, family, and other personal expenditures" into (1) "Credit cards and related plans" and (2) "Other loans to individuals for household, family, and other personal expenditures."

c. Add memorandum item 2 for "Loans to finance commercial real estate, construction, and land development activities included in Part I, items 2 and 7 above" that are charged-off or recovered.

d. Split memoranda item 4.c, "Secured by 1–4 family residential properties" into "Revolving, open-end loans secured by 1–4 family residential properties and extended under lines of credit" and "All other loans secured by 1–4 family residential properties."

Other Revisions

To the Bank Holding Company Consolidated Financial Statements (FR Y–9C):

1. Add to the Risk-Based Capital Abbreviated schedule (Schedule HC–1 Abbreviated) an item to collect "Capital investments in unconsolidated banking and finance subsidiaries."

2. Delete from the Memoranda schedule (Schedule HC–G), as previously approved, certain items that were included on the report form for the purpose of calculating secondary capital under the previous capital adequacy guidelines.

Unsecured long-term debt, which was collected on Schedule HC–G, will be moved to Schedule HC–IC.

3. Move from Schedule HC–G, Memoranda, to Schedule HC–IC, Additional Detail on Capital Components, the following items:

a. "Common or perpetual preferred stock dedicated to retire or redeem outstanding equity contract notes".

b. "Common or perpetual preferred stock dedicated to retire or redeem outstanding equity commitment notes".

c. "Total perpetual debt".

d. "Offsetting debit to the liability (i.e., the contra account) for Employee Stock Ownership Plan (ESOP) debt guaranteed by the reporting bank holding company".

4. Add two line items to schedule HC–IC that provide data on treasury stock in the form of perpetual preferred stock and treasury stock in the form of common stock.

To the Parent Company Only Financial Statements (FR Y–9LP)

5. Add an item to the balance sheet to collect deposits.

To ensure consistency of reporting and to enable the Board to analyze the liabilities of the parent company in conjunction with the consolidated financial statements, the Board has approved the addition of "Deposits" as a line item.

6. Add a free form item at the end of the FR Y–9LP.

The addition of this item will enable the Board to automate information that holding companies are now reporting as footnotes to various reported items.

To the Combined Financial Statements of Nonbank Subsidiaries of Bank Holding Companies (FR Y–11Q) and the Combined Financial Statements of Nonbank Subsidiaries of Bank Holding Companies, by Type of Nonbank Subsidiary (FR Y–11AS)

7. Add line items for purchased mortgage servicing rights, goodwill, and other identifiable intangible assets.

8. Split the line item, "Borrowings with an original maturity of one year or less' into "Commercial paper" and "Other borrowings with an original maturity of one year or less."

Public Availability of Schedules HC–I, HC–IC and HC–J in the FR Y–9C

Data on risk-based capital are submitted on Schedules HC–I, HC–IC, and HC–J in the FR Y–9C. These schedules require bank holding companies so submit data on their risk-weighted assets, off-balance sheet items, and tier 1 and tier 2 capital components.

In the **Federal Register** on August 8, 1990, 55 FR 32297, the Board indicated that these data would be given routine confidential treatment through year-end 1990 when the minimum capital ratios under the Risk-Based Guidelines become effective. The confidential treatment was to be consistent with the treatment accorded risk-based capital data on the Reports of Condition and Income filed by commercial banks and authorized by the Federal Financial Institutions Examination Council. This treatment was both to ensure that the data being reported were correct by the date of the public disclosure of the information and to maintain confidentiality until the Risk-Based Capital Guidelines were in place. On December 31, 1990, the Guidelines were effective for both banks and bank holding companies. The Council authorized the release to the public of data reported by commercial banks as of December 31, 1990.

The Board, therefore, intends to release the risk-based capital data reported in the FR Y–9C as of December

31, 1990. This action is taken to ensure data on bank holding companies will be available at the same time as data on banks, and that the data will be available at the same date as the implementation of the Risk-Based Capital Guidelines.

Legal Status and Confidentiality

Sections 5(b) and 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(b) and (c) and § 225.5(b) of Regulation Y (12 C.F.R. 225.5(b)) authorizes the Board to require the reports. The Board does not consider the data in these reports to be confidential except as indicated herein. Under the existing guidelines, the data submitted in response to the bank holding company reporting requirements are available to the public unless a specific company requests confidential treatment for all or part of the reports and the request is granted by the Board. The Board will continue to grant confidentiality for highly-leveraged transactions, for assets past due 30–89 days and still accruing, and for renegotiated loans and leases not in compliance with modified terms. Confidential treatment will be accorded pursuant to section (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4).

Regulatory Flexibility Act Analysis

The Board certifies that the bank holding company reporting requirements are not expected to have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Small bank holding companies are required to report semiannually, rather than quarterly, as is required for more complex or larger companies. The reporting requirements for the small companies require significantly less information to be submitted than the amount of information required of multibank or large bank holding companies. In addition, the reporting requirements allow for reporting of less detail for the smaller companies on the approved items.

The information that is collected on the reports is essential for the detection of emerging financial problems, the assessment of a holding company's financial condition and capital adequacy, the performance of pre-inspection reviews, and the evaluation of expansion activities through mergers and acquisitions. The imposition of the reporting requirements is essential for the Board's supervision of bank holding companies under the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, November 13, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91–27772 Filed 11–18–91; 8:45 am]

BILLING CODE 6210–01–M

First Banks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 10, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Banks, Inc., St. Louis, Missouri; to acquire at least 57.28 percent of the voting shares of WIN Bancorp, Inc., Winchester, Illinois, and thereby indirectly acquire Winchester National Bank, Winchester, Illinois.

2. Forbes First Financial Corporation, Clayton, Missouri; to acquire 99.2 percent of the voting shares of Pioneer Bank and Trust Company, Maplewood, Missouri.

3. Pine State Bancshares, Inc., Monticello, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Pine State Bank, Kingsland, Arkansas.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Norwest Bank Waseca, National Association, Waseca, Minnesota, a *de novo* bank.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Crosswhite Bankshares, Inc., Denver, Colorado; to acquire 80 percent of the voting shares of Cripple Creek Bancorporation, Inc., Cripple Creek, Colorado, and thereby indirectly acquire Bank of Cripple Creek, Cripple Creek, Colorado.

Board of Governors of the Federal Reserve System, November 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–27743 Filed 11–18–91; 8:45 am]

BILLING CODE 6210–01–F

Mark Oliver Johnson; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than December 10, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Mark Oliver Johnson, Rice Lake, Wisconsin; to acquire 15.99 percent of the voting shares of Rice Lake Bancorp, Inc., Rice Lake, Wisconsin, and thereby indirectly acquire Dairy State Bank, Rice Lake, Wisconsin, and First State Bank, Prairie Farm, Wisconsin.

Board of Governors of the Federal Reserve System, November 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–27744 Filed 11–18–91; 8:45 am]

BILLING CODE 6210–01–F

Lanier Bankshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 10, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Lanier Bankshares, Inc., Gainesville, Georgia; to retain 51 percent of the voting shares of Lanier Data Corporation, Gainesville, Georgia, and to contininue to engage in data processing and transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-27743 Filed 11-18-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Dkt. C-3349]

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

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, RWE to grant the required technology license used in producing high-purity alumina, and establish other required agreements, subject to prior Commission approval, within six months of the order, or else consent to the appointment of a trustee to effectuate these requirements. In addition, for ten years, RWE is required to obtain prior FTC approval before acquiring any entity that manufactures, distributes, or sells high-purity alumina, with sales in the U.S. of 125,000 pounds or more in any six-month period during the 36 months before the application.

DATES: Complaint and Order issued October 29, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Robert Tovsky, FTC/S-3302, Washington, DC 20580. (202) 326-2634.

SUPPLEMENTARY INFORMATION: On Tuesday, June 25, 1991, there was published in the **Federal Register**, 56 FR 28896, a proposed consent agreement with analysis In the Matter of Alpha Acquisition Corporation, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order, as set forth in the proposed consent agreement, in disposition of this proceeding.

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

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

Donald S. Clark,

Secretary.

[FR Doc. 91-27794 Filed 11-18-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 892-3008]

Elexis Corp.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, Elexis, a Miami-based manufacturer, from calling its ultrasonic dog and cat collars by names such as Flea Relief, Pet Shield, Flea Buster, Flea and Tick Collar, and from representing that such collars will eliminate or repel fleas or repel ticks without the use of chemicals.

DATES: Comments must be received on or before January 21, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: John Hallerud, Chicago Regional Office, Federal Trade Commission, 55 East Monroe Street, suite 1437, Chicago, Illinois 60603, (312) 353-8156.

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

Agreement Containing Consent Order To Cease and Desist

In the Matter of Elexis Corporation, a corporation, and Frank J. Bianco, individually and as an officer of Elexis Corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Elexis Corporation, a corporation, and Frank J. Bianco, individually and as an officer of Elexis Corporation, and it now appearing that Elexis Corporation, a corporation, and Frank J. Bianco, individually and as an officer of Elexis Corporation, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Elexis Corporation, by its duly authorized officers, its attorneys, and Frank J. Bianco, individually and as an officer of Elexis Corporation, and counsel for the Federal Trade Commission that:

1. (a) Elexis Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware and is authorized to transact business in the State of Florida pursuant to the laws of the State of Florida. Its office and principal place of business is at 7000 NW. 46th Street, Miami, Florida 33166.

(b) Frank J. Bianco is an officer of the corporate respondents named herein. He has formulated, directed and controlled the acts and practices of the corporation, including all the acts and practices set forth below. His address is the same as that of the corporate respondent.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

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

(c) All right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

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

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

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may without further notice to proposed respondents: (1) Issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding; and, (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service, Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. Respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered That Respondents Elexis Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and Frank J. Bianco, individually and as an officer of Elexis Corporation, directly or through any corporation, subsidiary, division or other device, in connection with manufacturing, advertising, labeling, packaging, offering for sale, selling, or distributing the "Microtech," "Microtech–2," "Flea Relief," "Pet Shield," "Quick Relief," "Electronic Flea Collar," "Shoo Flea," "Flea Chaser," "Flea Buster," "Microtech Home Unit," "Microtech Pest Repeller" or any other ultrasonic flea and/or tick control product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(a) That any such product can or will eliminate fleas on dogs or cats without the use of chemicals;

(b) That any such product can or will reduce flea and/or tick populations on dogs or cats or in indoor environments without the use of chemicals; or

(c) That any such product can or will repel fleas and/or ticks from dogs, cats or indoor environments without the use of chemicals.

II

It is further ordered That Respondents Elexis Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and Frank J. Bianco, individually and as an officer of Elexis Corporation, directly or through any corporation, subsidiary, division or other device, in connection with manufacturing, advertising, labeling, packaging, offering for sale, selling or distributing any ultrasonic pest control device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, the existence, contents, validity, results, conclusions, interpretations, or purposes of any study, test, or other scientific data.

III

It is further ordered That Respondents Elexis Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and Frank J. Bianco, individually and as an officer of Elexis Corporation, directly or through any corporation, subsidiary, division or other device in connection with manufacturing, advertising, labeling, packaging, offering for sale, selling, or distributing the "Microtech," "Microtech–2," "Flea Relief," "Pet Shield," "Quick Relief," "Electronic Flea Collar," "Shoo Flea," "Flea Chaser," "Flea Buster," or any other ultrasonic flea and/or tick control product in or affecting commerce, as "commerce" is defined in the Federal Trade

Commission Act, do forthwith cease and desist from using the terms "Flea Relief," "Pet Shield," "Shoo Flea," "Flea Chaser," "Flea Buster," "flea collar," "flea and tick collar" and "flea repellent".

IV

It is further ordered That Respondents Elexis Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and Frank J. Bianco, individually and as an officer of Elexis Corporation, directly or through any corporation, subsidiary, division or other device in connection with manufacturing, advertising, labeling, packaging, offering for sale, selling, or distributing the "Microtech," "Microtech–2," "Flea Relief," "Pet Shield," "Quick Relief," "Electronic Flea Collar," "Shoo Flea," "Flea Chaser," "Flea Buster," "Microtech Home Unit," "Microtech Pest Repeller" or any ultrasonic flea and/or tick control product that produces ultrasound at a frequency substantially similar to or below the forty (40) kilohertz frequency generated by these products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication that any such product can or will produce sound at frequencies beyond the hearing range of domestic dogs and cats.

V

It is further ordered That Respondents Elexis Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and Frank J. Bianco, individually and as an officer of Elexis Corporation, directly or through any corporation, subsidiary, division or other device in connection with manufacturing, advertising, labeling, packaging, offering for sale, selling, or distributing the "Microtech," "Microtech–2," "Flea Relief," "Pet Shield," "Quick Relief," "Electronic Flea Collar," "Shoo Flea," "Flea Chaser," "Flea Buster," "Microtech Home Unit," "Microtech Pest Repeller" or any similar ultrasonic flea and/or tick control product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication that any such product, when used as directed, produces sound that is not heard by or does not irritate dogs, cats or other pets unless, at the time of making such representation, Respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this Order, for any experiment, analysis, research, study or other evidence to be "competent and reliable" it shall be conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

VI

It is further ordered That Respondents Elexis Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and Frank J. Bianco, individually and as an officer of Elexis Corporation, directly or through any corporation, subsidiary, division or other device in connection with manufacturing, advertising, labeling, packaging, offering for sale, selling, or distributing and ultrasonic pest control product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, any performance characteristic of any ultrasonic flea, tick, mosquito, roach, rodent, or other ultrasonic pest control product unless, at the time of making such representation, Respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this Order, for any experiment, analysis, research, study or other evidence to be "competent and reliable" it shall be conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

VII

It is further ordered That Respondents shall, within thirty (30) days after the sale of service of this Order, send to each catalog company with whom the Respondents have done business since January 1, 1987, a copy of this Order and a notice that the catalog company shall immediately cease using or relying upon any Elexis advertising or promotional materials containing representations prohibited by this Order.

VIII

It is further ordered That, for a period of three (3) years after the date of service of this Order, Respondents, their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

(a) All evidence relied upon to substantiate any representation covered by this Order; and

(b) All test reports, studies, surveys, or demonstrations in their possession or control that contradict, qualify, or otherwise call into question any such representation.

IX

It is further ordered That, for a period of three (3) years after the date of service of this Order, Respondents shall distribute a copy of this Order to all managerial employees, distributors, independent sales agents, retailers and wholesale customers of any ultrasonic pest control product present and future.

X

It is further ordered That, for a period of five (5) years after the date of service of this Order, Respondent Frank J. Bianco shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment engaged in manufacturing, labeling, packaging, offering for sale, selling, distributing or advertising any flea, tick, mosquito, roach, rodent, or other pest control products or services, stating the nature of the business or employment in which he is newly engaged as well as a description of his duties and responsibilities in connection with the business or employment and the address of such new business or employment.

XI

It is further ordered That, for a period of ten (10) years after the date of service of this Order, the corporate respondent shall notify the Commission within thirty (30) days before any changes in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

XII

It is further ordered That Respondents shall, within sixty (60) days after the date of service of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a Consent Order from Elexis Corporation, a Delaware

corporation with its principal place of business in Florida, and Frank J. Bianco, individually and as an officer of Elexis Corporation, (the "respondents"). Under this agreement, the respondents will cease and desist from making certain claims for their ultrasonic flea collars and ultrasonic home units. The respondents have also agreed to cease and desist from using certain terms, such as "flea collar" and "flea and tick collar," in promoting these products. In addition, the respondents have agreed to cease and desist from making other claims for other ultrasonic pest control products unless they possess competent and reliable scientific evidence that substantiates such claims.

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

This matter concerns claims made for Elexis Corporation's ultrasonic flea and tick control products. The Complaint accompanying the proposed Consent Order alleges, in part, that the respondents engaged in deceptive acts and practices in violation of section 5 of the Federal Trade Commission Act. According to the Complaint, the respondents represented that their ultrasonic flea and tick collars eliminate fleas on dogs and cats without the use of chemicals, and that their ultrasonic flea and tick collars and other ultrasonic flea and tick control products reduce flea and/or tick populations on and repel fleas from dogs, cats and indoor environments without the use of chemicals. In addition, the Complaint alleges that the respondents represented that these products produced sound at frequencies beyond the hearing range of dogs and cats and that the sound produced is not heard by and does not irritate dogs, cats or other pets.

The Complaint also alleges that the respondents claimed that their representations concerning the performance characteristics of the flea and tick control products were substantiated by laboratory and veterinary testing conducted in a scientifically acceptable manner, and that the respondents claimed to possess and rely upon a reasonable basis in making those representations.

The Complaint alleges that these various representations made by the respondents for their ultrasonic flea control products are false and misleading, in violation of section 5 of the FTC Act.

The Consent Order contains provisions designed to prevent the respondents from engaging in similar allegedly illegal acts and practices in the future.

Specifically, part I of the Order prohibits the respondents from representing that the ultrasonic products can or will eliminate fleas on dogs or cats without the use of chemicals; can or will reduce flea and/or tick populations on dogs or cats or in indoor environments without the use of chemicals; or can or will repel fleas and/or ticks from dogs, cats or indoor environments without the use of chemicals.

Part II of the Order prohibits the respondents from misrepresenting any study, test or scientific data in connection selling ultrasonic pest control products.

Part III prohibits the respondents from using certain terms, such as "flea collar" and "flea and tick collar," to promote their ultrasonic flea and tick control products because these terms imply that the products are effective.

Part IV prohibits claims that sound at frequencies of 40 Khz, the sound frequency generated by the respondents' flea control products, or lower is beyond the hearing range of dogs or cats.

Part V prohibits the respondents from making claims that dogs, cats, or other pets cannot hear, or are not irritated by, the sound generated by the respondents' ultrasonic flea control products and other similar products unless the claims are supported by competent and reliable scientific evidence.

Part VI prohibits respondents from making any performance claim regarding any ultrasonic pest control product unless the claim is substantiated by competent and reliable scientific evidence.

The remainder of the Order contains provisions regarding compliance, record-keeping, and distribution of the Order to various entities.

Part VII of the Order requires the respondents to send a copy of the Order along with a notice to cease using advertising materials that contain representations prohibited by the Order to each catalog company with whom the respondents have done business since January 1, 1987.

Part VIII requires the respondents to maintain and make available to the FTC all evidence that the respondents possess that substantiates or contradicts the representations encompassed by the Order.

Under part IX, the respondents must distribute copies of the Order to certain of their managerial employees and customers.

Parts X and XI of the Order require Frank J. Bianco and the corporate respondent, Elexis Corporation, to provide the FTC with prior notification of changes in business affiliations and structure as may be necessary to insure compliance with the Order.

Finally, part XII of the Order requires the respondents to file compliance reports with the FTC.

Donald S. Clark,

Secretary.

[FR Doc. 91-27795 Filed 11-18-91; 8:45 am]

BILLING CODE 6750-01-M

[Docket 9237]

Wayne Phillips, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, that Wayne Phillips, a Scottsdale, Arizona individual and two companies of which he was an officer, cease and desist distributing the "Government Grants" commercial and pay to the Commission consumer redress of $50,000.

DATES: Complaint issued February 12, 1990. Order issued October 11, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Sylvia Kundig, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, suite 570, San Francisco, CA. 94103, (415) 744-7920.

SUPPLEMENTARY INFORMATION: On Tuesday, August 6, 1991, there was published in the **Federal Register**, 56 FR 37352, a proposed consent agreement with analysis in the matter of Wayne Phillips, *et al.*, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an

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

order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

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

Donald S. Clark,

Secretary.

[FR Doc. 91-27796 Filed 11-18-91; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3348]

Sentinel Group, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Stamford, Connecticut, based corporation to divest, to Commission-approved acquirers, one of its funeral homes in each of three separate markets and to obtain Commission approval, for a period of ten years, before acquiring any additional funeral homes in these and three other markets.

DATES: Complaint and Order issued October 23, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Mark Taylor, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., room 1000, Atlanta, GA 30367, (404) 347-4836.

SUPPLEMENTARY INFORMATION: On August 6, 1991, there was published in the **Federal Register**, 56 FR 37356, a proposed consent agreement with analysis in the matter of Sentinel Group, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

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

Donald S. Clark,

Secretary.

[FR Doc. 91-27797 Filed 11-18-91; 8:45 am]

BILLING CODE 6750-01-M

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Meeting of the Interagency Committee on Developmental Disabilities

AGENCY: Administration on Developmental Disabilities, ACF, DHHS.

ACTION: Notice of meeting.

SUMMARY: The Interagency Committee on Developmental Disabilities (ICDD) was established by the Developmental Disabilities Assistance and Bill of Rights Act of 1984 (Pub. L. 98-527) to "meet regularly to coordinate and plan activities by Federal departments and agencies for persons with developmental disabilities." The Developmental Disabilities Assistance and Bill of Rights Act of 1990 (Pub. L. 101-496) added the requirement that the meetings be open to the public and that a notice of the meeting be published in the **Federal Register**. The ICDD is co-chaired by the Assistant Secretary for Special Education and Rehabilitative Services and the Commissioner of the Administration on Developmental Disabilities.

The ICDD meets regularly on the first Tuesday in December, April, and August. The meeting is open to the public.

DATES: Tuesday, December 3, 1991, 9:30 a.m. to 12 Noon.

ADDRESSES: Auditorium of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ronald W. Conley, room 348F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 (202) 245-7617, or Wendell Johnson, room 3014A, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202 (202) 732-1274.

SUPPLEMENTARY INFORMATION: At the meeting the ICDD will discuss: (1) Progress in the development of several data items to be collected uniformly across advocacy programs (Protection and Advocacy for People with Developmental Disabilities, Protection and Advocacy for People with Mental Illnesses, Client Assistance Programs, and Ombudsman Programs); (2) issues arising out of fire-safety requirements for community-based living arrangements for persons who are disabled or aged; (3) problems in providing long-term funding for people in supported employment; and (4) other matters that may arise.

Dated: November 12, 1991.

Deborah L. McFadden,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 91-27696 Filed 11-18-91; 8:45 am]

BILLING CODE 4130-04-M

Food and Drug Administration

[Docket No. 91E-0369]

Determination of Regulatory Review Period for Purposes of Patent Extension; Fludara®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Fludara® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian Malkin, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the Testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Fludara®. Fludara® (fludarabine phosphate) is indicated for treatment of patients with B-cell chronic lymphocytic leukemia (CLL) who have not responded to or have progressed during treatment with at least one standard alkylating-agent-containing regimen. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Fludara® (U.S. Patent No. 4,357,324) from the United States of America, as represented by the Department of Health and Human Services. The Patent and Trademark Office requested FDA's assistance in determining this patient's eligibility for patent term restoration. FDA, in a letter dated September 24, 1991, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Fludara® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Fludara® is 3,034 days. Of this time, 2,523 days occurred during the testing phase of the regulatory review period, while 511 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(1) of the Federal Food, Drug, and Cosmetic Act became effective:* December 29, 1982. The applicant claims February 4, 1983, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 29, 1982, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* November 24, 1989. The applicant claims November 22, 1989, as the date the new drug application (NDA) (NDA 20–038) was filed. However, FDA records indicate that the NDA was submitted on November 24, 1989.

3. *The date the application was approved:* April 18, 1991. FDA has verified the applicant's claim that NDA 20–038 was approved on April 18, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 21, 1991 submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 12, 1991, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 12, 1991.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 91–27750 Filed 11–18–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91N–0453]

Drug Export: Genie HIV–1/HIV–2 EIA Test

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Genetic Systems Corp. has filed an application requesting approval for the export of the Genie HIV–1/HIV–2 EIA test for the detection of antibodies to human immunodeficiency virus type 1 and type 2 to France.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, room 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Genetic Systems Corp., 6565 185th Avenue NE., Redmond, WA 98052, has filed an application requesting approval for the export of Genie HIV–1/HIV–2 EIA test for the detection of antibodies to human immunodeficiency virus type 1 and type 2 to France. The Genie HIV–1 and HIV–2 test is a rapid, synthetic peptide, solid phase enzyme immunoassay for the detection of circulating antibodies to human immunodeficiency virus types 1 and 2 (HIV–1, HIV–2) in human serum or plasma. The application was received and filed in the Center for Biologics Evaluation and Research on October 11,

1991 which shall be considered the filing date for purposes of the act. Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by November 29, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: November 6, 1991.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 91-27748 Filed 11-18-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96-511).

1. *Type of Request:* Extension; *Title of Information Collection:* Request for Enrollment in Supplementary Medical Insurance (SMI); *Form Number:* HCFA-4040; *Use:* This form is completed by individuals wishing to enroll in Part B of Medicare who are not otherwise eligible. The form is used primarily by individuals in non-FICA covered employment and legally admitted aliens completing a 5-year residency requirement; *Frequency:* On occasion; *Respondents:* Individuals/households; *Estimated Number of Responses:* 40,000; *Average Time per Response:* 5 minutes; *Total Estimated Burden Hours:* 3,333.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Medicare Contractor Draws on Letter of Credit and Monthly Financial Report; *Form Numbers:* HCFA-1521-1522; *Use:* These reports are completed on a monthly basis by Medicare contractors to account for the expenditure of Federal funds for Medicare program and related administrative costs. HCFA reviews the reports to ensure that contractors do not overdraw their U.S. Treasury accounts for allotted administrative costs and to monitor Medicare trust fund projections; *Frequency:* Monthly; *Respondents:* Businesses/other for profit and non-profit institutions; *Estimated Number of Responses:* 1,020; *Average Hours per Response:* 17; *Total Estimated Burden Hours:* 17,340.

3. *Type of Request:* Reinstatement; *Title of Information Collection:* Medicare Intermediary Benefit Payment Report; *Form Number:* ; HCFA-456; *Use:* This report is completed monthly by Medicare fiscal intermediaries so that HCFA can monitor the implementation of the Prospective Payment System and track benefit payments by type of provider in order to detect significant shifts in the provision of types of services and in benefit payments; *Frequency:* Monthly; *Respondents:* Businesses/other for profit and non-profit institutions; *Estimated Number of Responses:* 540; *Average Hours per Response:* 30; *Total Estimated Burden Hours:* 16,200.

4. *Type of Request:* Revision; *Title of Information Collection:* Medicare Physical Therapist in Independent Practice Survey Report; *Form Number:* HCFA-3042; *Use:* This survey form is used by the State agency to record data collected in order to determine compliance with individual conditions of participation and report it to the Federal government; *Frequency:* On occasion; *Respondents:* State/local government; *Estimated Number of Responses:* 500; *Average Hours per Response:* 2; *Total Estimated Burden Hours:* 1,000.

5. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements at 42 CFR 411.54(c)(1), Itemized Statement of Hospital Charges; *Form Number:* HCFA-R-134; *Use:* Under the provisions contained as part of 42 CFR 411.54(c)(1), hospitals must furnish to the beneficiary, or his/her representative, an itemized statement of the hospital charges; *Frequency:* On occasion; *Respondents:* Non-profit institutions and small businesses/organizations; *Estimated Number of Responses:* Not applicable; *Average Hours per Response:* Not applicable; *Total Estimated Burder Hours:* 1.

Additional Information or Comments: Call the Reports Clearance Officer on 301-966-2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Eydt, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: November 13, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-27759 Filed 11-18-91; 8:45 am]

BILLING CODE 4120-03-M

Statement of Organization, Functions, and Delegations of Authority; Hearings and Appeals Staff

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) (FR Vol. 53, No. 47, dated Thursday, March 10, 1988, page 7803; FR Vol. 55, No. 49, dated Tuesday, March 13, 1990, page 9364; and FR Vol. 55, No. 122, dated June 25, 1990, page 25888) is amended to reflect the consolidation of several hearings and appeals activities into a single Hearings and Appeals Staff reporting directly to the Office of Budget and Administration within the Office of the Associate Administrator for Management. The new staff will be responsible for providing support services to the Medicare Geographic Classification Review Board as well as handling Medicaid hearings regarding State plan disapprovals or proposed withholdings of Medicaid funds for failure to comply with Medicaid requirements and various other ad hoc Medicare hearings.

The specific changes to part F are as follows:

- Section FM.20., Medicaid Bureau (FM) (Functions), is amended to remove reference to the hearings activities which have been reassigned to the new Hearings Staff reporting to the Office of Budget and Administration. The new section FM.20. reads as follows:

Section FM.20., Medicaid Bureau (FM) (Functions)

- Directs the planning, coordination, and implementation of the Medicaid program under Title XIX of the Social

Security Act and related statutes, as amended.

• Ensures the development of effective relationships between HCFA and other governmental jurisdictions.

• Provides direction for HCFA in the area of intergovernmental affairs, including advising the Administrator on all policy and program matters which affect other HCFA units and various levels of government.

• Plans and oversees Medicaid quality control financial management systems and national budgets for States.

• Develops requirements, standards, procedures, guidelines, and methodologies pertaining to the review and evaluation of State agencies' automated systems.

• Develops, operates, and manages a program for the performance evaluation of Medicaid State agencies and fiscal agents.

• Section FH.20.A., Office of Budget and Administration (FHA), is deleted and replaced by the following updated functional statement which reflects the transfer of the consolidated hearings and appeals functions to the Office:

A. Office of Budget and Administration (FHA)

• Provides HCFA-wide policy direction, coordination and control in the areas of budget, financial and accounting operations, personnel, management evaluation and analysis, administrative services, project grants, contracting and procurement, and work planning. Develops and promulgates HCFA policy in these areas and executes these policies throughout HCFA.

• Designs systems support for personnel management, financial management, procurement, and facilities management programs, within HCFA.

• Provides staff support to the Medicare Geographic Classification Review Board (MGCRB) and conducts Medicare and Medicaid hearings on behalf of the Secretary or the Administrator that are not within the jurisdiction of the Department Appeals Board, the Social Security Administration's Office of Hearings and Appeals, or the States.

• Serves as the Chief Executive Officer for the Agency.

• A new section FH.20.A.5., Hearings and Appeals Staff (FHA-2), is added to the Office of Budget and Administration to reflect the establishment of a new component which consolidates various hearings and appeals functions into a single component. The new section reads as follows:

5. Hearings and Appeals Staff (FHA-2)

• Provides staff support to the Medicare Geographic Classification Review Board (MGCRB) to assist the Board in managing and processing its caseload.

• Conducts Medicare and Medicaid hearings on behalf of the Secretary or the Administrator that are not within the jurisdiction of the Department Appeals Board, the Social Security Administration's Office of Hearings and Appeals, or the States.

• Facilitates and supports hearings and prepares final decision documents after the conclusion of the hearings.

Dated: November 7, 1991.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

[FR Doc. 91-27701 Filed 11-18-91; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of December 1991.

Name: Statistical Review Committee of the Advisory Commission on Childhood Vaccines.

Date and Time: December 11, 1991, 9 a.m.-11:30 a.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane Rockville, MD 20857.

The meeting is open to the public.

Purpose: This Committee will review statistics from all sources (the Compensation System, Vaccine Adverse Events Reporting System (VAERS), the U.S. Claims Court, etc.) that can give any reason for any alterations (additions, subtractions, or revisions) in the Vaccine Injury Table. The Committee will consider any applications for inclusion of additional vaccines and associated events to the table and make recommendations on these to the Commission. All recommendations by the Committee will be considered by the full Commission and, if accepted, will be forwarded to the Secretary. This Committee will also be the first line of study for all outside studies and literature reports with subjects affecting the Vaccine Injury Table.

Agenda: The Committee will discuss: (1) Criteria setting for injury table; and (2) analysis of types of claims receiving payouts, and the VAERS update.

Name: Accounting Review Committee of the Advisory Commission on Childhood Vaccines.

Date and Time: December 11, 1991, 9 a.m.-11:30 a.m.

Place: Conference Room H, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: The Committee reviews quarterly with the administrative staff, the financing of the Vaccine Injury Compensation Trust Fund, the output of funds resulting from each vaccine and each adverse event, and the relationship of each vaccine and each adverse event to the rate of depletion of the Trust Fund. If these studies justify any increase or any decrease of surtax for each vaccine, these recommendations can be made to the full commission and if accepted, can be forwarded to the Secretary.

Agenda: The Committee will discuss: (1) Overview of Trust Fund finances, and (2) Status of spending for pre-1988 awards.

Name: Advisory Commission on Childhood Vaccines.

Date and Time: December 11, 1991, 12:30 p.m.-5 p.m. December 12, 1991, 9 a.m.-5 p.m.

Place: Conference Rooms G & H, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: The Commission: (1) Advises the Secretary on the implementation of the Program, (2) on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table, (3) advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions, (4) surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and (5) recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

Agenda: Agenda items for the full commission will include, but not be limited to: the routine Program reports, reports from the National Vaccine Program and the National Vaccine Advisory Committee (NVAC), reports from the ACCV committees, a report from the NVAC Ad Hoc Subcommittee on the Vaccine Injury Compensation Program, a presentation on new vaccines, a presentation on annuities, and updates on the acellular pertussis vaccine clinical trial and on the section 313 study of Other Vaccine Risks.

Public comment will be permitted at the respective committee meetings on December 11 before noon and at the end of the second day, December 12. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their

presentation, by December 6 to Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, Health Resources and Services Administration, room 7–02, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443–6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Vaccine Injury Compensation Program will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Rooms G & H before 10 a.m., December 11 and 12. These persons will be allocated time as time permits.

Anyone requiring information regarding the subject Commission should contact Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, room 7–02, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443–6593.

Agenda Items are subject to change as priorities dictate.

Dated: November 12, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91–27683 Filed 11–18–91; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

Notice of Meeting of Heart, Lung, and Blood Research Review Committee A

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on December 5 and 6, 1991, in Building 31, conference room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on December 5, from 8 a.m. to approximately 9 a.m., to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on December 5, from approximately 9 a.m. until recess, and from 9 a.m. until adjournment on December 6, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236 will provide a summary of the meeting and a roster of the committee members.

Dr. Jeffrey H. Hurst, Executive Secretary, Heart, Lung, and Blood Research Review Committee B, Westwood Building, room 5A–10, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4485, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research, National Institutes of Health.)

Dated: October 29, 1991.

Raymond Bahor,

Acting Committee Management Officer, NIH.

[FR Doc. 91–27697 Filed 11–18–91; 8:45 am]

BILLING CODE 4140–01–M

Notice of Meeting of Heart, Lung, and Blood Research Review Committee B

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, National Institutes of Health, on December 5, 1991 in Building 31, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on December 5, from 8 a.m. to approximately 9 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and sections 10(d) of Public Law 92–463, the meeting will be closed to the public on December 5 from approximately 9 a.m. to 5 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236 will provide a summary of the meeting and a roster of the committee members.

Dr. Jeffrey H. Hurst, Executive Secretary, Heart, Lung and Blood Research Review Committee B, Westwood Building, room 5A–10, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4485, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research, National Institutes of Health.)

Dated: October 29, 1991.

Raymond Bahor,

Acting Committee Management Officer, NIH.

[FR Doc. 91–27698 Filed 11–18–91; 8:45 am]

BILLING CODE 4140–01–M

Opportunity for an Exclusive License Therapeutic Application of Dideoxycytidine

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) and Stichting Rega VZW desire to license a therapeutic application of 2′,3′-didehydro-2′,3′dideoxycytidine (dideoxycytidine). The compound is an unsaturated version of 2′,3′dideoxycytidine, also known as ddC. The invention available for licensing is the therapeutic application of the unsaturated dideoxycytidine which has an antiviral effect against HIV and has good prospects as a therapeutic against AIDS and related diseases. NIH and Stichting Rega VZW are co-assignees of the patent rights on this therapeutic application (U.S. Patent #4,964,533). The Inventors of this application are: Dr. Samuel Border, Dr. Jan Balzarini, Dr. Erik de Clercq and Dr. Piet Herdewijn. The inventors and their organizations are looking for a corporate

partner(s) to develop this compound as an anti-HIV agent under exclusive licensing agreements. Corporate partners would be expected to reimburse NIH and Stichting Rega VZW for patent prosecution expenses associated with the patent covering therapeutic applications of dideoxycytidine.

DATES: All proposals should be submitted on or before February 18, 1992.

FOR FURTHER INFORMATION AND LICENSING INQUIRIES CONTACT: Mr. Todd E. Leonard, Special Expert, Office of Technology Transfer, Box OTT, National Institutes of Health, Bethesda, MD 20892, Telephone: (301)–496–0750, FAX: (301) 402–0220.

Dated: November 5, 1991.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 91–27699 Filed 11–18–91; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration. Notice is given that chapter 7, the Office of the Deputy Commissioner for Human Resources is being amended to establish division level components and functions within the Office of Workforce Analysis (S7H). The new material is as follows:

Section S7H.10 *The Office of Workforce Analysis*—(Organization):

Add:

C. The Division of Workforce Studies and Analysis (S7HA)

D. The Division of Workforce Utilization (S7HB)

Section S7H.20 *The Office of Workforce Analysis*—(Functions):

Delete Items 1 through 6.

Add:

C. The Division of Workforce Studies and Analysis (S7HA).

1. Directs, develops and implements a comprehensive program of management studies, research and analysis to evaluate and determine the feasibility of implementing major changes affecting the SSA organization, its administrative practices and its methods of operation. Studies and analyses are Agencywide, frequently deal with issues of a sensitive nature and may involve other Government agencies.

2. Undertakes feasibility, predictive benefit and cost/risk analyses to identify alternatives and to develop administrative strategies for consideration by the SSA Executive Staff in responding to Agencywide problems and issues.

3. Develops SSA-wide workforce management policies, procedures and guidelines; determines resource requirements, conducts trend analysis and makes recommendations regarding management options, transition alternatives; etc, as appropriate.

D. The Division of Workforce Utilization (S7HB).

1. Develops and implements comprehensive workforce utilization and planning programs to improve productivity and the use of the SSA workforce.

2. Conducts studies and analyses of work processes and procedures, workflows and workload processing positions; applies a variety of disciplines and techniques, including management analysis and model building to assure best workforce utilization and recommends action to top SSA executives for improving the effectiveness of the SSA workforce.

3. Develops, analyzes and interprets workforce forecasting data and projects future workforce needs, including the types of skills and positions required.

4. Directs, develops and conducts Agencywide reviews and studies using industrial engineering, model building and other scientific approaches and methodologies.

Dated: November 1, 1991.

Ruth A. Pierce,

Acting Deputy Commissioner for Human Resources.

[FR Doc. 91–27684 Filed 11–18–91; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF INTERIOR

Bureau of Land Management

[CA–060–02–4740–10–CDLE]

Temporary Closure of Public Lands in San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure of public lands in San Bernardino County, CA.

SUMMARY: Notice is hereby given that certain Public Lands in California that were previously used as courses and starting, pitting, and spectator areas for the Barstow to Las Vegas Motorcycle Race, will be closed from November 27, 1991 through December 08, 1991 to all motorized vehicles. This closure begins on Public Lands north of I–15 in the Alvord Road area. From this location the closure covers the various routes and pit areas of previous Barstow to Vegas races, traveling in a generally northeasterly direction to the Nevada State border.

Order: Effective at 0001 hours (12:01 a.m., p.s.t.) Wednesday November 27, 1991 through 2400 hours (Midnight, p.s.t.) Sunday December 08, 1991, all Public Lands in California used for course routes, starting, pitting, and spectator areas for the Barstow to Las Vegas motorcycle race will be closed to vehicles. The legal land descriptions for the start, spectator, and pit areas affected by this closure are as follows:

All Public Lands within:

San Bernardino Baseline and Meridian:
T.10 N, R.3 E, sec. 1, 3, 11, 12, 14.
T.10 N, R.4 E, sec. 6, 7.
T.11 N, R.3 E, sec. 1, 2, 10, 11, 12, 14, 15, 22, 23, 24, 26, 27, 34, 35.
T.11 N, R.4 E, sec. 6, 8, 18, 19, 20 30, 31, 32.
T.12 N, R.3 E, sec. 22, 23, 24, 26, 27, 34.
T.12 N, R.4 E, sec. 19, 20, 30, 32.
T.15 N, R.8 E, sec. 19, 20, 29, 30.
T.12 N, R.7 E, sec. 11, 12, 13, 14.
T.15 N, R.10 E, sec. 2, 3, 10, 11.

The closure does not affect vehicles traveling on the following roads and trails:

1. California State Highway 127
2. Basin Road
3. Rasor Road
4. Kingston Road (Also known as Excelsior Mine Road)
5. That portion of the Barstow to Las Vegas course that runs easterly from Kingston Road, then north on Green's Well Road to the Boulder Corridor.

A map showing vehicle routes of travel affected by this closure is available from any of the offices listed below.

No person may use, drive, move, transport, let stand, park, or have charge or control over any type of motorized vehicle within this closure area or on closed routes.

Exemptions to this order are granted to the following:

Employees of valid right-of-way holders in the course of duties associated with the right-of-way.

Employees of Bond Gold Colosseum in the course of duties associated with the Colosseum mine. This includes suppliers making deliveries to the Colosseum mine with proof of impending delivery.

All other exemptions to this order are by written authorization of the California Desert District Manager. Person(s) seeking an exemption must submit their requests in writing to the California Desert District Manager (6221

Box Springs Blvd., Riverside, CA 92507). The requests must include a detailed description outlining the purpose or need for the exemption, specific areas needed, and the dates of the exemption.

BACKGROUND: The purpose of this temporary closure is to protect all Public Land resources on or adjacent to Barstow to Las Vegas race courses and associated areas from the impacts of unauthorized vehicle use. A temporary closure order prohibiting vehicle use on previously used routes and start, pit and spectator areas, was enacted in 1990 to prevent unauthorized vehicle use on the B–V corridor and the associated adverse environmental impacts. Four individuals were convicted in Federal Court of violating the 1990 closure order and were fined $850 each. Two others pled guilty before a local magistrate and both were fined $250.

Resources most critical to the area affected by this closure are the desert tortoise and its habitat. The desert tortoise is listed as a threatened species under the Federal Endangered Species Act and is afforded increased protection under the terms of the Act. The environmental assessment prepared for this action has shown there will be no significant impacts to recreational use or the natural environment as a result of this closure.

EFFECTIVE DATES: This closure will be in effect from 0001 hours (12:01 a.m., p.s.t.) Wednesday, November 27, 1991 through 2400 hours (Midnight, p.s.t.) Sunday December 08, 1991.

FOR FURTHER INFORMATION CONTACT:

District Manager, California Desert District, 6221 Box Springs Blvd., Riverside, CA 92507–0714, (714)–653–6950.

Area Manager, Barstow Resource Area, 150 Coolwater Lane, Barstow, CA 92311, 619–256–3591.

Area Manager, Needles Resource Area, 101 W. Spikes Rd., Needles, CA 92363, 619–326–3896.

SUPPLEMENTARY INFORMATION: The environmental assessment and maps showing the areas and routes affected by this closure order are available by contacting the aforementioned offices.

Authority for this temporary closure order isfound in 43 CFR 8364.1. Violation of this closure is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

Dated: November 8, 1991.

Alan Stein,

District Manager, California Desert.

[FR Doc. 91–27688 Filed 11–18–91; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–762605

Applicant: William Gruenerwald, Colorado Springs, CO.

The applicant requests a permit to import one captive-born male Somali wild ass (*Equus africanus somalicus*) from the Wilhelma Zoo, Stuttgart-Bad Cannstatt, Germany, to the Canyon Colorado Equid Sanctuary, Wayon Mound, NM, for breeding purposes.

PRT–760947

Applicant: James Ayers, Parsons, TN.

The applicant requests a permit to import a sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) from the captive herd of F.W.M. Bowker, Jr., Grahamstown, South Africa, for enhancement of survival of the species.

PRT–763052

Applicant: New York Zoological society, Bronx, NY.

The applicant requests a permit to import three captive-hatched white-naped cranes (*Grus vipio*) from Vogelpark, Germany, for captive-breeding and zoological display.

PRT–754354

Applicant: Los Angeles Zoo, Los Angeles, CA.

The applicant requests a permit to export one male captive-born Central American tapir (*Tapirus bairdii*) to the Belize Zoo, Belize for educational and breeding purposes.

PRT–761317

Applicant: George Cardin Circus, Springfield, MO.

The applicant requests a permit to purchase in interstate commerce two Asian elephants (*Elephus maximus*) from Monte Cox of Studio City, California, for the purpose of education and display.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.) room 432, 4401 N. Fairfax Dr., Arlington VA 22203, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203–3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: November 14, 1991.

Maggie Tieger,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 91–27739 Filed 11–18–91; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for extension of the expiration date under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1028–0044), Washington, DC 20503.

Title: State Water Research Institute Program, 30 CFR Part 401.

OMB approval number: 1028–0044.

Abstract: Respondents supply information on eligibility for Federal grants to support water-related research and provide performance reports on accomplishments achieved through use of such funds. This information allows the agency to determine compliance with the objectives and criteria of the grant program.

Bureau form number: None.

Frequency: Annually.

Description of respondents: State water research institutes.

Annual responses: 108.

Annual burden hours: 9072.

Bureau clearance officer: Geraldine A. Wilson 703–648–7309.

Dated: November 5, 1991.

Philip Cohen,

Chief Hydrologist.

[FR Doc. 91–27687 Filed 11–18–91; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Jadwin Canoe Rental, Inc., Concession Permit—Correction

AGENCY: National Park Service.

ACTION: Public notice.

SUMMARY: This notice corrects the public notice previously published in the **Federal Register** of October 17, 1991 (56 FR 52057) for negotiation of a concession permit with Jadwin Canoe Rental, Inc. The term stated in the previous notice was in error, it read:

"Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Jadwin Canoe Rental, Inc., authorizing it to continue to provide canoe rental facilities and services for the public at Ozark National Scenic Riverways, Missouri for a period of four (4) years from January 1, 1991 to December 31, 1994.

EFFECTIVE DATE: December 18, 1991.

The correction should read:

"Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Jadwin Canoe Rental, Inc., authorizing it to continue to provide canoe rental facilities for the public at Ozark National Scenic Riverways, Missouri for a period of four (4) years from January 1, 1992, to December 31, 1995.

Effective Date: January 31, 1992.

Dated: November 13, 1991.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 91–27777 Filed 11–18–91; 8:45 am]

BILLING CODE 4310–70–M

Concession Contract Negotiations

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with Southern Highland Handicraft Guild, Inc., authorizing it to continue to provide a handicraft sales outlet for the public on the Blue Ridge Parkway, for a period of five (5) years from January 1, 1991, through December 31, 1995.

EFFECTIVE DATES: January 27, 1992.

ADDRESSES: Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1990, and therefore pursuant to the provision of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR, 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: November 13, 1991.

Robert L. Deskins,

Acting Regional Director, Southeast Region.

[FR Doc. 91–27778 Filed 11–18–91; 8:45 am]

BILLING CODE 4310–70–M

General Management Plan Petrified Forest National Park; Availability of Draft General Management Plan/ Development Concept Plans/ Environmental Impact Statement

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a draft environmental impact statement (DEIS) assessing the potential impacts of the proposed General Management Plan for Petrified Forest National Park, Apache and Navajo Counties, Arizona.

The draft plan proposes the development of a research center/visitor center complex, relocation of some housing and maintenance facilities, expansion of the park's administrative boundary, adaptive use of historic structures for interpretive, administrative, and concession purposes, and improvement of an existing access road. The alternatives under consideration, in addition to the proposal, include the no action alternative and two development options. One development option would replace and expand the inadequate facilities on their current sites. Under this option the north visitor center would remain at the headquarters area, and the residential area at Giant Logs would be expanded to meet staff housing needs. The other development option would remove most existing development from the Giant Logs area and replace it with a new visitor center. In most other respects, these alternatives would be the same as the proposal.

Written comments on the draft General Management Plan/ Development Concept Plans and DEIS will be accepted until January 31, 1992. Public meetings will be held at the Navajo Nation Inn, Window Rock, Arizona at 1 p.m., December 2, 1991; at the Apache County Commissioner's Board Room, St. Johns, Arizona at 7 p.m., December 3, 1991; at the Old Navajo County Courthouse, Holbrook, Arizona, 7 p.m., December 4, 1991; and the Doubletree Hotel, 320 North 44th Street, Phoenix, Arizona at 7 p.m., December 5, 1991.

ADDRESSES: Inquiries on the DEIS should be directed to: Superintendent, Petrified Forest National Park, Post Office Box 2217, Petrified Forest National Park, Arizona 86028.

Copies of the draft plan/development concept plans and DEIS are available at the park headquarters at the above address. Copies are also available for inspection at libraries located in the park's vicinity.

Dated: October 25, 1991.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 91–27780 Filed 11–18–91; 8:45 am]

BILLING CODE 4310–70–M

Preservation of Jazz Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Preservation of Jazz Advisory Commission will be held on December 6 and 7, 1991, and a public hearing on December 7, 1991, in New Orleans, Louisiana.

The Preservation of Jazz Advisory Commission was established by Public Law 101–499 to advise the Secretary of the Interior in the preparation of a study of the suitability and feasibility of preserving and interpreting the origins of jazz in New Orleans.

The following is the schedule and purpose/agenda for the meetings and public hearing:

Dates and times	Location	Purpose/Agenda
Friday, December 6, 1991 2–4 p.m.	Advisory Commission Meeting U.S. Customs House, room 223 423 Canal Street New Orleans, Louisiana.	—Subcommittee Reports—National Park Service report on preliminary alternative concepts
Saturday, December 7, 1991 12:15–1 p.m. (following public hearing).	Advisory Commission Meeting Superdome, room 12 Southwest Quadrant New Orleans, Louisiana (enter building through Gate G from southwest parking garage located at Claiborne and Girod Streets).	—Review comments received from the public hearing held during the morning.
Saturday, December 7, 1991 9–12 noon	Public Hearing Superdome, room 12 Southwest Quadrant New Orleans, Louisiana (enter building through Gate G from the southwest parking garage located at Claiborne and Girod Streets).	—The Commission will hold the hearing to get public input on the project scope and ideas on potential programs.

The meetings and public hearing will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed at the commission meetings with the Superintendent, Jean Lafitte National Historical Park and Preserve. The public will also have an opportunity to submit written and oral comments for the record during the hearings.

Persons wishing further information concerning the meetings, public hearings, and workshop, or who wish to submit written statements may contact Robert Belous, Superintendent, Jean Lafitte National Historical Park and Preserve, U.S. Customs House, 423 Canal Street, room 210, New Orleans, Louisiana 70130–2341, Telephone 504/589–3882.

Minutes of the commission meetings will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: November 8, 1991.

Ernest Ortega,

Acting Regional Director, Southwest Region.

[FR Doc. 91–27782 Filed 11–18–91; 8:45 am]

BILLING CODE 4310–70–M

Mississippi River Corridor Study; Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act, 5 U.S.C. appendix (1988).

DATES AND TIMES: December 11, 2 p.m. to 5:30 p.m. December 12, 8 a.m. to 5:30 p.m. December 13, 8 a.m. if business requires a carryover.

ADDRESSES: Hotel St. Marie, 827 Toulouse, New Orleans, Louisiana 70112.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first come, first served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the National Park Service, Midwest Region, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: David N. Given, Associate Regional Director, Planning and Resources Preservation, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221–3082.

SUPPLEMENTARY INFORMATION: The Mississippi River Corridor Study Commission was established by Public Law 101–398, September 28, 1990.

Dated: November 6, 1991.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 91–27781 Filed 11–18–91; 8:45 am]

BILLING CODE 4310–70–M

Upper Delaware Scenic and Recreational River; Citizens Advisory Council

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.

ACTION: Notice of change of meeting date.

SUMMARY: This notice changes the date of the November, 1991, meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting change is required under the Federal Advisory Committee Act.

DATES: December 6, 1991.

TYPE OF MEETING: Business.

ADDRESSES: Town of Tusten Hall, Bridge Street, Narrowsburg, New York.

Press Releases containing specific information regarding the subject of the monthly meeting will be published in the following area newspapers: The Sullivan County Democrat, The Times Herald Record, The River Reporter, The Tri-state Gazette, The Pike County Dispatch, The Wayne Independent, The Hawley News Eagle, The Weekly Almanac.

Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL and WVOS.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, New York 12764–0159; 717–729–8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Public Law 95–625, 16 USC s1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware Region.

All meetings are open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, New York 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River, River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

Charles P. Clapper, Jr.,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 91–27814 Filed 11–18–91; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 7, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by December 19, 1991.

Carol D. Shull,

Chief of Registration, National Register

FLORIDA

Monroe County

AFRICAN QUEEN, 99701 Oversees Hwy., Key Largo, 91001771

KANSAS

Greenwood County

Madison Atchison, Topeka and Santa Fe Railroad Depot, Jct. of Third and Boone Sts., Madison, 91001774

LOUISIANA

Orleans Parish

Metairie Cemetery, Jct. of I–10 and Metairie Rd., New Orleans, 91001780

MARYLAND

Harford County

Broom's Bloom, 1616 S. Fountain Green Rd., Bel Air vicinity, 91001778

MISSISSIPPI

Jackson County

Bodden, Capt. Willie, House (Pascagoula MPS), 4002 Pine St., Pascagoula, 91001783
Brash, Anna C., House (Pascagoula MPS), 802 Buena Vista St., Pascagoula, 91001784
Clark, Clare T., House (Pascagoula MPS), 1709 Beach Blvd., Pascagoula, 91001785
Clinton, Capt. F.L., House (Pascagoula MPS), 903 Tucker St., Pascagoula, 91001786
Colle Company Housing (Pascagoula MPS), 3611 Frederic St., Pascagoula, 91001788
Colle, Capt. Herman H. Sr., House (Pascagoula MPS), 410 Live Oak St., Pascagoula, 91001787
Cottage by the Sea Tavern (Pascagoula MPS), 1205 Beach Blvd., Pascagoula, 91001789
Farnsworth, R.A., Summer Home (Pascagoula MPS), 901 Beach Blvd., Pascagoula, 91001790
Ford, Mayor Ebb, House (Pascagoula MPS), 3434 Pascagoula St., Pascagoula, 91001791
Frentz, George, House (Pascagoula MPS), 503 Morgan St., Pascagoula, 91001792
Gautier, Adam, House (Pascagoula MPS), 4418 Cedar St., Pascagoula, 91001793
Gautier, Eugene, House (Pascagoula MPS), 3803 Willow St., Pascagoula, 91001794
Gautier, Walter, House (Pascagoula MPS), 3012 Canty St., Pascagoula, 91001795
Herrick, Lemuel D., House (Pascagoula MPS), 2503 Pascagouls St., Pascagoula, 91001796
Hull, Edgar W., House (Pascagoula MPS), 2903 Beach Blvd., Pascagoula, 91001797
Kinne, Georgia P., House (Pascagoula MPS), 1101 Beach Blvd., Pascagoula, 91001798
Krebs, Agnes V., House (Pascagoula MPS), 803 Buena Vista St., Pascagoula, 91001799
Krebs, James, House (Pascagoula MPS), 4702 River Rd., Pascagoula, 91001800
Krebsville Historic District (Pascagoula MPS), 803, 809, 811 Kell Ave., 611, 703, 706, 707, 710, 802 Mill Rd., 4011, 4013, 4205, 4215 Pine St., Pascagoula, 91001801
Levin, Leonard, House (Pascagoula MPS), 1403 Washington Ave., Pascagoula, 91001802
Nelson Tenement (Pascagoula MPS), 3615 Pine St., Pascagoula, 91001804
Nelson, John C., House (Pascagoula MPS), 2434 Pascagoula St., Pascagoula, 91001803
Olsen, Lena, House (Pascagoula MPS), 706 Buena Vista St., Pascagoula, 91001805
Pascagoula Street Railroad and Power Company (Pascagoula MPS), 3708 Pascagoula St., Pascagoula, 91001806
Randall's Tavern (Pascagoula MPS), 919 Beach Blvd., Pascagoula, 91001807
Tabor, Dr. Joseph A., House (Pascagoula MPS), 520 Live Oak St., Pascagoula, 91001808
Thompson, George, House (Pascagoula MPS), 523 Orange St., Pascagoula, 91001809
Westphal, Laura, House (Pascagoula MPS), 711 Krebs St., Pascagoula, 91001810

MISSOURI

Franklin County

Meramec State Park Beach Area Historic District (ECW Architecture in Missouri State Parks TR), MO 185 at the Meramec R., Sullivan vicinity, 91001772

NORTH CAROLINA

Guilford County

Jamestown High School, Former, 200 W. Main St., Jamestown, 91001779

Union County

Waxhaw Historic District, Portions of Main, Broad, Church, Broom, Providence, Old Providence, Brevard and McKibben Sts., Waxhaw, 91001773

TENNESSEE

Madison County

Bemis Historic District, Roughly bounded by D St., the Illinois Central Gulf RR tracks, Sixth St. and rural property lines to the W and S, Bemis, 91001777

WASHINGTON

Lewis County

Everest, Wesley, Gravesite (Centralia Armistice Day, 1919 MPS), Sticklin—Greenwood Memorial Park, 1905 Johnson Rd., Centralia, 91001781
The Sentinel (Centralia Armistice Day, 1919 MPS), Washington Park, bounded by Main, Pearl, Locust and Silver, Centralia, 91001782

WISCONSIN

Ashland County

LUCERNE (Schooner), Lake Superior, La Pointe vicinity, 91001775

[FR Doc. 91–27783 Filed 11–18–91; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–539 (Preliminary)]

Uranium From the U.S.S.R.

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–539 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the U.S.S.R. of uranium,[1] provided for in subheadings 2612.10.00, 2844.10.10, 2844.10.20, 2844.10.50, and 2844.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by December 23, 1991.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: November 8, 1991.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–205–3181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the

[1] For purposes of this investigation, "uranium" includes the following: natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U_{235} and its compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing uranium enriched in U_{235} or compounds of uranium enriched in U_{235}.

Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on November 8, 1991, on behalf of the Ad Hoc Committee of Domestic Uranium Producers and the Oil, Chemical and Atomic Workers International Union.

The names and addresses of the petitioners are as follows: Ferret Exploration Company, Inc., Denver, CO; First Holding Company, Denver, CO; Geomex Minerals, Inc., Denver, CO; Homestake Mining Company, San Francisco, CA; IMC Fertilizer, Inc., Northbrook, IL; Malapai Resources Company, Houston, TX; Pathfinder Mines Corporation, Bethesda, MD; Power Resources, Inc., Denver, CO; Rio Algom Mining Corporation, Oklahoma City, OK; Solution Mining Corporation, Laramie, WY; Total Minerals Corporation, Houston, TX; Umetco Minerals Corporation, Danbury, CT; Uranium Resources, Inc., Dallas, TX; and Oil, Chemical and Atomic Workers International Union, Denver, CO.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on December 3, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Tedford Briggs (202–205–3181) not later than November 29, 1991, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before December 6, 1991, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Dated: November 12, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–27729 Filed 11–18–91; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31949]

CMX Trucking, Inc.—Merger and Continuance in Control Exemption—CSXI SUB

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10926 and 11343, *et seq.*, the merger of CMX Trucking, Inc. (CMX), a wholly-owned motor carrier subsidiary of CSX Transportation, Inc. (CSXT), which, in turn, is a rail carrier wholly-owned by CSX Corp. (CSX), into CSXI SUB, a non-carrier wholly-owned subsidiary of CSX Intermodal, Inc., a wholly-owned motor carrier subsidiary of CSX.

DATES: This exemption is effective on November 19, 1991. Petitions to reopen must be filed by December 9, 1991.

ADDRESSES: Send pleadings referring to Finance Docket No. 31949 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission; Washington, DC 20423.

(2) Petitioner's representative: Peter A. Greene, Thompson, Hine and Flory, 1920 N Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: November 8, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–27754 Filed 11–18–91; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 394 (Sub-No. 8)]

Cost Ratios for Recyclables—1991 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Notice of rate caps.

SUMMARY: The Commission has calculated proposed 1991 revenue-to-variable cost (R/VC) ratios as ceilings for rates on nonferrous recyclables under 49 U.S.C. 10731(e). The R/VC ratios were calculated in accordance with established procedures using the Uniform Railroad Costing System (URCS). URCS develops different variability percentages for different railroads, in accordance with the final rules adopted at 49 CFR part 1145, in Ex Parte 394 (Sub-No. 3), *Cost Ratios for Recyclables—Compliance Procedures.* The proposed national average R/VC ratio is 142.3 percent. Individual and regional R/VC ratios are also proposed.

EFFECTIVE DATE: December 9, 1991, unless, within that time, comments are received challenging the accuracy of the ratios, in which case a further decision will be issued.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 275–7354 [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone (202) 275–7428. [Assistance for the hearing impaired is available through TDD services (202) 275–1721].

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10321(a), 10731, 5 U.S.C. 553.

Decided: November 8, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–27755 Filed 11–18–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 58–91]

Privacy Act of 1974; Systems of Records

Because of the reassignment within its organizational components of certain functional responsibilities, the Department of Justice proposes to remove from its compilation of Privacy Act systems of records three such systems as they are currently designated, partially rename or redesignate them, and add them back to the Department's compilation of Privacy Act systems. Specifically, the Department will continue to maintain the systems but revise their titles to reflect acronyms/numbers that are consistent with the new organizational placement. No other changes are made. Accordingly, removals and additions to the Department's compilation of Privacy Act systems are indicated below. Removed, as currently designated, are:

Drug Enforcement Task Force Evaluation and Reporting System, of the Office of the Associate Attorney General, JUSTICE/AAG–002 (last published on September 12, 1985, 50 FR 37298).

Assistant United States Attorneys Applicant Records System, JUSTICE/DAG–003 (last published on October 21, 1985, 50 FR 42604).

Appointed Assistant United States Attorneys Personnel System, JUSTICE/DAG–002 (last published on October 21, 1985, 50 FR 42603).

Added, as redesignated, are:

Drug Enforcement Task Force Evaluation and Reporting System, JUSTICE/DAG–003 (with text identical to that published on September 12, 1985, 50 FR 37298, as indicated above).

Assistant United States Attorneys Applicant Records System, JUSTICE/USA–016 (with text identical to that published on October 21, 1985, 50 FR 42604, as indicated above).

Appointed Assistant United States Attorneys Personnel System, JUSTICE/USA–017 (with text identical to that published on October 21, 1985, 50 FR 42603, as indicated above).

The above changes are necessary because management responsibility for drug enforcement task force evaluation and reporting records was reassigned from the Office of the Associate Attorney General to the Office of the Deputy Attorney General; and management responsibility for Assistant United States Attorney applicant and personnel records was reassigned from the Office of the Deputy Attorney General to the Executive Office for United States Attorneys. Because the changes affect internal management responsibilities only, they will have no effect on the public.

All three systems will be republished in the near future in the Department's annual compilation of minor changes.[1] Changes to the newly designated systems may include changes to the system manager's address, together with any other minor changes that may be identified during review. However, until that time, inquiries or requests to access these systems should continue to be addressed in accordance with the instructions provided in the appropriate **Federal Register** publications identified above. In addition, a final rule document will be published in today's **Federal Register** to effect the appropriate changes to Title 28 of the Code of Federal Regulations.

[1] It is essential, however, that the above removals and additions precede the minor change publication to ensure that the Federal agency compilation, as edited and published biennially by the Office of the Federal Register, will not report duplicate systems but will reflect the redesignated systems, together with any revisions published by the Department in its upcoming annual compilation of minor changes.

Dated: November 5, 1991.

Harry H. Flickinger

Assistant Attorney General for Administration.

[FR Doc. 91–27690 Filed 11–18–91; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Proposed Termination of Final Judgment

Notice is hereby given that defendant Loews Theatre Management Corp. and LTM Holdings, Inc. (Loews) and Sony Pictures Entertainment Inc. have filed with the United States District Court for the Southern District of New York a motion to terminate insofar as they apply to Loews or Tri-Star Pictures, Inc., the Final Judgment in *United States* v. *Loew's Incorporated, et al.*, Equity No. 87–273, and two related Orders, and the Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to termination of the Final Judgment and the Orders, but has reserved the right to withdraw its consent based on public comments or for other reasons. The Petition in this case (filed on July 20, 1938) alleged that the leading motion picture distributors including Loew's, Inc., had combined and conspired with one another to fix theatre admission prices and monopolize the motion picture exhibition business by foreclosing independent exhibitors from access to first-run films.

The Final Judgment (entered on February 7, 1952, and later modified on July 25, 1974), ordered Loew's distribution business divorced from its theatre circuit (now Loews), and enjoined the latter from engaging in the distribution business and in certain "exhibition activities" that had been used in aid of the conspiracy. Subsequently, in an Order entered on February 27, 1980, the Court authorized Loews to engage in the business of distribution but, if it chose to do so,

imposed upon it, among other things, certain so-called licensing conduct restrictions. Although Loews never itself engaged in the business of distribution, it was acquired in 1986 by Tri-Star, a distributor, at which time the Court ordered that Tri-Star, which had not theretofore been subject to any conduct restrictions, must nevertheless observe such restrictions in its dealings with Loews, so long as it owned or controlled Loews. This restriction was subsequently confirmed by an Order entered June 18, 1987.

The Department has filed with the Court a memorandum setting forth the reasons why it believes that termination of the 1952 Loew's Judgment insofar as it applies to Loews and termination of the two related Orders, would be in the public interest. Copies of the Petition, the 1952 Loew's Judgment, the 1980 Loews Order, the 1987 Tri-Star Order, Loews' motion papers, the Stipulation containing the Government's tentative consent, and all further papers filed with the Court in connection with this motion will be available for inspection at Room 3233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530 (Telephone (202) 514–2481), and at the Office of the Clerk of the United States District Court for Southern District of New York, Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department Justice regulations.

Interested persons may submit comments to the Department regarding the proposed partial termination of the 1952 Loew's Judgment and termination of the related Orders. Such comments must be received within the sixty-day period established by court order, and will be filed with the Court by the Department. Comments should be addressed to Robert E. Bloch, Chief, Professions and Intellectual Property Section, Antitrust Division, Department of Justice, 500 Fourth Street, NW., Washington, DC 20001 (telephone:(202) 307–0467).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–27691 Filed 11–18–91; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on October 25, 1991, filed a written notification on behalf of Bellcore and Reliance Comm/Tec ("Reliance") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objective of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business in Livingston, New Jersey.

Reliance is a Delaware corporation with its principal place of business in Bedford, Texas.

Bellcore and Reliance entered into an agreement effective as of September 27, 1991 to engage in cooperative research of advanced digital subscriber line telecommunications over wire facilities to better understand the application of this technology for exchange and exchange access services, including experimental prototype fabrication for the demonstration of such technology.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–27692 Filed 11–18–91; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—OSINET Corp.

Notice is hereby given that, on April 15, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, at U.S.C. 4301 *et seq.* (the "Act"), OSINET Corporation ("OSINET") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to OSINET and (2) OSINET's nature and objectives. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to OSINET and its general area of planned activity, as disclosed in the notification, are given below.

OSINET is a nonstock membership corporation whose members are: Allied Signal, Inc.; Amdahl Corporation; AT&T; Bull HN Information Systems; Concurrent Computer Corporation; Control Data Corporation; Corporation for Open Systems; Cray Research, Inc.; Digital Equipment Corporation; Hewlett-Packard; IBM; Martin Marietta Energy Systems; National Communications System; Northern Telecom, Inc.; Novell, Inc.; Tandem Computers Incorporated; UNISYS; Wang Laboratories; The Wollongong Group; and Xerox Corporation.

For an annual fee, non-members may become Subscribers to OSINET. Subscribers will be entitled to attend and receive minutes of meetings of OSINET's Steering, Promotion, and Technical Committees; and to receive the OSINET General Agreements and Information Document, as well as other mailings. Subscribers may also attend and receive minutes of meetings of OSINET's Board of Directors, at the Board's discretion. However, Subscribers will have neither voting power nor the right to participate actively in OSINET's activities, described below.

The purpose of OSINET is to improve the business conditions of the computer and communications industry, and to benefit the international business community generally, by fostering the development, promotion and deployment of Open Systems Interconnection ("OSI").[1] Specifically, OSINET's activities include (i) maintenance of a network (comprising subnetworks, intermediate systems and end systems) used for interoperability testing; (ii) support of research and development resulting in interoperability tests; (iii) conducting interoperability testing; (iv) registration and dissemination to the public of testing results; (v) demonstration and support of OSI technology; and (vi) consultation regarding interoperability problems.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–27693 Filed 11–18–91; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Harold Footerman, M.D.; Revocation of Registration

On July 30, 1991, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause to Harold Footerman, M.D., of

[1] OSI comprises a set of protocols based on internationally accepted computer and communications standards. Products built to specifications consistent with the OSI protocols ("OSI Products") are designed to communicate with other OSI Products (*i.e.*, to "interoperate"), even through they may be manufactured by different companies.

Pittsburgh, Pennsylvania, proposing to revoke his DEA Certificate of Registration, AF5863027, and to deny any pending applications for renewal. The Administrator simultaneously imposed an immediate suspension of registration. The statutory basis for the Order to Show Cause was that Dr. Footerman's continued registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and in 21 U.S.C. 824(a)(4).

The Order to Show Cause was personally served on Dr. Footerman on August 1, 1991. More than thirty days have passed since the Order to Show Cause was received by Dr. Footerman and the Drug Enforcement Administration has received no response from Dr. Footerman or anyone purporting to represent him.

Pursuant to the provision of 21 CFR 1301.54(d), the Administrator finds that Dr. Footerman has waived his opportunity for a hearing. Accordingly, pursuant to the provision of 21 CFR 1316.67, the Administrator hereby enters his final order in this matter, based on findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that between February 1988 and December 1989, Dr. Footerman sold and dispensed, on demand, controlled substances, including Fiorinal with codeine, Valium and Xanax, for no legitimate medical reason. Additionally, during the period January 1988 through November 1989, Dr. Footerman ordered 246,000 dosage units of phentermine, phendimetrazine, Adipex, and Statobex. Such highly abusable drugs were dispensed in a manner outside the normal course of professional medical practice. The Administrator further finds that on April 26, 1990, the Commonwealth of Pennsylvania Bureau of Quality Assurance audited 29 of Dr. Footerman's patient records. A review of these records covering the period January 1989 through January 1990, disclosed that, in addition to engaging in faulty state Department of Public Welfare (DPW) billing practices, Dr. Footerman also insufficiently documented the appropriateness or necessity of treatment consisting of drug regimens of such highly abusable substances as Xanax, Adipex and Statobex. As a result, on July 19, 1991, that agency terminated Dr. Footerman's participation in the state health care program.

In addition, the Administrator also finds that on eighteen occasions during the period October 1990 through May 1991, Dr. Footerman sold and dispensed Adipex, and prescribed Valium and Darvocet, all Schedule IV controlled substances, to cooperating individuals acting in an undercover capacity for a DEA task force. These controlled substance transactions were for no legitimate medical purpose, and not in the course of professional medical practice. On July 9, 1991, Dr. Footerman was arrested by local authorities and arraigned on 17 counts of violating the laws of the Commonwealth of Pennsylvania, to wit: the alleged administration of controlled substances by a practitioner not in good faith, and not within the scope of legitimate medical practice. During the execution of search warrants on July 9, 1991, large amounts of Schedule III and IV controlled substances, including Vicodin E.S. and Anexsia, were found at Dr. Footerman's residence, an unregistered location. Between July 15, 1991 and August 1, 1991, Dr. Footerman continued to write prescriptions for controlled substances, including Vicodin, Tylenol with codeine #4 and Darvocet. These prescriptions were written for numerous patients, including known drug abusers, and served no legitimate medical purpose. The nature and frequency of presentation of these prescriptions was such that at least six local pharmacists refused to continue to fill them.

The Administrator may revoke a DEA Certificate of Registration, or deny an application for such a registration, if he determines that the registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), the following factors are employed in determining whether a registration is in the public interest:

(1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct as may threaten the public health or safety.

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. See, Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989); Neveille H. Williams, D.D.S., Docket No. 87–47, 53 FR 23465 (1988); David E. Trawick, D.D.S., Docket No. 86–69, 53 FR 5326 (1988).

Dr. Footerman did not offer any evidence contrary to that recited in the Order to Show Cause. Based on all the above, the Administrator concludes that Dr. Footerman's continued registration is inconsistent with the public interest, and therefore his DEA Certificate of Registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AF5863027, previously issued to Harold Footerman, M.D., be, and it hereby is, revoked, and that any pending applications for registration be, and they hereby are, denied. This order is effective December 19, 1991.

When the order to Show Cause/ Immediate Suspension was served on Harold Footerman, M.D., all controlled substances possessed by him under the authority of his then-suspended registration were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until all appeals have been concluded or until the time for taking an appeal has elapsed. Accordingly, these controlled substances shall remain under seal until December 19, 1991, or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

Dated: November 13, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91–27773 Filed 11–18–91; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements

under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 523-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Employment Standards Administration
Notice of Issuance of Insurance Policy.
1215-0059.
CM-921.
On occasion.
Businesses or other for profit.
6/54 respondents; 1,000 total hours; 10 min. per response.
1 form

The CM-921 provides insurance carriers with the means to supply DCMWC with information showing that a responsible coal mine operator is insured against its Federal black lung compensation liability pursuant to the requirements established in the Black Lung Benefits Act.

Signed at Washington, DC this 14th day of November, 1991.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 91-27774 Filed 11-18-91; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-26,150]

Crystal Brands Men's Sportswear Group Allentown, PA; Negative Determination Regarding Application for Reconsideration

By an application dated October 30, 1991, the Amalgamated Clothing Workers Union requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on October 1, 1991 and published in the **Federal Register** on October 22, 1991 (56 FR 54588).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Allentown facility is a Crystal Brands' distribution center for men's sportswear. In light of the Department's recent certification for workers at one of Crystal Brands affiliated firms—Eagle Shirtmakers in Mahanoy City, Pennsylvania, TA-W-25,028, the union is requesting reconsideration for workers at the Allentown distribution center.

Investigation findings show, however, that Eagle Shirtmakers accounted for less than a substantial amount of Allentown's business in 1990 and 1991. Worker separations occurred at Allentown because Crystal Brands moved the distribution function to Reading, Pennsylvania.

The Department's denial was based on the fact that the workers are engaged in distribution services for men's apparel and, as such, do not produce an article within the meaning of section 223(3) of the Act. Workers providing a service can be certified for trade adjustment assistance only in very limited circumstances and these were explained in the Department's initial denial.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 7th day of November 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-27775 Filed 11-18-91; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act: Employment and Training Assistance for Dislocated Workers; Reallotment of Title III Funds

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor is publishing for public information the Job Training Partnership Act title III (Employment and Training Assistance for Dislocated Workers) funds identified by States for reallotment, and the amount to be reallotted to eligible States.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Worker Retraining and Adjustment Programs, Employment and Training Administration, Department of Labor, room N-4703, 200 Constitution Avenue NW., Washington, DC 20210. Telephone. 202-535-0577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to title III of the Job Training Partnership Act (JTPA or the Act), as amended by the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), the Secretary of Labor (Secretary) is required to recapture funds from States identified pursuant to section 303(b) of the Act, and reallot such funds by a Notice of Obligation (NOO) adjustment to current year funds to "eligible States" and "eligible high unemployment States" as set forth in section 303 (a),

(b), and (c) of JTPA. 29 U.S.C. 1653. The basic reallotment process was described in Training and Employment Guidance Letter No. 4–88, dated November 25, 1988, Subject: Reallotment and Reallocation of Funds under title III of the Job Training Partnership Act (JTPA), as amended, 53 FR 43737 (December 2, 1988). The reallotment process for Program Year (PY) 1991 funds was described in Training and Employment Guidance Letter No. 4–90 dated April 24, 1991, Subject: Reallotment of Job Training Partnership Act (JTPA) title III Formula-Allotted Funds.

NOO adjustments to the PY 1991 (July 1, 1991–June 30, 1992) formula allotments are being issued based on expenditures reported to the Secretary by the States, as required by the recapture and reallotment provisions at section 303 of JTPA. 29 U.S.C. 1653.

The funds recaptured are an amount equal to the sum of every State's unexpended PY 1990 formula funds in excess of 20 percent of its PY 1990 formula allotments, and all unexpended funds made available by formula for 1989. A State's PY 1990 formula allotments include the initial allotment for PY 1990, and any additional funds received by the State during the PY 1990 reallotment process.

Funds are recaptured from PY 1991 formula allotments, and are distributed by formula to eligible States and eligible high unemployment States, resulting in either an upward or downward adjustment to every State's PY 1991 allotment.

Unemployment Data

The unemployment data used in the formula for reallotments, relative numbers of unemployed and relative numbers of excess unemployed, were for the July 1990 through June 1991 period. Long-term unemployment data used were for calendar year 1990. The determination of "eligible high unemployment States" for the reallotment of excess unexpended funds was also based on unemployment data for the period July 1990 through June 1991, with all average unemployment rates rounded to the nearest tenth of one percent. The unemployment data were provided by the Bureau of Labor Statistics, based upon the Current Population Survey.

The table below displays the distribution of the net changes to PY 1991 formula allotments.

BILLING CODE 4510-30-M

U.S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
PY 1991 JTPA TITLE III REALLOTMENT TO STATES
November 1, 1991

	COL 1	COL 2	COL 3	COL 4	COL 5	COL 6
Alabama	7.1	0	99,327	99,327	54,493	153,820
Alaska	7.1	0	13,834	13,834	7,590	21,424
Arizona	5.2	0	46,666	0	25,602	25,602
Arkansas	7.2	1,479,616	0	0	0	(1,479,616)
California	6.8	0	657,783	657,783	360,871	1,018,654
Colorado	5.0	0	52,360	0	28,725	28,725
Connecticut	5.3	0	60,403	0	33,138	33,138
Delaware	6.4	8,472	0	0	0	(8,472)
District of Columbia	7.2	0	16,347	16,347	8,968	25,315
Florida	6.6	0	275,245	275,245	151,004	426,249
Georgia	6.0	0	123,455	0	67,730	67,730
Hawaii	2.7	0	6,670	0	3,659	3,659
Idaho	6.2	0	19,968	0	10,955	10,955
Illinois	6.4	0	283,643	283,643	155,611	439,254
Indiana	5.9	0	101,654	0	55,769	55,769
Iowa	4.6	0	34,934	0	19,166	19,166
Kansas	4.7	404,248	0	0	0	(404,248)
Kentucky	6.3	0	84,542	0	46,381	46,381
Louisiana	6.5	2,720,196	0	0	0	(2,720,196)
Maine	7.0	0	31,063	31,063	17,042	48,105
Maryland	5.7	0	74,459	0	40,849	40,849
Massachusetts	7.9	0	193,892	193,892	106,372	300,264
Michigan	8.4	0	305,999	305,999	167,876	473,875
Minnesota	5.0	0	71,445	0	39,196	39,196
Mississippi	8.3	0	73,366	73,366	40,250	113,616
Missouri	6.3	21,264	112,335	0	61,629	40,365
Montana	6.5	0	17,851	17,851	9,794	27,645
Nebraska	2.3	0	7,742	0	4,247	4,247
Nevada	5.5	0	17,547	0	9,627	9,627
New Hampshire	6.6	0	29,822	29,822	16,361	46,183
New Jersey	5.9	0	152,392	0	83,605	83,605
New Mexico	6.9	0	36,235	36,235	19,879	56,114
New York	6.2	0	373,431	0	204,870	204,870
North Carolina	5.1	3,994	84,114	0	46,146	42,152
North Dakota	3.9	0	6,234	0	3,420	3,420
Ohio	6.0	0	232,025	0	127,293	127,293
Oklahoma	6.1	44,114	57,863	0	31,745	(12,369)
Oregon	5.8	0	58,778	0	32,247	32,247
Pennsylvania	6.3	0	249,425	0	136,839	136,839
Puerto Rico	15.2	0	152,591	152,591	83,714	236,305
Rhode Island	7.4	0	29,980	29,980	16,448	46,428
South Carolina	5.6	0	56,826	0	31,176	31,176
South Dakota	3.5	0	6,228	0	3,417	3,417
Tennessee	5.9	211,322	0	0	0	(211,322)
Texas	6.3	0	363,136	0	199,223	199,223
Utah	4.3	0	15,654	0	8,588	8,588
Vermont	6.3	0	11,936	0	6,548	6,548
Virginia	5.2	0	75,973	0	41,680	41,680
Washington	5.6	0	73,461	0	40,302	40,302
West Virginia	9.3	18,302	0	0	0	(18,302)
Wisconsin	4.9	0	56,019	0	30,733	30,733
Wyoming	5.4	0	6,875	0	3,772	3,772
NATIONAL TOTAL	6.3	4,911,528	4,911,528	2,216,978	2,694,550	0

BILLING CODE 4510-30-C

Explanation of Table

Column 1: This column shows each State's unemployment rate for the twelve months ending June 1991.

Column 2: This column shows the amount of excess funds (unexpended PY 1990 funds in excess of 20 percent of the State's PY 1990 formula allotments as described above and/or unexpended PY 1989 formula-allotted funds), which are subject to reallotment. PY 1991 funds in an amount equal to the excess funds identified will be recaptured from such States and distributed as discussed below.

Column 3: This column shows total excess funds distributed among all "eligible States" by applying the regular title III formula. "Eligible States" are those with unexpended PY 1990 funds at or below the level of 20 percent of their PY 1990 formula allotments as described above.

Column 4: Eligible States with unemployment rates higher than the national average, which was 6.3 percent for the 12-month period, are "eligible high unemployment States." These eligible high unemployment States received amounts equal to their share of the excess funds (the amounts shown in column 3) according to the regular title III formula. This is Step 1 of the reallotment process. These amounts are shown in column 4 and total $2,216,978.

Column 5: The sum of the remaining shares of available funds ($2,694,550) for eligible States with unemployment rates less than or equal to the national average is distributed among all eligible States, again using the regular title III allotment formula. This is Step 2 of the reallotment process. These amounts are shown in column 5.

Column 6: Net changes in PY 1991 formula allotment are presented. This column represents the decreases in title III funds shown in column 2, and the increases in title III funds shown in columns 4 and 5. NOOs in the amounts shown in column 6 are being issued to the States listed.

Equitable Procedures

Pursuant to section 303(d) of the Act, Governors of States required to make funds available for reallotment shall prescribe equitable procedures for making funds available from the State and substate grantees. 29 U.S.C. 1653(d).

Distribution of Funds

Funds are being reallotted by the Secretary in accordance with section 303 (a), (b), and (c) of the Act, using the factors described in section 302(b) of the Act. 29 U.S.C. 1652(b) and 1653 (a), (b), and (c). Distribution within States of funds allotted to States shall be in accordance with section 302 (c) and (d) of the Act (29 U.S.C. 1652 (c) and (d)), and the JTPA regulation at 20 CFR 631.12(d).

Signed at Washington, DC, this 8th day of November, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91-27776 Filed 11-18-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-101]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to Grant a Patent License.

SUMMARY: NASA hereby gives notice of intent to grant to StressTel Corporation, an exclusive, royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 4,363,242, and any reexamination or reissue thereof, entitled "Pulsed Phase Locked Loop Strain Monitor," which issued to the United States of America, as represented by the Administrator of the National Aeronautics and Space Administration, on December 14, 1982. The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR 1245.200 *et seq.* NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the date of this notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the license.

DATES: Comments to this notice must be received by January 21, 1992.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff (202) 453-2430.

Dated: November 6, 1991.

Gary L. Tesch,

Deputy General Counsel.

[FR Doc. 91-27760 Filed 11-18-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Undergraduate Science, Engineering, and Mathematics Education

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because 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 proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Proposal Review Panel for Undergraduate Science, Engineering, and Mathematics Education.

Dates and Times: November 21-22, 1991, 8 a.m.-5 p.m., November 23, 1991; 8 a.m.-3 p.m.

Location: Holiday Inn (at Crowne Plaza), Arlington, Virginia 22202.

Type of Meeting: Closed.

Agenda: Review and evaluate undergraduate course and curriculum development research proposals.

Contact Person: Dr. William Rauckhorst, room 639, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7051.

Dated: November 13, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-27728 Filed 11-18-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Potential NRC Requirements Regarding a Uniform Low-Level Radioactive Waste Manifest; Meeting

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will discuss its efforts to develop a uniform low-level radioactive waste manifest within the context of a potential rulemaking activity on Low-Level Waste Shipment Manifest Information and Reporting.

DATES: November 21, 1991.

ADDRESSES: Thirteenth Annual Department of Energy (DOE) Low-Level Waste Management Conference, The Atlanta Hilton and Towers, 255 Courtland Street, NE, Atlanta, Georgia 30303–9862.

FOR FURTHER INFORMATION CONTACT: William R. Lahs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–0569.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss NRC's proposed uniform low-level radioactive waste (LLW) manifest. The manifest is being developed as a part of a proposed rulemaking on manifest information and reporting.

The NRC staff, in a session on "Tracking and Transportation" at the Thirteenth Annual DOE Low-Level Waste Management Conference, scheduled for the morning of November 21, 1991, will discuss the proposed manifest, how it could meet various regulatory requirements, who would complete the manifest, and how the manifest tracks LLW from generation to disposal.

A formal paper covering the NRC presentation will be prepared and be available through the listed contact.

Dated at Rockville, Maryland this 13th day of November 1991.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Acting Chief, Decommissioning and Reglatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, NMSS.

[FR Doc. 91–27769 Filed 11–18–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–7406]

Consideration of Amendment to B.P. Chemicals America, Inc. License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Source Material License No. SUB–908 issued to B.P. Chemicals America Inc., for the use and or possession of source material at its facility located in Lima, Ohio.

The licensee requested the amendment in a letter dated August 15, 1991, subsequent to the submittal of the pond closure plans, dated January 25, 1987. The licensee submitted supplemental information to its pond closure plans via letters dated March 6, 1991, and April 11, 1991. Additional submittals on the pond closure plans are expected from the licensee in the near future.

The amendment would authorize the licensee to dispose onsite, low-level radioactive and Resource Conservation and Recovery Act (RCRA) hazardous mixed wastes currently stored in four retention ponds at its Lima, Ohio facility. RCRA considerations are being addressed by the Ohio Environmental Protection Agency (OEPA).

Contamination at the licensee's facility resulted from an acrylonitrile manufacturing process used and marketed by Vistron Corporation, former owner of B.P. Chemicals America, Inc. The catalyst utilized in the manufacturing process contained a small concentration of depleted uranium, and was discontinued in 1971. However, the residual contamination from the catalyst is suspected to be entrained in the currently operating Acrylo II facility system at the site.

B.P. Chemicals America, Inc. is completing the decontamination of the site in stages, which began with the catalyst plant decommissioning, which was released for unrestricted use by a license amendment dated August 1, 1988.

The Commission will require the licensee to cleanup the facility and site to meet the Commission's criteria, and during the decommissioning, the licensee shall maintain effluents as low as reasonably achievable.

Prior to the issuance of the proposed amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended, and the Commission's regulations.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of subpart L, Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the Commission's rules of practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a) any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding:

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, B.P. Chemicals America, Inc. to the attention of Mr. James H. Ross, President/Plant Manager, Fort Amanda and Adgate Road, P.O. Box 628, Lima, Ohio 45802–0628; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Any hearing that is requested and granted will be held in accordance with the Commission's Informal Hearing Procedures for Adjudications in Material Licensing Proceedings in 10 CFR part 2, subpart L.

For further details with respect to the proposed action, see the licensee's request for license amendment dated August 15, 1991, which is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC.

Dated at Rockville, Maryland, this 8th day of November, 1991.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 91–27771 Filed 11–18–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-312]

Sacramento Municipal Utility District; Rancho Seco Nuclear Generating Station; Exemption

I

The Sacramento Municipal Utility District (SMUD or the licensee) is the holder of Facility Operating License No. DPR-54. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a pressurized water reactor located at the licensee's site in Sacramento, California, and is currently defueled with the fuel stored in the spent fuel pool. Additionally, a confirmatory order prevents the movement of the fuel into the reactor building without NRC approval.

II

By letter dated July 24, 1990, the licensee requested an exemption from 10 CFR 50.75(e)(1)(ii) regarding the requirement to have all decommissioning funds collected when operations are terminated. The Rancho Seco Nuclear Generating Station (Rancho Seco) was permanently shut down on June 7, 1989 and completely defueled on December 8, 1989.

III

The decommissioning regulations were last amended by a final decommissioning rule on June 27, 1988, which established several acceptable methods by which power reactor licensees could provide assurance that they will have sufficient funds to decommission their plants by the time the plants are permanently shut down. In considering the final decommissioning rule, the Commission acknowledged that there might be instances in which reactors would permanently shut down before attaining a full-term operating life. However, because it was viewed as unlikely that many instances of premature decommissioning would occur, the rule did not explicitly provide remedies for this situation. For plants that had shut down before the effective date of the rule (i.e., July 27, 1988), requirements for contents of the decommissioning plan, including provisions for assuring adequate funding "may be modified with the approval of the Commission to reflect the fact that the decommissioning process has been initiated previously" (10 CFR 50.82(a)). For plants that permanently shut down after July 27, 1988, 50.75(e) calls for funds to be provided by one of three methods: Prepayment, surety, or external sinking fund in which the total amount of funds would be sufficient to pay for decommissioning costs at the time termination of operation is expected. These funding requirements are designed to provide reasonable assurance that at the time of permanent end of operations sufficient funds are available to decommission the facility in a manner which protects public health and safety.

The NRC staff determined that requiring prematurely shut down plants (ones after July 27, 1988) to comply fully with the 10 CFR 50.75(e) regulations might impose a severe financial burden on these plants since they have not operated long enough to have accumulated sufficient funds for decommissioning. On November 26, 1990, the staff solicited guidance from the Commission (SECY-90-386) on this issue. In its December 21, 1990, Staff Requirements Memorandum, the Commission responded to SECY-90-386 instructing the staff to develop a proposed decommissioning rule whereby the appropriate decommissioning funding accumulation period for licensees having prematurely shut down after July 27, 1988, be determined on a "case-by-case" basis. Furthermore, the staff was instructed, in the interim, to use the "case-by-case" approach in determining the decommissioning funding accumulation period for the three plants currently in the category of having prematurely ceased operations after July 27, 1988 (i.e., Shoreham, Rancho Seco, and Fort St. Vrain).

In a letter dated July 24, 1990, and as supplemented by letters dated March 26, 1991, and July 19, 1991, the licensee outlined its plan to assure decommissioning funding. SMUD's plan is comprised of the following:

(1) Initial contribution of approximately $90 million into an external sinking trust fund.

(2) Annual contributions of approximately $8 million prior to decommissioning plan approval and annual $12 million contributions thereafter.

(3) Annual contributions to continue until October 11, 2008. Funding to be complete at this time.

(4) Dispersals starting in September 1992 to cover decommissioning related costs only.

In reviewing the licensee's proposed funding plan, the staff determined that it meets the intent of 10 CFR 50.75(e)(1)(ii) in that it calls for an external sinking fund with periodic accumulations. SMUD's plan, however, does not meet the requirement to have full funding at the termination of Rancho Seco operations, since Rancho Seco was prematurely shut down.

The underlying purpose of the decommissioning funding regulations is to provide reasonable assurance that sufficient funds are available to decommissioning the facility in a manner which protects public health and safety. In implementing the "case-by-case" approach the staff has determined that a method of acceptable funding would take into account SMUD's financial and rate regulatory environment and provide for the collection of decommissioning funds for a period which would provide sufficient assurance that decommissioning could be funded so as to maintain adequate protection of the public health and safety.

The staff evaluated the licensee in areas of (1) financial security; (2) history of fund collection; (3) rate regulation; and (4) obligation to decommission.

(1) *Financial Security*—SMUD has a bond rating of "A" by Moodys. The staff believes that this bond rating indicates that SMUD has a high degree of financial security and therefore, provides a greater assurance that SMUD's decommissioning funding requirements can be met.

(2) *History of Fund Collection*—The licensee has made annual contributions to its decommissioning fund since January 1, 1980, even in periods of financial difficulty. SMUD has already collected approximately $90 million of the estimated $286 million to decommission Rancho Seco. The staff believes that this record shows that SMUD has a discipline to set aside funds over a long period, thus providing additional assurance that funds for decommissioning can be accumulated.

(3) *Rate Regulation*—As a municipal utility (unlike a privately owned utility) SMUD has legal authority to establish its own rates and charges. Therefore, it has the ability to recover costs associated with the Rancho Seco decommissioning from its ratepayers. The District's resolution 91-6-9 provides that "the District will collect through rates the cost of SAFSTOR and decommissioning of $280 million * * *"
The NRC has concluded that the ability to establish rates is a key factor in assuring decommissioning funding and, therefore, provides additional assurance that funds for decommissioning Rancho Seco can be accumulated.

(4) *Obligations to Decommission*—Aside from the decommissioning regulations imposed by the NRC, there are other laws applicable to SMUD that provide additional obligations to decommission Rancho Seco. In a letter dated March 18, 1991, to Walter Gaebler II of SMUD, the law firm of Orrick, Herrington, & Sutcliffe provided an opinion that the Cortese-Knox Local Government Act of 1985, California Government Code, § 56000, et seq, (the Act) generally provides for the continuation of the decommissioning obligations to the NRC in a successor to

SMUD in the event of a dissolution of SMUD. The opinion states that the Act contains detailed information as to the provision relating to a dissolution. These include such areas as (1) providing that the successor has the same powers and duties as the dissolved body; (2) that any monies and funds from the dissolved body and monies and funds received by the successor shall be used for payments due on bonds and other contracts or obligations; and (3) the rights of the successor are subject to the provisions of contracts or other obligations. The opinion concludes that the Act would require any successor to SMUD to continue to fulfill SMUD's duties and to apply SMUD's revenues to the payment of the District's obligations.

Additionally, SMUD's General Counsel in an opinion of June 19, 1991, concluded that the California Nuclear Facilities Decommissioning Act, California Public Utilities Code, § 8325, places an obligation on SMUD to provide adequate funds for decommissioning. This act has provisions for decommissioning items such as (1) providing for an estimate of decommissioning costs; (2) providing for the establishment and management of a separate external fund for the purpose of nuclear facility decommissioning; (3) providing for the periodic revision of the decommissioning cost estimate; and (4) developing regulations related to realistic cost estimating, periodic reviews, and cost controls.

The NRC believes that these two state acts provide an additional legal obligation to decommission Rancho Seco and provide additional assurance that funds will be available to decommission the facility.

The NRC has concluded that (1) the financial stability of SMUD, (2) their history of decommissioning fund payments, (3) their rate regulatory function, and (4) the other legal obligations to decommission Rancho Seco, provide mitigation to the absence of full decommissioning funding at the termination of operation at Rancho Seco. Furthermore, the NRC has concluded that these four factors, in conjunction with SMUD's financial assurance plan, provide adequate assurance that funds will be available to decommission the facility in a manner which protects public health and safety.

The NRC staff has determined that requiring the licensee to fully comply with the requirement to have complete decommissioning funding up front, in light of the premature shutdown of the Rancho Seco facility, is not necessary to achieve the underlying purpose of the regulations and would impose an undue financial burden on the licensee. Therefore, special circumstances as defined in 10 CFR 50.12(a)(2) (ii) and (iii) exist.

For these reasons, the Commission finds the licensee has provided an acceptable basis to authorize the granting of an exemption in accordance with the provisions of 10 CFR 50.12.

IV

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2) (ii) and (iii) are present to justify the exemption. The referenced special circumstances pertain to regulations that do not alter the underlying purpose of the regulations and without which would impose an undue cost of the licensee.

Based on the foregoing, the Commission hereby grants the following exemption:

The Sacramento Municipal Utility District (SMUD) is exempt from the requirement in 10 CFR 50.75(e)(1)(ii) to have the total amount of funds sufficient to pay decommissioning costs at the termination of operations, under the conditions that:

(1) SMUD must follow the decommissioning fund accumulation and disbursement plan specified in its July 19, 1991, Revised Financial Assurance Plan.

(2) SMUD shall review biannually their adherence to the Decommissioning Accumulation Table (Table 2 of the financial plan, July 19, 1991) and accordingly revise the accumulation/disbursement schedule on at least a 5-year frequency such that the original outcome is assured. Correspondingly, the NRC shall be informed of the findings of this biannual review and any planned adjustments to the accumulation/disbursement schedule.

Non-compliance with the above conditions will invalidate this exemption and will require full compliance with the regulations.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (56 FR 57536, November 12, 1991).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 13th day of November 1991.

Dennis M. Crutchfield,

Director, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91-27770 Filed 11-18-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF NATIONAL DRUG CONTROL POLICY

Performance Review Board Membership

AGENCY: Office of National Drug Control Policy.

ACTION: Notice.

SUMMARY: Notice is hereby given that the membership of such Performance Review Boards as shall be established by the Office of National Drug Control Policy pursuant to the provisions of 5 CFR 430.307 shall be drawn from the following individuals: Bruce M. Carnes, Gary F. Crosby, Henry H. Marsden, Joseph H. McHugh, Terence J. Pell, J. Michael Walsh, and John P. Walters.

DATES: This notice is effective immediately.

FOR FURTHER INFORMATION CONTACT: Carol Winfield, Personnel Officer, at (202) 467-9680.

Bob Martinez,

Director.

[FR Doc. 91-27694 Filed 11-18-91; 8:45 am]

BILLING CODE 3180-02-M

OVERSIGHT BOARD

Regional Advisory Board Meetings: Change of Meeting Time

AGENCY: Oversight Board.

ACTION: Change of meeting time for Regional Advisory Boards.

SUMMARY: This is to announce time changes for the Regions V, VI, IV Advisory Board meetings scheduled for 12:30 p.m. on December 3, 11, 13, respectively, as originally published in the **Federal Register**, October 28, 1991, page 55515. The new times are listed below.

DATES: 1. Region V, Albuquerque, NM., Tuesday, December 3, 8:30 a.m. to 12:30 p.m. 2. Region VI, San Francisco, CA, Wednesday, December 11, 9:30 a.m. to 1 p.m. 3. Region IV, Dallas, TX, Friday, December 13, 9 a.m. to 12 noon.

ADDRESSES: 1. Albuquerque, NM., Albuquerque Technical Vocational Institute, Main Board Room, Brasher Hall, 525 Buena Vista, SE. 2. San Francisco, CA, Federal Reserve of San Francisco, Fourth Floor Conference Room, 101 Market Street. 3. Dallas, TX, Dallas Public Library, Auditorium, 1515 Young Street.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, 1777 F Street, NW., Washington, DC 20232, (202) 786-9672.

Dated: November 14, 1991.

Jill Nevius,

Committee Management Officer.

[FR Doc. 91-27758 Filed 11-18-91 8:45 am]

BILLING CODE 2222-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its public hearing and Commission meetings on Wednesday, Thursday, and Friday, December 11–13, 1991, at the Grand Hotel, 2350 M Street NW., Washington, DC, 202–429–0100 in the ballroom. The hearing will be held on Wednesday and will give groups a chance to comment on issues that the Commission will address in its annual report:

- Implementation of the Medicare Fee Schedule.
- Progress report on developing a resource-based approach for determining practice expense.
- Further steps in applying a risk-of-service method for the malpractice expense component of the Medicare fee schedule.
- Beneficiary financial protection.
- Alternative definitions of shortage areas to be used for physician payment policy.
- Problems of health services delivery in the inner city.
- Options for physician payment policy and improving access in the Medicaid Program.
- Practice guidelines: a progress report.
- Physician practice profiling: problems and opportunities.
- Options for medical malpractice reform.
- Physician supply and distribution: directions for graduate medical education.
- Issues in physician credentialing.
- Data requirements for an all-payer system.
- Monitoring access under the Medicare fee schedule: progress report and work plan.

If a group wishes to testify or submit testimony for the record, it must notify Lauren LeRoy or Anne Schwartz at (202) 653–7220 no later than Friday, November 22, 1991. It may not be possible to schedule all groups requesting to testify, so some groups may be asked to present their views in writing for the hearing record.

ADDRESSES: The Commission is located at 2120 L Street NW. in suite 510, Washington, DC. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653–7220

SUPPLEMENTARY INFORMATION: Information about the hearing schedule and the exact agenda for the public meetings can be obtained on Friday, December 6, 1991. Copies of the agenda can be mailed at that time. Please direct all requests for the agenda to the Commission's receptionist.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 91–27682 Filed 11–18–91; 8:45 am]

BILLING CODE 6820–SE–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–29922; File No. SR–Amex–91–30]

Self-Regulatory Organizations; Filing and Order Granting Temporary Accelerated Approval to Proposed Rule Change by American Stock Exchange, Inc. Relating to a Pilot Program for Execution of Odd-lot Market Orders

November 8, 1991.

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 November 7, 1991, the American Stock Exchange, Inc. ("Amex" 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 Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend for three months its existing pilot program under Amex Rule 205 requiring execution of odd-lot market orders at the prevailing Amex quote with no differential charged.[1] The Amex received approval, on a pilot basis expiring on November 10, 1991, of amendments to Amex Rule 205.[2]

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Purpose

The Commission has approved, on a pilot basis extending to November 10, 1991, amendments to Exchange Rule 205 to require the execution of odd-lot market orders at the prevailing Amex quote with no odd-lot differential.[3] Under the pilot procedures, market orders with no qualifying notations are executed at the Amex quotation at the time the order is represented in the market either by being received at the trading post or through the Exchange's Post Execution Reporting system ("PER"). Enhancements to the PER system have been implemented to provide for the automatic execution of odd-lot market orders entered through PER. For purposes of the pilot program, limit orders that are immediately executable based on the Amex quote at the time the order is received at the trading post or through PER are executed in the same manner as market orders.

The Exchange proposes that the pilot program applicable to odd-lot execution procedures be extended for three months. This will provide the Commission with an additional period of time to assess procedures under the pilot program and will permit the Exchange to provide information

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[1] The Exchange seeks accelerated approval of the proposed rule change in order to allow the pilot program, which will expire on November 10, 1991, to continue without interruption.

[2] See Securities Exchange Act Release No. 29186 (May 9, 1991), 56 FR 22488 (May 15, 1991) (approving File No. SR–Amex–91–09) ("May 1991 Approval Order"). See also Securities Exchange Act Release No. 28758 (January 10, 1991), 56 FR 1656 (January 16, 1991) (approving File No. SR–Amex–90–39) ("January 1991 Approval Order") and Securities Exchange Act Release No. 27590 (January 5, 1990), 55 FR 1123 (January 11, 1990) (approving File No. SR–Amex–89–31) ("1990 Approval Order"). The Commission previously approved this pilot program and granted permanent approval of procedures which provide that the odd-lot portion of a Part of Round Lot ("PRL") order will be executed at the same price as the round lot portion, with no differential charged. See Securities Exchange Act Release No. 26445 (January 10, 1989), 54 FR 2248 (approving File No. SR–Amex–88–23) ("1989 Approval Order").

[3] See *supra* note 2.

regarding its experience under the pilot program as well as the operation of the PER system enhancements.

Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of sections 6(b)(5) and 11A(a)(1) in particular in that it facilitates the economically efficient execution of odd-lot transactions, and is intended to result in improved execution of customer orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–91–30 and should be submitted by December 10, 1991.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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, with the requirements of sections 6 [4] and 11A(a)(1) [5] of the Act and the rules and regulations thereunder. The Commission believes that the revised procedures, which provided for pricing of odd-lot market orders at the prevailing market quote rather than a subsequent transaction, should provide investors with more timely executions of these orders. Moreover, these orders will receive less costly executions than under the former procedures because no differential will be charged. In addition, the Exchange has implemented enhancements to its PER system to provide for the automatic execution of odd-lot market orders, as set forth in the Commission's 1989 Approval Order.[6]

In its 1989, 1990, January 1991 and May 1991 Approval Orders, the Commission asked the Amex to analyze the difference in executions between using the Intermarket Trading System ("ITS") best bid or offer and the Amex quote without the differential. Specifically, the Commission was interested in whether customers are receiving a better execution, both in terms of price and time, using the new Amex system. The Commission also was interested in the feasibility of implementing an odd-lot pricing system using the ITS best bid or offer and no differential.

The Amex submitted the requested information with respect to the difference in executions between the ITS best bid or offer and the Amex quote to the Commission on January 9, 1991, April 22, 1991 and October 25, 1991.[7] The Amex data submitted in January indicated that for 97.4% of the odd-lot executions, the Amex quote was the ITS best bid or offer. The Amex data submitted in April indicated that for 93.1% of the odd-lot executions, the Amex quote was the ITS best bid or offer. The Amex data submitted in October indicated that for 94.0% of the odd-lot executions, the Amex quote was the ITS best bid or offer. Based upon data submitted in both January and April, and Amex concluded that odd-lots were executed at a price equal to or better than the inside quote 97.0% of the time. Based upon data submitted in October, the Amex concluded that odd-lots were executed at a price equal to or better than the inside quote 96.1% of the time. The Amex also concluded that the prices at which odd-lot market orders are executed under the pilot program have been, on balance, superior to those available under the Exchange's previous procedures. The Amex states that, based upon its data submitted in January, it is expected that 87% of Amex odd-lot executions would receive a better price under the pilot procedures than under the prior procedures.

The Commission believes that it is reasonable to extend the pilot program for an additional three months to enable the Commission to fully review the Amex report and to enable the pilot to continue without interruption during the Commission's review. The Amex data indicates that the pilot procedures provide a superior execution for a substantial majority of odd-lot executions. The Commission, however, remains concerned that some odd-lot orders could receive executions at less than the best available price since the Exchange's pricing formula does not include quotations from other markets.[8] Due to the low number of odd-lot market orders,[9] the small percentage of Amex quotes that are worse than the ITS best bid and offer, and the benefits to customers under the pilot program procedures, the Commission believes that it is acceptable to continue the pilot's current pricing procedures for an additional three months. The Commission remains interested in the feasibility of implementing an odd-lot pricing system using the ITS best bid or offer and no differential. The Commission, therefore, requests that the Amex provide a report on this subject by December 16, 1991.

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.

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[4] 15 U.S.C. 78f (1988).

[5] 15 U.S.C. 78k–1(a)(1) (1988).

[6] See 1989 Approval Order, *supra* note 2 for a description of the Exchange's odd-lot procedures and the Commission's rationale for approving those procedures on a pilot basis. The discussion in that Order is incorporated by reference into this Order.

[7] See letters from Jules L. Winters, Executive Vice President, Operations, Amex, to Howard L. Kramer, Assistant Director, Commission, dated January 8, 1991, April 19, 1991 and October 23, 1991.

[8] The Commission has approved amendments to the New York Stock Exchange's ("NYSE") rules which incorporate the ITS quote into the NYSE's odd-lot pricing procedures through the use of the "Best Pricing Quote." See Securities Exchange Act Release No. 27981 (May 2, 1990), 55 FR 19409 (May 9, 1990).

[9] The Amex states that during the period of May 1 to September 30, 1991, odd-lots accounted for 0.265% of total Exchange volume (3,328,371 shares). See letter from Jules L. Winters, Executive Vice President, Amex, to Howard L. Kramer, Assistant Director, dated October 23, 1991. The Amex states that during the period of January 1 to November 30, 1990, odd-lots accounted for 0.24% of total Exchange volume (7,529,926 shares). See letter from Jules L. Winters, Executive Vice President, Operations, Amex, to Howard L. Kramer, Assistant Director, Commission, dated January 8, 1991. During the period of January 1 to April 12, 1991, the Exchange states that odd-lots accounted for 0.26% of total Exchange volume (3,182,228 shares). See letter from Jules L. Winters, Executive Vice President, Operations, Amex, to Howard L. Kramer, Assistant Director, dated April 19, 1991.

This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[10]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change is approved for a three month period ending on February 8, 1992.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. 91-27714 Filed 11-18-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

November 13, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

RJR Nabisco Holding Corp.
$.835 Dep. Shares (Rep. ¼ Series A) (File No. 7-7505).
General Motors
Preference A (File No. 7-7506).
K Mart
Dep. Shares (Rep. ¼ Conv. Pfd A) (File No. 7-7507).
Texas Instruments
Dep. Shares (Rep. ¼ Pfd. A) (File No. 7-7508).
Gaylord Entertainment Co.
Class A Common Stock, $.01 Par Value (File No. 7-7509).
Graham Field Health Product, Inc.
Common Stock, $.025 Par Value (File No. 7-7510).
Jenny Craig, Inc.
Common Stock, No Par Value (File No. 7-7511).
Jones Apparel Group, Inc.
Common Stock, $.01 Par Value (File No. 7-7512).
NovaCare, Inc.
Common Stock, $.01 Par Value (File No. 7-7513).
Scherer R.P.
Common Stock, $.01 Par Value (File No. 7-7514).
Shopko Stores
Common Stock, $.01 Par Value (File No. 7-7515).
Total
American Depositary Receipt, No Par Value (File No. 7-7516).
Value City Department Stores
Common Stock, No Par Value (File No. 7-7517).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 5, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-27715 Filed 11-18-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

November 13, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Aegon, N.V.
Ordinary Shares, NLG 5 Par Value (File No. 7-7524)
Sears, Roebuck & Co.
Depositary Shares (each representing ¼ share of 8.88% Preferred Share First Series) (File No. 7-7525)
Foundation Health Corporation
Common Stock, $.01 Par Value (File No. 7-7526)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 5, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-27716 Filed 11-18-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

November 13, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Bio Whittaker, Inc.
Common Stock, $1 Par Value (File No. 7-7518).
Greyhound Lines, Inc.
Common Stock, $.01 Par Value (File No. 7-7519).
Munsingwear, Inc.
Common stock, $1 Par Value (File No. 7-7520).
RJR Nibisco Holding Corp.
$8.35 Depositary Share of Pfd. Equity Redemption Cumulative Stock, "Perk" (FIle No. 7-7521).
Jenny Craig, Inc.
Common Stock, $.00000005 Par Value (File No. 7-7522).
Chiles Offshore Corporation
Common Stock, $0.01 Par Value (File No. 7-7523).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 5, 1991, written data views and arguments

[10] No comments were received in connection with the proposed rule change which implemented these procedures. See 1989 Approval Order, *supra* note 2.

15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30-3(a)(12) (1990).

concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-27717 Filed 11-18-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25408]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 8, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 2, 1991, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective

Public Service Company of Oklahoma (70-6827)

Public Service Company of Oklahoma ("PSO"), 212 East 6th Street, Tulsa, Oklahoma, an electric utility subsidiary company of Central and Southwest Corporation, Inc., a registered holding company, and PSO's mining subsidiary company, Ash Creek Mining Company ("Ash Creek"), have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 43 and 45 thereunder.

By order dated December 8, 1989 (HCAR No. 24994), the Commission extended PSO's authorization to finance Ash Creek through December 31, 1991 in the maximum principal amount of $4 million outstanding at any one time. PSO and Ash Creek estimate that Ash Creek's indebtedness to PSO at December 31, 1991 will be approximately $3,450,000. PSO now proposes to extend its authorization to finance Ash Creek through December 31, 1993 and to increase the maximum principal amount of such financing to $5 million outstanding at any one time.

Eastern Utilities Associates (70-7677)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts, a registered holding company, has filed a post-effective amendment under section 12(b) of the Act and rule 45 thereunder to its application-declaration originally filed under sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and rules 41, 43, 45(a), 51 and 50(a)(5) thereunder.

By order dated March 2, 1990 (HCAR No. 25049), the Commission, *inter alia*, granted EUA authorization to make capital contributions to its wholly owned electric public utility subsidiary, Newport Electric Corporation ("Newport"), not to exceed $10 million in the aggregate through December 31, 1991. EUA now proposes to extend such authorization to make capital contributions to Newport through December 31, 1993.

Ohio Power Company (70-7892)

Ohio Power Company ("OPCo"), 301 Cleveland Avenue, SW., Canton, Ohio 44702, a electric-utility subsidiary company of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed an application under sections 9(a) and 10 of the Act.

By orders dated August 3, 1979 and January 16, 1981 (HCAR Nos. 21173 and 21886, respectively), OPCo was authorized to acquire the assets of the Cook Coal Terminal Railcar Maintenance Shop ("Shop") located at its Cook Coal Terminal in Massac County, Illinois. By subsequent order dated June 17, 1983 (HCAR No. 22977), OPCo was authorized to have the Shop provide services in connection with the repair of railroad cars used in the transportation operations of associate companies in the AEP system.

OPCo now proposes to provide such repair services at the Shop for railcars of nonassociated entities. OPCo will perform such services in an amount up to 40% of the capacity of the Shop for an initial period ending on December 31, 1996. Charges to nonassociates would be the greatest amount practicable giving consideration to the competitive market, but in no case less than the direct incremental costs of labor and materials associated with such services. The revenue derived from providing services to nonassociates, after the payment of incremental costs, would be used to reduce the amount paid to OPCo by AEP system companies.

Entergy Corporation, et al. (70-7913)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its electric utility subsidiary company, Louisiana Power & Light Company ("LP&L"), 317 Baronne Street, New Orleans, Louisiana 70112, have filed an application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and rule 43 thereunder.

LP&L proposes to issue and sell from time-to-time through December 31, 1993, and Entergy proposes to acquire, an aggregate of up to 22,753,200 additional shares of LP&L's common stock, without nominal or par value, for an aggregate cash consideration not to exceed $150 million. LP&L's Restated Articles of Incorporation, as amended, presently provide for 250 million authorized shares of common stock of which 150,004,380 such shares are issued and outstanding and owned by Entergy.

The proceeds from such sales are presently expected to be used by LP&L for the redemption, prior to maturity, of a portion of LP&L's Secured Notes due April 1, 1993, as authorized by prior Commission order, dated April 28, 1986 (HCAR No. 24072). All or a portion of such proceeds may alternatively be used by LP&L for the financing, in part, of the possible redemption, purchase or other acquisition of all or a portion of certain outstanding series of LP&L's first mortgage bonds, pollution control revenue bonds and preferred stock, as authorized by prior Commission orders, dated March 21, 1991 and May 17, 1991 (HCAR Nos. 25279 and 25314, respectively), for its construction

program and for other corporate purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-27718 Filed 11-18-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice No. 1522]

Port of Brownsville, Texas; Application for Bridge Permit

Notice is hereby given that the Department of State has received an application for a permit authorizing construction of a bridge across the Rio Grande River from the city of Brownsville, Texas (Brownsville Navigation District) to Matamoros, Tamaulipas, Mexico.

The Department's jurisdiction with respect to this application is based upon Executive Order 11423, dated August 16, 1968, and the International Bridge Act of 1972 (Pub. L. 92-434, 86 Stat. 731, 33 U.S.C. 535 approved September 26, 1972).

As required by E.O. 11423, the Department of State is circulating this application to concerned agencies for comment.

Interested persons may submit their views regarding the application in writing by December 19, 1991 to Mr. Irwin Rubenstein, Border Coordinator, Office of Mexican Affairs, room 4258, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520.

The application and related documents made part of the record to be considered by the Department of State in connection with this application are available for inspection in the Office of Mexican Affairs during normal business hours.

Any questions relating to this notice may be addressed to the Border Coordinator at the above address or by telephone, No. (202) 647-9894.

Dated: November 7, 1991.

Irwin Rubenstein,

Border Coordinator, Office of Mexican Affairs.

[FR Doc. 91-27695 Filed 11-18-845 am]

Billing Code 4710-01-M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended November 8, 1991

The following application for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's procedural regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket number: 47822.

Date filed: November 5, 1991.

Due date for answers, conforming applications, or motion to modify scope: December 3, 1991.

Description: Application of Aero Transporte S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit authorizing it to provide scheduled foreign air transportation of property (cargo) and mail from Lima, Peru to Miami, Florida via Panama City, Panama, Guayaquil, Ecuador (blind sector), and Bogota and Cali, Colombia (blind sectors) and return.

Docket number: 47824.

Date filed: November 6, 1991.

Due date for answers, conforming applications, or motion to modify scope: December 4, 1991.

Description: Application of American Dream Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to engage in scheduled interstate and overseas air transportation of persons, property, and mail between points in the United States, its territories and possessions (including the District of Columbia).

Docket number: 47825.

Date filed: November 6, 1991.

Due date for answers, conforming applications, or motion to modify scope: December 4, 1991.

Description: Application of Air Transat A.T., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for an amended foreign air carrier permit for authority to conduct scheduled international air service between Montreal (Mirabel), Quebec, on the one hand, and Fort Lauderdale, Florida, on the other hand.

Docket number: 47828.

Date filed: November 7, 1991.

Due date for answers, conforming applications, or motion to modify scope: December 5, 1991.

Description: Application of Airmark Aviation, Inc., pursuant to section 401(d)(3), of the Act and subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing interstate and overseas charter air transportation.

Docket number: 47829.

Date filed: November 7, 1991.

Due date for answers, conforming applications, or motion to modify scope: December 5, 1991.

Description: Application of Airmark Aviation, Inc., pursuant to section 401(d)(3) of the Act and subpart Q of the Regulations requests a certificate of public convenience and necessity authorizing interstate and overseas charter air transportation of persons, property and mail; between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States, and any point outside thereof.

Docket number: 47831.

Date filed: November 8, 1991.

Due date for answers, conforming applications, or motion to modify scope: December 6, 1991.

Description: Application of USAir, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations requests renewal of the Charlotte, North Carolina—London, United Kingdom authority in its certificate for Route 524 for a period of five years.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-27723 Filed 11-18-91, 8:45 am]

BILLING CODE 4910-62-M

Office of Hearings

[Docket 47830]

Pan American World Airways, Inc.; Notice of Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge Burton S. Kolko. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, room 9228, Department of Transportation, 400 Seventh Street, SW., Washington DC 20590. Telephone: (202) 366-2142.

Dated: November 12, 1991.

John J. Mathias,

Chief Administrative Law Judge.

[FR Doc. 91-27724 Filed 11-18-91; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Bureau of the Public Debt

Privacy Act of 1974, As Amended; System of Records

AGENCY: Department of the Treasury, Fiscal Service, Bureau of the Public Debt.

ACTION: Notice of system of records: Treasury/BPD .006—Health Service Program Records.

SUMMARY: The purpose of this document is to give notice under the provisions of the Privacy Act of 1974, as amended, of records maintained at the Bureau of the Public Debt—Health Service Program Records. This system contains information on individuals who receive health services from the Health Unit at the Savings Bond Operations Office in Parkersburg, West Virginia. The system does not infringe upon any individual's privacy rights because of the security protections and the disclosure restrictions imposed by the Privacy Act. The Bureau's systems of records were last published on March 1, 1988, at 53 FR 6252.

DATES: Comments must be received no later than December 19, 1991.

ADDRESSES: Send any comments to D. Louise Bennett, Disclosure Officer, Bureau of the Public Debt, E Street Building, room 553, Washington, DC 20239-0001. Copies of all written comments will be available for public inspection and copying at the Department of the Treasury Library, room 5030, Main Treasury Building, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: D. Louise Bennett, Disclosure Officer (202) 219-3307.

SUPPLEMENTARY INFORMATION: Information in this system of records involves nonoccupational visits to and treatments of individuals by the Public Debt Health Unit located at the Savings Bond Operations Office in Parkersburg, West Virginia. In addition to covering records about Public Debt employees, this system of records also covers Federal employees of other organizations located in the Parkersburg, West Virginia vicinity who are routinely treated and non-Federal individuals who may receive emergency treatment from Health Unit personnel. Information is maintained on paper and magnetic media.

Examples of information which may be found in each record are the individual's name; office and home addresses and telephone numbers of individual; medical problems; names of medications; name, address, and telephone number of individual's physician; name, address, and telephone number of hospital; name, address, and telephone number of emergency contact; and information from the individual's personal physician.

A system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Office of Management and Budget (OMB) and Congress pursuant to Appendix I to OMB Circular A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

Dated: November 8, 1991.

David M. Nummy,

Acting Assistant Secretary (Management).

Treasury/BPD .006

SYSTEM NAME:

Health Service Program Records.

SYSTEM LOCATION:

Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia 26106.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Bureau of the Public Debt employees who receive services under the Federal Employee Health Services Program from the Public Debt Health Unit at the Savings Bond Operations Office in Parkersburg, West Virginia.

(2) Federal employees of other organizations in the Parkersburg, West Virginia vicinity who receive services under the Federal Employee Health Services Program from the Public Debt Health Unit at the Savings Bond Operations Office in Parkersburg, West Virginia.

(3) Non-Federal individuals, such as members of the public visiting the credit union or cafeteria or non-Federal personnel working in the building, who may receive emergency treatment from the Public Debt Health Unit at the Savings Bond Operations Office in Parkersburg, West Virginia.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is comprised of records developed as a result of an individual's utilization of services provided under the Federal Government's Health Service Program. These records contain information such as: Examination, diagnostic, and treatment data; laboratory findings; nutrition and dietetic files; nursing notes; immunization records; names, addresses, and telephone numbers of individual; name, address, and telephone number of individual's physician; name, address, and telephone number of hospital; name, address, and telephone number of emergency contact; and information obtained from the individual's physician.

Note: This system does not cover records related to counseling for drug, alcohol, or other problems covered by System No. Treasury/BPD .005—Employee Assistance Records. Medical records relating to a condition of employment or an on-the-job occurrence are covered by the Office of Personnel Management's System of Records No. OPM/GOVT-10—Employee Medical File System Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C. 7901.

PURPOSES:

These records document an individual's utilization on a voluntary basis of health services provided under the Federal Government's Health Service Program at the Health Unit at the Bureau of the Public Debt in Parkersburg, West Virginia. Data is necessary to ensure proper evaluation, diagnosis, treatment, and referral to maintain continuity of care; a medical history of care received by the individual; planning for further care of the individual; a means of communication among health care members who contribute to the individual's care; a legal document of health care rendered; a tool for evaluating the quality of health care rendered.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record or information from a record maintained in this system of records may be disclosed as a routine use to:

a. Medical personnel under a contract agreement with Public Debt;

b. A Federal, State, or local public health service agency, as required by applicable law, concerning individuals who have contracted certain communicable diseases or conditions. Such information is used to prevent further outbreak of the disease or condition;

c. Appropriate Federal, State, or local agencies responsible for investigation of an accident, disease, medical condition, or injury as required by pertinent legal authority;

d. The Department of Justice in connection with lawsuits in which the Department of the Treasury is a party or has an interest;

e. A Federal agency responsible for administering benefits programs in connection with a claim for benefits filed by an employee;

f. A Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

g. A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena or in connection with criminal law proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

These records are retrieved by the name of the individual to whom they pertain.

SAFEGUARDS:

These records are maintained in a secured room with access limited to Health Unit personnel whose duties require access. Medical personnel under a contract agreement who have access to these records are required to maintain adequate safeguards with respect to such records.

RETENTION AND DISPOSAL:

Records of the Health Unit are maintained for 6 years from the date of the last entry and then destroyed.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Administration, Bureau of the Public Debt, Savings Bond Operations Office, Parkersburg, West Virginia 26106.

NOTIFICATION PROCEDURE:

Individuals may submit their requests for determination if the system contains records pertaining to them or for access to records as provided under "Record Access Procedures." Requests must be made in compliance with the applicable regulations (31 CFR part 1, subpart C). Requests which do not comply fully with these procedures may result in noncompliance with the request, but will be answered to the extent possible.

RECORD ACCESS PROCEDURES:

(1) A request for access to records should be in writing, signed by the individual concerned, identify the system of records, and clearly indicate that the request is made pursuant to the Privacy Act of 1974. If the individual is seeking access in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without the photograph but instead showing a name and signature. If the individual is seeking access by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau reserves the right to require additional verification of an individual's identity. (2) The request should be submitted to the following: Director, Division of Administration, Bureau of the Public Debt, Savings Bond Operations Office, Parkersburg, West Virginia 26106. (3) The request must state whether the requester wishes to be notified that the record exists or desires to inspect or obtain a copy of the record. If a copy of the record is desired, the requester must agree to pay the fees for copying the documents in accordance with 31 CFR 1.26(d)(2)(ii).

CONTESTING RECORD PROCEDURES:

(1) A request by an individual contesting the content of records or for correction of records should be in writing, signed by the individual involved, identify the system of records, and clearly state that the request is made pursuant to the Privacy Act of 1974. If the request is made in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without the photograph but instead showing a name and signature. If the request is made by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau reserves the right to require additional verification of an individual's identity. (2) The initial request should be submitted to the following: Director, Division of Administration, Bureau of the Public Debt, Savings Bond Operations Office, Parkersburg, West Virginia 26106. (3) The request should specify: (a) The dates of records in question, (b) the specific records alleged to be incorrect, (c) the correction requested, and (d) the reasons therefor. (4) The request must include any available evidence in support of the request.

Appeals from an Initial Denial of a Request for Correction of Records: (1) An appeal from an initial denial of a request for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that it is made pursuant to the Privacy Act of 1974. If the individual is making an appeal in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without the photograph but instead showing a name and signature. If the individual is making an appeal by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau reserves the right to require additional verification of an individual's identity. (2) Appellate determinations will be made by the Commissioner of the Public Debt or the delegate of such officer. Appeals made by mail should be addressed to, or delivered personally to: Privacy Act Amendment Appeal, Chief Counsel, Bureau of the Public Debt, 999 E Street, NW., room 503, Washington, DC 20239–0001 (or as otherwise provided for in the applicable appendix to 31 CFR part 1, Subpart C), within 35 days of the individual's receipt of the initial denial of the requested correction. (3) An appeal must also specify: (a) The records to which the appeal relates, (b) the date of the initial request made for correction of the records, and (c) the date that the initial denial of the request for correction was received. (4) An appeal must also specify the reasons for the requester's disagreement with the initial denial of correction and must include any applicable supporting evidence.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies; laboratory reports and test results; Health Unit physicians, nurses, and other medical technicians who have examined, tested, or treated the individual; the individual's personal physician; other Federal employee health units; and other Federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 91–27757 Filed 11–18–91; 8:45 am]

BILLING CODE 4810-40-M

Internal Revenue Service

Information Reporting Program Advisory Committee; Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of open meeting.

There will be a meeting of the Information Reporting Program Advisory Committee (IRPAC) on Wednesday, December 4, 1991. The meeting will be held in room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, Northwest, Washington, DC. The meeting will begin at 10:30 a.m., and end at 4:30 p.m. A draft version of the agenda follows:

Agenda for Meeting on December 4, 1991

10:30 Welcome.
10:45 Opening remarks & presentation of IRP Quality Awards.
12:00 IRPAC Luncheon—in camera.
01:30 Information reporting program initiatives I.
03:00 Break.
03:15 Information reporting program initiatives II.
04:00 Comments and questions from the public and press.
04:15 Closing remarks.
04:30 Adjourn.

Note: Last minute changes to the day or order of topic discussion are possible and could prevent effective advance notice.

The meeting which will be open to the public, will be in a room that accommodates approximately 50 people, including members of IRPAC and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Kate LaBuda no later than November 27,1991. Ms. LaBuda may be reached at 202–566–8542 (not toll-free).

ADDRESSES: If you would like to have IRPAC consider a written statement, please write to Kate LaBuda at IRS, IRP Planning and Management Staff, EX:I:P, room 2011, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Kate LaBuda, 202–566–8542 (not a toll-free number).

Dated: November 14, 1991.

John F. Devlin,

Director Information Reporting Program.

[FR Doc. 91–27786 Filed 11–18–91; 8:45 am]

BILLING CODE 4830–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–82]

Thailand Copyright Enforcement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for public comment.

SUMMARY: The U.S. Trade Representative (USTR) is seeking further public comment on acts, policies and practices of the Government of Thailand concerning the enforcement of copyrights in that country, in particular whether such practices are unreasonable and burden or restrict U.S. commerce, and if so, what responsive action, if any, should be taken pursuant to section 301 of the Trade Act of 1974, as amended, ("the Trade Act").

DATES: Written comments from interested persons are due on December 19, 1991.

ADDRESSES: Comments should be addressed to the Chairman, Section 301 Committee, Office of the United States Trade Representative, room 223, 600 17th Street, NW., Washington, DC, 20506.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Director for Southeast Asian Affairs, (202) 395–6813, or Catherine Field, Associate General Counsel, (202) 395–3432, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: On December 21, 1990, the USTR initiated an investigation of the Thai government's acts, policies and practices relating to the enforcement of copyrights. By **Federal Register** notice dated January 3, 1991 (56 FR 292), USTR invited written public comments on the Thai government's acts, policies and practices related to the enforcement of copyrights and whether these acts, policies and practices constituted a burden or restriction on U.S. commerce. The U.S. Government has held and will continue to hold consultations with the Thai government on this matter, with the objective of resolving the issue before December 21, 1991.

Section 304 of the Trade Act requires the USTR in this case to determine by December 21, 1991, whether the Thai government's acts, policies and practices are unreasonable and burden or restrict U.S. commerce. If that determination is affirmative, the USTR must determine what action, if any, to take under section 301 in response.

Public Comment

The USTR invites all interested persons to submit comments on the required determinations. Comments will be considered in recommending any determination or action under section 301 to the USTR. Written comments previously provided by interested persons in response to the January 3, 1991, **Federal Register** notice (56 FR 292) need not be resubmitted and will be treated as though they were provided in response to this notice unless they are modified or withdrawn.

All written comments must be filed in accordance with 15 CFR 2006.8 and are due December 19, 1991. Comments must be in English and provided in twenty (20) copies to: Chairman, section 301 Committee, room 223, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

Written comments will be placed in a file (Docket 301–82) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. (Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the public file.) The docket shall be available for public inspection at the USTR Reading Room, room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC. An appointment to review the docket may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 p.m. and from 1 p.m. to 4 p.m., Monday to Friday (except holidays).

Daniel M. Price,

Deputy General Counsel.

[FR Doc. 91–27499 Filed 11–18–91; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 223
Tuesday, November 19, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 6, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–27861 Filed 11–14–91; 5:07 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 13, 1991.

PLACE: 2033 K St., NW, Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–27862 Filed 11–14–91; 5:07 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 20, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–27863 Filed 11–14–91; 5:07 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 27, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–27864 Filed 11–14–91; 8:45 am]

BILLING CODE 6351–01–M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, November 21, 1991

November 14, 1991.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, November 21, 1991, which is scheduled to commence at 9:30 a.m., in room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, and Subject

1—Common Carrier—*Title:* In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards (CC Docket No. 90–623). *Summary:* The Commission will consider adoption of a *Report and Order* concerning the regulatory safeguards for the Bell Operating Companies provision of enhanced services.

2—Common Carrier—*Title:* In the Matter of the Bell Operating Companies' Further Open Network Architecture (ONA) Amendments (CC Docket No. 88–2, Phase I). *Summary:* The Commission will consider adoption of a *Memorandum Opinion and Order* regarding the Bell Operating Companies' further ONA amendments.

3—Common Carrier—*Title:* In the Matter of Intelligent Networks. *Summary:* The Commission will consider beginning an inquiry regarding Intelligent Networks.

4—Mass Media—*Title:* Amendment of Part 73 of the Commission's Rules to Modify Processing Procedures for Commercial FM Broadcast Applications. *Summary:* The Commission will consider adoption of a *Notice of Proposed Rule Making* to review procedures for processing commercial FM broadcast applications.

5—Mass Media—*Title:* Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments. *Summary:* The Commission will consider adoption of a *Notice of Proposed Rule Making* to review procedures governing conflicts between rulemaking petitions to amend the FM Table of Allotments and facilities.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632–5050.

Federal Communications Commission.

Issued: November 14, 1991.

Donna R. Searcy,

Secretary.

[FR Doc. 91–27890 Filed 11–15–91; 3:59 pm]

BILLING CODE 6712–1–M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, November 25, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 15, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–27901 Filed 11–15–91; 3:44 pm]

BILLING CODE 6210–01–M

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

Notice of Meeting

Notice is hereby given in accordance with section 551b of title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, December 5, 1991.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist Federal, State and local authorities in

the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 p.m. at the Northbridge Primary School, Cross Street, Northbridge, MA for the following reasons:

1. Executive Committee Report/Budget Update
2. FY92 Work Plan
3. Public Comment Period

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: James Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 34, Uxbridge, MA 01569. Telephone: (508) 278–9400.

Further information concerning this meeting may be obtained from James Pepper, Executive Director of the Commission at the address below.

Nancy L. Brittain,

Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 91–27900 Filed 11–15–91; 1:19 pm]

BILLING CODE 4310–70–M

federal register

Tuesday
November 19, 1991

Part II

Environmental Protection Agency

40 CFR Part 131

Amendments to the Water Quality Standards Regulation; Compliance With CWA Section 303(c)(2)(B); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[WH-FRL-4029-2]

Amendments to the Water Quality Standards Regulation To Establish the Numeric Criteria for Priority Toxic Pollutants Necessary to Bring All States Into Compliance With Section 303(c)(2)(B)

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking would promulgate the chemical-specific, numeric criteria for priority toxic pollutants necessary to bring all States into compliance with the requirements of section 303(c)(2)(B) of the Clean Water Act (CWA). States which have been determined by EPA to fully comply with section 303(c)(2)(B) requirements would not be affected by today's proposed rulemaking.

The proposed rulemaking addresses several situations. For a few States EPA would promulgate only a limited number of criteria because the Agency previously identified, in disapproval letters to such States, the specific priority toxic pollutants that require new or revised criteria. For these States, EPA would promulgate Federal criteria only for the priority toxic pollutants which require new or revised criteria. In the vast majority of States, EPA would promulgate, at a minimum, broadly applicable Federal criteria for all priority toxic pollutants for which EPA has issued section 304(a) water quality criteria guidance and that are not the subject of approved State criteria.

For those priority toxic pollutants included in today's proposed rulemaking where the section 304(a) criteria recommendation is based on carcinogenicity, the proposed criteria are based on an incremental one in one million cancer risk level (i.e., 10^{-6}).

The primary focus of this rule is the inclusion of the water quality criteria for pollutant(s) in State standards as necessary to support water quality-based control programs. The Agency is accepting comment on the criteria proposed in today's rule. However, Congress has established a very ambitious schedule for the promulgation of the final criteria. The statutory deadline in section 303(c)(4) clearly indicates that Congress intended the Agency to move very expeditiously when Federal action is warranted. The Agency believes that the limited time available for promulgation of the regulation can be used most efficiently and effectively by addressing those issues that have not already come before the Agency.

DATES: All written comments received on or before December 19, 1991, will be considered in the preparation of any final rulemaking.

A public hearing will be held on December 19, 1991, in Washington, DC, beginning at 9 a.m. The hearing officer reserves the right to limit oral testimony to 10 minutes, if necessary.

ADDRESSES: Comments, in quadruplicate, on this proposed rule should be addressed to William R. Diamond, Director, Standards and Applied Science Division (WH-585), Office of Science and Technology, 401 M Street, SW., Washington, DC 20460 (Telephone: 202-260-1315). The public may inspect the administrative record for this rulemaking, including documentation supporting the aquatic life and human health criteria, and all comments received on this proposed rule at EPA's Public Information Reference Unit, EPA Library, room 2904, Waterside Mall, 401 M Street, SW., Washington, DC 20460 (Telephone: 202-260-5926) on weekdays during the Agency's normal business hours of 8 a.m. to 4:30 p.m. Each of EPA's ten Regional offices will also have copies for public inspection and copying of the administrative records for the States in that Region. These records will be available in the Water Management Divisions of each respective Regional office. A reasonable fee will be charged for photocopies.

The public hearing will be held in the EPA auditorium, 401 M Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David K. Sabock or R. Kent Ballentine, Telephone 202-260-1315.

SUPPLEMENTARY INFORMATION:

This preamble is organized according to the following outline:

A. Introduction and Overview
1. Introduction
2. Overview
B. Statutory and Regulatory Background
1. Pre-Water Quality Act Amendments of 1987 (P.L. 100-4)
2. The Water Quality Act Amendments of 1987 (P.L. 100-4)
a. Description of the New Requirements
b. EPA's Initial Implementing Actions for Sections 303(c) and 304(l)
3. EPA's Program Guidance for Section 303(c)(2)(B)
4. Revisions to the Water Quality Standards Regulation to Incorporate the Requirements of Section 303(c)(2)(B)
C. State Actions Pursuant to Section 303(c)(2)(B)
D. Determining State Compliance With Section 303(c)(2)(B)
1. EPA's Review of State Water Quality Standards for Toxics
2. Determining Current Compliance Status
E. Rationale and Approach for Developing Today's Proposed Rulemaking
1. Legal Basis
2. Approach for Developing Today's Proposed Rulemaking
3. Approach for States That Fully Comply Subsequent to Issuance of Today's Proposed Rulemaking
F. Derivation of Proposed Criteria
1. Section 304(a) Criteria Process
2. Aquatic Life Criteria
3. Criteria for Human Health
4. Section 304(a) Human Health Criteria Excluded
5. Cancer Risk Level Proposed
6. Applying EPA's Nationally Derived Criteria to State Waters
G. Description of the Proposed Rule
1. Scope
2. EPA Criteria for Priority Toxic Pollutants
3. Applicability
H. Specific Issues for Public Comment
I. Executive Order 12291
J. Regulatory Flexibility Act
K. Paperwork Reduction Act

A. Introduction and Overview

1. Introduction

This section of the preamble introduces the topics which are addressed subsequently and provides a brief overview of EPA's basis and rationale for proposing to promulgate Federal criteria for priority toxic pollutants. Section B of this preamble presents a description of the evolution of the Federal Government's efforts to control toxic pollutants beginning with a discussion of the authorities in the Federal Water Pollution Control Act Amendments of 1972. Also described in some detail is the development of the water quality standards review and revision process which provides for establishing both narrative goals and enforceable numeric requirements for controlling toxic pollutants. This discussion includes the recent changes enacted in the 1987 Clean Water Act Amendments which are the basis for this proposed rulemaking. Section C summarizes State efforts since 1987 to comply with the requirements of Section 303(c)(2)(B). Section D describes EPA's procedure for determining whether a State has fully complied with Section 303(c)(2)(B). Section E sets out the rationale and approach for developing today's proposed rulemaking, including a discussion of EPA's legal basis. Section F describes the development of the criteria included in today's proposed rulemaking. Section G summarizes the provisions of the proposed rule and Section H highlights certain issues

raised by the proposal for public comment. Sections I, J, and K address the requirements of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act, respectively. Section L provides a list of subjects covered in today's proposed rulemaking.

2. Overview

Today's proposed rulemaking to establish Federal toxics criteria for States is important for a number of environmental, programmatic and legal reasons.

First, control of toxic pollutants in surface waters is an important priority to achieve the Clean Water Act's goals and objectives. The most recent National Water Quality Inventory indicates that one-third of monitored river miles, lake acres, and coastal waters have elevated levels of toxics. Forty-seven States and Territories have reported elevated levels of toxic pollutants in fish tissues. States have issued a total of 586 fishing advisories and 135 bans, attributed mostly to industrial discharges and land disposal.

The absence of State water quality standards for toxic pollutants undermines EPA's overall toxic control efforts to address these problems. Without clearly established water quality goals, the effectiveness of many of EPA's water programs is jeopardized. Permitting, enforcement, coastal water quality improvement, fish tissue quality protection, certain nonpoint source controls, drinking water quality protection, and ecological protection all depend to a significant extent on complete and adequate water quality standards. Numeric criteria for toxics are essential to the process of controlling toxics because they allow States and EPA to evaluate the adequacy of existing and potential control measures to protect aquatic ecosystems and human health. Formally adopted standards form the legal basis for including water quality-based effluent limitations in NPDES permits to control toxic pollutant discharges. The critical importance of controlling toxic pollutants has been recognized by Congress and is reflected, in part, by the addition of section 303(c)(2)(B) to the Act. Congressional impatience with the pace of State toxics control programs is well documented in the legislative history of the 1987 CWA amendments. In order to protect human health, aquatic ecosystems, and successfully implement toxics controls, EPA believes that all actions which are available to the Agency must be taken to ensure that all necessary numeric criteria for priority toxic pollutants are established in a timely manner.

Second, as States and EPA continue the transition from an era of primarily technology-based controls to an era in which technology-based controls are integrated with water quality-based controls, it is important that EPA ensures timely compliance with CWA requirements. An active Federal role is essential to assist States in getting in place complete toxics criteria as part of their pollution control programs. While most States recognize the need for enforceable water quality standards for toxic pollutants, their recent adoption efforts have often been stymied by a variety of factors including limited resources, competing environmental priorities, and difficult scientific, policy and legal challenges. Although many water quality criteria for toxic pollutants have been available since 1980 and the water quality standards regulation has required State adoption of numeric criteria for toxic pollutants since 1983 (see 40 CFR 131.11), a preliminary assessment of the water quality standards for all States in February of 1990 showed that only six States had established fully acceptable criteria for toxic pollutants. This rate of toxics criteria adoption is contrary to the CWA requirements and is a reflection of the difficulties faced by States. EPA should exercise its CWA authorities to assist States in such circumstances.

EPA's proposed action will also help restore equity among the States. The CWA is designed to ensure all waters are sufficiently clean to protect public health and the environment. The CWA allows some flexibility and differences among States in their adopted and approved water quality standards, but it was not designed to reward inaction and inability to meet statutory requirements.

Although most States have made some progress toward satisfying CWA requirements, many appear to have failed to fully comply with section 303(c)(2)(B). The CWA assigns EPA the legal responsibility to promulgate standards where necessary to meet the requirements of the Act. Where States have not satisfied the CWA requirement to adopt water quality standards for toxic pollutants, which was re-emphasized by Congress in 1987, it is imperative that EPA take action.

EPA's ability to oversee State standards-setting activities and to correct deficiencies in State water quality standards is critical to the effective implementation of section 303(c)(2)(B). This proposed rulemaking is a necessary and important component of EPA's implementation of section 303(c)(2)(B) as well as EPA's overall efforts to control toxic pollutants in surface waters.

B. Statutory and Regulatory Background

1. Pre-Water Quality Act Amendments of 1987 (Pub. L. 100-4)

Section 303(c) of the 1972 Federal Water Pollution Control Act Amendments (FWPCA) (33 U.S.C. 1313(c)) established the statutory basis for the current water quality standards program. It completed the transition from the previously established program of water quality standards for interstate waters to one requiring standards for all surface waters of the United States.

Although the major innovation of the 1972 FWPCA was technology-based controls, Congress maintained the concept of water quality standards both as a mechanism to establish goals for the Nation's waters and as a regulatory requirement when standardized technology controls for point source discharges and/or nonpoint source controls were inadequate. In recent years these so-called water quality-based controls have received new emphasis by Congress and EPA in the continuing quest to enhance and maintain water quality to protect the public health and welfare.

Briefly stated, the key elements of section 303(c) are:

(a) A water quality standard is defined as the designated beneficial uses of a water segment and the water quality criteria necessary to support those uses;

(b) The minimum beneficial uses to be considered by States in establishing water quality standards are specified as public water supplies, propagation of fish and wildlife, recreation, agricultural uses, industrial uses and navigation;

(c) A requirement that State standards must protect public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act;

(d) A requirement that States must review their standards at least once each three year period using a process that includes public participation;

(e) The process for EPA review of State standards which may ultimately result in the promulgation of a superseding Federal rule in cases where a State's standards are not consistent with the applicable requirements of the CWA, or in situations where the Agency determines Federal standards are necessary to meet the requirements of the Act.

Another major innovation in the 1972 FWPCA was the establishment of the

National Pollutant Discharge Elimination System (NPDES) which requires point source dischargers to obtain a permit before legally discharging to the waters of the United States. In addition to the permit limits established on the basis of technology (e.g. effluent limitations guidelines), the Act requires dischargers to meet instream water quality standards. (See section 301(b)(1)(C), 33 U.S.C. 1311(b)(1)(C)).

Thus water quality standards serve a dual function under the Clean Water Act regulatory scheme. Standards establish narrative and numeric definitions and quantification of the Act's goals and policies (see section 101, 33 U.S.C. 1251) which provide a basis for identifying impaired waters. Water quality standards also establish regulatory requirements which are translated into specific discharge requirements. In order to fulfill this critical function, adopted State criteria must contain sufficient parametric coverage to protect both human health and aquatic life.

In its initial efforts to control toxic pollutants, the FWPCA, pursuant to section 307, required EPA to designate a list of toxic pollutants and to establish toxic pollutant effluent standards based on a formal rulemaking record. Such rulemaking required formal hearings, including cross-examination of witnesses. EPA struggled with this unwieldy process and ultimately promulgated effluent standards for six toxic pollutants, pollutant families or mixtures. (See 40 CFR part 129.) Congress amended section 307 in the 1977 Clean Water Act Amendments by endorsing the Agency's alternative procedure of regulating toxic pollutants by use of effluent limitationguidelines, by amending the procedure for establishing toxic pollutant effluent standards to provide for more flexibility in the hearing process for establishing a record, and by directing the Agency to include sixty-five specific pollutants or classes of pollutants on the toxic pollutant list. EPA published the required list on January 31, 1978 (43 FR 4109). This toxic pollutant list was the basis on which EPA's efforts on criteria development for toxics was focused.

During planning efforts to develop effluent limitation guidelines and water quality criteria, the list of sixty-five toxic pollutants was judged too broad as some of the pollutants were, in fact, general families or classes of organic compounds consisting of many individual chemicals. EPA selected key chemicals of concern within the 65 families of pollutants and identified a more specific list of 129 priority toxic pollutants. Three volatile chemicals were removed from the list (see 46 FR 2266, January 8, 1981; 46 FR 10723, February 4, 1981) so that at present there are 126 priority toxic pollutants. This list is published as Appendix A to 40 CFR part 423.

Another critical section of the 1972 FWPCA was section 304(a) (33 U.S.C. 1314(a)). Section 304(a)(1) provides, in pertinent part, that EPA

> * * * shall develop and publish * * * criteria for water quality accurately reflecting the latest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, * * * and (C) on the effects of pollutants on biological community diversity, productivity, and stability, * * *

In order to avoid confusion, it must be recognized that the Clean Water Act uses the term "criteria" in two separate ways. In section 303(c), which is discussed above, the term is part of the definition of a water quality standard. That is, a water quality standard is comprised of designated uses and the criteria necessary to protect those uses. Thus, States are required to adopt regulations or statutes which contain legally achievable criteria. However, in section 304(a), the term criteria is used in a scientific sense and EPA develops recommendations which States consider in adopting regulatory criteria.

In response to this legislative mandate and an earlier similar statutory requirement, EPA and a predecessor agency have produced a series of water quality criteria documents. Early Federal efforts were Water Quality Criteria (1968 "Green Book") and Quality Criteria for Water (1976 "Red Book"). EPA also sponsored a contract effort with the National Academy of Science—National Academy of Engineering which resulted in Water Quality Criteria, 1972 (1973 "Blue Book"). These early efforts were premised on the use of literature reviews and the collective scientific judgment of Agency and advisory panels. However, when faced with the list of 65 toxic pollutants and the need to develop criteria for human health as well as aquatic life, the Agency determined that new procedures were necessary. Continued reliance solely on existing scientific literature was now inadequate, since for many pollutants essential information was not available. EPA scientists developed formal methodologies for establishing scientifically defensible criteria. These were subjected to review by the Agency's Science Advisory Board and the public. This effort culminated on November 28, 1980, when the Agency published criteria development guidelines for aquatic life and for human health, along with criteria for 64 toxic pollutants. (See 45 FR 79318.) Since that initial publication, the aquatic life methodology was slightly amended (50 FR 30784, July 29, 1985) and additional criteria were proposed for public comment and finalized as Agency criteria guidance. EPA summarized the available criteria information in Quality Criteria for Water 1986 (1986 "Gold Book") which is updated from time-to-time. However, the individual criteria documents, as updated, are the official guidance documents.

EPA's criteria documents provide a comprehensive toxicological evaluation of each chemical. For toxic pollutants, the documents tabulate the relevant acute and chronic toxicity information for aquatic life and derive the criteria maximum concentrations (acute criteria) and criteria continuous concentrations (chronic criteria) which the Agency recommends to protect aquatic life resources. For human health criteria, the document provides the appropriate reference doses, and if appropriate the carcinogenic slope factors, and derives recommended criteria. The details of this process are described more fully in a following part of this preamble.

Programmatically, EPA's initial efforts were aimed at converting a program focused on interstate waters into one addressing all interstate and intrastate surface waters of the United States. Guidance was aimed at the inclusion of traditional water quality parameters to protect aquatic life (e.g., pH, temperature, dissolved oxygen and a narrative "free from toxicity" provision), recreation (e.g., bacteriological criteria) and general aesthetics (e.g., narrative "free from nuisance" provisions). EPA also required State adoption of an antidegradation policy to maintain existing high quality or ecologically unique waters as well as maintain improvements in water quality as they occur.

The initial water quality standards regulation was actually a part of EPA's water quality management regulations implementing section 303(e) (33 U.S.C. 1313(e)) of the Act. It was not comprehensive and did not address toxics or any other criteria specifically. Rather, it simply required States to adopt appropriate water quality criteria necessary to support designated uses. (See 40 CFR 130.17 as promulgated in 40 FR 55334, November 28, 1975).

After several years of effort and faced with increasing public and Congressional concerns about toxic pollutants, EPA realized that proceeding under section 307 of the Act would not comprehensively address in a timely manner the control of toxics through either toxic pollutant effluent standards or effluent limitations guidelines because these controls are only applicable to specific types of discharges. EPA sought a broader, more generally applicable mechanism and decided to vigorously pursue the alternative approach of EPA issuance of scientific water quality criteria documents which States could use to adopt enforceable water quality standards. These in turn could be used as the basis for establishing State and EPA permit discharge limits pursuant to section 301(b)(1)(C) which requires NPDES permits to contain

> * * * any more stringent limitation, including those necessary to meet water quality standards * * *, or required to implement any applicable water quality standard established pursuant to this Act.

Thus, the adoption by States of appropriate toxics criteria applicable to their surface waters, such as those recommended by EPA in its criteria documents, would be translated by regulatory agencies into point source permit limits. Through the use of water quality standards, all discharges of toxics are subject to permit limits and not just those discharged by particular industrial categories. In order to facilitate this process, the Agency amended the water quality standards regulation to explicitly address toxic criteria requirements in State standards. The culmination of this effort was the promulgation of the present water quality standards regulation on November 8, 1983 (40 CFR part 131, 48 FR 51400).

The current water quality standards regulation (40 CFR part 131) is much more comprehensive than its predecessor. The regulation addresses in detail both the beneficial use component and the criteria component of a water quality standard. Section 131.11 of the regulation requires States to review available information and,

> * * * to identify specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use or where the levels of toxic pollutants are at a level to warrant concern and must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use.

The regulation provided that either or both numeric and narrative criteria may be appropriately used in water quality standards.

EPA's water quality standards emphasis since the early 1980's reflected the increasing importance placed on controlling toxic pollutants. States were strongly encouraged to adopt criteria in their standards for the priority toxic pollutants, especially where EPA had published criteria guidance under Section 304(a) of the Act.

Under the statutory scheme, during the 3-year triennial review period following EPA's 1980 publication of water quality criteria for the protection of human health and aquatic life, States should have reviewed those criteria and adopted standards for many priority toxic pollutants. In fact, State response to EPA's criteria publication and toxics initiative was disappointing. A few States adopted large numbers of numeric toxics criteria, although primarily for the protection of aquatic life. Most other States adopted few or no water quality criteria for priority toxic pollutants. Some relied on a narrative "free from toxicity" criterion, and so-called "action levels" for toxic pollutants or occasionally calculated site-specific criteria. Few States addressed the protection of human health by adopting numeric human health criteria.

In support of the November, 1983, water quality standards rulemaking, EPA issued program guidance entitled, Water Quality Standards Handbook (December 1983) simultaneously with the publication of the final rule. The foreword to that guidance noted EPA's two-fold water quality based approach to controlling toxics: chemical specific numeric criteria and biological testing in whole effluents or ambient waters to comply with narrative "no toxics in toxic amounts" standards. More detailed programmatic guidance on the application of biological testing was provided in the Technical Support Document for Water Quality Based Toxics Control (TSD) (EPA 440/4–85–032, September 1985). This document provided the needed information to convert chemical specific and biologically based criteria into water quality standards for ambient receiving waters and permit limits for discharges to those waters. The TSD focused on the use of bioassay testing of effluents (so-called whole effluent testing or WET methods) to develop effluent limitations within discharge permits. Such effluent limits were designed to implement the "free from toxicity" narrative standards in State water quality standards. The TSD also focused on water quality standards. Procedures and policy were presented for appropriate design flows for EPA's section 304(a) acute and chronic criteria. EPA revised the TSD. (Technical Support Document for Water Quality-based Toxics Control, EPA 505/2–90–001, March 1991.) A Notice of Availability was published in the **Federal Register** on April 4, 1991 (56 FR 13827). All references in this Preamble are to the revised TSD.

The Water Quality Standards Handbook and the TSD are examples of EPA's efforts and assistance that were intended to help, encourage and support the States in adopting appropriate water quality standards for the protection of their waters against the deleterious effects of toxic pollutants. In some States, more and more numeric criteria for toxics were being included as well as more aggressive use of the "free from toxics" narratives in setting protective NPDES permit limits. However, by the time of Congressional consideration and action on the CWA reauthorization, most States had adopted few, if any, water quality standards for priority toxic pollutants.

State practices of developing case-by-case effluent limits using procedures that were not standardized in State regulations made it difficult to ascertain whether such procedures were consistently applied. The use of approaches to control toxicity that did not rely on the statewide adoption of numeric criteria for the priority toxic pollutants generated frustration in Congress. Senator Robert Stafford, first chairman and then ranking minority member of the authorizing committee, noted during the Senate debate:

> An important problem in this regard is that few States have numeric ambient criteria for toxic pollutants. The lack of ambient criteria (for toxic pollutants) make it impossible to calculate additional discharge limitations for toxics * * * It is vitally important that the water quality standards program operate in such a way that it supports the objectives of the Clean Water Act to restore and maintain the integrity of the Nation's Waters. (bracketed material added). A Legislative History of the Water Quality Act of 1987 (Pub. L. 100–4), Senate Print 100–144, USGPO, November 1988 at page 1324.

Other comments in the legislative history similarly note the Congressional perception that the States were failing to aggressively address toxics and that EPA was not using its oversight role to push the States to move more quickly and comprehensively. Thus Congress developed the water quality standards amendments to the Clean Water Act for reasons similar to those strongly stated during the Senate debate by a chief sponsor, Senator John Chaffee,

A cornerstone of the bill's new toxic pollution control requirements is the so called beyond-BAT program. * * * Adopting the beyond BAT provisions will assure that EPA continues to move forward rapidly on the program. * * * If we are going to repair the damage to those water bodies that have become highly degraded as a result of toxic substances, we are going to have to move forward expeditiously on this beyond-BAT program. The Nation cannot tolerate endless delays and negotiations between EPA and States on this program. Both entities must move aggressively in taking the necessary steps to make this program work within the time frame established by this Bill * * * Ibid, at page 1309.

This Congressional impatience with the pace of State and EPA progress and an appreciation that the lack of State standards for toxics undermined the effectiveness of the entire CWA-based scheme, resulted in the 1987 adoption of stringent new water quality standard provisions in the Water Quality Act amendments.

2. The Water Quality Act Amendments of 1987 (Pub. L. 100-4)

a. Description of the New Requirements

The 1987 Amendments to the Clean Water Act added section 303(c)(2)(B) which provides:

Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act for which criteria have been published under section 304(a), the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants. Where such numerical criteria are not available, whenever a State reviews water quality standards pursuant to paragraph (1), or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 304(a)(8). Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.

b. EPA's Initial Implementing Actions for Sections 303(c) and 304(l)

This new requirement to the existing water quality standards review and revision process of section 303(c) did not change the existing procedural or timing provisions. For example, section 303(c)(1) still requires that States review their water quality standards at least once each 3 year period and transmit the results to EPA for review. EPA's oversight and promulgation authorities and statutory schedules in section 303(c)(4) were likewise unchanged. Rather, the provision required the States to place heavy emphasis on adopting numeric chemical-specific criteria for toxic pollutants (i.e., rather than just narrative approaches) during the next triennial review cycle. As discussed in the previous section, Congress was frustrated that States were not using the numerous section 304(a) criteria that EPA had developed, and was continuing to develop, to assist States in controlling the discharge of priority toxic pollutants. Congress therefore took an usual action; for the first time in the history of the Clean Water Act, it explicitly mandated that States adopt numeric criteria for specific toxic pollutants.

In response to this new Congressional mandate, EPA redoubled its efforts to promote and assist State adoption of water quality standards for priority toxic pollutants. EPA's efforts included the development and issuance of guidance to the States on acceptable implementation procedures for several new sections of the Act, including Sections 303(c)(2)(B) and 304(l).

The 1987 CWA Amendments added to, or amended, other CWA sections related to toxics control. Section 304(l) (33 U.S.C. 1314(l)) was an important corollary amendment because it required States to take actions to identify waters adversely affected by toxic pollutants, particularly those waters entirely or substantially impaired by point sources. Section 304(l) entitled "Individual Control Strategies for Toxic Pollutants," requires in part, that States identify and list waterbodies where the designated uses specified in the applicable water quality standards cannot reasonably be expected to be achieved because of point source discharge of toxic pollutants. For each segment so identified, the State is required to develop individual control strategies to reduce the discharge of toxics from point sources so that in conjunction with existing controls on point and nonpoint sources, water quality standards will be attained. To assist the States in identifying waters under section 304(l), EPA's guidance listed a number of potential sources of available data for States to review. States generally assembled data for a broad spectrum of pollutants, including the priority toxic pollutants, which could be useful in complying with sections 304(l) and 303(c)(2)(B). In fact, between February 1988 and October 1988, EPA assembled pollutant candidate lists for section 304(l) which were then transmitted to each jurisdiction. Thus, each State had a preliminary list of pollutants that had been identified as present in, or discharged to, surface waters. Such lists were limited by the quantity and distribution of available effluent and ambient monitoring data for priority toxic pollutants. This listing exercise further emphasized the need for water quality standards for toxic pollutants. Lack of standards increased the difficulty of identifying impaired waters. On the positive side, the data gathered in support of the 304(l) activity proved helpful in identifying those pollutants most obviously in need of water quality standards.

EPA, in devising guidance for section 303(c)(2)(B), attempted to provide the maximum flexibility in its options that not only complied with the express statutory language but also with the ultimate congressional objective: Prompt adoption of numeric toxics criteria. EPA believed that flexibility was important so that each State could comply with section 303(c)(2)(B), accommodate its existing water quality standards regulatory approach, and not violate the resource constraints specific to the State. These options are described in the next Section of this preamble. EPA's program guidance was issued in final form on December 12, 1988 but was not substantially different from earlier drafts available for review by the States. The availability of the guidance was published in a **Federal Register** notice on January 5, 1989 (54 FR 346).

3. EPA's Program Guidance for Section 303(c)(2)(B)

EPA's section 303(c)(2)(B) program guidance identified three options that could be used by a State to meet the requirement that the State adopt toxic pollutant criteria "* * * the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses."

Option 1. Adopt statewide numeric criteria in State Water Quality Standards for all section 307(a) toxic pollutants for which EPA has developed criteria guidance, regardless of whether the pollutants are known to be present.

This option is the most comprehensive approach to satisfy the statutory requirements because it would include all of the priority toxic pollutants for which EPA has prepared section 304(a)

criteria guidance for either or both aquatic life protection and human health protection. In addition to a simple adoption of EPA's section 304(a) guidance as standards, a State must select a risk level for those toxic pollutants which EPA believes are carcinogens (i.e., that cause, or may cause cancer in humans). EPA also recommended that States should supplement this comprehensive approach with a water quality standard variance and/or a site-specific criteria methodology to provide the opportunity for flexibility in applying criteria.

Many States found this option attractive because it ensured comprehensive coverage of the priority toxic pollutants with scientifically defensible criteria without the need to conduct a resource-intensive evaluation of the particular segments and pollutants requiring criteria or future prevalence of priority toxic pollutants in their waters. It was also determined this option would not be more costly to dischargers than the other options because permit limits would only be based on the regulation of the particular toxic pollutants in their discharges and not on the total listing in the water quality standards. Thus, actual permit limits should be the same under any of the options.

Option 2. Adopt chemical-specific numeric criteria for priority toxic pollutants that are the subject of EPA section 304(a) criteria guidance, where the State determines based on available information that the pollutants are present or discharged and can reasonably be expected to interfere with designated uses.

This option results in the adoption of numeric water quality standards for some subset of those pollutants for which EPA has issued section 304(a) criteria guidance based on a review of current information. To satisfy this option, the guidance recommended that States use the data gathered during the section 304(l) water quality assessments as a starting point to identify those water segments that need water quality standards for priority toxic pollutants. That data would be supplemented by a State and public review of other data sources to ensure sufficient breadth of coverage to meet the statutory objective. Among the available data to be reviewed were: (1) Ambient water monitoring data, including those for the water column, sediment, and aquatic life (e.g., fish tissue data); (2) NPDES permit-applications and permittee self-monitoring reports; (3) effluent guideline development documents, many of which contain priority toxic pollutant scans; (4) pesticide and herbicide application information and other records of pesticide or herbicide inventories; (5) public water supply source monitoring data noting pollutants with maximum contaminant levels (MCLs); and (6) any other relevant information on toxic pollutants collected by Federal, State, industry, agencies, academic groups, or scientific organizations. EPA also recommended that States adopt a translator provision similar to that described in Option 3 but applicable to all chemicals causing toxicity, and not just priority toxic pollutants.

This Option 2 review resulted in a State proposing new or revised water quality standards and providing an opportunity for public review and comment on the pollutants, criteria, and water bodies included. Throughout this process, EPA's Regional Offices were available to assist States by providing additional guidance and technical assistance on applying EPA's recommended criteria to particular situations in the States.

Option 3. Adopt a procedure to be applied to a narrative water quality standard provision prohibiting toxicity in receiving waters. Such procedures would be used by the State in calculating derived numeric criteria which must be used for all purposes under section 303(c) of the CWA. At a minimum, such criteria need to be developed for section 307(a) toxic pollutants, as necessary to support designated uses, where these pollutants are discharged or present in the affected waters and could reasonably be expected to interfere with designated uses.

The combination of a narrative standard (e.g., "free from toxics in toxic amounts") and an approved translator mechanism as part of a State's water quality standards satisfies the requirements of section 303(c)(2)(B). As noted above, such a procedure is also a valuable supplement to either option 1 or 2. There are several regulatory and scientific requirements EPA's guidance specifies are essential to ensure acceptable scientific quality and full involvement of the public and EPA in this approach. Briefly stated these are:

- The procedure (i.e., narrative criterion and translator) must be used to calculate numeric water quality criteria;
- The State must demonstrate to EPA that the procedure results in numeric criteria that are sufficiently protective to meet the goals of the Act;
- The State must provide for full opportunity for public participation during the adoption of the procedure;
- The procedure must be formally adopted as a State rule and be mandatory in application; and
- The procedure must be submitted for review and approval by EPA as part of the State's water quality standards regulation.

Several States currently apply translators that have been approved by EPA. The scientific elements of a translator are similar to EPA's 304(a) criteria methodologies when applied on a site-specific basis. For example, aquatic criteria are developed using a sufficient number and diversity of aquatic species representative of the biological assemblage of a particular water body. Human health criteria focus on determining appropriate exposure conditions (e.g. amount of aquatic life consumed per person per day) rather than underlying pollutant toxicity. The results of the procedures are scientifically defensible criteria that are protective for the site's particular conditions. EPA review of translator procedures includes an evaluation of the scientific merit of the procedure using the Section 304(a) methodolgy as a guide.

Ideally, States adopting option 3 translator procedures should prepare a preliminary list of criteria and specify the waters the criteria apply to at the time of adoption. Although under option 3 the State retains flexibility to derive new criteria without revising the adopted standards, establishing this preliminary list of derived criteria at the time of the triennial review will assist the public in determining the scope of the adopted standards, and help ensure that the State ultimately complies with the requirement to establish criteria for all pollutants that can "reasonably be expected" to interfere with uses. EPA believes that States selecting solely option 3 should prepare an analysis similar to that required of option 2 States at the time of the triennial review.

EPA's December 1988 guidance also addressed the timing issue for State compliance with section 303(c)(2)(B). The statutory directive was clear: All State standards triennial reviews initiated after passage of the Act must include a consideration of numeric toxic criteria.

The structure of section 303(c) is to require States to review their water quality standards at least once each three year period. Section 303(c)(2)(B) instructs States to include reviews for toxics criteria whenever they initiate a triennial review. EPA initially looked at February 4, 1990, the 3-year anniversary of the 1987 CWA amendments, as a convenient point to index State

compliance. The April 1990 Federal Register notice used this index point for the preliminary assessment. However, some States were very nearly completing their State administrative processes for ongoing reviews when the 1987 amendments were enacted and could not legally amend those proceedings to address additional toxics criteria. Therefore, in the interest of fairness, and to provide such States a full 3-year review period, EPA's FY 1990 Agency Operating Guidance provided that "By the end of the FY 88–90 triennium, States should have completed adoption of numeric criteria to meet the section 303(c)(2)(B) requirements." (p. 48.) The FY 88–90 triennium ended on September 30, 1990.

Clean Water Act section 303(c) does not provide penalties for States that do not complete timely water quality standards reviews. In no previous case has the EPA Administrator found that State failure to complete a review within three years jeopardized the public health or welfare to such an extent that promulgation of Federal standards pursuant to section 303(c)(4)(B) was justified. The pre-1987 CWA never mandated State adoption of priority toxic pollutants or other specific criteria. EPA relied on its water quality standards regulation (40 CFR 131.11) and its criteria and program guidance to the States on appropriate parametric coverage in State water quality standards, including toxic pollutants. However, because of Congressional concern exhibited in the legislative history for the 1987 Clean Water Act amendments regarding undue delays by States and EPA, and because States have been explicitly required to adopt numeric criteria for appropriate priority toxic pollutants since 1963, the Agency in this proposed rulemaking is proceeding pursuant to section 303(c)(4)(B) and 40 CFR 131.22(b).

4. Revisions to the Water Quality Standards Regulation to Incorporate the Requirements of Section 303(c)(2)(B)

In a rulemaking separate from today's proposal, EPA intends to propose amendments to the Water Quality Standards Regulation to incorporate the requirements of section 303(c)(2)(B). EPA views the effects of that intended rulemaking to be prospective only. EPA's expected regulatory change would provide principally more consistency among the States in their approaches to adopting appropriate toxic and other criteria in future triennial reviews.

The current requirements for water quality criteria in State water quality standards are addressed in 40 CFR 131.11. EPA's intended rulemaking will propose amendments to this section and incorporate the three options described in its December 12, 1988 guidance. Of special concern are the specific requirements for the translator provision described as option 3.

The current regulation at 40 CFR part 131 in conjunction with the statutory language provides a clear and unambiguous basis and process for today's proposed Federal promulgation.

C. State Actions Pursuant to Section 303(c)(2)(B)

There has been substantial progress by many States in the adoption, and EPA approval, of water quality standards for toxic pollutants. For example, for freshwater aquatic life uses, the average number of priority toxic pollutants with criteria adopted has tripled from ten per State in 1986 to thirty per State on February 4, 1990. In addition, the number of States with at least some aquatic life criteria adopted has increased from thirty-three in April 1986 to forty-five as of February 4, 1990.

Furthermore, virtually all States have at least proposed new toxics criteria for priority toxic pollutants since section 303(c)(2)(B) was added to the CWA in February of 1987. Unfortunately, not all such State proposals address, in a comprehensive manner, the requirements of section 303(c)(2)(B). For example, some States have proposed to adopt criteria to protect aquatic life, but not human health; other States have proposed human health criteria which do not address major human exposure pathways. In addition, in some cases final adoption of proposed State toxics criteria which would be approvable by EPA has been substantially delayed due to controversial and difficult issues associated with the toxics criteria adoption process. For purposes of today's proposed rulemaking, it is EPA's judgment that only 35 States completed actions which fully satisfy the requirements of section 303(c)(2)(B).

The difficulties faced by States in adopting criteria for priority toxic pollutants are exemplified by recent State efforts to adopt criteria for the priority toxic pollutant 2,3,7,8–TCDD (dioxin). As is generally true of State section 303(c)(2)(B) efforts, State efforts to adopt numeric human health dioxin criteria have been slow and controversial, but in many respects impressive. For example, since 1987, a total of 34 States have adopted numeric human health criteria for dioxin which have been approved by EPA. In total, 38 States have adopted numeric human health criteria for dioxin. Twenty-five of these 38 States adopted criteria during calendar year 1991, showing that the pace of State actions to adopt dioxin criteria has accelerated substantially.

The progress which has been made by States in adopting dioxin criteria is particularly impressive in light of the substantial attention and controversy which has been focused on such actions. EPA, States, dischargers, environmental groups, and the public at large have been involved in discussions concerning the ambient level of protection that is protective of public health. In some States, the struggle to select an appropriate dioxin criterion has been the major impediment to successful completion of section 303(c)(2)(B) actions.

At issue are scientific questions specific to dioxin, such as determining the carcinogenic potency of the pollutant and the extent to which the pollutant tends to accumulate in fish tissues. Other issues are generic to EPA'S human health criteria, such as determining the rate at which humans consume fish and other forms of aquatic life, and the necessity of setting ambient criteria at levels which may not be detected by state-of-the-art laboratories. Most of these issues relate, directly or indirectly, to concerns expressed by dischargers regarding the cost of complying with water quality-based effluent limits for dioxin which, although variable from State to State, generally are based on State numeric water quality criteria that allow only minute quantities of dioxin per liter of water. For example, twelve States have adopted EPA's recommended ambient water column concentration of 0.013 picograms per liter.

Currently, a total of eleven States have proposed, or are expected to propose, numeric human health-based criteria for dioxin. These States could face the same issues, obstacles, and resource requirements that the 38 States which previously adopted criteria have faced.

In summary, States have devoted substantial resources, and have made substantial progress, in adopting new or revised numeric criteria for priority pollutants. In so doing they have addressed a number of significant and difficult issues. These issues and the attendant controversy has accounted, at least in part, for the fact that 22 jurisdictions still have not adopted numeric toxics criteria that fully comply with section 303(c)(2)(B). For a more detailed State-specific outline of actions taken in response to section 303(c)(2)(B), refer to part III of appendix 1, which itemizes State actions to adopt toxics criteria for States approved by EPA as

being in full compliance as well as States which EPA has not approved as being in full compliance with section 303(c)(2)(B).

D. Determining State Compliance With Section 303(c)(2)(B)

1. EPA's Review of State Water Quality Standards for Toxics

The EPA Administrator has delegated the responsibility and authority for review and approval or disapproval of all State water quality standards actions to the 10 EPA Regional Administrators (see 40 CFR 131.21). State section 303(c)(2)(B) actions are thus submitted to the appropriate EPA Regional Administrator for review and approval. This de-centralized EPA system for State water quality standards review and approval is guided by EPA Headquarter's Office of Water, which issues national policies and guidance to the States and Regions such as the annual Office of Water Operating Guidance and various technical operating guidance manuals.

For purposes of evaluating State compliance with CWA section 303(c)(2)(B), EPA relied on the language of section 303(c)(2)(B), the existing water quality standards regulation, and section 303(c)(2)(B) national guidance to provide the basis for EPA review. In some cases, individual Regions also used Regional policies and procedures in reviewing State section 303(c)(2)(B) actions. The flexibility provided by the national guidance, coupled with subtle differences in Regional policies and procedures, contributed to some differences in the approaches taken by States to satisfy section 303(c)(2)(B) requirements.

As discussed previously, EPA's final guidance on compliance with section 303(c)(2)(B) was developed to provide States with the necessary flexibility to allow State standards revisions that would complement the State's existing water quality standards program, fully comply with section 303(c)(2)(B), and not violate State-specific resource constraints. As guidance, it did not contain clearly defined limits on the range of acceptable approaches, but rather described EPA's recommendations on approaches States could use to satisfy the statutory requirements. Some innovative State approaches were expected as well as differences in terms of criteria coverage, stringency and application procedures.

Although the guidance provided for State flexibility, it was also consistent with existing water quality standards regulation requirements at 40 CFR 131.11 that explicitly require State criteria to be sufficient to protect designated uses. Such water quality criteria also must be based on sound scientific rationale and support the most sensitive use designated for a water body.

The most complicated EPA compliance determinations involve States that select EPA Options 2 or 3. Since most States use EPA's Section 304(a) criteria guidance, where States select Option 1, EPA normally is able to focus Agency efforts on verifying that all available EPA criteria are included, appropriate cancer risk levels are selected, and that sufficient application procedures are in place (e.g. laboratory analytical methods, mixing zones, flow condition, etc.).

However, for States using EPA's Option 2 or 3, substantially more EPA evaluation and judgment is required because the Agency must evaluate which priority pollutants and, in some cases, segments or designated uses, require numeric criteria. Under these options, the State must adopt or derive numeric criteria for priority toxic pollutants for which EPA has section 304(a) criteria, "* * * the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State * * *" The necessary justification and the ultimate coverage and acceptability of a State's actions vary State-to-State because of differences in the adequacy of available monitoring information, local water bodies use designations, the effluent and nonpoint source controls in place, and different approaches to the scientific basis for criteria.

In submitting criteria for the protection of human health, States are not limited to a 1 in 1 million risk level (10^{-6}). EPA generally regulates pollutants treated as carcinogens in the range of 10^{-6} to 10^{-4} for average exposed individuals. If a State selects a criterion that represents an upper bound risk level less protective than 1 in 100,000 (i.e., 10^{-5}), however, the State will need to have substantial support in the record for this level. This support should focus on two distinct issues. First, the record must include documentation that the decision maker considered the public interest of the State in selecting the risk level, including documentation of public participation in the decision making process as required by the water quality standards regulation at 40 CFR 131.20(b). Second, the record must include an analysis showing that the risk level selected, when combined with other risk assessment variables, is a balanced and reasonable estimate of actual risk posed, based on the best and most representative information available. The importance of the estimated actual risk increases as the degree of conservatism in the selected risk level diminishes. EPA will carefully evaluate all assumptions used by a State if the State chooses to alter any one of the standard EPA assumption values.

Where States select Option 3, EPA reviews must also include an evaluation of the scientific defensibility of the translator procedure. EPA must also verify that a requirement to apply the translator whenever toxics may reasonably be expected to interfere with designated uses (e.g., where such toxics exist or are discharged) is included in the State's water quality standards. Satisfactory application procedures must also be developed by States selecting Option 3.

In general, each EPA Region made compliance decisions based on whatever information was available to the State at the time of the triennial review. For some States, information on the presence and discharge of priority toxic pollutants is extremely limited. Nevertheless, during the period of February 1988 to October 1990, to supplement State efforts, EPA assembled the available information and provided each State with various pollutant candidate lists in support of the section 304(l) and section 303(c)(2)(B) activities. These were based in part on computerized searches of existing Agency data bases.

Beginning in 1988, EPA provided States with candidate lists of priority toxic pollutants and water bodies in support of CWA section 304(l) implementation. These lists were developed because States were required to evaluate existing and readily available water-related data in order to comply with section 304(l). 40 CFR 130.10(d). A similar "strawman" analysis of priority pollutants potentially requiring adoption of numeric criteria under section 303(c)(2)(B) was furnished to most States in September or October of 1990 for their use in on-going and subsequent triennial reviews. The primary differences between the "strawman" analysis and the section 304(l) candidate lists were that the "strawman" analysis: (1) Organized the results by chemical rather than by water body, (2) included data for certain STORET monitoring stations that were not used in constructing the candidate lists, (3) included data from the Toxics Release Inventory database, and (4) did not include a number of data sources used in preparing the candidate lists (e.g., those, such as fish kill

information, that did not provide chemical specific information).

In its 1988 section 303(c)(2)(B) guidance, EPA urged States, at a minimum, to use the information gathered in support of section 304(l) requirements as a starting point for identifying which priority toxic pollutants require adoption of numeric criteria. EPA also encouraged States to consider the presence or potential construction of facilities that manufacture or use priority toxic pollutants as a strong indication of the need for toxics criteria. Similarly, EPA indicated to States that the presence of priority pollutants in ambient waters (including those in sediments or in aquatic life tissue) or in discharges from point or nonpoint sources also be considered as an indication that toxics criteria should be adopted. A limited amount of data on the effluent characteristics of NPDES discharges was readily available to States. States were also expected to take into account newer information as it became available, such as information in annual reports from the Toxic Chemical Release Inventory requirements of the Emergency Planning and Community Right-To-Know Act of 1986. (Title III, Pub. L. 99–499.)

In summary, EPA and the States had access to a variety of information gathered in support of section 304(l), section 303(c)(2)(B), and section 305(b) activities. For some States, as noted above, such information for priority toxic pollutants is extremely limited. In the final analysis, the Regional Administrator made a judgment on a duly submitted State standards triennial review based on the State's record and the Region's independent knowledge of the facts and circumstances surrounding the State's actions. These actions, taken in consultation with the Office of Water, determined which State actions were sufficiently consistent with the coverage contemplated in the statute to justify approval. These approval actions include allowable variations among State water quality standards. EPA approval indicates that, based on the record, the State water quality standards met the requirements of the Act.

2. Determining Current Compliance Status

The following summarizes the process generally followed by the Agency in assessing compliance with section 303(c)(2)(B). As with other aspects of this rule, EPA invites comments on the compliance determination process.

A State was determined to be in full compliance with the requirements of section 303(c)(2)(B) if,

a. The State had submitted a water quality standards package for EPA review since enactment of the 1987 Clean Water Act amendments or was determined to be already in compliance, and,

b. The adopted State water quality standards are effective under State law and consistent with the CWA and EPA's implementing regulations (EPA's December 1988 guidance described three Options, any one, or a combination of which EPA suggested States could adopt for compliance with the CWA and EPA regulations), and

c. EPA has issued a formal approval determination to the State.

States meeting these criteria are not included in this proposed rulemaking.

States which adopted standards following Option 1 generally have been found to satisfy section 303(c)(2)(B). An exception exists for selected States which attempted to follow Option 1 by adopting all EPA section 304(a) criteria by reference. EPA has withheld approval for a few States which have adopted such references into their standards because the adopted standards did not specify application factors necessary to implement the criteria (e.g., a risk level for carcinogens). Other States have achieved full compliance following options 1, 2, 3, or some combination of these options.

As of the date of signature of today's proposal, the Agency has determined that 35 States and Territories are in full compliance with the requirements of section 303(c)(2)(B). Compliance status for all States and Territories is set forth in Table 1.

TABLE 1.—PRELIMINARY ASSESSMENT OF STATE COMPLIANCE WITH CWA SECTION 303(c)(2)(B)

State	Is State in compliance with section 303(c)(2)(B)?
Alabama	Yes.
Alaska	No.
Arizona	No.
Arkansas	No.
California	No.
Colorado	No.
Connecticut	No.
Delaware	Yes.
Florida	No.
Georgia	Yes.
Hawaii	No.
Idaho	No.
Illinois	Yes.
Indiana	Yes.
Iowa	Yes.
Kansas	No.
Kentucky	Yes.
Louisiana	No.
Maine	Yes.
Maryland	Yes.
Massachusetts	Yes.
Michigan	No.
Minnesota	Yes.
Mississippi	Yes.
Missouri	Yes.
Montana	Yes.
Nebraska	Yes.
Nevada	No.
New Hampshire	No.
New Jersey	No.
New Mexico	Yes.
New York	Yes.
North Carolina	Yes.
North Dakota	Yes.
Ohio	Yes.
Oklahoma	Yes.
Oregon	Yes.
Pennsylvania	Yes.
Rhode Island	No.
South Carolina	Yes.
South Dakota	Yes.
Tennessee	Yes.
Texas	Yes.
Utah	Yes.
Vermont	No.
Virginia	No.
Washington	No.
West Virginia	Yes.
Wisconsin	Yes.
Wyoming	Yes.
American Samoa	Yes.
Commonwealth of the Northern Marianas Islands.	No.
District of Columbia	No.
Guam	Yes.
Puerto Rico	No.
Tr. Territories	Yes.
Virgin Islands	Yes.

Section III of appendix 1 provides a State-by-State summary of how compliance was achieved for the EPA-approved States, and what has been, and yet needs to be, accomplished in States included in this proposed rule.

E. Rationale and Approach for Developing Today's Proposed Rulemaking

The addition of section 303(c)(2)(B) to the Clean Water Act was an unequivocal signal to the States that Congress wanted toxics criteria in the State's water quality standards. The legislative history notes that the "beyond BAT" program (i.e., controls necessary to comply with water quality standards that are more stringent than technology-based controls) was the cornerstone to the Act's toxic pollution control requirements.

The major innovation of the 1972 Clean Water Act Amendments was the concept of effluent limitation guidelines

which were to be incorporated into NPDES permits. In many cases, this strategy has succeeded in halting the decline in the quality of the Nation's waters and, often, has provided improvements. However, the effluent limitation guidelines for industrial discharges and the similar technology-based secondary treatment requirements for municipal discharges are not capable, by themselves, of ensuring that the fishable-swimmable goals of the Clean Water Act will be met.

The basic mechanism to accomplish this in the Act is water quality standards. States are required to periodically review and revise these standards to achieve the goals of the Act. In the 1987 CWA amendments, Congress focused on addressing toxics in several sections of the Act, but special attention was placed on the section 303 water quality standards program requirements. Congress intended that the adoption of numeric criteria for toxics would result in direct improvements in water quality by forcing, where necessary, effluent limits more stringent than those resulting from technology-based effluent limitations guidelines.

As the legislative history demonstrates, Congress was dissatisfied with the piecemeal, slow progress being made by States in setting standards for toxics. Congress reacted by legislating new requirements and deadlines directing the States to establish toxics criteria for pollutants addressed in EPA Section 304(a) criteria guidance, especially for those priority toxic pollutants that could reasonably be expected to interfere with designated uses. In today's action, EPA is exercising its authority under section 303(c)(4) to propose criteria where States have failed to act in a timely manner.

For those States not in compliance with section 303(c)(2)(B) four and one-half years after enactment, EPA now begins the process that will culminate in the promulgation of appropriate toxics criteria and the determination of the necessary parametric coverage and stringency of such criteria. While the previous section of this preamble explains EPA's approach to evaluating the adequacy of State actions in response to section 303(c)(2)(B), this section explains EPA's legal basis for issuing today's proposed rulemaking, discusses EPA's general approach for developing the proposed State-specific requirements in § 131.36(d).

In addition to the Congressional directive and the legal basis for this proposed action, there are a number of environmental and programmatic reasons why further delay in establishing water quality standards for toxic pollutants is no longer acceptable.

Prompt control of toxic pollutants in surface waters is critical to the success of a number of Clean Water Act programs and objectives, including permitting, enforcement, fish tissue quality protection, coastal water quality improvement, sediment contamination control, certain nonpoint source controls, pollution prevention planning, and ecological protection. The decade-long delay in State adoption of water quality standards for toxic pollutants has had a ripple effect throughout EPA's water programs. Without clearly established water quality goals, the effectiveness of many water programs is jeopardized.

Failure to take prompt action at this juncture would also undermine the continued viability of the current statutory scheme to establish standards. Continued delay subverts the entire concept of the triennial review cycle which is to combine current scientific information with the results of previous environmental control programs to direct continuing progress in enhancing water quality.

Finally, another reason to proceed expeditiously is to bring closure to this long-term effort and allow State attention and resources to be directed towards important, new national program initiatives. Until standards for toxic pollutants are in place, neither EPA nor the States can fully focus on the emerging, ecologically based water quality activities such as wetlands criteria, biological criteria and sediment criteria.

1. Legal Basis

Clean Water Act section 303(c) specifies that adoption of water quality standards is primarily the responsibility of the States. However, section 303(c) also describes a role for EPA of overseeing State actions to ensure compliance with CWA requirements. If the Agency's review of the State's standards finds flaws or omissions, then the Act authorizes EPA to initiate promulgation to correct the deficiencies (see section 303(c)(4)). The water quality standards promulgation authority has been used by EPA to issue final rules on nine separate occasions. These actions have addressed both insufficiently protective State criteria and/or designated uses and failure to adopt needed criteria. Thus, today's action is not unique, although it would affect more States and pollutants than previous actions taken by the Agency.

The Clean Water Act in section 303(c)(4) provides two bases for promulgation of Federal water quality standards. The first basis in paragraph (A) applies when a State submits new or revised standards that EPA determines are not consistent with the applicable requirements of the Act. If, after EPA's disapproval, the State does not promptly amend its rules so as to be consistent with the Act, EPA must promulgate appropriate Federal water quality standards for that State. The second basis for EPA's action is paragraph (B), which provides that EPA shall promptly initiate promulgation "* * * in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this Act." EPA is relying on both section 303(c)(4)(A) and section 303(c)(4)(B) as the legal basis for this proposed rulemaking.

Section 303(c)(4)(A) supports today's action for several States. These States have submitted criteria for some number of priority toxic pollutants and EPA has disapproved the State's adopted standards. The basis for EPA's disapproval generally has been the lack of sufficient criteria or particular criteria that were insufficiently stringent. In these cases, EPA has, by letter to the State, noted the deficiencies and specified the need for corrective action. (See section III of appendix 1 for a summary description of each State's section 303(c)(2)(B) history.) Not having received an appropriate correction within the statutory time frame, EPA is today proposing the needed criteria. The action in today's proposal pursuant to section 303(c)(4)(A) may differ from those taken pursuant to section 303(c)(4)(B) by being limited to criteria for specific priority toxic pollutants, particular geographic areas, or particular designated uses.

Section 303(c)(4)(B) is the basis for EPA's proposed requirements for most States. For these States, the Administrator proposes criteria that would bring the States into compliance with the requirements of the CWA. In these cases, EPA is proposing, at a minimum, criteria for all priority toxic pollutants not addressed by approved State criteria. EPA is also proposing criteria for priority toxic pollutants where any previously-approved State criteria do not reflect current science contained in revised criteria documents and other guidance sufficient to fully protect all designated uses or human exposure pathways, or where such previously-approved State criteria are not applicable to all appropriate designated uses. EPA's action pursuant

to section 304(c)(4)(B) may include several situations.

In some cases, the State has failed to adopt and submit for approval any criteria for those priority toxic pollutants for which EPA has published criteria. This includes those States that have not submitted triennial reviews. In other cases, the State has adopted and EPA has approved criteria for either aquatic life or human health, but not both. In yet a third siuation, States have submitted some criteria but not all necessary criteria. Lastly, one State has submitted criteria that do not apply to all appropriate geographic sections of the waters of the State. (See section III of appendix 1.)

The use of section 303(c)(4)(B) requires a determination by the Administrator "* * * that a revised or new standard is necessary to meet the requirements of * * *" the Act. The Administrator's determination could be supported in different ways.

One approach would be for EPA to undertake a time-consuming effort to research and marshall data to demonstrate the need for promulgation for each criteria for each stream segment or waterbody in each State. This would include evidence for each section 307(a) priority toxic pollutant for which EPA has section 304(a) criteria and that there is a "discharge or presence" which could reasonably "be expected to interfere with" the designated use. This approach would not only impose an enormous administrative burden, but would be contrary to the statutory scheme and the compelling Congressional directive for swift action reflected in the 1987 addition of section 303(c)(2)(B) to the Act.

An approach that is more reasonable and consistent with Congressional intent focuses on the State's failure to complete the timely review and adoption of the necessary standards required by section 303(c)(2)(B) despite information that priority toxic pollutants may interfere with designated uses of the State's waters. This approach is consistent with the fact that in enacting section 303(c)(2)(B) Congress expressed its determination of the necessity for prompt adoption and implementation of water quality standards for toxic pollutants. Therefore, a State's failure to meet this fundamental 303(c)(2)(B) requirement of adopting appropriate standards constitutes a failure "to meet the requirements of the Act." That failure to act can be a basis for the Administrator's determination under section 303(c)(4)(B) that new or revised criteria are necessary to ensure designated uses are adequately protected. Here, this determination is buttressed by the existence of evidence of the discharge or presence of priority toxic pollutants in a State's waters for which the State has not adopted numeric water quality criteria. The Agency has compiled an impressive volume of information in the record for this rulemaking (See appendix 1) on the discharge or presence of toxic pollutants in State waters. This data supports the Administrators's proposed determination pursuant to section 303(c)(4)(B).

The Agency's choice to base the proposed determination on the second approach is supported by both the elicit language of the statutory provision and by the legislative history. Congress added subsection 303(c)(2)(B) to section 303 with full knowledge of the existing requirements in section 303(c)(1) for triennial water quality standards review and submission to EPA and in section 303(c)(4)(B) for EPA promulgation. There was a clear expectation that these provisions be used in concert to overcome the programmatic delay that many legislators criticized and achieve the Congressional objective of the rapid availability of enforceable water quality standards for toxic pollutants. As quoted earlier, chief Senate sponsors, including Senators Stafford, Chafee and others, wanted the provision to eliminate State and EPA delays and force aggressive action.

In normal circumstances, it might be argued that to exercise section 303(c)(4)(B) the Administrator might have the burden of marshalling conclusive evidence of "necessity" for Federally promulgated water quality standards. However, in adopting section 303(c)(2)(B), Congress made clear that the "normal" procedure had become inadequate. The specificity and deadline in section 303(c)(2)(B) were layered on top of a statutory scheme already designed to achieve the adoption of toxic water quality standards. Congressional action to adopt an essentially redundant provision was driven by their impatience with the lack of State progress. The new provision was essentially a Congressional "determination" of the necessity for new or revised comprehensive toxic water quality standards by States. In deference to the principle of State primacy, Congress, by linking section 303(c)(2)(B) to the section 303(c)(1) three-year review period, gave States a last chance to correct this deficiency on their own. However, this Congressional indulgence does not alter the fact that section 303(c)(2)(B) changed the nature of the CWA State/EPA water quality standard relationship. The new provision and its legislative background indicate that the Administrator's determination to invoke his section 303(c)(4)(B) authority in this circumstance can be met by a generic finding of inaction on the part of a State and without the need to develop data for individual stream segments. Otherwise, the Agency would face the heavy data gathering burden of justifying the need for each Federal criterion, the process could stretch for years and never be realized. To interpret the combination of subsections (c)(2)(B) and (c)(4) as an effective bar to prompt achievement of statutory objectives would be a perverse conclusion and render section 303(c)(2)(B) essentially meaningless.

A second strong argument against requiring EPA to shoulder a heavy burden to exercise section 303(c)(4)(B) authority is that it would invert the traditional statutory scheme of EPA as national overseer and States as the entity with the greatest local expertise. The CWA provides States the flexibility to tailor water quality standards to local conditions and needs based upon their wealth of first-hand experience, knowledge and data. However, this allowance for flexibility is based on an assumption of reasoned and timely State action, not an abdication of State responsibility by failure to act. EPA does not possess the local expertise or resources necessary to successfully tailor State water quality standards. Therefore, the fact that the CWA allows States flexibility in standards development does not impose an inappropriate burden on EPA in the exercise of its oversight promulgation responsibilities. A broad Federal promulgation based on a showing of State inaction coupled with basic information on the discharge and presence of toxic pollutants meets the statutory objective of having criteria in place that are protective of public health and the environment. Without local expertise to help accurately narrow this list of pollutants and segments requiring criteria, there is no assurance of comparable protection. Nothing in the overall statutory water quality standards scheme anticipates EPA would develop this expertise in lieu of the States. EPA's lack of familiarity with local conditions argues strongly for a simple "determination" test to trigger section 303(c)(4)(B) promulgations. It also supports the concept of an across-the-board rulemaking for all priority toxic pollutants with section 304(a) criteria.

A final major reason supporting a simple determination to trigger 303(c)(4)(B) action is that comprehensive

Federal promulgation imposes no undue or inappropriate burden on States or dischargers. It merely puts in place standards for toxic pollutants that are utilized in implementing Clean Water Act programs. Under this rulemaking, a State still retains the ability to adopt alternative water quality standards simply by completing its standards adoption process. Upon EPA approval of those standards, EPA would take actions to withdraw the Federally-promulgated criteria.

Federal promulgation of State water quality standards should be a course of last resort. It is symptomatic of something awry with the basic statutory scheme. Yet, when it is necessary to exercise this authority, as the evidence suggests is this case, there should be no undue impediments to its use. Section 303(c)(4) is replete with deadlines and Congressional directives for the Administrator to act "promptly" in these cases. The statute indicates that the Administrator of EPA, is to "* * * promptly prepare and publish proposed regulations setting forth a revised or new water quality standard * * *" and "* * * shall promulgate any revised or new standard * * * not later than 90 days after he published such proposed standards, unless prior to such promulgation, such State has adopted a revised or new standard which the Administrator determines to be in accordance with the Act." EPA intends to make every effort to meet the 90 day schedule. The adoption of section 303(c)(2)(B) reinforced this emphasis on expeditious actions. EPA has demonstrated extensive deference to State primacy and a willingness to provide broad flexibility in their adoption of State standards for toxics. However, to fulfill its statutory obligation requires that EPA's deference and flexibility cannot be unlimited.

For the reasons just discussed, EPA does not believe it is necessary to support the criteria proposed today on a pollutant specific, State-by-State, waterbody-by-waterbody basis. Nonetheless, over the course of the past several years in working with and assisting the States, the Agency has reviewed the readily-available data on the discharge and presence of priority toxic pollutants. While this data is not necessarily comprehensive, it constitutes a substantial record to support a *prima facie* case for the need for numeric criteria for most priority toxic pollutants with section 304(a) criteria guidance in most States. In the absence of final State actions to adopt criteria pursuant to either Option 2 or 3 which meet the requirements for EPA approval, this evidence strongly supports EPA's decision to propose, pursuant to Section 303(c)(4)(B), criteria for all priority toxic pollutants not fully addressed by State criteria. The EPA data supporting this assertion is discussed more fully in the next section.

2. Approach for Developing Today's Proposed Rulemaking

The proposed State-specific requirements in § 131.36(d) were developed using one of two approaches. In the formal review of the adopted standards for certain States, EPA has determined that specific numeric toxics criteria are lacking. For some, criteria were omitted from the State standards, even though in EPA's judgment, the pollutants can reasonably be expected to interfere with designated uses. In these cases where EPA has specifically identified deficiencies in a State submission, today's proposed rule would establish Federal criteria for that limited number of priority toxic pollutants necessary to correct the deficiency.

For the balance of the States, EPA proposes to apply, to all appropriate State waters, the section 304(a) criteria for all priority toxic pollutants which are not the subject of approved State criteria. EPA also proposes to promulgate Federal criteria for priority toxic pollutants where any previously-approved State criteria do not reflect current science contained in revised criteria documents and other guidance sufficient to fully protect all designated uses or human health exposure pathways, where such previously-approved State criteria do not protect against both acute and chronic aquatic life effects, or where such previously-approved State criteria are not applicable to all appropriate State designated uses. EPA encourages public comments regarding any data which demonstrate that specific priority pollutants or water bodies may not require Federal criteria to protect State designated uses.

Absent a State-by-State pollutant specific analysis to narrow the list, existing data sources strongly support a comprehensive rulemaking approach. Information in the rulemaking record from a number of sources indicates the discharge, potential discharge or presence of virtually all priority toxic pollutants in all States. The data available to EPA has been assembled into a "strawman" analysis designed to identify priority toxic pollutants that potentially require the adoption of numeric criteria. Information on pollutants discharged or present was identified by accessing various national data sources:

—Final section 304(1) short lists identifying toxic pollutants likely to impair designated uses;
—Water column, fish tissue and sediment observations in the Storage Retrieval (STORET) data base (i.e., where the pollutant was detected);
—The National Pollutant Discharge Elimination System's (NPDES) Permit Compliance System data base to identify those pollutants limited in direct dischargers' permits;
—Pollutants included on Form 2(c) permit applications which have been submitted by wastewater dischargers;
—Information on discharges to surface waters or POTWs from the Toxics Release Inventory required by the Emergency Planning and Community Right-To-Know Act of 1986 (title III, Pub. L. 99–499);
—Pollutants predicted to be in the effluent of NPDES dischargers based on industry-specific analyses conducted for the Clean Water Act effluent guideline program.

The extent of this data supports a conclusion that promulgation of Federal criteria for all priority toxic pollutants with section 304(a) criteria guidance documents is appropriate for those States that have not completed their standards adoption process. This conclusion is supported by several other factors.

First, many of the available data sources have limitations which argue against relying on them solely to identify all needed water quality criteria. For example, the section 304(l) short lists only identified water bodies where uses were impaired by point source discharges; State long lists did not generally identify pollutants causing use impairment by nonpoint sources. Other available data sources (i.e., NPDES permit limits) have a similar narrow scope because of their particular purposes. Even the value of those data bases designed to identify ambient water problems is restricted by the availability of monitoring data.

In many States, the quantity, spatial and temporal distribution, and pollutant coverage of monitoring data is severely limited. For example, the most recent Water Quality Inventory Report to Congress included an evaluation of use attainment for only one-third of all river miles and less than one-half of lake acres. Even for those waters where use attainment status was reported, many assessments were based on data which did not include the chemical-specific information necessary to identify the priority toxic pollutants which pose a threat to designated uses. After evaluating this data, EPA concluded that

it most likely understates the adverse presence or discharge of priority toxic pollutants.

Further evidence justifying a broad promulgation rulemaking can be found in the State actions to date in their standards adoption process. While many have not come to completion, the initial steps have led many States to develop or propose rulemaking packages with extensive pollutant coverage. The nature of these preliminary State determinations argues for a Federal promulgation of all section 304(a) criteria pollutants to ensure adequate public health and environmental protection against priority toxic pollutant insults.

EPA's strawman analysis for each State is described in greater detail in part III of appendix 1 and the complete record is available for public review.

The detailed assumptions and "rules" followed by EPA in writing the proposed § 131.36(d) requirements for all jurisdictions are listed below. Comment is invited on the details of these determinations.

(1) No criteria are proposed for States which have been fully approved by EPA as complying with the section 303(c)(2)(B) requirements.

(2) For States which have not been fully approved, if EPA has not previously determined which specific pollutants/criteria/waterbodies are lacking from a State's standards (i.e., as part of an approval/disapproval action only), all of the criteria in columns B, C, and D of the proposed § 131.36(b) matrix are proposed for statewide application to all appropriate designated uses, except as provided for elsewhere in these rules. That is, EPA proposes to bring the State into compliance with section 303(c)(2)(B) via an approach which is comparable to option 1 of the December 1988 national guidance for section 303(c)(2)(B).

(3) If EPA has previously determined which specific pollutants/criteria/waterbodies are needed to comply with CWA section 303(c)(2)(B) (i.e., as part of an approval/disapproval action only), the criteria in proposed section 131.36(b) are proposed for only those specific pollutants/criteria/waterbodies (i.e., EPA proposes to bring the State into compliance via an approach which is comparable to option 2 of the December 1988 national guidance for section 303(c)(2)(B)).

(4) For aquatic life, except as provided for elsewhere in these rules, all waters with designated aquatic life uses providing even minimal support to aquatic life are included in the proposed rule (i.e., fish survival, marginal aquatic life, etc.).

(5a) For human health, except as provided for elsewhere in these rules, all waters with designated uses providing for public water supply protection (and therefore a potential water consumption exposure route) or minimal aquatic life protection (and therefore a potential fish consumption exposure route) are included in the proposed rule.

(5b) Where a State has determined the specific aquatic life segments which provide a fish consumption exposure route (i.e., fish or other aquatic life are being caught and consumed) and EPA approved this determination as part of standards approval/disapproval action, the proposed rule includes the fish consumption (Column D(II)) criteria for only those aquatic life segments, except as provided for elsewhere in these rules. In making a determination that certain segments do not support a fish consumption exposure route, a State must have completed, and EPA approved, a use attainability analysis consistent with the provisions of 40 CFR 131.10(j). In the absence of such an approved State determination, EPA has proposed fish consumption criteria for all aquatic life segments.

(6) Uses/Classes other than those which support aquatic life or human health are not included in the proposed rulemaking (e.g., livestock watering, industrial water supply), unless they are defined in the State standards as also providing protection to aquatic life or human health (i.e., unless they are described as protecting multiple uses including aquatic life or human health). For example, if the State standards include a use such as industrial water supply, and in the narrative description of the use the State standards indicate that the use includes protection for resident aquatic life, then this use is included in the proposed rulemaking.

(7) For human health, the "water+fish" criteria in Column D(I) of § 131.36(b) are proposed for all waterbodies where public water supply and aquatic life uses are designated, except as provided for elsewhere in these rules (e.g., rule 9).

(8) If the State has public water supplies where aquatic life uses have not been designated, or public water supplies that have been determined not to provide a potential fish consumption exposure pathway, the "water only" criteria in Column D(I) of § 131.36(b) are proposed for such waterbodies, except as provided for elsewhere in these rules (e.g., rule 9).

(9) EPA is generally not proposing criteria for priority toxic pollutants for which a State has adopted criteria and received EPA approval. The exceptions to this general rule are described in rules 10 and 11.

(10) For priority toxic pollutants where the State has adopted human health criteria and received EPA approval, but such criteria do not fully satisfy section 303(c)(2)(B) requirements, the proposed rule includes human health criteria for such pollutants. For example, consider a case where a State has a water supply segment that poses an exposure risk to human health from both water and fish consumption. If the State has adopted, and received approval for, human health criteria based on water consumption only (e.g., Safe Drinking Water Act Maximum Contaminant Levels (MCLs)) which are less stringent than the "water+fish" criteria in Column D(I) of proposed § 131.36(b), the Column D(I) criteria are proposed for those water supply segments. The rationale for this is to ensure that both water and fish consumption exposure pathways are adequately addressed and human health is fully protected. If the State has adopted water consumption only criteria which are more stringent or equal to the Column D(I) criteria, the "water+fish" criteria in Column D(I) criteria are not proposed.

(11) For priority toxic pollutants where the State has adopted aquatic life criteria and previous to the 1987 CWA Amendments received EPA approval, but such criteria do not fully satisfy section 303(c)(2)(B) requirements, the proposed rule includes aquatic life criteria for such pollutants. For example, if the State has adopted not-to-be-exceeded aquatic life criteria which are less stringent than the 4-day average chronic aquatic life criteria in § 131.36(b) (i.e., in Columns B(II) and C(II)), the acute and chronic aquatic life criteria in Section 131.36(b) are proposed for those pollutants.

The rationale for this is that the State-adopted criteria do not protect resident aquatic life from both acute and chronic effects, and that Federal criteria are necessary to fully protect aquatic life designated uses. If the State has adopted not-to-be-exceeded aquatic life criteria which are more stringent or equal to the chronic aquatic life criteria in § 131.36(b), the acute and chronic aquatic life criteria in § 131.36(b) are not proposed for those pollutants.

(12) Under certain conditions discussed in rules 9, 10, and 11, criteria listed in § 131.36(b) are not proposed for specific pollutants; however, EPA made such exceptions only for pollutants for which criteria have been adopted by the State and approved by EPA, where such criteria are currently effective under State law the appropriate EPA Region

concluded that the State's criteria fully satisfy section 303(c)(2)(B) requirements.

3. Approach for States That Fully Comply Subsequent to Issuance of Today's Proposed Rulemaking

As discussed in prior sections of this preamble, the water quality standards program has been established with an emphasis on State primacy. Although this proposed rule has been developed to Federally promulgate toxics criteria for States, EPA prefers that States maintain primacy, revise their own standards, and achieve full compliance. EPA is hopeful that today's proposed rulemaking will provide additional impetus for non-complying States to adopt the criteria for priority toxic pollutants necessary to comply with section 303(c)(2)(B).

For States that achieve full compliance before publication of the final rulemaking, EPA will not include such States in the final rulemaking. At any point in the process prior to final promulgation, a State can ensure that it will not be affected by this action by adopting the necessary criteria pursuant to State law and receiving EPA approval. The content of the adopted standards must be within the boundaries of the several acceptable approaches described earlier in this preamble.

Following a final promulgation of this rule, removal of a State from the rule will require rulemaking by EPA according to the requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). EPA will withdraw the Federal rule without a notice and comment rulemaking when the State adopts standards no less stringent than the Federal rule (i.e., standards which provide, at least, equivalent environmental protection). For example, see 51 FR 11580, April 4, 1986, which finalized EPA's removal of a Federal rule for the State of Mississippi.

However, if a State adopts standards for toxics which are less stringent than the Federal rule but, in the Agency's judgment, fully meet the requirements of the Act, EPA will propose to withdraw the rule with a notice of proposed rulemaking and provide for public participation. This procedure would be required for partial or complete removal of a State from this rulemaking. A State covered by the final rule could adopt the necessary criteria using any of the three options or combinations of those Options described in EPA's 1989 guidance.

EPA cautions States and the public that promulgation of a Federal rule removes most of the flexibility available to States for modifying their standards on a discharger-specific or stream-specific basis. For example, variances, site-specific criteria and schedules of compliance actions pursuant to State law for federally promulgated criteria are precluded. Each of these types of modifications would require Federal rulemaking on a case-by-case basis to change the Federal rule for that State.

F. Derivation of Proposed Criteria

1. Sections 304(a) Criteria Process

Under the authority of CWA section 304(a) EPA has developed methodologies and specific criteria to protect aquatic life and human health. These methodologies are intended to provide protection for all surface water on a national basis. As described below, there are site specific procedures for more precisely addressing site specific conditions for an individual water body. However, these site-specific criteria procedures are infrequently used because the section 304(a) criteria recommendations have proven themselves to be appropriate for the vast majority of water bodies. The methodologies have been subject to public review, as have the individual criteria documents. Additionally, the methodologies have been reviewed and approved by EPA's Science Advisory Board.

EPA incorporates by reference into the record of this proposed rulemaking the aquatic life methodology as described in "Appendix B—Guidelines for Deriving Water Quality Criteria for the Protection of Aquatic Life and Its Uses" (45 FR 79341, November 28, 1980) as amended by "Summary of Revisions to Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" (50 FR 30792, July 29, 1985). EPA also incorporates by reference into the record of this proposed rulemaking the human health methodology as described in "Appendix C—Guidelines and Methodology Used in the Preparation of Health Effects Assessment Chapters of the Consent Decree Water Criteria Documents" (45 FR 79347, November 28, 1980). EPA also recommends that the following be reviewed for information: "Appendix D—Response to Comments on Guidelines for Deriving Water Quality Criteria for the Protection of Aquatic Life and Its Uses," (45 FR 79357, November 28, 1980); "Appendix E—Responses to Public Comments on the Human Health Effects Methodology for Deriving Ambient Water Quality Criteria" (45 FR 79368, November 28, 1980); and "Appendix B—Response to Comments on Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" (50 FR 30793, July 29, 1985). EPA also is placing into the record the most current individual criteria documents for the priority toxic pollutants included in today's proposal.

The primary focus of this rule is the inclusion of the water quality criteria for pollutant(s) in State standards as necessary to support water quality-based control programs. The Agency is accepting comment on the criteria proposed in today's rule. However, Congress has established a very ambitious schedule for the promulgation of the final criteria. The statutory deadline in section 303(c)(4) clearly indicates that Congress intended the Agency to move very expeditiously when Federal action is warranted. The Agency believes that the limited time available for promulgation of the regulation can be used most efficiently and effectively by addressing those issues that have not already come before the Agency.

The methodology used to develop the criteria and the criteria themselves (to the extent not updated through IRIS) have previously undergone scientific peer review and public review and comment, and have been revised as appropriate. For the most part, this review occurred before Congress amended the Act in 1987, to require the inclusion of numeric criteria for certain toxic pollutants in State standards. Congress acted with full knowledge of the EPA process for developing criteria and the Agency's recommendations under section 304(a). EPA believes it is consistent with Congressional intent to rely in large part on existing criteria rather than engage in a time-consuming reevaluation of the underlying basis for water quality criteria. Accordingly, the Agency does not intend in this rulemaking to address the issues that have already been addressed by the Agency in response to previous comments. It is the Agency's belief that this approach will best achieve the purpose of moving forward in promulgating criteria for States not in compliance with section 303(c)(2)(B) so that environmental controls intended by Congress can be put into place to protect public health and welfare and enhance water quality.

It should be noted that the Agency is initiating a review of the basic guidelines for developing criteria and that comments received in this rulemaking may be of value in that effort as well. Future revisions to the criteria guidelines will be reviewed by

the Agency's Science Advisory Board and submitted to the public for review and comment following the same process that was used in issuing the existing methodological guidelines. Subsequent revisions of criteria documents and the issuance of any new criteria documents will also be subject to public review.

2. Aquatic Life Criteria

Aquatic life criteria may be expressed in numeric or narrative forms. EPA's guidelines describe an objective, internally consistent and appropriate way of deriving chemical-specific, numeric water quality criteria for the protection of the presence of, as well as the uses of, both fresh and marine water aquatic organisms.

An aquatic life criterion derived using EPA's section 304(a) method represents an estimate of the highest concentration of a pollutant in water that does not present a significant risk to aquatic organisms *per se* or to their use. EPA's guidelines are designed to derive criteria that protect aquatic communities by protecting most of the species and their uses most of the time, but not necessarily all of the species all of the time. Aquatic communities can tolerate some stress and occasional adverse effects on a few species so that total protection of all species all of the time is not necessary. EPA's guidelines attempt to provide a reasonable and adequate amount of protection with only a small possibility of substantial overprotection or underprotection. As discussed in detail below, there are several individual factors which may make the criteria somewhat overprotective or underprotective. Clearly, addressing them all is probably infeasible and, in any case, would make the criteria derivation process unduly resource intensive and time consuming. The approach EPA is using is believed to be as well balanced as possible, given the state of the science.

Numerical aquatic life criteria derived using EPA's most recent guidelines are expressed as short-term and long-term numbers, rather than one number, in order that the criteria more accurately reflect toxicological and practical realities. The combination of a criteria maximum concentration (CMC), a one-hour average acute limit, and a criteria continuous concentration (CCC), a four-day average concentration chronic limit, provide protection of aquatic life and its uses from acute and chronic toxicity to animals and plants, and from bioconcentration by aquatic organisms, without being as restrictive as a one-number criterion would have to be.

The two number criteria are intended to identify average pollutant concentrations which will produce water quality generally suited to maintenance of aquatic life and their uses while restricting the duration of excursions over the average so that total exposures will not cause unacceptable adverse effects. Merely specifying an average value over a time period is insufficient unless the time period is short, because excursions higher than the average can kill or cause substantial damage in short periods.

EPA's guidelines were developed on the assumption that the results of laboratory tests are generally useful for predicting what will happen in field situations. Certain ambient waters may have some capacity to bind pollutants and make them less bioavailable. The site-specific criteria process provides a means of addressing this effect (i.e., by allowing development and use of a "water effect ratio" that quantifies the difference in toxicity of a pollutant in site water versus the toxicity of the pollutant in the laboratory water used to develop the section 304(a) criteria recommendation). However, in the absence of such an approach, the criteria may be somewhat overprotective in some situations.

A minimum data set of eight specified families is required for criteria development (details are given in the methodology cited above). The eight specific families are intended to be representative of a wide spectrum of aquatic life. For this reason it is not necessary that the specific organisms tested be actually present in the water body. States may develop site-specific criteria using native species, provided that the broad spectrum represented by the eight families is maintained. All aquatic organisms and their common uses are meant to be considered, but not necessarily protected, if relevant data are available.

EPA's application of guidelines to develop the criteria matrix in the proposed rule is judged by the Agency to be applicable to all waters of the United States, and to all ecosystems. There are waters and ecosystems where site-specific criteria could be developed, as discussed below, but it is up to States to identify those waters and develop the appropriate site-specific criteria.

Fresh water and salt water (including both estuarine and marine waters) have different chemical compositions, and freshwater and saltwater species rarely inhabit the same water simultaneously. To provide additional accuracy, criteria developed recently are developed for fresh water and for salt water.

Assumptions which may make the criteria underprotective include the use of criteria on an individual basis, with no consideration of additive or synergistic effects, and the general lack of consideration of impacts on wildlife, due principally to a lack of data.

3. Criteria for Human Health

As with aquatic life, EPA's guidelines for human health criteria attempt to provide a reasonable and adequate amount of protection with only a small possibility of substantial overprotection or underprotection. EPA's section 304(a) criteria for human health are based on two types of biological endpoints:

(1) Carcinogenicity and (2) systemic toxicity (i.e., all other adverse effects other than cancer). Thus, there are two procedures for assessing these health effects: One for carcinogens and one for non-carcinogens.

EPA's guidelines assume that carcinogenicity is a "non-threshold phenomenon," that is, there are no "safe" or "no-effect levels" because even extremely small doses are assumed to cause a finite increase in the incidence of the response (i.e., cancer). Therefore, EPA's water quality criteria for carcinogens are presented as pollutant concentrations corresponding to increases in the risk of developing cancer.

For pollutants that do not manifest any apparent carcinogenic effects in animal studies (i.e., systemic toxicants), EPA assumes that the pollutant has a threshold below which no effects will be observed. This assumption is based on the premise that a physiological mechanism exists within living organisms to avoid or overcome the adverse effects of the pollutant below the threshold concentration.

The human health risks of a substance cannot be determined with any degree of confidence unless dose-response relationships are quantified. Therefore, a dose-response assessment is required before a criterion can be calculated. The dose-response assessment determines the quantitative relationships between the amount of exposure to a substance and the onset of toxic injury or disease. Data for determining dose-response relationships are typically derived from animal studies, or less frequently, from epidemiological studies in exposed populations.

The dose-response information needed for carcinogens is an estimate of the carcinogenic potency of the compound. Carcinogenic potency is defined here as a general term for a chemical's human cancer-causing potential. This term is often used loosely

to refer to the more specific carcinogenic or cancer slope factor which is defined as an estimate of carcinogenic potency derived from animal studies or epidemiological data of human exposure. It is based on extrapolation from test exposures of high dose levels over relatively short periods of time to more realistic low dose levels over a lifetime exposure period by use of linear extrapolation models. The cancer slope factor, q1*, is EPA's estimate of carcinogenic potency and is intended to be a conservative upper bound estimate (e.g. 95% upper bound confidence limit).

For non-carcinogens, EPA uses the reference dose (RfD) as the dose response parameter in calculating the criteria. The RfD was formerly referred to as an "Acceptable Daily Intake" or ADI. The RfD is useful as a reference point for gauging the potential effects of other doses. Doses that are less than the RfD are not likely to be associated with any health risks, and are therefore less likely to be of regulatory concern. As the frequency of exposures exceeding the RfD increases and as the size of the excess increases, the probability increases that adverse effects may be observed in a human population. Nonetheless, a clear conclusion cannot be categorically drawn that all doses below the RfD are "acceptable" and that all doses in excess of the RfD are "unacceptable." In extrapolating non-carcinogen animal test data to humans to derive an RfD, EPA divides a no-observed-effect dose observed in animal studies by an "uncertainty factor" which is based on professional judgment of toxicologists and typically ranges from 10 to 10,000.

For section 304(a) criteria development, EPA typically considers only exposures to a pollutant that occur through the ingestion of waters and contaminated fish and shellfish. Thus the criteria are based on an assessment of risks related to the surface water exposure route only.

The assumed exposure pathways in calculating the criteria are the consumption of 2 liters per day at the criteria concentration and the consumption of 6.5 grams per day of fish/shellfish contaminated at a level equal to the criteria concentration but multiplied by a "bioconcentration factor." The use of fisn consumption as an exposure factor requires the quantification of pollutant residues in the edible portions of the ingested species. Bioconcentration factors (BCFs) are used to relate pollutant residues in aquatic organisms to the pollutant concentration in ambient waters. BCFs are quantified by various procedures depending on the lipid solubility of the pollutant. For lipid soluble pollutants, the average BCF is calculated from the weighted average percent lipids in the edible portions of fish/shellfish, which is about 3%; or it is calculated from theoretical considerations using the octanol/water partition coefficient. For non-lipid soluble compounds, the BCF is determined empirically. The assumed water consumption is taken from the National Academy of Sciences publication "Drinking Water and Health" (1977). The 6.5 grams per day contaminated fish consumption value is equivalent to the average per-capita consumption rate of all (contaminated and non-contaminated) freshwater and estuarine fish for the U.S. population.

EPA also assumes in calculating water quality criteria that the exposed individual is an average adult with body weight of 70 kilograms. The issue of concern is dose per kilogram of body weight. EPA assumes 6.5 grams per day of contaminated fish consumption and 2 liters per day of contaminated drinking water consumption for a 70 kilogram person in calculating the criteria. Persons of smaller body weight are expected to ingest less contaminated fish and water, so the dose per kilogram of body weight is generally expected to be roughly comparable. There may be subpopulations within a State, such as subsistence fishermen, who as a result of greater exposure to a contaminant, are at greater risk than the hypothetical 70 kilogram person eating 6.5 grams per day of maximally contaminated fish and shellfish and drinking 2 liters per day of maximally contaminated drinking water. (EPA is in part addressing the potential that highly exposed subpopulations exist by selecting a relatively stringent cancer risk level (10^{-6}) for use in deriving State-wide criteria for carcinogens. Individuals that ingest ten times more of a pollutant than is assumed in derivation of the criteria will be protected to a 10^{-5} level, which EPA has historically considered to be adequately protective. There may, nevertheless, be circumstances where site-specific numeric criteria that are more stringent than the State-wide criteria are necessary to adequately protect highly exposed subpopulations. Although EPA intends in this initial promulgation to focus on promulgation of appropriate State-wide criteria that will reduce risks to all exposed individuals, including highly exposed subpopulations, site specific criteria may be developed subsequently by EPA or the States where warranted to provide necessary additional protection.)

For non-carcinogens RfDs are developed based on pollutant concentrations that cause threshold effects. The RfD is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious effects during a lifetime.

Criteria are calculated for individual chemicals with no consideration of additive, synergistic or antagonistic effects in mixtures. If the conditions within a State differ from the assumptions EPA used, the States have the option to perform the analyses for their conditions.

EPA has a process to develop a scientific consensus on oral reference doses and carcinogenic slope factors. Reference doses and slope factors are validated by two Agency work groups (i.e., one work group for each) which are composed of senior Agency scientists from all of the program offices and the Office of Research and Development. These work groups develop a consensus of Agency opinion for Rfds and slope factors which are then used throughout the Agency for consistent regulation and guidance development. EPA maintains an electronic data base which contains the official Agency consensus for Rfd's and slope factors which is known as the Integrated Risk Information System (IRIS). It is available for use through EPA's electronic mail system, and also available through the Public Health Network of the Public Health Foundation, and on the National Institutes of Health National Library of Medicine's TOXNET system. For the criteria included in today's proposal, EPA used the criteria recommendation from the appropriate section 304(a) criteria document. (The availability of EPA's criteria documents has been announced in various **Federal Register** notices. These documents are also placed in the record for today's proposed rule.) However, if the Agency has changed in IRIS any parameters used in criteria derivation since issuance of the criteria guidance document, EPA recalculated the criteria recommendation with the latest information. (This information is included in the record.) Thus, there may be differences between the original recommendation, and those in today's proposal, but today's proposal presents the Agency's most current section 304(a) criteria recommendation. The recalculated human health numbers are denoted by an "a" in the criteria matrix in subsection 131.36(b) of today's proposed rule.

In order to base its regulatory decisions on the best available science, EPA continuously updates its assessment of the risk from exposure to contaminants. On September 11, 1991, EPA's Office of Research and Development (ORD) began reassessing the scientific models and exposure scenarios used to predict the risks of biological effects from exposure to low levels of dioxin. This reassessment has the potential to alter the risk assessment for dioxin and accordingly the Agency's regulatory decisions related to dioxin. At this time, EPA is unable to say with any certainty what the degree or directions of any changes in risk estimates might be. This rulemaking includes a proposed Agency action with regard to dioxin that may be affected by the reassessment. The Agency will be carefully monitoring ORD's efforts in order to ensure that appropriate actions are taken during the course of this rulemaking to reflect any necessary changes resulting from the reassessment. If a final Agency action on this rulemaking occurs prior to completion of ORD's work, the Agency will consider revisiting that decision.

4. Section 304(a) Human Health Criteria Excluded

Today's proposal does not contain certain of the Section 304(a) criteria for priority toxic pollutants because those criteria were not based on toxicity. The basis for these particular criteria are organoleptic effects (e.g., taste and odor) which would make water and edible aquatic life unpalatable but not toxic. Because the basis for this proposed rulemaking is to protect the public health and aquatic life from toxicity consistent with the language in section 303(c)(2)(B), EPA is proposing criteria only for those priority toxic pollutants whose criteria recommendations are based on toxicity. The Section 304(a) human health criteria based on organoleptic effects for copper, zinc, 2,4-dimethylphenol, and 3-methyl-4-chlorophenol are excluded for this reason.

5. Cancer Risk Level Proposed

EPA's Section 304(a) criteria guidance documents for priority toxic pollutants which are based on carcinogenicity present concentrations for upper bound risk levels of 1 excess cancer per 100,000 people (10^{-5}), per 1,000,000 people (10^{-6}), and per 10,000,000 people (10^{-7}). However, the criteria documents do not recommend a particular risk factor as EPA policy.

In the April, 1990, **Federal Register** notice of preliminary assessment of State compliance, EPA announced the intention to include in the proposed rulemaking an incremental cancer risk level of one in a million (10^{-6}) for all priority toxic pollutants regulated as carcinogens. That cancer risk level is reflected in this proposed rule. The reasons supporting this decision are discussed below. However, EPA's Office of Water's guidance to the States has consistently reflected the Agency's policy of accepting cancer risk policies from the States in the range of 10^{-6} to 10^{-4}. EPA reviews individual State policies as part of its water quality standards oversight function and determines if States have appropriately consulted its citizens and applied good science in adopting water quality criteria.

First, EPA's human health criteria have been developed based on a number of exposure assumptions. Many of these assumptions are based on the exposure for an average individual. For example, EPA's criteria assumes exposure of a 70 kilogram (154 pound) adult who consumes 2 liters (2.1 quarts) of water per day and 6.5 grams of fish per day (less than 7 ounces per month). These assumptions are based on approximate national averages, but considerably understate the exposure that would occur for certain segments of the population that have high fish consumption or depend on fish consumption for subsistence. Similarly, it would overstate the exposure of those who consume less fish than the National average amount. Therefore, although EPA would accept a lower State adopted risk level, in the range of 10^{-4} to 10^{-6}, EPA has chosen a 10^{-6} risk level to protect the average exposed individual at a conservative incremental lifetime cancer risk.

A second strong reason is that a 10^{-6} risk level is consistent with what most States have selected, or are expected to select, as their risk level. A recent EPA status report on State compliance with section 303(c)(2)(B) found that 36 of the 57 States and Territories will select 10^{-6} as their risk level (12 States have selected or are expected to select 10^{-5} and 9 of the remaining States are undecided). EPA's proposal is therefore consistent with the majority of the States, does not contradict those States choosing a 10^{-6} risk level and does not preclude States from eventually choosing a risk level below 10^{-6}.

Third, by selecting a risk level of 10^{-6} for the average exposed individual, some assurance is provided against the possibility that current section 304(a) criteria are not sufficiently stringent. The various parameters used in deriving the Section 304(a) criteria (e.g. cancer potency slopes, reference doses, bioaccumulation factors, etc.) are based on the state of present science. With additional research and experience, EPA may find that one or more of these factors understates the actual public risk. In addition, in many cases, EPA's criteria are based upon a single health effect. As the science evolves and available information expands, there is the potential that EPA will determine that other endpoints or effects are more sensitive than those currently considered. This risk level also reflects a recognition that certain factors are not considered in the current criteria methodology.

A proposed 10^{-6} risk level does not preclude State alternatives. If a State decides that a different risk level is more appropriate, it may avoid Federal promulgation by completing its standards adoption process in compliance with section 303(c)(2)(B). As discussed earlier, this would be the case both in advance of or subsequent to final promulgation.

6. Applying EPA's Nationally Derived Criteria to State Waters

To assist States in modifying EPA's water quality criteria, the Agency has provided guidance on developing site specific criteria for aquatic life and human health (see Water Quality Standards Handbook and the Guidelines for Deriving Numerical National Water Quality Criteria). This guidance can be used by the appropriate regulatory authority to develop alternative criteria Where such criteria are more stringent than the criteria finally developed pursuant to this proposed rulemaking, section 510 of the Clean Water Act (33 U.S.C. 1370) provides authority for their implementation and enforcement in lieu of today's proposed criteria.

EPA's experience with such site-specific criteria has verified that the national criteria are generally protective and appropriate for direct use by the States.

G. Description of the Proposed Rule

EPA's final rule would establish a new § 131.36 in 40 CFR part 131 entitled, "Toxics Criteria for Those States Not Fully Complying With Clean Water Act section 303(c)(2)(B)."

1. Scope

Subsection (a), entitled "Scope", clarifies that this section is not a general promulgation of the section 304(a) criteria for priority toxic pollutants but is restricted to specific pollutants in specific States.

2. EPA Criteria for Priority Toxic Pollutants

Subsection (b) presents a matrix of the applicable EPA criteria for priority toxic pollutants. Section 303(c)(2)(B) of the Act addresses only pollutants listed as "toxic" pursuant to section 307(a) of the Act. As discussed earlier in this preamble, the section 307(a) list of toxics contains 65 compounds and families of compounds, which potentially include thousands of specific compounds. The Agency uses the list of 126 "priority toxic pollutants" for administrative purposes (see 40 CFR part 423, appendix A). Reference in this proposed rule to priority toxic pollutants, toxic pollutants, or toxics refers to the 126 priority toxic pollutants.

However, EPA has not developed both aquatic life and human health section 304(a) criteria for all of the 126 priority toxic pollutants. The matrix in paragraph (b) contains human health criteria in Column D for 102 priority toxic pollutants which are divided into criteria (Column I) for water consumption (i.e., 2 liters per day) and aquatic life consumption (i.e., 6.5 grams per day of aquatic organisms), and Column II for aquatic life consumption only. The term aquatic life includes fish and shellfish such as shrimp, clams, oysters and mussels. The total number of priority toxic pollutants with criteria proposed today differs from the total number of priority toxic pollutants with section 304(a) criteria because EPA has developed and is proposing chromium criteria for two valence states. Thus, although chromium is a single priority toxic pollutant, there are two criteria for chromium. See numbers 5a and 5b in proposed § 131.36(b).

The matrix contains aquatic life criteria for 30 priority pollutants. These are divided into freshwater criteria (Column B) and saltwater criteria (Column C). These columns are further divided into acute and chronic criteria. The aquatic life criteria are considered by EPA to be protective when applied under the conditions described in the section 304(a) criteria documents and in the "Technical Support Document for Water Quality-based Toxics Control." For example, waterbody uses should be protected if the criteria are not exceeded, on average, once every three year period. It should be noted that the criteria maximum concentrations (the acute criteria) are one-hour average concentrations and that the criteria continuous concentrations (the chronic criteria) are four-day averages. It should also be noted that for certain of the metals, the actual criteria are equations which are included as footnotes to the matrix. The toxicity of these metals are water hardness dependent. The values shown in the table are based on a hardness expressed as calcium carbonate of 100 mg/l. Finally, the criterion for pentachlorophenol is pH dependent. The equation is the actual criterion and is included as a footnote. The value shown in the matrix is for a pH of 7.8 units.

Several of the freshwater aquatic life criteria are incorporated into the matrix in the format used in the 1980 criteria methodology. This distinction is noted in footnote (g) to the table. EPA has not updated these criteria for various reasons. Footnote (g) describes an approximate method to translate these 1980 criteria to the equivalent criteria by the 1985 methodology. EPA could make this translation in a final rule and solicits public comment on which approach is better.

The matrix also includes toxicity-based human health criteria for copper, 2-chloroethylvinyl ether, 1,2-trans-dichloroethylene, 2-chlorophenol, acenaphthene, butylbenzyl phthalate, and N-nitrosodi-n-propylamine. The criteria for these substances are shown in parentheses and are *not* being proposed today but are included for informational purposes and as notice for consideration in all future State triennial reviews. Although sufficient information on these compounds was previously unavailable to calculate a section 304(a) criterion based on carcinogenicity or systemic toxicity, Agency-approved information in IRIS now allow calculation of these criteria using the EPA criteria guidelines. EPA has assembled another matrix which provides all of the factors used to calculate the proposed human health criteria. This supplementary matrix is included in the record for this proposal.

3. Applicability

Section 131.36(d) establishes the applicability of the criteria proposed for each included State. It provides that the criteria promulgated for each State supersede and/or complement any State criteria for that toxic pollutant. EPA believes it has not proposed to supersede any State criteria for priority toxic pollutants unless the State-adopted criteria are disapproved or otherwise insufficient. The approach followed by the Agency in preparing proposed § 131.36(d) is described in section E.2, and further rationale is provided in section E.3 of this preamble. EPA invites comment on the accuracy of the Agency's decisions to include or exclude particular priority toxic pollutant criteria.

EPA's principal purpose today is to propose the toxics criteria necessary to comply with section 303(c)(2)(B). However, in order for such criteria to achieve their intended purpose the implementation scheme must be such that the final results protect the public health and welfare. In section F of this preamble a discussion focused on the factors in EPA's assessment of criteria for carcinogens. For example, fish consumption rates, bioaccumulation factors, and cancer potency slopes were discussed. When any one of these factors is changed, the others must also be evaluated so that, on balance, resulting criteria are adequately protective.

Once an appropriate criterion is selected for either aquatic life or human health protection, then appropriate conditions for calculating water quality-based effluent limits for that chemical must be established in order to maintain the intended stringency and achieve the necessary toxics control. EPA has included in this proposal appropriate implementation factors necessary to maintain the level of protection intended. These proposals are included in subsection (c).

For example, most States have low flow values for streams and rivers which establish flow rates below which numeric criteria may be exceeded. These low flow values became design flows for sizing treatment plants and developing water quality-based effluent limits. Historically, these so-called "design" flows were selected for the purposes of waste load allocation analyses which focused on instream dissolved oxygen concentrations and protection of aquatic life. With the publication of the 1985 Technical Support Document for Water Quality Based Toxics Control (TSD), EPA introduced hydrologically and biologically based analyses for the protection of aquatic life and human health.[1] EPA recommended either of two methods for calculating acceptable low flows, the traditional hydrologic method developed by the U.S. Geological Survey and a biological based method developed by EPA. The

[1] These concepts have been expanded subsequently in guidance entitled "Technical Guidance Manual for Performing Wasteload Allocations, Book 6, Design Conditions," USEPA, Office of Water Regulations and Standards, Washington, DC (1986). These new developments are included in appendix D of the revised TSD. The discussion here is greatly simplified and is provided to support EPA's decision to propose baseline application values for instream flows and thereby maintain the intended stringency of the criteria for priority toxic pollutants.

results of either of these two methods may be used.

Some States have adopted specific low flow requirements for streams and rivers to protect designated uses against the effects of toxics. Generally these have followed the guidance in the TSD. However, EPA believes it is essential to include proposed design flows in today's proposed rule so that, where States have not yet adopted such design flows, the criteria proposed today would be implemented appropriately. Clearly, if the proposed criteria were implemented using inadequate design flows, the resulting toxics controls would not be fully effective, because the resulting ambient concentrations would exceed EPA's recommended levels.

In the case of aquatic life, more frequent violations than the once in 3 years assumed exceedences would result in diminished vitality of stream ecosystems characteristics by the loss of desired species such as sport fish. The low flow values proposed are:

Aquatic Life:	
Acute criteria (CMC).	1 Q 10 or 1 B 3.
Chronic criteria (CCC).	7 Q 10 or 4 B 3
Human Health:	
Non-carcinogens	30 Q 5.
Carcinogens	harmonic mean flow.

Where:

1 Q 10 is the lowest one day flow with an average recurrence frequency of once in 10 years determined hydrologically;

1 B 3 is biologically based and indicates an allowable exceedence of once every 3 years. It is determined by EPA's computerized method (DFLOW model);

7 Q 10 is the lowest average 7 consecutive day low flow with an average recurrence frequency of once in 10 years determined hydrologically;

4 B 3 is biologically based and indicates an allowable exceedence for 4 consecutive days once every 3 years. It is determined by EPA's computerized method (DFLOW model);

30 Q 5 is the lowest average 30 consecutive day low flow with an average recurrence frequency of once in 5 years determined hydrologically; and

The harmonic mean flow is a long term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows.

EPA is proposing the harmonic mean flow to be applied with human health criteria. The concept of a harmonic mean is a standard statistical data analysis technique. EPA's model for human health effects assumes that such effects occur because of a long-term exposure to low concentration of a toxic pollutant. For example, two liters of water per day for seventy years. To estimate the concentrations of the toxic pollutant in those two liters per day by withdrawal from streams with a high daily variation in flow, EPA believes the harmonic mean flow is the correct statistic to use in computing such design flows rather than other averaging techniques.[2]

All waters, whether or not suitable for such hydrologic calculations but included in this proposed rule (including lakes, estuaries, and marine waters), must contain the criteria proposed today. Such attainment must occur at the end of the discharge pipe, unless the State has an EPA approved mixing zone regulation. If the State has an EPA approved mixing zone regulation, then the criteria would apply at the locations stated in that regulation. For example, the chronic criteria (CCC) must apply at the geographically defined boundary of the mixing zone. Discussion and guidance of these factors are included in the revised TSD in chapter 4.

EPA is aware that the criteria proposed today for some of the priority toxic pollutants are at concentrations less than EPA's current analytical detection limits. Detection limits have never been an acceptable basis for setting standards since they are not related to actual environmental impacts. The environmental impact of a pollutant is based on a scientific determination, not an arbitrary measuring technique which is subject to change. Setting the criteria at levels that reflect adequate protection tends to be a forcing mechanism to improve analytical detection methods. As the methods improve, limits closer to the actual criteria necessary to protect aquatic life and human health are measurable. The Agency does not believe it is appropriate to promulgate insufficiently protective criteria (e.g., criteria equal to the current analytical detection limits).

EPA does believe, however, that the use of analytical detection limits are appropriate for determining compliance with NPDES permit limits. This historical view of the role of detection limits was recently articulated in guidance for translating dioxin criteria into NPDES permit limits which is the principal method used for water quality standards enforcement.[3] This guidance presents a model for addressing toxic pollutants which have criteria recommendations less than current detection limits. This guidance is equally applicable to other priority toxic pollutants with criteria recommendations less than current detection limits. The guidance explains that detection limits may be used for purposes of determining compliance with permit limits, but not for purposes of establishing water quality criteria or permit limits. Because under the Clean Water Act analytical detection limits are appropriately used only in connection with NPDES permit limit compliance determinations, EPA has not considered analytical detection limits in deriving the criteria proposed today.

EPA has added provisions in paragraph (c)(3) to determine when fresh water or saltwater aquatic life criteria apply. The structure of the paragraph is to establish presumptively applicable rules and to allow for site-specific determinations where the rules are not consistent with actual field conditions. Because a distinct separation generally does not exist between fresh water and marine water aquatic communities, EPA is proposing the following: (1) The fresh water criteria apply at salinities of 1 part per thousand and below; (2) marine water criteria apply at 10 parts per thousand and above; and (3) at salinities between 1 and 10 parts per thousand the more stringent of the two apply unless EPA approves another site specific criterion for the pollutant. This proposed assignment of criteria for fresh, brackish and marine waters was developed in consultation with EPA's research laboratories at Duluth, Minnesota and Narragansett, Rhode Island. The Agency believes such an approach is consistent with field experience.

In paragraph (c)(4)(i) EPA has included a limitation on the amount of hardness that EPA can allow to antagonize the toxicity of certain metals (see footnote (e) in the criteria matrix in paragraph (b) of the rule). The data base used for the Section 304(a) criteria documents for metals do not include data supporting the extrapolation of the hardness effects on metal toxicity beyond a range of hardness of 25 mg/l to 400 mg/l (expressed as calcium carbonate). Thus, the aquatic life values for the CNC (acute) and CCC (chronic) criteria for these metals in waters with a hardness less than 25 mg/l, must nevertheless use 25 mg/l when calculating the criteria; and in waters with a hardness greater than 400 mg/l, must nevertheless use 400 mg/l when calculating the criteria.

[2] For a description of harmonic means see "Design Stream Flows Based on Harmonic Means," Lewis A. Rossman, J. of Hydraulics Engineering, Vol. 116, No. 7, July, 1990. This article is contained in the record for this proposal.

[3] Strategy for the Regulation of Discharges of PHDDs and PHDFs from Pulp and Paper Mills to Waters of the United States," memorandum from the Assistant Administrator for Water to the Regional Water Management Division Directors and NPDES State Directors, May 21, 1990.

Subsection (d) lists the States for which rules are being proposed. For each identified State, the water uses impacted (and in some cases the waters covered) and the criteria proposed are identified.

H. Specific Issues for Public Comment

As is the Agency's custom, EPA would like to request that particular public review be directed to the issues and alternatives presented in this section. Although the issues presented below are particularly notable and worthy of comment, EPA encourages public comment on any aspect of this proposed rule.

1. In section D of this preamble, EPA has presented a discussion of how EPA determines State compliance with section 303(c)(2)(9). The process described has been the Agency's general practice since the beginning of the water quality standards program, although the requirements specific to toxics criteria have evolved over the years. Briefly stated, EPA's ten Regional offices review the State-adopted standards to ascertain compliance with the Clean Water Act using the information developed by the State and other relevant and available data and information.

For compliance with section 303(c)(2)(B), EPA's focus in many cases was on the process the State used to assemble the criteria for those priority toxic pollutants which could reasonably be expected to interfere with the State's designated uses. For example, EPA's review of individual State water quality standards had to balance a need for national consistency with the need to implement the CWA scheme that provides for State primacy and State-specific approaches. If EPA had information on a toxic pollutant sufficient to satisfy the test that the pollutant can reasonably be expected to interfere with designated uses, and the State did not adopt sufficient, scientifically defensible criteria for that pollutant, EPA disapproved the State action as being inconsistent with Section 303(c)(2)(B). Alternative approaches could have had either a narrower focus on fewer priority toxic pollutants (for example, relying only on the results of the section 304(l) short list process) or might have been broader, (for example, requiring most States to adopt criteria for the complete list of priority toxic pollutants addressed in EPA section 304(a) criteria recommendations). EPA solicits comment on whether the Agency's traditional review process should have been changed.

2. EPA's approach and rationale for deciding which criteria to propose for a State is discussed in section E of this Preamble. Briefly stated, EPA either: (1) Proposed to promulgate Federal criteria for all priority toxic pollutants not acceptably addressed by approved State criteria (this approach is used for most States), or (2) proposed to promulgate Federal criteria only for specific priority pollutants for which State criteria are lacking or insufficient (this approach is used for only a few States). EPA could have used other approaches and solicits public comment. For example, EPA could have relied totally on the State's own determination pursuant to section 304(l) and 305(b), or entirely on an Option 1 approach of promulgating all Federal criteria for all State waters.

3. This proposed rulemaking includes proposed minimum implementation factors for the criteria, such as flow conditions. As proposed, these factors are dependent on existing State rules but subject to base values which are those used in developing the criteria. EPA's revised TSD explains more fully the details of these base values. EPA could rely entirely on existing State rules or establish the proposed Federal rules.

4. The conditions under which States will be removed from the rule, either before or after final promulgation, are described in section E.4 of this preamble. EPA could make the conditions for removing the applicability of the rule to a State more or less stringent. A difficult aspect of this issue is a definition of what the State must adopt for EPA to withdraw the applicability of its rule entirely. As currently stated, EPA's policy is that if the State's standards are judged to meet the requirements of the Act and thereby provide adequate environmental protection, EPA will withdraw the applicability of the Federal Rule as to that State. In the context of this proposal, the State would have to demonstrate that the criteria it adopted meet the statutory test of protecting the public health and would protect designated uses. State compliance could be by any one or a combination of the 3 options described in EPA's guidance. Once such a showing were made EPA would propose to withdraw the applicability of its rule entirely. However, if a State fails to make such a demonstration for all pollutants, partial withdrawals for certain pollutants could occur, leaving applicable parts of the Federal rule.

5. EPA must also decide whether it should pick a uniform cancer risk level of, for example, 10^{-6}, for all States included in a final rule, or whether different risk levels for different States are appropriate. EPA today proposes the human health criteria at a cancer risk level of 10^{-6} because such a risk level is conservative for the general population and in the generally applied risk range. However, as noted in section F.5., EPA has approved human health risk levels of 10^{-5} in 10 States, and for some criteria and uses risk levels of 10^{-4}. EPA's review of the explanations provided by the States supporting State-adopted risk levels of less than 10^{-5} focuses on public participation and the supportability of the risk factors included in the State's analysis.

While today's proposed action is predicated on a 10^{-6} risk level for carcinogens, another option that the public should consider in responding to this rule is the application of the proposed criteria at a 10^{-5} risk level. EPA's rationale for proposing at a 10^{-6} risk level was articulated earlier in the preamble. However, there are several arguments to support a less protective 10^{-5}level. The model used to calculate the criteria for carcinogens is a conservative one and has a very low probability of underestimating the potency of a carcinogen. As a result, a higher level of accepted risk as the endpoint for criteria calculations may be reasonable. For "Class C" carcinogens, i.e., those for which the data demonstrating oncogenicity in animal studies are most limited, a 10^{-5} risk level is closer to the criteria values calculated as Rfds (non-cancer endpoints of toxicity) for these chemicals. Use of RfDs reduces the likelihood that EPA is over-regulating chemicals of less definitive cancer potency. A 10^{-5} risk is within the range of accepted risks for other major EPA rulemakings which aim to protect the general public, such as national drinking water standards.

Similarly, EPA must decide what a State must adopt in the way of a risk level for EPA to withdraw a final rule. The question to be addressed is whether EPA can accept less stringent risk levels (applied statewide; by individual chemicals, or by geographical sub-area) than contained in EPA's final rule if such less stringent risk levels were adopted following State administrative procedures and adequately supported by the administrative record.

6. Today's proposed rulemaking includes an Agency proposal to establish criteria for only those EPA priority toxic pollutant criteria which are based on toxic effects. The Agency could include other section 304(a) priority toxic pollutant criteria

recommendations which are based on organoleptic (i.e., taste and odor) effects. The logic would be that the congressional reference to "toxic pollutants" in section 303(c)(2)(B) was the generic list of 126 priority toxic pollutants and EPA should include all such criteria developed for these pollutants rather than just those based on toxicity. Organoleptic effects cause taste and odor problems in drinking water which may increase treatment costs or the selection by the public of alternative but less protective sources of drinking water; and may cause tainting or off flavors in fish flesh and other edible aquatic life reducing their marketability, thus diminishing the recreational and resource value of the water. EPA believes that because the Section 303(c)(2)(B) focuses on toxicity of the priority toxic pollutants, EPA's proposal should likewise focus on toxicity.

7. EPA also invites public comment on the merits of promulgating a translator procedure (that could support derivation of new or revised chemical-specific criteria for those priority toxic pollutants for which EPA has not issued section 304(a) criteria guidance) for States in this rule to enhance State and EPA implementation of section 303 (c)(2)(B). Such a procedure would supplement the specific numeric criteria included in this proposal. The rationale for, and specifics of, such an approach are described below.

As discussed in previous sections of this preamble, CWA section 303(c)(2)(B) represents a clear congressional mandate for State adoption of chemical-specific numeric criteria for priority toxic pollutants where EPA has issued section 304(a) criteria guidance. However, where no such criteria exist, section 303(c)(2)(B) went on to direct States that, " * * * Where such numerical criteria are not available, whenever a State reviews water quality standards * * * or revises or adopts new standards * * *, such State shall adopt criteria based on biological monitoring or assessment methods * * *.

EPA's December 1988 national guidance provided States with three options for satisfying the chemical-specific criteria requirements. Option 3 of the guidance allows States to adopt and apply translator procedures. As described in section B–3 of this preamble, such translator procedures are defined as the methods, equations, and protocols by which a State calculates derived chemical-specific numeric criteria for priority toxic pollutants to ensure that the State's narrative toxics criterion is fully satisfied.

There are several alternative approaches for establishing a translator procedure. All approaches would utilize EPA's criteria guidelines (i.e., for aquatic life and human health as described in section F.1. of this preamble) as the basis for deriving chemical-specific criteria. They could also require EPA to periodically issue an updated list of derived numeric criteria and notice the availability of the list in the **Federal Register.**

One alternative would be to promulgate a mechanism for State usage only for the pollutants where EPA has not issued a section 304 (a) criteria guidance document.

Another alternative would be to allow criteria revisions in specific situations where EPA determines that a revised criterion is necessary. For example, if EPA issued a final revised estimate of the cancer potency slope of a priority toxic pollutant (i.e., by adding it to IRIS), such cancer slopes would be available for use in deriving new human health criteria for that pollutant following the translator procedure. Another example would be situations where additional data on the toxicity of a pollutant to aquatic life becomes available such that the minimum database requirements in the EPA criteria guidelines are satisfied. In such situations, the data could be applied to the translator procedure to derive new or revised aquatic life criteria more rapidly than the current method of proposing for comment and then publishing a final section 304(a) recommendation for subsequent consideration by States. This alternative would apply to criteria for both aquatic life and human health protection and could apply to pollutants for which a section 304(a) criteria recommendation exists or to those pollutants where no such recommendation exists.

A third approach would limit the applicability of the translator procedure to the priority toxic pollutants for which numeric criteria are contained in today's proposed rulemaking. Under this alternative, criteria could not be derived for pollutants without a section 304(a) criteria recommendation using the translator procedure, even where: (1) Formal Agency estimates of the parameters necessary to support derivation are issued, or (2) the data necessary to satisfy the minimum database requirements become available.

A final alternative providing only limited flexibility would be to limit use of the translator procedure to human health criteria where the Agency issues a final revised risk assessment for the parameter in IRIS. Such IRIS estimates are subject to extensive intra-Agency review. This alternative would limit revisions to situations where EPA makes a formal determination that a revised human health risk assessment is appropriate.

The Agency invites public comment on the environmental, programmatic and legal aspects of including a promulgation of a criteria translator mechanism for each State in the final issuance of this rulemaking. Comment is also invited on the scope and details of such an approach as described above.

8. EPA solicits comment on the section 304(a) assessment methodology (cancer and non-cancer) used to derive human health criteria for section 307(a) priority toxic pollutants. This methodology is discussed in section F of the Preamble but is derived in the criteria methodology published in the Federal Register on November 26, 1980 (45 FR 79347). For example, EPA has included proposed criteria for 3 PAHs (acenaphthylene, benzo(ghi)perylene and phenanthrene). The included criteria treat these PAHs as carcinogens and are based on data for benzo(a)pyrene. The section 304(a) criteria methodology does not distinguish between classes of carcinogens and allows the use of closely related chemicals of similar structure to carry the same criteria recommendation. This methodology is basic to the development of the human health criteria proposed today.

I. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses for major regulations. Major regulations are those that impose an annual cost to the economy of $100 million or more, or meet other criteria. This is a major regulation, however, a regulatory impact analyses has been waived by the Office of Management and Budget for this proposal for the reasons discussed below.

This rulemaking establishes a legal minimum standard where States have failed to comply with the statutory mandate to adopt numeric criteria for toxic pollutants. The impacts to dischargers are no different than what would occur if States had acted to adopt their own standards. There will be a cost to dischargers for complying with these proposed new standards as the standards are translated into specific NPDES permit limits for individual dischargers. However, for reasons discussed in more detail below, a meaningful cost estimate is difficult to

develop. The increased costs incurred will depend upon the type and amount of pollutants discharged and the extent to which additional treatment needs to be installed beyond that which is required to meet the generally applicable technology-based limit regulations. As discussed earlier in the Preamble, the control of toxic pollutants is expected to provide societal benefits by reducing risk to human health and to reduce ecological impacts on aquatic life.

The general impacts on point source dischargers, publicly owned treatment works (POTWs) and nonpoint sources may be described. By establishing new goals for a waterbody, the addition of criteria for toxic pollutants into State water quality standards will affect the wasteload allocations developed for each waterbody segment to the extent the pollutant is actually discharged into the stream. If the pollutant is not present in the wastestream, the addition of criteria has no impact. Revised wasteload allocations may result in adjustments to individual NPDES permit limits for point source dischargers which could result in increased incremental treatment costs required to meet the revised water quality standards. These costs will vary depending on the types of treatment involved, the number and kind of pollutant(s) being treated, and the controls necessary to meet the technologically based effluent limits for a given industry.

Compliance costs for indirect industrial dischargers will be reflected in increased incremental costs for POTWs assuming that industrial sources are the primary source of toxics discharged by POTWs and that the incremental treatment costs incurred by POTWs will be passed along to their industrial dischargers. Possible areas where the addition of criteria for toxic pollutants into State standards may have a cost impact include: (1) POTW expansion, (2) operational changes, and (3) increased operator training costs.

Increased costs may also be incurred by nonpoint sources of toxic pollutants to the extent that best management practices need to be modified to reflect the revised standards. Although there is no comparable Federal permit program for nonpoint sources as there is to control point source discharges, there are existing State regulatory programs to control nonpoint sources.

Monitoring programs to generate information on the existing quality of water and the kinds and amount of pollutants being discharged are likely to be affected by this proposed rulemaking. However, the addition of criteria for toxic pollutants into State standards does not require the State to engage in a program to monitor for all such pollutants unless there is some reasonable expectation that the pollutants are manufactured or actually used in the State with the likelihood that they will be discharged into surface waters.

While recognizing that the application of criteria for toxic pollutants will result in increased treatment costs and that such costs are appropriately considered in several areas of the standards to permits process, it is important to consider the difficulties and the large potential uncertainties involved in developing meaningful cost estimates for purposes of this proposed rulemaking. The development of compliance cost estimates would require numerous assumptions about pollutant loadings, impacts of technology-based regulations on loadings, combinations of pollutants handled by a given treatment approach, the costs of each treatment train and the variables for each pollutant in each waterbody in each State. There are many sources of uncertainty in making these assumptions, and the resulting estimates could contain such significant estimation errors that the figures would have questionable value.

This proposed rule, including the above determination, has been reviewed by the Office of Management and Budget. Any written comments from OMB to EPA and any EPA response to those comments are included in the public record and are available for inspection.

J. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, Pub. L. 96–354) requires EPA to assess whether its regulations create a disproportionate effect on small entities. According to the provisions of the Act, EPA must prepare an initial regulatory flexibility analysis for all proposed regulations that have a significant impact on a substantial number of small entities. There will be a cost to dischargers for complying with these standards as they are translated into permit limits for individual dischargers. However, for the reasons discussed in the previous section, a meaningful estimate of the total cost or impact on small entities cannot be meaningfully computed.

This proposed regulation fills a regulatory void left by States not fully complying with the statute; thus, the impact on small entities is not different than what would have occurred if States had acted to adopt standards. In addition, the water quality standards regulation provides several means (such as adjusting designated uses, setting site-specific criteria, or granting variances) to consider costs and adjust standards to account for the impacts on dischargers.

K. Paperwork Reduction Act

The information collection requirements associated with this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 0988.04) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (PM–223Y); Washington, DC 20460 or by calling (202) 382–2740.

Public reporting burden for this collection of information is estimated to average 745 hours per respondent, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223Y, U.S. EPA, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs; Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in th s proposal.

List of Subjects

Water quality standards, Toxic pollutants.

Dated: November 6, 1991.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, part 131 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: Clean Water Act, Pub. L. 92–500, as amended; 33 U.S.C. 1251 *et seq.*

2. Section 131.36 is added to subpart D to read as follows:

§ 131.36 Toxics criteria for those states not complying with Clean Water Act section 303(c)(2)(B)

(a) *Scope.* This section is not a general promulgation of the section 304(a) criteria for priority toxic pollutants but is restricted to specific pollutants in specific States.

(b) *EPA's Section 304(a) Criteria for Priority Toxic Pollutants*

A		B		C		D	
		Freshwater		Saltwater		Human health (10^{-6} risk for carcinogens)	
						For consumption of:	
(#) Compound	CAS No.	Criterion maximum concentration d (µg/L) B1	Criterion continuous concentration d (µg/L) B2	Criterion maximum concentration d (µg/L) C1	Criterion continuous concentration d (µg/L) C2	Water and organisms (µg/L) D1	Organisms only (µg/L) D2
1 Antimony	7440360					14 a	4300 a
2 Arsenic	7440382	360	190	69	36	0.018 bc	0.14 bc
3 Beryllium	7440417					0.0077 ac	0.13 ac
4 Cadmium	7440439	3.9 e	1.1 e	43	9.3	16	170 aj
5a Chromium (III)	16065831	1700 e	210 e			33000 a	670000 a
b Chromium (VI)	18540299	16	11	1100	50	170 a	3400 a
6 Copper	7440508	18 e	12 e	2.9	2.9	(1300) b	
7 Lead	7439921	82 e	3.2 e	220	8.5	50	
8 Mercury	7439976	2.4	0.012 i	2.1	0.025 i	0.14	0.15
9 Nickel	7440020	1400 e	160 e	75	8.3	610 a	4600 a
10 Selenium	7782492	20	5	300	71	100 b	6800 bj
11 Silver	7440224	4.1 e		2.3		105 a	65000 aj
12 Thallium	7440280					1.7 a	6.3 a
13 Zinc	7440666	120 e	110 e	95	86		
14 Cyanide	57125	22	5.2	1	1	700 a	220000 aj
15 Asbestos	1332214					7,000,000 fibers/L k	
16 2,3,7,8-TCDD (Dioxin)	1746016					0.000000013 c	0.000000014 c
17 Acrolein	107028					320	780
18 Acrylonitrile	107131					0.059 ac	0.66 ac
19 Benzene	71432					1.2 ac	71 ac
20 Bromoform	75252					4.3 ac	360 ac
21 Carbon Tetrachloride	56235					0.25 ac	4.4 ac
22 Chlorobenzene	108907					680 a	21000 aj
23 Chlorodibromomethane	124481					0.41 ac	34 ac
24 Chloroethane	75003						
25 2-Chloroethylvinyl Ether	110758						
26 Chloroform	67663					5.7 ac	470 ac
27 Dichlorobromomethane	75274					0.27 ac	22 ac
28 1,1-Dichloroethane	75343						
29 1,2-Dichloroethane	107062					0.38 ac	99 ac
30 1,1-Dichloroethylene	75354					0.057 ac	3.2 ac
31 1,2-Dichloropropane	78875					(0.52) kc	(39) kc
32 1,3-Dichloropropylene	542756					10 a	1700 a
33 Ethylbenzene	100414					3100 a	29000 a
34 Methyl Bromide	74839					48 a	4000 a
35 Methyl Chloride	74873					5.7 ac	470 ac
36 Methylene Chloride	75092					4.7 ac	1600 ac
37 1,1,2,2-Tetrachloroethane	79345					0.17 ac	11 ac
38 Tetrachloroethylene	127184					0.8 c	8.85 c
39 Toluene	108883					6800 a	200000 a
40 1,2-Trans-Dichloroethylene	156605					(700) a	(140000) a
41 1,1,1-Trichloroethane	71556					3100 a	(170000) a
42 1,1,2-Trichloroethane	79005					0.60 ac	42 ac
43 Trichloroethylene	79016					2.7 c	81 c
44 Vinyl Chloride	75014					2 c	525 c
45 2-Chlorophenol	95578					(120) a	(400) a
46 2,4-Dichlorophenol	120832					93 a	790 aj
47 2,4-Dimethylphenol	105679					(540) a	(2300) a
48 2-Methyl-4,6-Dinitrophenol	534521					13.4	765
49 2,4-Dinitrophenol	51285					70 a	14000 a
50 2-Nitrophenol	88755						
51 4-Nitrophenol	100027						
52 3-Methyl-4-Chlorophenol	59507						
53 Pentachlorophenol	87865	20 f	13 f	13	7.9	0.28 ac	8.2 acj
54 Phenol	108952					21000 a	4600000 aj
55 2,4,6-Trichlorophenol	88062					2.1 ac	6.5 ac
56 Acenaphthene	83329					(1200) a	(2700) a
57 Acenaphthylene	208968					0.0028 c	0.031 c
58 Anthracene	120127					9600 a	110000 a
59 Benzidine	92875					0.00012 ac	0.00054 ac
60 Benzo(a)Anthracene	56553					0.0028 c	0.031 c
61 Benzo(a)Pyrene	50328					0.0028 c	0.031 c
62 Benzo(b)Fluoranthene	205992					0.0028 c	0.031 c

A		B		C		D	
		Freshwater		Saltwater		Human health (10^{-6} risk for carcinogens)	
(#) Compound	CAS No.	Criterion maximum concentration d (µg/L) B1	Criterion continuous concentration d (µg/L) B2	Criterion maximum concentration d (µg/L) C1	Criterion continuous concentration d (µg/L) C2	For consumption of: Water and organisms (µg/L) D1	For consumption of: Organisms only (µg/L) D2
63 Benzo(ghi)Perylene	191242					0.0028 c	0.031 c
64 Benzo(k)Fluoranthene	207089					0.0028 c	0.031 c
65 Bis(2-Chloroethoxy)Methane	111911						
66 Bis(2-Chloroethyl)Ether	111444					0.031 ac	1.4 ac
67 Bis(2-Chloroisopropyl)Ether	108601					1400 a	170000 a
68 Bis(2-Ethylhexyl)Phthalate	117817					1.8 ac	5.9 ac
69 4-Bromophenyl Phenyl Ether	101553						
70 Butylbenzyl Phthalate	85687					(3000) a	(5200) a
71 2-Chloronaphthalene	91587					(1700) a	(4300) a
72 4-Chlorophenyl Phenyl Ether	7005723						
73 Chrysene	218019					0.0028 c	0.031 c
74 Dibenzo(a,h)Anthracene	53703					0.0028 c	0.031 c
75 1,2-Dichlorobenzene	95501					2700 a	17000 a
76 1,3-Dichlorobenzene	541731					400	2600
77 1,4-Dichlorobenzene	106467					400	2600
78 3,3'-Dichlorobenzidine	91941					0.04 ac	0.077 ac
79 Diethyl Phthalate	84662					23000 a	120000 a
80 Dimethyl Phthalate	131113					313000	2900000
81 Di-n—Butyl Phthalate	84742					2700 a	12000 a
82 2,4-Dinitrotoluene	121142					0.11 c	9.1 c
83 2,6-Dinitrotoluene	606202						
84 Di-n-Octyl Phthalate	117840						
85 1,2-Diphenylhydrazine	122667					0.040 ac	0.54 ac
86 Fluoranthene	206440					300 a	370 a
87 Fluorene	86737					1300 a	14000 a
88 Hexachlorobenzene	118741					0.00075 ac	0.00077 ac
89 Hexachlorobutadiene	87683					0.44 ac	50 ac
90 Hexachlorocyclopentadiene	77474					240 a	17000 aj
91 Hexachloroethane	67721					1.9 ac	8.9 ac
92 Indeno(1,2,3-cd)Pyrene	193395					0.0028 c	0.031 c
93 Isophorone	78591					8.4 ac	600 ac
94 Naphthalene	91203						
95 Nitrobenzene	98953					17 a	1900 aj
96 N-Nitrosodimethylamine	62759					0.00069 ac	8.1 ac
97 N-Nitrosodi-n-Propylamine	621647					(0.005) ac	(1.4) ac
98 N-Nitrosodiphenylamine	86306					5.0 ac	16 ac
99 Phenanthrene	85018					0.0028 c	0.031 c
100 Pyrene	129000					960 a	11000 a
101 1,2,4-Trichlorobenzene	120821						
102 Aldrin	309002	3 g		1.3 g		0.00013 ac	0.00014 ac
103 alpha-BHC	319846					0.0039 ac	0.013 ac
104 beta-BHC	319857					0.014 ac	0.046 ac
105 gamma-BHC	58899	2 g	0.08 g	0.16 g		0.019 c	0.063 c
106 delta-BHC	319868						
107 Chlordane	57749	2.4 g	0.0043 g	0.09 g	0.004 g	0.00057 ac	0.00059 ac
108 4-4'-DDT	50293	1.1 g	0.001 g	0.13 g	0.001 g	0.00059 ac	0.00059 ac
109 4,4'-DDE	72559					0.00059 ac	0.00059 ac
110 4,4'-DDD	72548					0.00083 ac	0.00084 ac
111 Dieldrin	60571	2.5 g	0.0019 g	0.71 g	0.0019 g	0.00014 ac	0.00014 ac
112 alpha-Endosulfan	959988	0.22 g	0.056 g	0.034 g	0.0087 g	0.93 a	2.0 a
113 beta-Endosulfan	33213659	0.22 g	0.056 g	0.034 g	0.0087 g	0.93 a	2.0 a
114 Endosulfan Sulfate	1031078					0.93 a	2.0 a
115 Endrin	72208	0.18 g	0.0023 g	0.037 g	0.0023 g	0.76 a	0.81 aj
116 Endrin Aldehyde	7421934					0.76 a	0.81 aj
117 Heptachlor	76448	0.52 g	0.0038 g	0.053 g	0.0036 g	0.00021 ac	0.00021 ac
118 Heptachlor Epoxide	1024573	0.52 g	0.0038 g	0.053 g	0.0036 g	0.00010 ac	0.00011 ac
119 PCB-1242	53469219		0.014 g		0.03 g	0.000044 ac	0.000045 ac
120 PCB-1254	11097691		0.014 g		0.03 g	0.000044 ac	0.000045 ac
121 PCB-1221	11104282		0.014 g		0.03 g	0.000044 ac	0.000045 ac
122 PCB-1232	11141165		0.014 g		0.03 g	0.000044 ac	0.000045 ac
123 PCB-1248	12672296		0.014 g		0.03 g	0.000044 ac	0.000045 ac
124 PCB-1260	11096825		0.014 g		0.03 g	0.000044 ac	0.000045 ac
125 PCB-1016	12674112		0.014 g		0.03 g	0.000044 ac	0.000045 ac
126 Toxaphene	8001352	0.73	0.0002	0.21	0.0002	0.00073 ac	0.00075 ac
Total No. of Criteria (h) =		24	29	33	27	103	102

Footnotes:

a. Criteria revised to reflect current agency q_1^* or RfD, as contained in the Integrated Risk Information System (IRIS). The fish tissue bioconcentration factor (BCF) from the 1980 criteria documents was retained in all cases. Values in parentheses indicate that no health based criteria appeared in the 1980 documents. The criteria in parentheses are not being proposed today but are presented as notice for inclusion in future state triennial reviews.

b. EPA in the Office of Research and Development's Environmental Criteria and Assessment Office prepared draft updates of criteria documents for arsenic, copper and selenium which are used instead of IRIS for this rulemaking. Each document was entitled as an "Addendum" to the prior criteria documents. These documents are available in the record for this proceeding.

c. Criteria based on carcinogenicity (10^{-6} risk).

d. Criteria Maximum Concentration = the highest concentration of a pollutant to which aquatic life can be exposed for a short period of time (1-hour average) without deleterious effects.

Criteria Continuous Concentration = the highest concentration of a pollutant to which aquatic life can be exposed for an extended period of time (4-days) without deleterious effects.

µg/L = micrograms per liter

e. Freshwater aquatic life criteria for these metals are expressed as a function of total hardness (mg/L), as follows (where exp represents the base e exponential function). (Values displayed above in the matrix correspond to a total hardness of 100 mg/L.)

	CMC = exp{m_A [ln(hardness)] + b_A}		CCC = exp{m_C [ln(hardness)] + b_C}	
	m_a	b_A	m_C	b_C
Cadmium	1.128	−3.828	0.7852	−3.490
Copper	0.9422	−1.464	0.8545	−1.465
Chromium (III)	0.8190	3.688	0.8190	1.561
Lead	1.273	−1.460	1.273	−4.705
Nickel	0.8460	3.3612	0.8460	1.1645
Silver	1.72	−6.52		
Zinc	0.8473	0.8604	0.8473	0.7614

f. Freshwater aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows. (Values displayed above in the matrix correspond to a pH of 7.8.)

$CMC = \exp(1.005(pH) - 4.830)$ $CCC = \exp(1.005(pH) - 5.290)$

g. Aquatic life criteria for these compounds were issued in 1980 utilizing the 1980 Guidelines for criteria development. The acute values shown are final acute values (FAV). According to the 1980 Guidelines, the acute values were intended to be interpreted as instantaneous maximum values, and the chronic values shown were interpreted as 24-hour average values. EPA has not updated these criteria pursuant to the 1985 Guidelines. However, as an approximation, dividing the final acute values in columns B1 and C1 by 2 yields a Criterion Maximum Concentration. No numeric changes are required for columns B2 and C2, and EPA suggests using these values directly as Criterion Continuous Concentration.

h. These totals simply sum the criteria in each column. For aquatic life, there are 30 priority toxic pollutants with some type of freshwater or saltwater, acute or chronic criteria proposed. For human health, there are 102 priority toxic pollutants with either "water + fish" or "fish only" criteria proposed. Note that these totals count chromium as one pollutant even though EPA has developed criteria based on two valence states. In the matrix, EPA has assigned numbers 5a and 5b to the proposed criteria for chromium to reflect the fact that the list of 126 priority toxic pollutants includes only a single listing for chromium. Criteria enclosed in parentheses are also *not* included in the totals.

i. Applies to methyl mercury.

j. No criteria for protection of human health from consumption of aquatic organisms (excluding water) was presented in the 1980 criteria document or in the 1986 Quality Criteria for Water. Nevertheless, the criterion value has not been placed in parentheses, because sufficient information was presented in the 1980 document to allow a calculation of a criterion, even though the results of such a calculation were not shown in the document.

k. The criterion for asbestos is the MCL (56 FR 3526, January 30, 1991). The criteria for 1,2-dichloropropane have been derived using MCL (56 FR 3526, January 30, 1991).

General notes:

(1) This chart lists all of EPA's priority toxic pollutants whether or not criteria recommendations are available. Blank spaces indicate the absence of criteria recommendations. Because of variations in chemical nomenclature systems, this listing of toxic pollutants does not duplicate the listing in appendix A of 40 CFR part 423. EPA has added the Chemical Abstracts Service (CAS) registry numbers, which provide a unique identification for each chemical.

(2) The following chemicals have organoleptic based criteria recommendations that are not included on this chart (for reasons which are discussed in the preamble): copper, zinc, chlorobenzene, 2-chlorophenol, 2,4-dichlorophenol, acenaphthene, 2,4-dimethylphenol, 3-methyl-4-chlorophenol, hexachlorocyclopentadiene, pentachlorophenol, phenol

(3) For purposes of this rulemaking, freshwater criteria apply at salinity levels equal to or less than 1 part per thousand (ppt); saltwater criteria apply at salinity levels equal to or greater than 10 ppt; for waters with salinity between 1 and 10 ppt, the applicable criteria are the more stringent of the freshwater or saltwater criteria.

(c) *Applicability.* (1) The criteria in paragraph (b) of this section apply to the States' designated uses cited in paragraph (d) of this section and supersede any criteria adopted by the State, except when State regulations contain criteria which are more stringent for a particular use in which case the State's criteria will continue to apply;

(2) The criteria established in this section are subject to the State's general rules of applicability in the same way and to the same extent as are the other numeric toxics criteria when applied to the same use classifications including mixing zones, and low flow values below which numeric standards can be exceeded in flowing fresh waters, but only if these State general policies have been reviewed and approved previously by EPA after November 8, 1983.

(i) For all waters with approved EPA mixing zone regulations or implementation procedures, the criteria apply at the appropriate locations within or at the boundary of the mixing zones; otherwise the criteria apply throughout the waterbody including at the end of any discharge pipe, canal or other discharge point.

(ii) A State shall not use a low flow value below which numeric standards can be exceeded that is less stringent than the following for waters suitable for the establishment of low flow return frequencies (i.e., streams and rivers):

Aquatic Life

acute criteria (CMC); I Q 10 or I B 3

chronic criteria (CCC); 7 Q 10 or 4 B 3

Human Health

non-carcinogens; 30 Q 5

carcinogens; harmonic mean flow

where:

CMC—criteria maximum concentration = the water quality criteria to protect against acute effects in aquatic life and is the highest instream concentration of a priority toxic pollutant consisting of a one-hour average not to be exceeded more than once every three years on the average.

CCC—criteria continuous concentration = the water quality criteria to protect against chronic effects in aquatic life is the highest instream concentration of a priority toxic pollutant consisting of a 4-day average not to be exceeded more than once every three years on the average.

1 Q 10 is the lowest one day flow with an average recurrence frequency of once in 10 years determined hydrologically;

1 B 3 is biologically based and indicates an allowable exceedence of once every 3 years. It is determined by EPA's computerized method (DFLOW model);

7 Q 10 is the lowest average 7 consecutive day low flow with an average recurrence frequency of once in 10 years determined hydrologically:

4 B 3 is biologically based and indicates an allowable exceedence for 4 consecutive days once every 3 years. It is determined by EPA's computerized method (DFLOW model);

30 Q 5 is the lowest average 30 consecutive day low flow with an average recurrence frequency of once in 5 years determined hydrologically and, the harmonic mean flow is a long term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows.

(iii) If a State does not have such a low flow value for numeric standards compliance, then none shall apply and the criteria included in paragraph (d) of this section herein apply at all flows.

(3) The aquatic life criteria in the matrix in paragraph (b) of this section apply as follows:

(i) For waters in which the salinity is equal to or less than 1 part per thousand, the applicable criteria are the freshwater criteria in Column B.

(ii) For waters in which the salinity is equal to or greater than 10 parts per thousand, the applicable criteria are the saltwater criteria in Column C;

(iii) For waters in which the salinity is between 1 and 10 parts per thousand, the applicable criteria are the more stringent of the freshwater or saltwater criteria. However, the Regional Administrator may approve the use of alternative criteria if scientifically defensible information and data demonstrate that on a site-specific basis the biology of the waterbody is dominated by freshwater aquatic life and that freshwater criteria are more appropriate; or conversely, the biology of the waterbody is dominated by saltwater aquatic life and that saltwater criteria are more appropriate.

(4) Application of metals criteria. (i) For purposes of calculating freshwater aquatic life criteria for metals from the equations in footnote (e) in the criteria matrix in paragraph (b) of this section, the minimum hardness allowed for use in those equations shall not be less than 25 mg/l, as calcium carbonate, even if the actual ambient hardness is less than 25 mg/l as calcium carbonate. The maximum hardness value for use in those equations shall not exceed 400 mg/l as calcium carbonate, even if the actual ambient hardness is greater than 400 mg/l as calcium carbonate.

(ii) The hardness values used shall be consistent with the design discharge conditions established in pararaph (c)(2) of this section for flows and mixing zones.

(d) *Criteria for Specific Jurisdictions.*—(1) *Connecticut, Region 1*

(i) All waters assigned to the following use classifications in the "State of Connecticut Water Quality Standards" adopted pursuant to section 22a–426 of the Connecticut General Statutes are subject to the criteria in paragraph (d)(1)(ii) of this section, without exception:

II.5.(A)—Class AA Surface Waters
II.5.(B)—Class A and SA Surface Waters
II.5.(C)—Class B and SB Surface Waters

(ii) The following criteria from the matrix in paragraph (b) of this section apply to the use classifications identified in paragraph (d)(1)(i) of this section:

Use classification	Applicable criteria
Class AA; Class A; Class B waters where water supply use is designated.	Each of these classifications is assigned the criteria in: Column B(I)—all. Column B(II)—all. Column D(I)—all.
Class B waters where water supply use is not designated.	This classification is assigned the criteria in: Column B(I)—all. Column B(II)—all. Column D(II).
Class SA; Class SB	Each of these classifications is assigned the criteria in: Column C(I)—all. Column C(II)—all. Column D (II)—all.

(2) *New Hampshire, Region 1*

(i) All waters assigned to the following use classifications in the New Hampshire Revised Statutes Annotated Chapter 149:3 are subject to the criteria in paragraph (d)(2)(ii) of this section, without exception:

149:3.I Class A
149:3.II Class B
149:3.III Class C

(ii) The following criteria from the matrix in paragraph (b) of this section apply to the use classifications identified in paragraph (d)(a)(i) of this section:

Use classification	Applicable criteria
Class A; Class B waters where water supply use is designated.	Each of these classifications is assigned the criteria in: Column D (I)—#16. Column D(II)—#16.
Class B waters where water supply use is not designated Class C.	

(3) *Rhode Island, Region 1*

(i) All waters assigned to the following use classifications in the Water Quality Regulations for Water Pollution Control adopted under chapters 46–12, 42–17.1, and 42–35 of the General Laws of Rhode Island are subject to the criteria in paragraph d(3)(ii) of this section without exception:

6.21 Freshwater
Class A
Class B
Class C
6.22 Saltwater
Class SA
Class SB
Class SC

(ii) The following criteria from the matrix in paragraph (b) of this section apply to the use classifications identified in paragraph (d)(3)(i) of this section:

Use classification	Applicable criteria
Class A; Class B waters where water supply use is designated.	These classifications are assigned the criteria in: Column D (I)—all.
Class B waters where water supply use is not designated Class C; Class SA; Class SB; Class SC.	Each of these classifications is assigned the criteria in: Column D (II)—all.

(4) *Vermont, Region 1*

(i) All waters assigned to the following use classifications in the Vermont Water Quality Standards adopted under the authority of the Vermont Water Pollution Control Act (10 V.S.A., Chapter 47) are subject to the criteria in paragraph (d)(4)(ii) of this section, without exception:

Class A
Class B
Class C

(ii) The following criteria from the matrix in paragraph (b) of this section apply to the use classifications identified in paragraph (d)(4)(i) of this section:

Use classification	Applicable criteria
Class A; Class B waters where water supply use is designated.	This classification is assigned the criteria in: Column B(I)—all. Column B(II)—all. Column D(I)—all.
Class B waters where water supply use is not designated; Class C.	These classifications are assigned the criteria in: Column B(I)—all. Column B(II)—all. Column D(II)—all.

(5) *New Jersey, Region 2*

(i) All waters assigned to the following use classifications in the New Jersey Administrative Code (N.J.A.C.) 7:9–4.1 et seq., Surface Water Quality Standards, are subject to the criteria in paragraph (d)(5)(ii) of this section, without exception:

N.J.A.C. 7:9–4.12(c): Class FW2
N.J.A.C. 7:9–4.12(d): Class SE1
N.J.A.C. 7:9–4.12(e): Class SE2
N.J.A.C. 7:9–4.12(f): Class SE3
N.J.A.C. 7:9–4.12(g): Class SC

(ii) The following criteria from the matrix in paragraph (b) of this section apply to the use classifications identified in paragraph (d)(5)(i) of this section:

Use classificatior	Applicable criteria
FW?	This classification is assigned the criteria in: Column B(1)—all except #102, 105, 107, 108, 111, 112, 113, 115, 117, and 118. Column B(2)—all except #105, 107, 108, 111, 112, 113, 115, 117, 118, 119, 120, 121, 122, 123, 124, and 125. Column D(1)—all except #4, 5a, 5b, 7, 10, and 11. Column D(2)—all.
SE1, SE SE3, SC.	These classifications are each assigned the criteria in: Column C(1)—all except #102, 105, 107, 108, 111, 112, 113, 115, 117, and 118. Column C(2)—all except #105, 107, 108, 111, 112, 113, 115, 117, 118, 119, 120, 121, 122, 123, 124, and 125. Column D(2)—all.

(6) *Puerto Rico, Region 2*

(i) All waters assigned to the following use classifications in the Puerto Rico Water Quality Standards (promulgated by Resolution Number R–83–5–2) are subject to the criteria in paragraph (d)(6)(ii) of this section, without exception.

Article 2.2.2—Class SB
Article 2.2.3—Class SC
Article 2.2.4—Class SD

(ii) The following criteria from the matrix in paragraph (b) of this section apply to the use classifications identified in paragraph (d)(6)(i) of this section:

Use classification	Applicable criteria
Class SD	This classification is assigned criteria in: Column B(1)—all, except: 10, 102, 105, 107, 108, 111, 112, 113, 115, 117, and 126. Column B(2)—all, except: 105, 107, 108, 112, 113, 115, and 117. Column D(1)—all, except: 4, 5a, 5b, 6, 7, 10, 11, 14, 105, 112, 113, and 115. Column D(2)—all, except: 4, 5a, 5b, 10, 14, 105, 112, 113, and 115.
Class SB, Class SC.	These classifications are assigned criteria in: Column C(1)—all, except: 4, 5b, 7, 8, 10, 11, 13, 102, 105, 107, 108, 111, 112, 113, 115, 117, and 126. Column C(2)—all, except: 4, 5b, 10, 13, 108, 112, 113, 115, and 117. Column D(2)—all, except: 4, 5a, 5b, 10, 14, 105, 112, 113, and 115.

(7) *Virginia, Region 3*

(i) All waters assigned to the following use classifications in the Virginia Water Quality Standards, VR680–21 are subject to the criteria in paragraph (d)(6)(ii) of this section without exception:

VR680–21–08 Classes I–VII and PWS

(ii) The following criteria from the matrix in paragraph (b) of this section apply to the use classifications identified in paragraph (d)(7)(i) of this section:

Use classification	Applicable criteria
Class I	This classification is assigned the criteria in: Column C(I)—all. Column C(II)—all. Column D(II)—all, except #16.
Class II	This classification is assigned the criteria in: Column B(I)—all. Column B(II)—all. Column C(I)—all. Column C(II)—all. Column D(II)—all, except #16.
Class III–VII	Each of these classifications is assigned the criteria in: Column B(I)—all. Column B(II)—all. Column D(II)—all, except #16.
PWS	This classification is assigned the additional criteria in: Column D(I)—all, except #16.

(8) *District of Columbia, Region 3*

(i) All waters assigned to the following use classifications in Chapter 11 Title 21 DCMR, Water Quality Standards of the District of Columbia are subject to the criteria in paragraph (d)(8)(ii) of this section without exception:

1101.2 Class C waters

(ii) The following criteria from the matrix in paragraph (b) of this section apply to the use classification identified in paragraph (d)(8)(i) of this section:

Use classification	Applicable criteria
Class C	This classification is assigned the additional criteria in: Column B(II)—#10, 118, 126. Column D(I)—#7, 15, 16, 44, 67, 68, 79, 80, 81, 88, 114, 116, 118. Column D(II)—all.

(9) *Florida, Region 4*

(i) All waters assigned to the following use classifications in Chapter 17–301 of the Florida Administrative Code (i.e., identified in Section 17–302.600) are subject to the criteria in paragraph (d)(9)(ii) of this section, without exception:

Class I
Class II
Class III

(ii) The following criteria from the matrix paragraph (b) of this section apply to the use classifications identified in paragraph (d)(9)(i) of this section:

Use classification	Applicable criteria
Class I	This classification is assigned the criteria in: Columns B1 and B2—5(b), 6, 7, 8, 9, 10, 11, 107, 111, 115, 118, and 126; and Column D1—all.
Class II; Class III (marine).	This classification is assigned the criteria in: Columns C1 and C2—2, 6, 7, 8, 9, 11, 13, 14, 111, 115, 118, and 126; and Column D2—all.
Class III (freshwater).	This classification is assigned the criteria in: Columns B1 and B2—5(b), 6, 7, 8, 9, 10, 11, 107, 111, 115, 118, and 126; and Column D2—all.

(10) *Michigan, Region 5*

(i) All waters assigned to the following use classifications in the Michigan Department of Natural Resources Commission General Rules, R 323.1043 Definitions; A to N, (i.e., identified in Section (g) "Designated use") are subject to the criteria in paragraph (d)(10)(ii) of this section, without exception:

(A) Industrial water supply
(B) Agricultural water supply
(C) Public water supply
(D) Recreation
(E) Fish, other aquatic life, and wildlife
(F) Navigation

(ii) The following criteria from the matrix in paragraph (b) of this section apply to the use classifications identified in paragraph (d)(10)(i) of this section:

Use classification	Applicable criteria
Public water supply	This classification is assigned the criteria in: Column B (I)—all, Column B (II)—all, Column D (I)—all.
All other designations.	These classifications are assigned the criteria in: Column B (I)—all, Column B (II)—all, and Column D (II)—all.

(11) *Arkansas, Region 6*

(i) All waters assigned to the following use classification in Section 4C (Waterbody uses) identified in Arkansas Department of Pollution Control and Ecology's Regulation No. 2 as amended and entitled, "Regulation Establishing Water Quality Standards

for Surface Waters of the State of Arkansas" are subject to the criteria in paragraph (d)(11)(ii) of this section, without exception:

(A) Extraordinary Resource Waters
(B) Ecologically Sensitive Waterbody
(C) Natural and Scenic Waterways
(D) Fisheries:
(*1*) Trout
(*2*) Lakes and Reservoirs
(*3*) Streams
(*i*) Ozark Highlands Ecoregion
(*ii*) Boston Mountains Ecoregion
(*iii*) Arkansas River Valley Ecoregion
(*iv*) Ouachita Mountains Ecoregion
(*v*) Typical Gulf Coastal Ecoregion
(*vi*) Spring Water-influenced Gulf Coastal Ecoregion
(*vii*) Least-altered Delta Ecoregion
(*viii*) Channel-altered Delta Ecoregion
Domestic Water Supply

(ii) The following criteria from the matrix in paragraph (b) of this section apply to the use classification identified in paragraph (d)(11)(i) of this section:

Use classification	Applicable criteria
Extraordinary resource waters Ecologically sensitive waterbody Natural and scenic waterways Fisheries: (1) Trout (2) Lakes and reservoirs (3) Streams (a) Ozark highlands ecoregion (b) Boston mountains ecoregion (c) Arkansas river valley ecoregion (d) Ouachita mountains ecoregion (e) Typical gulf coastal Ecoregion (f) Spring water-influenced gulf coastal ecoregion (g) Least-altered Delta ecoregion (h) Channel-altered Delta ecoregion.	These uses are each assigned the criteria in Column B1—# 2, 4, 5a, 5b, 6, 7, 8, 9, 10, 11, 13, 14. Column B2—# 2, 4, 5a, 5b, 6, 7, 8, 9, 10, 13, 14. Column D2—all.
Domestic water supply.	This use is assigned the criteria in: Column D1—all.

(12) *Louisiana, Region 6*

(i) All waters assigned to the following use designations in the Louisiana Administrative Code, Title 33—Environmental Quality, Part IX—Water Quality Regulations, Chapter 11 (i.e., identified in Section 1111 Water Use Designations) are subject to the criteria in paragraph (d)(12)(ii) of this section, without exception:

(A) Public Water Supply
(B) Fish and Wildlife Propagation
(C) Oyster Propagation

(ii) The following criteria from the matrix in paragraph (b) of this section apply to the use classifications identified in paragraph (d)(12)(i) of this section:

Use classification	Applicable criteria
Public water supply.....	This classification is assigned the criteria in: Column D(I)—#16.
Fish and wildlife propagation.	These classifications are assigned the criteria in: Column D(II) #16.
Oyster propagation	Column D(II) #16.

(13) *Kansas, Region 7*

(i) All waters assigned to the following use classification in the Kansas Department of Health and Environment regulations, K.A.R. 28–16–28b through K.A.R. 28–16–28f, are subject to the criteria in paragraph (d)(13)(ii) of this section, without exception.

Section 28–16–28d:
Section (2)(A)—Special Aquatic Life Use Waters
Section (2)(B)—Expected Aquatic Life Use Waters
Section (2)(C)—Restricted Aquatic Life Use Waters
Section 3—Domestic Water Supply
Section (6)(c)—Consumptive Recreation Use.

(ii) The following criteria from the matrix is paragraph (b) of this section apply to the use classifications identified in paragraph (d)(13)(i) of this section:

Use classification	Applicable criteria
Sections (2)(A), (2)(B), (2)(C), 6(C).	These classifications are each assigned all criteria in: Column B(I), except #9, 13, 102, 105, 107, 108, 111–113, 115, 117, and 126; Column B(II), except #9, 13, 105, 107, 108, 111–113, 115, 117, 119–125, and 126; and Column D(II), except #9, 10, 112, 113, and 115.
Section (3).....	This classification is assigned all criteria in: Column D(I), except #9, 10, 12, 112, 113, and 115.

(14) *Colorado, Region 8*

(i)(A) All waters assigned to the following use classifications in the Colorado Classifications and Numeric Standards for the following Basins:

(*1*) Arkansas River Basin—3.2.0 (5CCR 1002–8);

(*2*) Upper Colorado River Basin and North Platte River Basin (Planning Region 12)—3.3.0 (5CCR 1002–8);

(*3*) San Juan and Dolores River Basins—3.4.0 (5CCR 1002–8);

(*4*) Gunnison and Lower Dolores River Basins—3.5.0 (5CCR 1002–8);

(*5*) Rio Grande River Basin 3.6.0 (5CCR 1002–8);

(*6*) Lower Colorado Basin—3.7.0 (5CCR 1002–8);

(*7*) South Platte River Basin, Laramie River Basin, Republican River Basin, Smoky Hill River Basin—3.8.0 (5CCR 1002–8);

are subject to the criteria in paragraph (d)(14)(ii) of this section, except where only particular segments require criteria as delineated in paragraph (d)(14)(ii) of this section.

The following are the use classifications:

(*1*) Domestic Water Supply
(*2*) Class 1—Cold Water Aquatic Life
(*3*) Class 2—Cold Water Aquatic Life
(*4*) Class 1—Warm Water Aquatic Life
(*5*) Class 2—Warm Water Aquatic Life

(ii) The following criteria from the matrix in paragraph (b) of this section apply to the use classifications in paragraph (d)(14)(i) of this section:

Use classification	Applicable criteria
Domestic water supply.	All waters assigned to this use classification are subject to the criteria in: Column D(I)—all except #4, 5a, 5b, 6, 7, 10, 11, 22, 33, 39, 41, 44, 53, 66, 77, 90, 95, 115.
Class 1 Cold Water A.L. Class 2 Cold Water A.L. Class 1 Warm Water A.L. Class 2 Warm Water A.L..	All waters assigned to these use classifications are subject to the criteria in: Column B(I)—#10. Column B(II)—#10. Column D(II)—all and the following specific segments (which have been assigned one of these aquatic life uses) are further assigned the criteria set forth below.

1. The criteria in: B(I)—#2, 4, 5a, 5b, 6, 7, 8, 9, 11, 13, 14; B(II)—#2, 4, 5a, 5b, 6, 7, 8, 9, 13, 14 are assigned to the following specific segments:

• Basin 3.2.0

Upper Arkansas River Basin: segments 14, 26
Middle Arkansas River Basin: segments 4, 13, 18
Fountain Creek Basin: segments 3a, 8
Lower Arkansas River Basin: segments 2, 6b, 13
Cimarron River Basin: segment 1

- Basin 3.3.0
  Blue River Basin (14010002): segments 5, 20
  Eagle River Basin (14010003): segment 11
  North Platte River Basin (1018001, 10180002): segment 7
  Yampa River Basin (14050001, 14050002): segment 12
- Basin 3.4.0
  San Juan River Basin: segments 3, 10, 11
  Piedra River Basin: segment 6
  Los Pinos River Basin: segment 6
  Animas and Florida River Basin: segment 13b
  La Plata River, Mancos River, McElmo Creek and San Juan River Basin in Montezuma County and Dolores Counties: segments 3, 6, 8
  Dolores River Basin: segment 11
- Basin 3.5.0
  Upper Gunnison River Basin: segments 6b, 16, 28, 32
  North Fork of the Gunnison River Basin: segment 6, 10
  Upcomphgre River Basin: segments 10, 12
  Lower Gunnison River Basin: segment 4
  San Miguel River Basin: segment 12
  Lower Dolores River Basin: segment 4
- Basin 3.6.0
  Rio Grande River Basin: segments 15b, 25
  Closed Basin—San Luis Valley: segment 3
- Basin 3.7.0
  Lower Yampa River/Green River Basin: segments 3a, 3b, 6, 14, 17, 20
  White River Basin: segments 5, 9, 13a, 22
  Lower Colorado River Basin: segments 11b, 11e, 13
- Basin 3.8.0
  Republican River Basin: segments 6, 7
  South Platte River Basin (Region 1): segment 2
  Cache La Poudre River Basin: segments 8, 13
  Big Thompson River Basin: segments 6, 10
  South Platte River Basin (Region 2): segment 3
  St. Vrain Creek Basin: segment 6
  Boulder Creek Basin: segments 8, 11
  Big Dry Creek Basin: segment 1
  Clear Creek Basin: segments 8, 16, 18
  Cherry Creek Basin: segment 4
  South Platte River Basin (Regions 2, 3, 4): segments 7a, 11a, 16
  South Platte River Basin (Region 3 and 4): segment 7

2. The criteria in: Column B(I)—#9; Column B(II)—#9 are assigned to the following specific segments:

- Basin 3.3.0
  Blue River Basin (14010002): segment 12
- Basin 3.4.0
  Animas and Florida River Basin: segment 15
  La Plata River, Mancos River, McElmo Creek and San Juan River Basin in Montezuma County and Dolores Counties: segment 9
- Basin 3.8.0
  Big Thompson River Basin: segment 13
  Boulder Creek Basin: segments 4c, 6
  Clear Creek Basin: segment 12
  Bear Creek Basin: segments 4a, 5
  South Platte River Basin (Region 2, 3, and 4): segment 7b

3. The criteria in: Column B(I)—#8; Column B(II)—#8 are assigned to the following specific segments:

- Basin 3.7.0—Lower Colorado River Basin: segment 4
- Basin 3.8.0—South Platte River Basin (Region 2, 3, and 4): segment 11b

4. The criteria in: Column B(I)—#14; Column B(II)—#14 are assigned to the following specific segment:

- Basin 3.2.0—Upper Arkansas River Basin: segment 8b

5. The criterion in: Column B(I)—#11 is assigned to the following specific segment:

- Basin 3.7.0—Lower Colorado River Basin: segment 4.

(15) *Arizona, Region 9*

(i) All waters assigned the use classifications in chapter 21 of the Arizona Administrative Code (AAC) which are referred to in paragraph (d)(15)(ii) of this section, are subject to the criteria in paragraph (d)(15)(ii) of this section, without exception. These criteria amend the existing State standards contained in chapter 21 of the AAC sections R9–21–101 through 304, Water Quality Standards for Waters of the State, for the toxic pollutants identified in paragraph (d)(15)(ii) of this section. For purposes of this action, the specific standards to be applied are based on the following selected use designations as defined in chapter 21, AAC §§ R9–21–101 through R9–21–304:

(A) DWS—Domestic Water Source
(B) A&W—Aquatic & Wildlife (including any aquatic life designation)

(ii) The following criteria from the matrix in paragraph (b) of this section apply to the water and use classifications defined in paragraph (d)(15)(i) of this section and identified below:

Water and use classification	Applicable criteria
Waters of the State with A&W but without DWS.	These waters are assigned the criteria in: Column B1—all pollutants. Column B2—all pollutants. Column D2—all pollutants.
Waters of the State with A&W and DWS.	These waters are assigned the criteria in: Column B1—all pollutants. Column B2—all pollutants. Column D1—all pollutants.
Waters of the State with DWS but without A&W.	These waters are assigned the criteria in: Column D1—all pollutants.

(16) *California, Region 9*

(i) All waters assigned any aquatic life or human health use classifications in the Water Quality Control Plans for the various Basins of the State ("Basin Plans"), as amended, adopted by the California State Water Resources Control Board ("SWRCB"), except for ocean waters covered by the Water Quality Control Plan for Ocean Waters of California ("Ocean Plan") adopted by the SWRCB with resolution Number 90-27 on March 22, 1990, are subject to the criteria in paragraph (d)(16)(ii) of this section, without exception. These criteria amend the portions of the existing State standards contained in the Basin Plans. More particularly these criteria amend water quality criteria contained in the Basin Plan Chapters specifying water quality objectives (the State equivalent of federal water quality criteria) for the toxic pollutants identified in paragraph (d)(16)(ii) of this section. Although the State has adopted several use designations for each of these waters, for purposes of this action, the specific standards to be applied in paragraph (d)(16)(ii) of this section are based on the presence in all waters of some aquatic life designation and the presence or absence of the MUN use designation (Municipal and domestic supply). (See Basin Plans for more detailed use definitions).

(ii) The following criteria from the matrix in paragraph (b) of this section apply to the water & use classifications defined in paragraph (d)(16)(i) of this section and identified below:

Water and use classification	Applicable criteria
Waters of the state defined as bays or estuaries except the Sacramento-San Joaquin Delta and San Francisco Bay.	These waters are assigned the criteria in: Column B1—all pollutants. Column B2—all pollutants. Column C1—all pollutants. Column C2—all pollutants. Column D2—all pollutants.

Water and use classification	Applicable criteria
Waters of the Sacramento-San Joaquin Delta and waters of the state defined as inland (i.e., all surface waters of the state not bays or estuaries or ocean) that include a MUN use designation except the San Joaquin River from the mouth of the Merced River to Vernalis and the Sacramento River and its tributaries upstream from Hamilton City.	These waters are assigned the criteria in: Column B1—all pollutants. Column B2—all pollutants. Column D1—all pollutants.
Waters of the state defined as inland without an MUN use designation except waters flowing to Grasslands Water District, San Luis National Wildlife Refuge and Los Banos State Wildlife Area.	These waters are assigned the criteria in: Column B1—all pollutants. Column B2—all pollutants. Column D2—all pollutants.
Waters of the San Joaquin River from the mouth of the Merced River to Vernalis.	These waters are assigned the criteria in: Column B1—all pollutants except #10. Column B2—all pollutants. Column D1—all pollutants except #10.
Waters of the Sacramento River and its tributaries upstream from Hamilton City.	These wates are assigned the criteria in: Column B1—all pollutants except #4, 6, 13. Column B2—all pollutants except #4, 6, 13. Column D1—all pollutants except #4.
Waters flowing to Grasslands Water District, San Luis National Wildlife Refuge, and Los Banos State Wildlife Area.	These waters are assigned the criteria in: Column B1—all pollutants. Column B2—all pollutants. Column D2—all pollutants except #10.
Waters of San Francisco Bay.	These waters are assigned the criteria in: Column B1—all pollutants. Column B2—all pollutants. Column C1—all pollutants except #10. Column C2—all pollutants except #10. Column D2—all pollutants.

(17) *Nevada, Region 9*

(i) All waters assigned the use classifications in chapter 445 of the Nevada Administrative Code (NAC), Nevada Water Pollution Control Regulations, which are referred to in paragraph (d)(17)(ii), of this section, are subject to the criteria in paragraph (d)(17)(ii) of this section, without exception. These criteria amend the existing State standards contained in the Nevada Water Pollution Control Regulations. More particularly, these criteria amend or supplement the table of numeric standards in NAC 445.1339 for the toxic pollutants identified in paragraph (d)(17)(ii) of this section.

(ii) The following criteria from the matrix in paragraph (b) of this section apply to the waters defined in paragraph (d)(16)(i) of this section and identified below:

Water and use classification	Applicable criteria
Waters that the State has included in NAC 445.1339 where municipal or domestic supply is a designated use.	These waters are assigned the criteria in: Column B1—pollutant #118. Column B2—pollutant #118. Column D1—pollutants 15, 16, 18, 19, 20, 21, 23, 26, 27, 29, 30, 34, 35, 36, 37, 38, 42, 43, 55, 57-64, 66, 73, 74, 78, 82, 85, 87-89, 91, 92, 96, 98-100, 103, 104, 105, 114, 116, 117, 118.
Waters that the State has included in NAC 445.1339 where municipal or domestic supply is not a designated use.	These waters are assigned the criteria in: Column B1—pollutant #118. Column B2—pollutant #118. Column D2—all pollutants except #2.

(18) *Hawaii, Region 9*

(i) All waters assigned the use classifications in the existing State standards ("State Standards") which are referred to in paragraph (d)(18)(ii) of this section, are subject to the criteria in paragraph (d)(18)(ii) of this section, without exception. These criteria amend the existing State standards. Specifically, these criteria supplement the table of numeric standards for toxic pollutants applicable to all of Hawaii's waters in section 11-54-04(b)(3).

(ii) The following criteria from the matrix in paragraph (b) of this section apply to the waters defined in paragraph (d)(18)(i) of this section and identified below:

Water and use classification	Applicable criteria
Waters of the State assigned to Classes AA, A, 1, and 2.	These waters are assigned the criteria in: Column D2—pollutants #3, 8.
Waters of the State assigned to Classes AA and A.	These waters are assigned criteria in: Column C1—pollutant #6. Column C2—pollutants #6, 7, 8.

(19) *Commonwealth of the Northern Mariana Islands, Region 9*

(i) All waters assigned the use classifications in the existing Commonwealth of the Northern Mariana Islands Marine and Fresh Water Quality Standards ("Standards") which are referred to in paragraph (d)(19)(ii) of this section, are subject to the criteria in paragraph (d)(19)(ii) of this section, without exception. These criteria amend the existing standards. Specifically, these criteria supplement the table of numeric standards in part 7.10 of the Standards.

(ii) The following criteria from the matrix in paragraph (b) of this section apply to the waters defined in paragraph (d)(19)(i) of this section and identified below:

Water and use classification	Applicable criteria
Fresh surface waters of the Commonwealth assigned to classes 1 and 2.	These waters are assigned the criteria in: Column D1—all pollutants. Column B1—pollutants #53, 108, 118. Column B2—pollutants #53, 108, 118.
Marine waters of the Commonwealth to classes AA and A..	These waters are assigned the criteria in: Column D2—all pollutants. Column C1—pollutants #53, 108, 118. Column C2—pollutants #53, 108, 118.

(20) *Alaska, Region 10*

(i) All waters assigned to the following use classifications in the Alaska Administrative Code (AAC), chapter 18 (i.e., identified in 18 AAC 70.020) are subject to the criteria in paragraph(d)(20)(ii) of this section, without exception:

70.020.(1)(A)	Fresh water. Water supply. (i) Drinking, culinary, and food processing, (ii) Aquaculture;
70.020.(1)(B)	Water recreation. (i) Contact recreation, (ii) Secondary recreation;
70.020.(1)(C)	Growth and propagation of fish, shellfish, other aquatic life, and wildlife.

70.020.(2)(A)	Marine water.
	Water supply.
	(i) Aquaculture,
	(ii) Seafood processing,
70.020.(2)(B)	Water recreation.
	(i) Contact recreation,
	(ii) Secondary recreation;
70.020.(2)(C)	Growth and propagation of fish, shellfish, other aquatic life, and wildlife;
70.020.(2)(D)	Harvesting for consumption of raw mollusks or other raw aquatic life.

(ii) The following criteria from the matrix in paragraph (b) of this section apply to the use classifications identified in paragraph (d)(20)(i) of this section:

Use classification	Applicable criteria
(1)(A)i	This classification is assigned the criteria in: Column D(I)—#'s 9, 10, 53. Column D(I)—human health carcinogens: #'s 2, 3, 16, 18, 19, 20, 21, 23, 26, 27, 29, 30, 35, 36, 37, 42, 43, 44, 55, 57–64, 66, 68, 73, 74, 78, 82, 85, 87, 88, 89, 91, 92, 96, 97, 98, 99, 100, 102–111, 117–126.
(1)(A)iii	This classification is assigned the criteria in: Same as for (1)(A)i (above) plus: Column B(I)—all. Column B(II)—#'s 9, 10, 13, 53.
(1)(B)i	This classification is assigned the criteria in: Same as for (1)(A)i above.
(1)(B)ii	This classification is assigned the criteria in: Column B(I)—all. Column B(II)—#'s 9, 10, 13, 53. Column D(II)—#'s 9, 10, 53. Column D(II) human health carcinogens: #'s 2, 3, 16, 18, 19, 20, 21, 23, 26, 27, 29, 30, 35, 36, 37, 42, 43, 44, 55, 57–64, 66, 68, 73, 74, 78, 82, 85, 87, 88, 89, 91, 92, 96, 97, 98, 99, 100, 102–111, 117–126
(1)(C) This classification is assigned the criteria in:. Same as for (1)(B)(ii).	
(2)(A)i	This classification is assigned the criteria in: Column C(I)—all. Column C(II)—#'s 9, 10, 13, 53. Column D(II)—#'s 9, 10, 53. Column D(II)—human health carcinogens: #'s 2, 3, 16, 18, 19, 20, 21, 23, 26, 27, 29, 30, 35, 36, 37, 42, 43, 44, 55, 57–64, 66, 68, 73, 74, 78, 82, 85, 87, 88, 89, 91, 92, 96, 97, 98, 99, 100, 102–111, 117–126
(2)(A)i	This classification is assigned the criteria in: Column C(I)—all. Column C(II)—only for #'s 9, 10, 13, 53.
(2)(B)i & ii	These classifications are assigned the criteria in: Column D(II) for #'s 9, 10, 53. Column D(II)—human health carcinogens: #'s 2, 3, 16, 18, 19, 20, 21, 23, 26, 27, 29, 30, 35, 36, 37, 42, 43, 44, 55, 57–64, 66, 68, 73, 74, 78, 82, 85, 87, 88, 89, 91, 92, 96, 97, 98, 99, 100, 102–111, 117–126.
(2)(C) and (2)(D)	These classifications are assigned the criteria in: Same as for (2)(A)i.

(21) *Idaho, Region 10*

(i) All waters assigned to the following use classifications in the Idaho Administrative Procedures Act (IDAPA), chapter 16 (i.e., identified in IDAPA 16.01.2100,02–16.01.2100,07) are subject to the criteria in paragraph (d)(21)(ii) of this section, without exception:

16.01.2100,02.	Domestic Water Supplies.
16.01.2100,03.	Cold Water Biota.
16.01.2100,04.	Warm Water Biota.
16.01.2100,05.	Salmonid Spawning.
16.01.2100,06.	Primary Contact Recreation.
16.01.2100,07.	Secondary Contact Recreation.

(ii) The following criteria from the matrix in paragraph (b) of this section apply to the use classifications identified in paragraph (d)(21)(i) of this section:

Use classification	Applicable criteria
02	This classification is assigned the criteria in: Column D(I)—all except #'s 4, 5, 7, 10, 11, 14, 115.
03, 04 and 05	These classifications are assigned the criteria in: Column B(I)—all. Column B(II)—all. Column D(II)—all.
06	This classification is assigned the criteria in: Column B(I)—all. Column B(II)—all.
07	This classification is assigned the criteria in: Column B(I)—all. Column B(II)—all. Column D(II)—all.

(22) *Washington, Region 10*

(i) All waters assigned to the following use classifications in the Washington Administrative Code (WAC), chapter 173–201 (i.e., identified in WAC 173–201–045) are subject to the criteria in paragraph (d)(22)(ii) of this section, without exception:

173–201–045.	Class AA water supplies.
	Class A.
	Class B.
	Class C.
	Lake class.

(ii) The following criteria from the matrix in paragraph (b) of this section apply to the use classifications identified in paragraph (d)(22)(i) of this section:

Use classification	Applicable criteria
AA and A	These classifications are assigned the criteria in: Column D(I)—all. Column D(II)—all. Columns B(I), B(II), C(I), and C(II): all except #'s 4, 5a&b, 7, 8, 9, 11, 13, 53, 108, 109, 110, 115, 117, 119–126
B and C	These classifications are assigned the criteria in: Same as for AA and A except do not include Column D(I).
Lake class	This classification is assigned the criteria in: Same as for AA and A except do not include Columns C(I), C(II) or D(I).

(Note.—The following appendix will not appear in the Code of Federal Regulations.)

Appendix to Preamble of Today's Proposal

I. Introduction

The purpose of this appendix is to provide background information and further explanation of today's proposed rulemaking. Two major topics are discussed. The first topic concerns the detailed assumptions and rules followed

by EPA in writing the State-specific proposed regulatory requirements (i.e., the water quality uses and criteria) contained in proposed section § 131.36(d). The second topic concerns EPA's rationale for proposing the § 131.36(d) requirements. Separate, customized rationales are provided for each jurisdiction included in the water quality standards program (i.e., as defined by 40 CFR 131.3(j)).

II. Assumptions and Rules Followed by EPA in Writing the Proposed Section 131.36(d) Requirements for all Jurisdictions

The "rules" followed by EPA in writing the proposed § 131.36(d) requirements for all jurisdictions are as follows:

1. No criteria are proposed for States which have been fully approved by EPA as complying with the section 303(c)(2)(B) requirements.

2. For States which have not been fully approved, if EPA has not previously determined which specific pollutants/criteria/waterbodies are lacking from a State's standards (i.e., as part of an approval/disapproval action only), all of the criteria in Columns B, C, and D of the proposed § 131.36(b) matrix are proposed for statewide application to all appropriate designated uses, except as provided for elsewhere in these rules. That is, EPA proposes to bring the State into compliance with section 303(c)(2)(B) via an approach which is comparable to option 1 of the December 1988 national guidance for section 303(c)(2)(B).

3. If EPA has previously determined which specific pollutants/criteria/waterbodies are needed to comply with CWA section 303(c)(2)(B) (i.e., as part of an approval/disapproval action only), the criteria in proposed § 131.36(b) are proposed for only those specific pollutants/criteria/waterbodies (i.e., EPA proposes to bring the State into compliance via an approach which is comparable to option 2 of the December 1988 national guidance for section 303(c)(2)(B)).

4. For aquatic life, except as provided for elsewhere in these rules, all waters with designated aquatic life uses providing even minimal support to aquatic life are included in the proposed rule (i.e., fish survival, marginal aquatic life, etc.).

5(a). For human health, except as provided for elsewhere in these rules, all waters with designated uses providing for public water supply protection (and therefore a potential water consumption exposure route) or minimal aquatic life protection (and therefore a potential fish consumption exposure route) are included in the proposed rule.

5(b). Where a State has determined the specific aquatic life segments which provide a fish consumption exposure route (i.e., fish or other aquatic life are being caught and consumed) and EPA approved this determination as part of a standards approval/disapproval action, the proposed rule includes the fish consumption (Column D(II)) criteria for only those aquatic life segments, except as provided for elsewhere in these rules. In making a determination that certain segments do not support a fish consumption exposure route, a State must complete and EPA must have previously approved, a use attainability analysis consistent with the provisions of 40 CFR part 131.10(j). In the absence of such an approved State determination, EPA has proposed fish consumption criteria for all aquatic life segments.

6. Uses/Classes other than those which support aquatic life or human health are not included in the proposed rulemaking (e.g., livestock watering, industrial water supply), unless they are defined in the State standards as also providing protection to aquatic life or human health (i.e., unless they are described as protecting multiple uses including aquatic life or human health). For example, if the State standards include a use such as industrial water supply, and in the narrative description of the use the State standards indicate that the use includes protection for resident aquatic life, then this use is included in the proposed rulemaking.

7. For human health, the "water + fish" criteria in Column D(I) of § 131.36(b) are proposed for all waterbodies where public water supply and aquatic life uses are designated, except as provided for elsewhere in these rules (e.g., rule 9).

8. If the State has public water supplies where aquatic life uses have not been designated, or public water supplies that have been determined not to provide a potential fish consumption exposure pathway, the "water + fish" criteria in Column D(I) of § 131.36(b) are proposed for such waterbodies, except as provided for elsewhere in these rules (e.g., rule 9).

9. EPA is generally not proposing criteria for priority toxic pollutants for which a State has adopted criteria and received EPA approval. The exceptions to this general rule are described in rules 10 and 11.

10. For priority toxic pollutants where the State has adopted human health criteria and received EPA approval, but such criteria do not fully satisfy section 303(c)(2)(B) requirements, the proposed rule includes human health criteria for such pollutants. For example, consider a case where a State has a water supply segment that poses an exposure risk to human health from both water and fish consumption. If the State has adopted, and received approval for, human health criteria based on water consumption only (e.g., Safe Drinking Water Act Maximum Contaminant Levels (MCLs)) which are less stringent than the "water + fish" criteria in Column D(I) of proposed § 131.36(b), the Column D(I) criteria are proposed for those water supply segments. The rationale for this is to ensure that both water and fish consumption exposure pathways are adequately addressed and human health is fully protected. If the State has adopted water consumption only criteria which are more stringent or equal to the Column D(I) criteria, the "water + fish" criteria in Column D(I) criteria are not proposed.

11. For priority toxic pollutants where the State has adopted aquatic life criteria and received EPA approval, but such criteria do not fully satisfy section 303(c)(2)(B) requirements, the proposed rule includes aquatic life criteria for such pollutants (e.g., because previously approved State criteria do not reflect current science contained in revised criteria documents and other guidance sufficient to protect all designated uses or human health exposure pathways). For example, if the State has adopted not-to-be-exceeded aquatic life criteria which are less stringent than the 4-day average chronic aquatic life criteria in § 131.36(b) (i.e., in Columns B(II) and C(II)), the acute and chronic aquatic life criteria in § 131.36(b) are proposed for those pollutants. The rationale for this is that the State-adopted criteria do not protect resident aquatic life from both acute and chronic effects, and that federal criteria are necessary to fully protect aquatic life designated uses. If the State has adopted not-to-be-exceeded aquatic life criteria which are more stringent or equal to the chronic aquatic life criteria in § 131.36(b), the acute and chronic aquatic life criteria in § 131.36(b) are not proposed for those pollutants.

12. Under certain conditions discussed in rules 9, 10, and 11, criteria listed in § 131.36(b) are not proposed for specific pollutants; however, EPA made such exceptions only for pollutants for which criteria have been adopted by the State and approved by EPA, where such criteria are currently effective under State law and fully satisfy section 303(c)(2)(B) requirements.

III. State-by-State Summary Information and Rationale

EPA's jurisdiction-specific rationale for the § 131.36(d) requirements is described below. In addition, all proposed § 131.36(d) requirements conform to the rules specified in the previous section of this appendix.

Region 1

Connecticut is included in today's proposal because the State has not adopted any criteria for priority toxic pollutants, either before or in response to the statutory requirement, and EPA has reason to believe that at least some criteria are necessary to comply with section 303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the State is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

Connecticut's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows.

—August, 1990. Draft WQS revisions were submitted to EPA by the State. In this draft revision the State proposed adopting criteria for all priority pollutants for fresh water aquatic life and human health protection. No criteria were proposed for marine waters.

—December, 1990. EPA Region I notified Connecticut that adoption of criteria for marine waters is necessary to achieve compliance with section 303(c)(2)(B).

This proposed rulemaking would Federally promulgate the criteria necessary to bring the State into full compliance with section 303(c)(2)(B). To fully protect State designated uses, and to ensure that the required criteria are adopted, EPA proposes to apply broadly the criteria in proposed § 131.36(b). At a minimum, EPA proposes to apply, to all appropriate State waters, the criteria in proposed § 131.36(b) for all priority toxic pollutants which are not the subject of approved State criteria. EPA also proposes to promulgate Federal criteria for priority toxic pollutants where any previously-approved State criteria are insufficiently stringent to fully protect all designated uses, or where such previously-approved State criteria are not applicable to all appropriate State designated uses. EPA invites public comment regarding any specific priority pollutants or water bodies for which Federal criteria may not be necessary to protect State designated uses.

For reasons which are fully discussed in the preamble, EPA has not attempted to determine the specific priority pollutants and water bodies that require criteria. However, EPA has determined that at least some Federal criteria are necessary to protect designated uses. This determination is supported by information in the record which demonstrates that priority toxic pollutants are discharged or present in surface waters at levels that can reasonably be expected to interfere with State designated uses. For some priority toxic pollutants, available data clearly demonstrate use impairment and the need for toxics criteria. For most priority toxic pollutants, however, available data on the discharge and presence of priority toxic pollutants are spatially and temporally limited. Nevertheless, EPA believes that the data for many of these pollutants are sufficient to satisfy the "reasonable expectation" test established in section 303(c)(2)(B). The information in the record which demonstrates that priority toxic pollutants are discharged or present and that Federal criteria are necessary may be summarized as follows:

—Priority toxic pollutants on the State Section 304(1) short list for which State criteria have not been adopted and approved.

—State efforts since 1987 to adopt additional numeric criteria for priority toxic pollutants, as described above. The State has initiated (but not completed) efforts to adopt new or revised chemical-specific, numeric criteria for 34 priority toxic pollutants. These efforts represent evidence of the State's recognition of the need for numeric criteria for these priority toxic pollutants.

—Presence in surface waters of the State of priority pollutants for which sufficient State numeric criteria have not been adopted, based on surface water monitoring data in STORET.

—Discharge to surface waters of priority pollutants for which sufficient State numeric criteria have not been adopted, based on data in the Toxics Release Inventory database and/or the Permit Compliance System database.

—Long Island Sound study conducted as part of the National Estuaries Program which indicates presence of priority pollutants in Long Island Sound.

Maine has not been included in today's proposed rulemaking because the State has adopted revised criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's response to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—June 1990. Legislative adoption of all EPA issued section 304(a)(1) criteria by reference.

—December 20, 1990. EPA approved the adopted State criteria.

EPA fully approved the criteria for priority toxic pollutants adopted by Maine in June of 1990 as being consistent with option 1 of the December 12, 1988 section 303(c)(2)(B) guidance document.

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B) it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Massachusetts has not been included in today's proposed rulemaking because the State has adopted revised criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

Massachusetts' actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—Massachusetts adopted revised standards on July 23, 1990. The State adopted the section 304(a)(1) criteria for aquatic life protection in fresh and marine waters.

—Massachusetts toxicity control policy adopted with the standards incorporates a 10^{-6} risk level.

—December 20, 1990. EPA fully approved the Massachusetts toxics criteria as fully satisfying the requirements of section 303(c)(2)(B).

EPA fully approved the criteria for priority toxic pollutants adopted by Massachusetts as being consistent with option 1 of the December 12, 1988 section 303(c)(2)(B) guidance document.

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B) it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

New Hampshire is included in today's proposal because although the State adopted numeric criteria for some priority toxic pollutants before the 1987 amendments, the State has not completed a review of their numeric criteria for priority toxic pollutants in response to the statutory requirement and EPA has reason to believe that at least some additional criteria are necessary to comply with section

303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the State is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

New Hampshire's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—August 1990. The State adopted water quality standards revisions following an option 1 approach using EPA national criteria for all pollutants. New Hampshire used a 10^{-6} risk assumption for human health protection for all pollutants except 2,3,7,8–TCDD for which a risk level of 10^{-5} was assumed.

—December 19, 1990. The revised toxics criteria adopted by the State were approved with the exception of the human health criteria for dioxin, which was disapproved.

This proposed rulemaking would Federally promulgate the criteria necessary to bring the State into full compliance with section 303(c)(2)(B). To fully protect State designated uses, and to ensure that the required criteria are adopted, EPA proposes to apply broadly the criteria in proposed § 131.36(b). At a minimum, EPA proposes to apply, to all appropriate State waters, the criteria in proposed § 131.36(b) for all priority toxic pollutants which are not the subject of approved State criteria. EPA also proposes to promulgate Federal criteria for priority toxic pollutants where any previously approved State criteria are insufficiently stringent to fully protect all designated uses, or where such previously approved State criteria are not applicable to all appropriate State designated uses. EPA invites public comment regarding any specific priority pollutants or water bodies for which Federal criteria may not be necessary to protect State designated uses.

For reasons which are fully discussed in the preamble, EPA has not attempted to determine the specific priority pollutants and water bodies that require criteria. However, EPA has determined that at least some Federal criteria are necessary to protect designated uses. This determination is supported by information in the record which demonstrates that priority toxic pollutants are discharged or present in surface waters at levels that can reasonably be expected to interfere with State designated uses. For some priority toxic pollutants, available data clearly demonstrate use impairment and the need for toxics criteria. For most priority toxic pollutants, however, available data on the discharge and presence of priority toxic pollutants are spatially and temporally limited. Nevertheless, EPA believes that the data for many of these pollutants are sufficient to satisfy the "reasonable expectation" test established in section 303(c)(2)(B). The information in the record which demonstrates that priority toxic pollutants are discharged or present and that Federal criteria are necessary may be summarized as follows:

—State efforts since 1987 to adopt additional numeric criteria for priority toxic pollutants, as described above. The State has initiated (but not completed) efforts to adopt new or revised chemical-specific, numeric criteria for 126 priority toxic pollutants. These efforts represent evidence of the State's recognition of the need for numeric criteria for these priority toxic pollutants.

—Presence in surface waters of the State of priority pollutants for which sufficient State numeric criteria have not been adopted, based on surface water monitoring data in STORET.

—Discharge to surface waters of priority pollutants for which sufficient State numeric criteria have not been adopted, based on data in the Toxics Release Inventory data base and/or the Permit Compliance System data base.

Rhode Island is included in today's proposal because although the State has completed a review and adopted numeric criteria for some priority pollutants in response to the statutory requirement, EPA has reason to believe that at least some additional criteria are necessary to comply with section 303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the State is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

Rhode Island's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—October 1989. The State adopted revised WQS incorporating an option 1 approach for all section 304(a)(1) criteria for aquatic life protection in fresh and marine waters. No criteria were adopted for the protection of human health.

—March 30, 1989. EPA approved the water quality standards and informed Rhode Island that to come into full compliance with Section 303(c)(2)(B) that the State would have to adopt human health criteria.

This proposed rulemaking would Federally promulgate the criteria necessary to bring the State into full compliance with section 303(c)(2)(B). To fully protect State designated uses, and to ensure that the required criteria are adopted, EPA proposes to apply broadly the criteria in proposed § 131.36(b). At a minimum, EPA proposes to apply, to all appropriate State waters, the criteria in proposed § 131.36(b) for all priority toxic pollutants which are not the subject of approved State criteria. EPA also proposes to promulgate Federal criteria for priority toxic pollutants where any previously-approved State criteria are insufficiently stringent to fully protect all designated uses, or where such previously-approved State criteria are not applicable to all appropriate State designated uses. EPA invites public comment regarding any specific priority pollutants or water bodies for which Federal criteria may not be necessary to protect State designated uses.

For reasons which are fully discussed in the preamble, EPA has not attempted to determine the specific priority pollutants and water bodies that require criteria. However, EPA has determined that at least some Federal criteria are necessary to protect designated uses. This determination is supported by information in the record which demonstrates that priority toxic pollutants are discharged or present in surface waters at levels that can reasonably be expected to interfere with State designated uses. For some priority toxic pollutants, available data clearly demonstrate use impairment and the need for toxics criteria. For most priority toxic pollutants, however, available data on the discharge and presence of priority toxic pollutants are spatially and temporally limited. Nevertheless, EPA believes that the data for many of these pollutants are sufficient to satisfy the "reasonable expectation" test established in section 303(c)(2)(B). The information in the record which demonstrates that priority toxic pollutants are discharged or present and that Federal criteria are necessary may be summarized as follows:

—Priority toxic pollutants on the State section 304(1) short list for which State toxics criteria have not been adopted and approved.

—State efforts since 1987 to adopt additional numeric criteria for priority toxic pollutants, as described above. The State has initiated (but not completed) efforts to adopt new or revised chemical-specific, numeric

criteria for an as yet undetermined number of priority toxic pollutants. These efforts represent evidence of the State's recognition of the need for numeric criteria for these priority toxic pollutants.

—Presence in surface waters of the State of priority pollutants for which sufficient State numeric criteria have not been adopted, based on surface water monitoring data in STORET.

—Discharge to surface waters of priority pollutants for which sufficient State numeric criteria have not been adopted, based on data in the Toxics Release Inventory database and/or the Permit Compliance System database.

—Superfund monitoring data indicating presence of priority pollutants at hazardous waste sites that may enter surface water through surface drainage and ground water migration.

—The Narragansett Bay Study conducted under the National Estuaries Program which indicated presence of priority pollutants in fish and shellfish tissue.

Vermont is included in today's proposal because the State has not adopted any criteria for priority toxic pollutants, either before or in response to the statutory requirement, and EPA has reason to believe that at least some criteria are necessary to comply with section 303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the State is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

Vermont's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—April 1990. Vermont proposed draft water quality standards revisions following an option 1 approach for all section 304(a)(1) pollutants for aquatic life and human health protection.

This proposed rulemaking would Federally promulgate the criteria necessary to bring the State into full compliance with section 303(c)(2)(B). To fully protect State designated uses, and to ensure that the required criteria are adopted, EPA proposes to apply broadly the criteria in proposed § 131.36(b). At a minimum, EPA proposes to apply, to all appropriate State waters, the criteria in proposed § 131.36(b) for all priority toxic pollutants which are not the subject of approved State criteria. EPA also proposes to promulgate Federal criteria for priority toxic pollutants where any previously approved State criteria are insufficiently stringent to fully protect all designated uses, or where such previously approved State criteria are not applicable to all appropriate State designated uses. EPA invites public comment regarding any specific priority pollutants or water bodies for which Federal criteria may not be necessary to protect State designated uses.

For reasons which are fully discussed in the preamble, EPA has not attempted to determine the specific priority pollutants and water bodies that require criteria. However, EPA has determined that at least some Federal criteria are necessary to protect designated uses. This determination is supported by information in the record which demonstrates that priority toxic pollutants are discharged or present in surface waters at levels that can reasonably be expected to interfere with State designated uses. For some priority toxic pollutants, available data clearly demonstrate use impairment and the need for toxics criteria. For most priority toxic pollutants, however, available data on the discharge and presence of priority toxic pollutants are spatially and temporally limited. Nevertheless, EPA believes that the data for many of these pollutants are sufficient to satisfy the "reasonable expectation" test established in section 303(c)(2)(B). The information in the record which demonstrates that priority toxic pollutants are discharged or present and that Federal criteria are necessary may be summarized as follows:

—State efforts since 1987 to adopt additional numeric criteria for priority toxic pollutants, as described above. The State has initiated (but not completed) efforts to adopt new or revised chemical-specific, numeric criteria for 126 priority toxic pollutants. These efforts represent evidence of the State's recognition of the need for numeric criteria for these priority toxic pollutants.

—Presence in surface waters of the State of priority pollutants for which sufficient State numeric criteria have not been adopted, based on surface water monitoring data in STORET.

—Discharge to surface waters of priority pollutants for which sufficient State numeric criteria have not been adopted, based on data in the Toxics Release Inventory database and/or the Permit Compliance System database.

Region 2

New Jersey is included in today's proposal because although the State adopted numeric criteria for some priority toxic pollutants before the 1987 amendments, the State has not completed a review/revision of their numeric criteria for priority toxic pollutants in response to the statutory requirement and EPA has reason to believe that additional criteria are necessary to comply with section 303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the State is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

New Jersey adopted criteria for some priority toxic pollutants prior to passage of section 303(c)(2)(B) on April 29, 1985 (N.J.A.C 7:9–4.1 et seq.). EPA approved these criteria on July 8, 1985. Some of these criteria are not affected by today's proposed rulemaking.

The State's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—June 20, 1988: the State published a public notice of proposed revisions to the State Surface Water Quality Regulation, including new numeric criteria for toxic pollutants.

—July 14, 1989: The State adopted revisions to the State Surface Water Quality Standards Regulation. Numeric criteria were not included in the adopted revisions.

—July 16, 1990: The State informed EPA that it would be proposing numeric criteria for all EPA priority pollutants.

This proposed rulemaking would Federally promulgate the criteria necessary to bring the State into full compliance with section 303(c)(2)(B). To fully protect State designated uses, and to ensure that the required criteria are adopted, EPA proposes to apply broadly the criteria in proposed § 131.36(b). At a minimum, EPA proposes to apply, to all appropriate State waters, the criteria in proposed § 131.36(b) for all priority toxic pollutants which are not the subject of approved State criteria. EPA also proposes to promulgate Federal criteria for priority toxic pollutants where any previously-approved State criteria are insufficiently stringent to fully protect all designated uses, or where such previously-approved State criteria are not applicable to all appropriate State designated uses. EPA invites public comment regarding any specific priority pollutants or water bodies for which Federal criteria may not be necessary to protect State designated uses.

For reasons which are fully discussed in the preamble, EPA has not attempted to determine the specific priority

pollutants and water bodies that require criteria. However, EPA has determined that at least some Federal criteria are necessary to protect designated uses. This determination is supported by information in the record which demonstrates that priority toxic pollutants are discharged or present in surface waters at levels that can reasonably be expected to interfere with State designated uses. For some priority toxic pollutants, available data clearly demonstrate use impairment and the need for toxics criteria. For most priority toxic pollutants, however, available data on the discharge and presence of priority toxic pollutants are spatially and temporally limited. Nevertheless, EPA believes that the data for many of these pollutants are sufficient to satisfy the "reasonable expectation" test established in section 303(c)(2)(B). The information in the record which demonstrates that priority toxic pollutants are discharged or present and that Federal criteria are necessary may be summarized as follows:

—Priority toxic pollutants on the State section 304(1) list for which appropriate State criteria have not been adopted and approved, including metals.

—State efforts since 1987 to adopt additional numeric criteria for priority toxic pollutants, as described above. The State has initiated (but not completed) efforts to adopt new or revised chemical-specific, numeric criteria for 16 priority toxic pollutants. These efforts represent evidence of the State's recognition of the need for numeric criteria for these priority toxic pollutants.

—Presence in surface waters of the State of priority pollutants for which sufficient State numeric criteria have not been adopted, based on surface water monitoring data in STORET.

—Discharge to surface waters of priority pollutants for which sufficient State numeric criteria have not been adopted, based on data in the Toxics Release Inventory database and/or the Permit Compliance System database.

—Correspondence from the State indicating that the adoption of criteria for all EPA priority pollutants would be proposed for adoption.

Puerto Rico is included in today's proposal because although the State adopted numeric criteria for some priority toxic pollutants before the 1987 amendments, the State has not completed a review/revision of their numeric criteria for priority toxic pollutants in response to the statutory requirement and EPA has reason to believe that additional criteria are necessary to comply with section 303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the State is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

Puerto Rico adopted criteria for some priority pollutants prior to passage of section 303(c)(2)(B) on February 28, 1983 (Puerto Rico Water Quality Standards Regulation, as amended, promulgated by Environmental Quality Board Resolution Number R–83–5–2). Some of these criteria are not affected by today's proposed rulemaking.

Puerto Rico's actions to respond to the 1987 Section 303(c)(2)(B) requirement can be summarized as follows:

—March 15, 1990: The Commonwealth submitted draft water quality standards revisions to EPA for review prior to issuing proposed standards for public comment.

—May 2–3, 1990 and July 12–13, 1990: The Commonwealth held public hearings on its proposed water quality standards revisions.

This proposed rulemaking would Federally promulgate the criteria necessary to bring the Commonwealth into full compliance with section 303(c)(2)(B). To fully protect Puerto Rico's designated uses, and to ensure that the required criteria are adopted, EPA proposes to apply broadly the criteria in proposed § 131.36(b). At a minimum, EPA proposes to apply, to all appropriate Commonwealth waters, the criteria in proposed § 231.36(b) for all priority toxic pollutants which are not the subject of approved Commonwealth criteria. EPA also proposes to promulgate Federal criteria for priority toxic pollutants where any previously approved Commonwealth criteria are insufficiently stringent to fully protect all designated uses, or where such previously approved Commonwealth criteria are not applicable to all appropriate Commonwealth designated uses. EPA invites public comment regarding any specific priority pollutants or water bodies for which Federal criteria may not be necessary to protect Puerto Rico's designated uses.

For reasons which are fully discussed in the preamble, EPA has not attempted to determine the specific priority pollutants and water bodies that require criteria. However, EPA has determined that at least some Federal criteria are necessary to protect designated uses. This determination is supported by information in the record which demonstrates that priority toxic pollutants are discharged or present in surface waters at levels that can reasonably be expected to interfere with Puerto Rico's designated uses. For some priority toxic pollutants, available data clearly demonstrate use impairment and the need for toxics criteria. For most priority toxic pollutants, however, available data on the discharge and presence of priority toxic pollutants are spatially and temporally limited. Nevertheless, EPA believes that the data for many of these pollutants are sufficient to satisfy the "reasonable expectation" test established in section 303(c)(2)(B). The information in the record which demonstrates that priority toxic pollutants are discharged or present and that Federal criteria are necessary may be summarized as follows:

—Priority toxic pollutants on the Commonwealth's section 304(l) short list for which appropriate state criteria have not been adopted and approved, including metals and organic compounds.

—The Commonwealth's efforts since 1987 to adopt additional numeric criteria for priority toxic pollutants, as described above. The Commonwealth has initiated (but not completed) efforts to adopt new or revised chemical-specific, numeric criteria for 9 priority toxic pollutants. These efforts represent evidence of the Commonwealth's recognition of the need for numeric criteria for these priority toxic pollutants.

—Presence in surface waters of the Commonwealth's priority pollutants for which sufficient Commonwealth numeric criteria have not been adopted, based on surface water monitoring data in STORET.

—Discharge to surface waters of priority pollutants for which sufficient Commonwealth numeric criteria have not been adopted, based on data in the Toxics Release Inventory database and/or the Permit Compliance System database.

—Previously proposed revisions to Puerto Rico's Water Quality Standards Regulation indicating that numeric criteria for additional priority pollutants are necessary.

New York has not been included in today's proposed rulemaking because the State has water quality standards which meet the requirements of section 303(c)(2)(B). The State has met the requirements of section 303(c)(2)(B) of the Act through a combined Option 2 and Option 3 approach, as described in

EPA's December 12, 1988 guidance document.

State actions in response to the Clean Water Act requirement to adopt criteria may be summarized as follows:

—September 1985: The State adopted numeric criteria for 95 substances or classes of substances, including aquatic life and/or human health criteria. The State also adopted procedures, in regulation, for developing both aquatic life and human health based criteria. The procedures are used for developing the numeric criteria in the standards as well as for developing guidance values to be used for all purposes for which numeric criteria are used. The State has applied these procedures to develop aquatic life or human health based criteria for a total of 215 substances or classes of substances.

—September 30, 1985: EPA approved the State Water Quality Standards submittal.

—June 8, 1990: EPA approved State section 304(l) lists. No segments were included on the "short list" under Section 304(l) due to the presence of EPA priority pollutants for which the State did not have either a numeric criterion or derived guidance value.

—New York State had begun a triennial review prior to the 1987 amendments to the Clean Water Act. A notice of a public hearing and public information meetings was issued on May 25, 1990. The State has proposed the adoption of a limited number of aquatic life and human health based criteria for EPA priority pollutants. Public hearings and meetings were conducted in August 1990. A number of the proposed aquatic life and human based criteria were formerly included as guidance values. The State may be expected to convert additional guidance values during the next triennial review.

EPA approved the criteria for priority toxic pollutants adopted by New York on September 27, 1990, as being consistent with options 2 and 3 of the December 12, 1988 section 303(c)(2)(B) guidance document. In this letter, EPA directed the State to adequately address three issues: the need for greater public participation in the use of guidance values; the need for additional bioconcentration/bioaccumulation-based criteria and guidance values; and participation in the process to identify appropriate water quality criteria for use in developing TMDLs/WLAs for the waters of the New York/New Jersey Harbor Complex. EPA believes that the State has established standards which include or provide for the derivation of, numeric criteria for all priority toxic pollutants which "may reasonably be expected to interfere with designated uses".

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B), it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

The U.S. Virgin Islands has not been included in today's rulemaking. No EPA priority pollutants have been identified as impairing designated uses in the U.S. Virgin Islands through water quality monitoring and assessment activities. Further, EPA believes that there are no priority toxic pollutants present or discharged to surface waters which "may reasonably be expected to interfere with designated uses."

The following information supports EPA's conclusion:

—June 4, 1989: The U.S. Virgin Islands submitted lists of impaired waters pursuant to section 304(l). No waters were included on the section 304(l) "short list." No EPA priority pollutants were identified as impairing uses on other section 304(l) lists.

—May 9, 1990: EPA approved section 304(l) lists submitted by the U.S. Virgin Islands.

EPA has determined that the Water Quality Standards of the U.S. Virgin Islands fully meet the requirements of CWA section 303(c)(2)(B).

If additional information is submitted during the public comment period asserting that the U.S. Virgin Islands has not fully complied with section 303(C)(2)(B), it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Region 3

Virginia is included in today's proposal because although the State adopted numeric criteria for some priority toxic pollutants before the 1987 amendments, such criteria are not mandatory in application and, furthermore, the State has not completed a review of their numeric criteria for priority toxic pollutants in response to the statutory requirement. EPA has reason to believe that at least some additional criteria are necessary to comply with section 303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the State is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

The State's actions to respond to the 1987 section 303(c)(2)(B) requirements can be summarized as follows:

—September 29, 1987. The State Water Control Board adopted a resolution to adopt numerical criteria for toxic pollutants immediately after EPA issuance of CWA section 303(c)(2)(B) guidance.

—November 29, 1988. The State held a public meeting to receive comments on the adoption of criteria for toxic pollutants.

—December 30, 1988. EPA sent the State final "Guidance for State Implementation of Water Quality Standards for CWA section 303(c)(2)(B)."

—January 10, 1989. EPA submitted formal comments from the public meeting.

—October 23, 1989. Virginia requested EPA to submit recommendations for its triennial review.

—November 21, 1989. EPA responded to Virginia's request for triennial review recommendations.

—December 14, 1989. Virginia began public meetings to receive comments on issues to be included in the triennial review.

—February 12, 1990. Virginia began public hearings on a water quality standard for dioxin.

—February 16, 1990. EPA informed the State of EPA's intent to include the State in the national rule to promulgate numeric water quality criteria for priority toxic pollutants for those States which failed to meet the requirements of section 303(c)(2)(B).

—March 5, 1990. EPA submitted comments on Virginia's proposed dioxin standard.

—April 9, 1990. The EPA Assistant Administrator for the Office of Water informed the State that it was going to be included in a proposed national rule to establish numeric, surface water criteria for toxic pollutants designed to bring all States into full compliance with the requirements of section 303(c)(2)(B).

—July 25, 1990. Virginia began public hearings on proposed water quality standards, including criteria for toxics.

—August 7, 1990. EPA submitted comments on Virginia's proposed standards.

—August 17, 1990. Virginia reproposed changes to the water quality standards for public comment.

—September 14, 1990. EPA submitted comments on the revisions to the proposed water quality standards.

This proposed rulemaking would Federally promulgate the criteria necessary to bring the State into full compliance with section 303(c)(2)(B). To fully protect State designated uses, and to ensure that the required criteria are adopted, EPA proposes to apply broadly the criteria in proposed § 131.36(b). At a minimum, EPA proposes to apply, to all appropriate State waters, the criteria in proposed section 131.36(b) for all priority toxic pollutants which are not the subject of approved State criteria. EPA also proposes to promulgate Federal criteria for priority toxic pollutants where any previously-approved State criteria are insufficiently stringent to fully protect all designated uses, or where such previously-approved State criteria are not applicable to all appropriate State designated uses. EPA invites public comment regarding any specific priority pollutants or water bodies for which Federal criteria may not be necessary to protect State designated uses.

For reasons which are fully discussed in the preamble, EPA has not attempted to determine the specific priority pollutants and water bodies that require criteria. However, EPA has determined that at least some Federal criteria are necessary to protect designated uses. This determination is supported by information in the record which demonstrates that priority toxic pollutants are discharged or present in surface waters at levels that can reasonably be expected to interfere with State designated uses. For some priority toxic pollutants, available data clearly demonstrate use impairment and the need for toxics criteria. For most priority toxic pollutants, however, available data on the discharge and presence of priority toxic pollutants are spatially and temporally limited. Nevertheless, EPA believes that the data for many of these pollutants are sufficient to satisfy the "reasonable expectation" test established in section 303(c)(2)(B). The information in the record which demonstrates that priority toxic pollutants are discharged or present and that Federal criteria are necessary may be summarized as follows:

—Priority toxic pollutants on the State section 304(l) short list for which mandatory State criteria have not been adopted and approved.

—State efforts since 1987 to adopt additional numeric criteria for priority toxic pollutants, as described above. The State has adopted a human health criterion for dicxin and has initiated (but not completed) efforts to adopt new or revised chemical-specific, numeric criteria for 67 other priority toxic pollutants. These efforts represent evidence of the State's recognition of the need for numeric criteria for these priority toxic pollutants.

—Presence in surface waters of the State of priority pollutants for which sufficient State numeric criteria have not been adopted, based on surface water monitoring data in STORET.

—Discharge to surface waters of priority pollutants for which sufficient State numeric criteria have not been adopted, based on data in the Toxics Release Inventory database and/or the Permit Compliance System database.

Delaware has not been included in today's proposed rulemaking because the State has adopted revised criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's response to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—December 30, 1988. EPA sent the State final "Guidance for State Implementation of Water Quality Standards for CWA Section 303(c)(2)(B)."

—November 18, 1988. First draft revisions to water quality standards, including toxics.

—January 25, 1989. Second draft revisions to water quality standards.

—March 1, 1989. Third draft revisions to standards.

—June 1, 1989. Workshop draft of water quality standards, including development documents.

—June 12, 1989. Delaware began public workshops on standards revisions.

—July 10, 1989. EPA provided preliminary comments on the workshop draft revisions.

—July 28, 1989. Delaware submitted revised standards for EPA review.

—September 6, 1989. Delaware held a public hearing on the triennial review revisions to the water quality standards.

—September 6, 1989. EPA provided comments at the public hearing.

—February 2, 1990. Delaware adopted revisions to the water quality standards.

—February 5, 1990. Delaware submitted revised standards to EPA.

—February 16, 1990. EPA informed the State of EPA's intent to include the State in the national rule to promulgate numeric water quality criteria for priority toxic pollutants for those States which failed to meet the requirements of section 303(c)(2)(B).

—March 13, 1990. Delaware completed a responsiveness summary for its standards review.

—March 21, 1990. Delaware's Attorney General certified the revised standards.

—April 9, 1990. The EPA Assistant Administrator for the Office of Water informed the State that it was going to be included in a proposed national rule to establish numeric, surface water criteria for toxic pollutants designed to bring all States into full compliance with the requirements of section 303(c)(2)(B).

—August 24, 1990. EPA approved Delaware's revised standards for toxics.

EPA fully approved the criteria for priority toxic pollutants adopted by Delaware on February 2, 1990 as being consistent with option 2 of the December 12, 1988 section 303(c)(2)(B) guidance document. As part of its submittal of revised standards for EPA review, the State included information which demonstrated that numeric criteria had been adopted for all priority toxic pollutants which "may reasonably be expected to interfere with designated uses."

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B), it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Maryland has not been included in today's proposed rulemaking, because the State has adopted revised criteria for priority toxic pollutants in response to the section 303(C)(2)(B) requirement and received Environmental Protection Agency (EPA) approval for the criteria portion of the water quality standards.

The State's response to the 1987 section 303(C)(2)(B) requirement can be summarized as follows:

—December 30, 1988. EPA sent the State final "Guidance for State Implementation of Water Quality Standards for CWA section 303(c)(2)(B)."

—February 16, 1990. EPA informed the State of EPA's intent to include the State in the national rule to promulgate numeric water quality criteria for priority toxic pollutants for those States which failed to meet the requirements of section 303(c)(2)(B).

—March 21, 1990. The State adopted revised water quality standards which

included numeric criteria for priority toxic pollutants.

—April 9, 1990. The EPA Assistant Administrator for the Office of Water informed the State that it was going to be included in a proposed national rule to establish numeric, surface water criteria for toxic pollutants designed to bring all States into full compliance with the requirements of section 303(c)(2)(B).

—April 30, 1990. The State submitted the adopted water quality standards with a State Attorney General certification to EPA for approval/disapproval.

—May 4, 1990. The State proposed in the Maryland Register to adopt maximum contaminant levels (MCLs) for selenium and silver as drinking water criteria, which corrects a printing error resulting in the criteria being placed in the wrong column in the regulations proposed on November 3, 1989.

—June 12, 1990. Maryland submitted for EPA review the public hearing record for the toxic substances regulations proposed November 3, 1989.

—September 12, 1990. EPA approved the revised State numeric criteria for priority toxic pollutants.

EPA approved the criteria for priority toxic pollutants adopted by Maryland on March 21, 1990, as being consistent with option 2 of the December 12, 1988 section 303(c)(2)(B) guidance document. As part of its submittal of final revised standards for EPA review, the State included information which demonstrated that numeric criteria had been adopted for all priority toxic pollutants which "may reasonably be expected to interfere with designated uses".

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B), it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Pennsylvania has not been included in today's proposed rulemaking because the State has adopted a translator procedure to derive numeric criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's response to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—August 26, 1987. The State submitted to EPA a proposed list of issues to be addressed during the triennial water quality standards review.

—April 5, 1988. EPA submitted comments on the draft proposed revisions to the water quality standards.

—June 16, 1988. The State held a public hearing on its proposed water quality standards revisions, at which EPA provided verbal testimony.

—June 20, 1988. EPA submitted written comments to the State regarding the proposed water quality standards revisions.

—November 15, 1988. The State adopted revised water quality standards which included a translator procedure (option 3) for deriving numeric criteria for priority toxic pollutants.

—December 30, 1988. EPA sent the State final "Guidance for State Implementation of Water Quality Standards for CWA section 303(c)(2)(B)."

—April 17, 1989. The State submitted the adopted water quality standards with a State Attorney General certification to EPA for approval/disapproval.

—July 21, 1989. EPA requested clarification on the enforceability of the procedure adopted to derive criteria for priority toxic pollutants.

—July 28, 1989. The State responded to EPA's clarification request.

—September 29, 1989. EPA conditionally approved the State's water quality standards due to concerns regarding the enforceability and public participation of the translator procedure and the derived criteria.

—November 15, 1989. The State responded to EPA's conditional approval.

—January 18, 1990. EPA requested additional clarification regarding the State's response to the conditional approval.

—February 16, 1990. EPA informed the State of EPA's intent to develop a national rule to promulgate numeric water quality criteria for priority toxic pollutants for those States which failed to meet the requirements of section 303(c)(2)(B).

—February 20, 1990. The State provided additional clarification, in response to EPA's January 18, 1990, letter.

—April 9, 1990. The EPA Assistant Administrator for the Office of Water informed the State that it was going to be included in a proposed national rule to establish numeric, surface water criteria for toxic pollutants designed to bring all States into full compliance with the requirements of section 303(c)(2)(B).

—April 11, 1990. EPA approved the translator procedure for developing criteria for priority toxic pollutants.

EPA fully approved the procedure for developing numeric criteria for priority toxic pollutants which was adopted by Pennsylvania on November 15, 1988 as being consistent with option 3 of the December 12, 1988 section 303(c)(2)(B) guidance document.

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B), it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

West Virginia has not been included in today's proposal because the State has adopted criteria for priority toxic pollutants in response to the statutory requirement and will receive full EPA approval by September 13, 1990.

The State's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—June 23, 1988. The State submitted a draft list of toxic pollutants for criteria development to EPA for review prior to issuing proposed standards for public comment.

—July 25, 1988. EPA provided written comments on the draft list of toxic pollutants for criteria development.

—September 12, 1988. The State held a public hearing on its proposed water quality standards revisions, at which EPA provided verbal testimony.

—September 21, 1988. EPA provided written comments on the proposed revisions to the water quality standards.

—October 18, 1988. The State submitted proposed revisions to EPA for review and approval.

—December 30, 1988. EPA sent the State final "Guidance for State Implementation of Water Quality Standards for CWA section 303(c)(2)(B)."

—April 27, 1989. The State adopted final revisions to the water quality standards.

—September 29, 1989. EPA disapproved criteria for seven priority pollutants. Aquatic life criteria were disapproved for arsenic, cadmium, mercury, nickel, lead, selenium, and silver. Human health criteria were disapproved for arsenic, mercury and nickel. In addition, EPA disapproved site-specific toxics criteria (cyanide, hexavalent chromium, and copper) for two waterbody segments (Little Scary Creek and Turkey Run).

—November 13, 1989. The State responded to EPA's disapproval of the final revisions to the water quality standards.

—January 30, 1990. The State sent a letter to EPA which stated that the permittee discharging to Turkey Run

was relocating its outfall to another water body.
—January 31, 1990. EPA responded to the State's November 13, 1989 reply to EPA's disapproval of the water quality standards revisions.
—February 16, 1990. EPA informed the State of EPA's intent to develop a national rule to promulgate numeric water quality criteria for priority toxic pollutants for those States which failed to meet the requirements of section 303(c)(2)(B).
—March 12, 1990. EPA granted the State an extension to address EPA's disapproval.
—April 9, 1990. The EPA Assistant Administrator for the Office of Water informed the State that it was going to be included in a proposed national rule to establish numeric, surface water criteria for toxic pollutants designed to bring all States into full compliance with the requirements of section 303(c)(2)(B).
—April 1990. The State submitted rejustification for a disapproved site-specific criterion for copper.
—June 13, 1990. The State submitted emergency revisions to the water quality standards to address EPA's disapproval.
—July 16, 1990. The State held a public hearing on its emergency rulemaking, at which EPA provided verbal testimony.
—July 25, 1990. The State submitted comments received on the standards revisions by industrial representatives and requested EPA's reaction to the comments.
—July 27, 1990. EPA held a conference call with the State and discharger to Little Scary Creek to discuss the site-specific copper criteria rejustification submitted in April, 1990.
—August 2, 1990. EPA sent the State recommended revised site-specific copper criteria for Little Scary Creek.
—August 13, 1990. EPA replied to the State's July 25, 1990 request to respond to comments received by industrial representatives.
—August 20, 1990. The State adopted final emergency revisions to the water quality standards to address EPA's remaining concerns.
—August 27, 1990. The State submitted the adopted final emergency revisions to the water quality standards with a State Attorney General certification to EPA for approval/ disapproval.
—September 18, 1990. EPA fully approved the State's revised State water quality standards, including full approval of the revised numeric criteria for priority toxic pollutants.

EPA fully approved the criteria for priority toxic pollutants adopted by West Virginia on August 20, 1990 as being consistent with option 2 of the December 12, 1988 section 303(c)(2)(B) guidance document. As part of its submittal of final revised standards for EPA review, the State included information which demonstrated that numeric criteria had been adopted for all priority toxic pollutants which "may reasonably be expected to interfere with designated uses."

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B) it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

The District of Columbia is included in today's proposal because although the District adopted numeric criteria for most priority toxic pollutants before the 1987 amendments, the District has not completed a review of their numeric criteria for priority toxic pollutants in response to the statutory requirement, and EPA has reason to believe that at least some additional criteria are necessary and some criteria need to be revised to comply with section 303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the District is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

On August 26, 1985, prior to the passage of section 303(c)(2)(B), the District of Columbia adopted under emergency powers some criteria for priority toxic pollutants, chapter 11 of title 21 DCMR, "Water Quality Standards of the District of Columbia." EPA approved these criteria on October 31, 1985. The District made the emergency rules final on December 27, 1985.

The District's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—August 26, 1988. EPA sent comments to the District as to what issues should be addressed for the upcoming triennial water quality standards review.
—December 30, 1988. EPA sent the State final "Guidance for State Implementation of Water Quality Standards for CWA section 303(c)(2)(B)."
—February 15, 1989. The District submitted draft water quality standards revisions to EPA for review prior to issuing proposed standards for public comment.
—May 30, 1989. EPA sent the District a letter which emphasized the need for expediting the triennial water quality standards review.
—June 26, 1989. The District submitted proposed water quality standards revisions to EPA for review.
—July 5, 1989. The District held a public hearing on the proposed water quality standards revisions.
—September 15, 1989. The District submitted revised proposed water quality standards revisions to EPA for review.
—September 25, 1989. EPA submitted comments on the proposed water quality standards revisions and indicated that the District must adopt human health criteria for the consumption of fish.
—October 3, 1989. The District responded to EPA's comments.
—November 3, 1989. EPA provided additional comments on the proposed water quality standards revisions.
—December 11, 1989. EPA telephoned the District to inquire about a response to EPA's November 3, 1989, letter and the status of the water quality standards revisions.
—February 16, 1990. EPA informed the District of EPA's intent to develop a national rule to promulgate numeric water quality criteria for priority toxic pollutants for those States which failed to meet the requirements of section 303(c)(2)(B).
—April 9, 1990. The EPA Assistant Administrator for the Office of Water informed the State that it was going to be included in a proposed national rule to establish numeric, surface water criteria for toxic pollutants designed to bring all States into full compliance with the requirements of section 303(c)(2)(B).
—September 7, 1990. The District public noticed for comment proposed water quality standards revisions.
—October 5, 1990. EPA submitted comments on the proposed water quality standards revisions.

The District has adopted aquatic life criteria for 120 priority toxic pollutants and human health criteria for 107 priority toxic pollutants. The aquatic life criteria for two of the pollutants (selenium and toxaphene) and the human health criterion for one of the pollutants (hexachlorobenzene) exceed EPA's section 304(a)(1) criteria recommendations. Therefore, EPA believes that revised criteria for these pollutants are necessary. The District did not adopt human health criteria applicable to public water supplies for nine priority toxic pollutants (lead, asbestos, 2,3,7,8-tetrachlorodibenzo-p-

dioxin, vinyl chloride, bis(2-chloroisopropyl) ether, bis(2-ethylhexyl) phthalate, diethyl phthalate, dimethyl phthalate, and di-n-butyl phthalate) and has not provided justification that the discharge or presence of these pollutants cannot reasonably be expected to interfere with designated uses in the District's surface waters. Therefore, EPA believes that human health criteria for the consumption of water are necessary for these pollutants.

The District has not adopted any criteria for the protection of humans from the consumption of fish. Since the District's 1989 State Clean Water Strategy identifies that fishing does occur on District waters, EPA believes it is necessary to propose human health criteria for fish consumption for all priority toxic pollutants for which EPA has issued section 304(a)(1) criteria recommendations.

This proposed rulemaking would federally promulgate the criteria necessary to bring the State into full compliance with section 303(c)(2)(B). To fully protect State designated uses, and to ensure that the required criteria are adopted, EPA proposes to apply broadly the criteria in proposed § 131.36(b). At a minimum, EPA proposes to apply, to all appropriate State waters, the criteria in proposed 131.36(b) for all priority toxic pollutants which are not the subject of approved State criteria. EPA also proposes to promulgate Federal criteria for priority toxic pollutants where any previously approved State criteria are insufficiently stringent to fully protect all designated uses, or where such previously approved State criteria are not applicable to all appropriate State designated uses. EPA invites public comment regarding any specific priority pollutants or water bodies for which Federal criteria may not be necessary to protect State designated uses.

For reasons which are fully discussed in the preamble, EPA has not attempted to determine the specific priority pollutants and water bodies that require criteria. However, EPA has determined that at least some Federal criteria are necessary to protect designated uses. This determination is supported by information in the record which demonstrates that priority toxic pollutants are discharged or present in surface waters at levels that can reasonably be expected to interfere with State designated uses. For some priority toxic pollutants, available data clearly demonstrate use impairment and the need for toxics criteria. For most priority toxic pollutants, however, available data on the discharge and presence of priority toxic pollutants are spatially and temporally limited. Nevertheless, EPA believes that the data for many of these pollutants are sufficient to satisfy the "reasonable expectation" test established in section 303(c)(2)(B). The information in the record which demonstrates that priority toxic pollutants are discharged or present and that Federal criteria are necessary may be summarized as follows:

—State efforts since 1987 to adopt additional numeric criteria for priority toxic pollutants, as described above. The State has initiated (but not completed) efforts to adopt new or revised chemical-specific, numeric criteria for 12 priority toxic pollutants. These efforts represent evidence of the State's recognition of the need for numeric criteria for these priority toxic pollutants.

—Presence in surface waters of the State of priority pollutants for which sufficient numeric criteria have not been adopted, based on surface water monitoring data in STORET.

Region 4

Alabama has not been included in today's proposed rulemaking because the State has adopted criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's response to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—January 24, 1990. The Alabama Environmental Management Commission adopted the triennial review of water quality standards.

—May 23, 1990. The State Attorney General notified EPA that the adopted water quality standards would not be certified.

—June 1, 1990. The State sent EPA a copy of the revised standards without a request for formal EPA review and approval.

—November 26, 1990. The State submitted draft water quality standards revisions for EPA review. These revisions include: (1) Criteria for protection of aquatic life based on an Option I approach as described in EPA's December 12, 1988 guidance document, (2) numeric criteria for protection of human health for 17 priority toxic pollutants based on Option II of the guidance, and (3) proposed criteria equations based on Option III of the guidance for the protection of human health for the remaining priority toxic pollutants.

—January 17, 1991. The State held public hearings on the proposed revisions to water quality standards.

—February 20, 1991. The State adopted revisions to water quality standards including the numeric criteria for priority toxic pollutant based on an Option I approach as described in EPA's December 12, 1988 guidance document.

—April 18, 1991. EPA received the State's request for formal review of the adopted water quality standards.

—May 24, 1991. The State Attorney General submitted information relating to the legal certification of the adopted water quality standards.

—July 3, 1991. The State Attorney General submitted further information relating to the legal certification of the adopted water quality standards.

—July 18, 1991. EPA approved the revised State water quality standards.

EPA fully approved the criteria for priority toxic pollutants adopted by Alabama on July 18, 1991 as being consistent with Option I of the December 12, 1988 guidance document.

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B) it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Florida is included in today's proposal because although the State has adopted numeric criteria for priority toxic pollutants in response to the statutory requirement, the State has not yet requested or obtained EPA approval of the adopted criteria. In addition, EPA has reason to believe that criteria for at least one other priority toxic pollutant is necessary to comply with section 303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the State is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

On September 24, 1987 EPA approved the previous triennial review of Florida Water quality standards with the exception of three areas of the water quality standards which were disapproved. Included in the water quality standards which were approved by EPA were several numeric criteria for toxic priority pollutants derived for the protection of aquatic life. These criteria were initially adopted by the State as water quality standards in adoption proceedings prior to 1985. These criteria were not revised in the State's triennial review completed in 1987.

These criteria included criteria values which are less stringent in value than several of the national ambient water quality criteria included in the proposed rulemaking. Data used to develop the national ambient water quality criteria were not available for consideration by the State at the time of the initial adoption of these criteria by the State.

In the letter approving revisions to water quality standards, EPA instructed the State "to initiate a review of existing criteria at the earliest possible date." This review was necessary to address the 1987 requirements of section 303(c)(2)(B) for adoption of numeric criteria for toxic priority pollutants.

In directing the State to complete this review, EPA stated, "Recent changes in federal law relating to water quality standards will make it necessary for the State to complete an extensive review of water quality criteria during the next triennial review of water quality standards. The Water Quality Act of 1987 mandates that each state adopt numerical criteria for all 307(a) toxics for which national criteria are available or adopt procedures which will result in numeric limitations in National Pollutant Discharge Elimination System permits for these contaminants.

Considering the above, EPA is including the national ambient aquatic life-based water quality criteria values for these toxic priority pollutants in this proposed rulemaking.

In addition, the criteria adopted by the State in 1990 for the protection of human health have not been formally submitted and certified to EPA with a request for approval. Therefore, EPA is including all national ambient water quality criteria for protection of human health (as a class of criteria).

The State's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—December 27, 1989. The State submitted draft water quality standards revisions to EPA for review. These revisions include proposed criteria for protection of human health based on an Option II approach as described in EPA's December 12, 1988 guidance document as well as updates to adopted criteria for protection of aquatic life.

—February 7 and May 1, 1990. The State held public workshops on its proposed water quality standards revisions.

—December 7, 1990. The State adopted revisions to water quality standards which include 66 numeric criteria for priority toxic pollutants.

This proposed rulemaking would Federally promulgate the criteria necessary to bring the State into full compliance with section 303(c)(2)(B). To fully protect State designated uses, and to ensure that the required criteria are adopted, EPA proposes to apply broadly the criteria in proposed § 131.36(b). At a minimum, EPA proposes to apply, to all appropriate State waters, the criteria in proposed section 131.36(b) for all priority toxic pollutants which are not the subject of approved State criteria. EPA invites public comment regarding any specific priority pollutants or water bodies for which Federal criteria may not be necessary to protect State designated uses.

For reasons which are fully discussed in the preamble, EPA has not attempted to determine the specific priority pollutants and water bodies that require criteria. However, EPA has determined that at least some Federal criteria are necessary to protect designated uses. This determination is supported by information in the record which demonstrates that priority toxic pollutants are discharged or present in surface waters at levels that can reasonably be expected to interfere with State designated uses. For some priority toxic pollutants, available data clearly demonstrate use impairment and the need for toxics criteria. For most priority toxic pollutants, however, available data on the discharge and presence of priority toxic pollutants are spatially and temporally limited. Nevertheless, EPA believes that the data for many of these pollutants are sufficient to satisfy the "reasonable expectation" test established in section 303(c)(2)(B). The information in the record which demonstrates that priority toxic pollutants are discharged or present and that Federal criteria are necessary may be summarized as follows:

—priority toxic pollutants on the section 304(1) lists;

—State efforts since 1987 to adopt additional numeric criteria for priority toxic pollutants, as described above. The State has adopted new or revised chemical-specific, numeric criteria for 66 priority toxic pollutants. These efforts represent evidence of the State's recognition of the need for numeric criteria for these priority toxic pollutants.

—Priority toxic pollutants for which there exist water quality-based limits in an NPDES permit or where NPDES permit screening shows that the Federal 304(a) criteria may be exceeded instream;

—Priority toxic pollutant ambient monitoring data or site specific data which show that the Federal 304(a) criteria in the water column or in fish tissue may be exceeded;

—Priority toxic pollutant data in the Toxics Release Inventory under section 313 of SARA title III or in the National Bioaccumulation Study which show that the Federal 304(a) criteria in the water column or in fish tissue may be exceeded;

—Priority toxic pollutant data for which there are reasonable expectations that the Federal 304(a) criteria will be exceeded in the water column or fish tissue as a result of impacts from Superfund or RCRA sites; and

—Consideration of other data such as sediment data and location of storage facilities of priority toxic pollutants where these pollutants could reasonably be expected to interfere with designated uses.

Georgia has not been included in today's proposed rulemaking because the State has adopted revised criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's actions to respond to the 1987 Section 303(c)(2)(B) requirement can be summarized as follows:

—December 7, 1988. The State adopted revisions to water quality standards which included 12 criteria for 307(a) toxics.

—December 8, 1988. The State submitted the adopted revisions to water quality standards for review and approval.

—March 29, 1989. EPA disapproved the adopted 307(a) criteria adopted by the State.

—December 6, 1989. The State adopted water quality standards which included an Option I approach for the section 303(c)(2)(B) requirement with the exception of 2,3,7,8 TCDD (dioxin) and PCBs.

—December 14, 1989. The State submitted the adopted revisions to water quality standards for review and approval.

—March 28, 1990. The State adopted water quality criteria for dioxin and PCBs.

—April 3, 1990. EPA approved the priority toxic pollutant criteria adopted by the State on December 6, 1989.

—May 29, 1990. The State submitted the adopted criteria for dioxin and PCBs for EPA review and approval.

—October 29, 1990. The State submitted draft revisions to water quality standards including revised criteria for dioxin.

—November 27, 1990. EPA disapproved the adopted criteria for dioxin and approved the adopted criteria for PCBs.

—January 23, 1991. The State adopted revised criteria for dioxin.
—April 2, 1991. The State submitted the revised water quality standard for dioxin with a State Attorney General certification to EPA for approval.
—June 3, 1991. EPA approved the dioxin criteria, thus bringing the State into full compliance with section 303(c)(2)(B).

EPA fully approved the criteria for priority toxic pollutants on June 3, 1991 as being consistent with Option 1 of the December 12, 1988 guidance.

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B), it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Kentucky has not been included in today's proposed rulemaking because the State has adopted revised criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's response to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—May 31, 1990. The State adopted revised water quality standards which included numeric criteria for priority toxic pollutants based on Option I approach for the section 303(c)(2)(B) requirement.
—June 29, 1990. The State submitted the adopted water quality standards with a State Attorney General certification to EPA for approval.
—October 5, 1990. EPA approved the revised State water quality standards, including full approval of the revised numeric criteria for priority toxic pollutants.

EPA fully approved the criteria for priority toxic pollutants adopted by Kentucky on October 5, 1990 as being consistent with Option I of the December 12, 1988 guidance document.

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B) it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Mississippi has not been included in today's proposed rulemaking because the State has adopted criteria for priority toxic pollutants in response to the section 303(c)(2(B) requirement and received full EPA approval.

The State's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—March 22, 1990. The State adopted revisions to water quality standards in response to the section 303(C)(2)(B) requirement. The adopted revisions did not include criteria for dioxin.
—May 14, 1990. The State submitted the adopted revisions to water quality standards for review and approval.
—October 5, 1990. EPA approved the water quality criteria adopted by the State with the exception of the absence of criteria for dioxin, which was disapproved.
—January 29, 30 and 31, 1991. The State held public hearings to receive comments on the proposed dioxin criteria.
—March 28, 1991. The State adopted dioxin criteria of 1.0 ppq for protection of human health from the exposure routes of consumption of fish and shellfish and consumption of water.
—July 12, 1991. The State submitted the adopted dioxin criteria for EPA review and approval.
—July 15, 1991. The State submitted the adopted dioxin criteria for EPA review and approval.
—July 24, 1991. EPA approved the State-adopted water quality criteria for dioxin.

EPA fully approved the criteria for priority toxic pollutants adopted by Mississippi on July 24, 1991, as being consistent with Options I and III of the December 12, 1988 guidance document.

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B), it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

North Carolina has not been included in today's proposed rulemaking because the State has adopted revised criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—July 13, 1989. The State adopted revisions to water quality standards in response to the section 303(C)(2)(B) requirement.
—October 27, 1989. The State submitted the adopted revisions to water quality standards for review and approval.
—April 12, 1990. EPA approved the water quality criteria adopted by the State with the exception of the criteria for arsenic (saltwater), chromium (freshwater), copper, lead, pentachlorophenol and zinc.
—October 5, 1990. EPA approved the adopted criteria for chromium (freshwater) and decided that no criteria were required for pentachlorophenol to meet the 303(c)(2)(B) requirement. In addition, EPA conditionally approved the criteria for arsenic (saltwater), copper, lead and zinc based on a commitment by the State that revisions to these criteria would be adopted by the State by December 13, 1990.
—December 13, 1990. The State adopted revised criteria for arsenic, copper, chromium, lead and zinc.
—January 18, 1991. The State submitted the adopted water quality standards with a State Attorney General certification to EPA for approval.
—February 7, 1991. EPA approved the revised North Carolina water quality standards, including full approval of the revised criteria for priority toxic pollutants.

On February 7, 1991, EPA fully approved the criteria for priority toxic pollutants adopted by North Carolina as being consistent with Options II and III of the December 12, 1988 guidance document.

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B), it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

South Carolina has not been included in today's proposed rulemaking because the State has adopted revised criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—April 27, 1990. The State Legislature adopted revisions to water quality standards in response to the section 303(c)(2)(B) requirement.
—May 26, 1990. The State submitted the adopted revisions to water quality standards for review and approval.
—June 14, 1990. The State submitted for EPA review draft water quality standards revisions including numeric human health-based criteria based on Option I of the December 12, 1988 guidance document.
—August 1 and 2, 1990. The State held public hearings on proposed revisions to water quality standards which included 103 water quality criteria for protection of human health.
—October 5, 1990. EPA approved the water quality criteria adopted by the State with the exception of the criteria for protection of human health as a

class of criteria. The human health criteria for arsenic and lead were approved by EPA.

—October 11, 1990. The South Carolina Board of Health and Environmental Control promulgated the proposed revisions to water quality standards which included 103 criteria for the protection of human health.

—December 7, 1990. Promulgation by the Board of the South Carolina Department of Health and Environmental Control.

—March 13, 1991. Attorney General certification made.

—April 26, 1991. Revisions to South Carolina Water Classifications and Standards, Regulation 61–68, pertaining to numeric human health criteria for Clean Water Action section 307(a) toxics became effective upon publication in the State Register.

—May 8, 1991. The State submitted the adopted human health criteria for EPA review and approval.

—July 9, 1991. EPA approved the adopted standards, thus bringing the State into full compliance with section 303(c)(2)(B).

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B), it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Tennessee has not been included in today's proposed rulemaking because the State has adopted criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—May 1, 1989. The State submitted draft water quality standards revisions to EPA for review.

—December 15, 1989. The State submitted draft water quality standards revisions to EPA for review. The proposal included revisions to the draft water quality standards based on comments made by EPA and the public.

—December 15, 1989. The State held a public hearing on proposed revisions to water quality standards.

—July 30, 1990. The State submitted draft water quality standards revisions to EPA for review. The proposal included revisions to the draft water quality standards based on comments made by EPA and the public.

—November 15, 1990. The State held a second public hearing on proposed revisions to the water quality standards.

—January 17, 1991. The State adopted revised water quality standards which included numeric criteria for priority toxic pollutants based on Option II of EPA's December 12, 1988 guidance.

—August 14, 1991. The State submitted the adopted water quality standards with a State Attorney General certification to EPA for approval.

—September 28, 1991. EPA approved the revised State water quality standard, including full approval of the criteria for toxic pollutants.

EPA fully approved the criteria for toxic pollutants adopted by Tennessee on September 28, 1991 as being consistent with Option II of the December 12, 1988 guidance.

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B), it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Region 5

Wisconsin has not been included in today's proposed rulemaking because the State has adopted revised criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's response to the 1987 section 303(c)(2)(B) requirements can be summarized as follows:

—February 1987. The Natural Resources Board authorized public hearings on Chapter NR 105.

—December 1987. The Natural Resources Board authorized public hearings on Chapter NR 106.

—Thirteen public hearings were held on the water quality standards revisions in 1987 and 1988.

—November 17, 1988 and December 15, 1988. The State adopted revised water quality standards (Chapter NR 106 and Chapter NR 105, respectively) which included numeric criteria for priority pollutants.

—February 3, 1989. Wisconsin Department of Natural Resources submitted the adopted water quality standards with a State Attorney General certification to EPA for approval/disapproval.

—March 1, 1989. Water quality standards became effective.

—May 15, 1989. USEPA approved the revised State water quality standards, including full approval of the revised numeric criteria for priority toxic pollutants.

USEPA fully approved the criteria for priority toxic pollutants adopted by Wisconsin on November 17 and December 15, 1988 as being consistent with option 2 of the December 12, 1988 section 303(c)(2)(B) guidance document As part of its submittal of final revised standards for USEPA review, the State included information which demonstrated that numeric criteria had been adopted for all priority toxic pollutants which "may reasonably be expected to interfere with designated uses."

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B) it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Illinois has not been included in today's proposed rulemaking because the State has adopted revised criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's response to the 1987 section 303(c)(2)(B) requirements can be summarized as follows:

—January 25, 1990. The State adopted revised water quality standards which included criteria for priority toxic pollutants.

—February 2, 1990. The State submitted the adopted water quality standards with a State Attorney General certification to USEPA for approval/disapproval.

—February 13, 1990. Water quality standards rules became effective.

—February 15, 1990. USEPA approved the revised water quality standards (Docket A), including full approval of the revised criteria for priority pollutants.

USEPA fully approved the criteria for priority toxic pollutants adopted by Illinois on January 25, 1990 as being consistent with a combination of options 2 and 3 of the December 12, 1988 section 303(c)(2)(B) guidance document. As part of its submittal of final revised standards for USEPA review, the State included information which demonstrated that numeric criteria had been adopted for all priority toxic pollutants which "may reasonably be expected to interfere with designated uses."

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B) it will be necessary at that time to respond to those comments and reevaluate the

Agency's determination of full compliance.

Indiana has not been included in today's proposed rulemaking because the State has adopted revised criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's response to the 1987 section 303(c)(2)(B) requirements can be summarized as follows:

—March 1, 2, and 7, 1989. The State conducted public hearings for the water quality standards rules revisions.
—December 13, 1989. The State adopted revised water quality standards which included criteria for priority toxic pollutants. The Governor signed the revised standards on January 31, 1990.
—March 3, 1990. Water quality standards rules became effective.
—April 5, 1990. The State submitted the adopted water quality standards with a State Attorney General certification to USEPA for approval/disapproval.
—May 7, 1990. USEPA approved the revised water quality standards including full approval of the revised numeric criteria for priority pollutants.

USEPA fully approved the criteria for priority toxic pollutants adopted by Indiana on December 15, 1989 as being consistent with a combination of options 2 and 3 of the December 12, 1988 section 303(c)(2)(B) guidance document. As part of its submittal of final revised standards for USEPA review, the State included information which demonstrated that numeric criteria had been adopted for all priority toxic pollutants which "may reasonably be expected to interfere with designated uses."

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B) it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Ohio has not been included in today's proposed rulemaking because the State has adopted revised criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's response to the 1987 section 303(c)(2)(B) requirements can be summarized as follows:

—November 28, 29 and 30, 1989. Ohio EPA conducted public hearings addressing water quality standards revisions.
—December 18, 1989 Public record closed.
—February 1, 1990. The State adopted revised water quality standards which included criteria for priority toxic pollutants.
—February 12, 1990. The State submitted the adopted water quality standards to USEPA for approval/disapproval.
—March 13, 1990. The State submitted the required Attorney General certification of the water quality standards.
—April 25, 1990. USEPA approved the revised water quality standards including full approval of the revised numeric criteria for priority pollutants.
—May 1, 1990. Water quality standards rules became effective.

USEPA fully approved the criteria for priority toxic pollutants adopted by Ohio on February 1, 1990 as being consistent with a combination of options 2 and 3 of the December 12, 1988 section 303(c)(2)(B) guidance document. As part of its submittal of final revised standards for USEPA review, the State included information which demonstrated that numeric criteria had been adopted for all priority toxic pollutants which "may reasonably be expected to interfere with designated uses."

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B) it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Michigan is included in today's proposal because although the State adopted criteria for priority pollutants before the 1987 amendments, the State has not completed a review of their criteria for priority toxic pollutants in response to the statutory requirement and USEPA has reason to believe that modification of the water quality standards is necessary to comply with section 303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the State is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

Michigan adopted criteria for priority toxic pollutants consistent with option 3 of the December 12, 1988 section 303(c)(2)(B) guidance document prior to actual passage of section 303(c)(2)(B) on November 14, 1986 (General Rules of the Michigan Water Resources Commission, Part 4, Water Quality Standards, R 323 of the Michigan Administrative Code). USEPA approved these criteria on August 4, 1987. However, the translator mechanism guidelines implementing Rule 57 were not included within the water quality standards regulation itself and, therefore, the criteria calculated through the implementation of this procedure were not binding upon the Water Resources Commission but instead are considered to be recommendations to the Commission. The State's efforts in response to section 303(c)(2)(B) have consisted of bringing the existing option 3 procedure within Rule 57 itself, thereby making implementation of the procedure-generated criteria in permits mandatory.

The State's actions to respond to the 1987 section 303(c)(2)(B) requirements can be summarized as follows:

—July 21, 1988. MDNR staff presented and the Michigan Water Resources Commission approved a proposed water quality standards review process and schedule.
—August, September and October 1988. Informal public comment on requests for changes in the water quality standards taken in Water Resources Commission meetings at Houghton, Lansing and Tawas, Michigan, respectively.
—February 28, 1989. Scoping session held by MDNR staff with interested parties prior to development of water quality standards package.
—August 20, 1989. Draft proposed water quality standards package as presented to the Commission and was approved for informal public comment through September 29, 1989.
—October 20, 1989. Staff presented a draft proposed standards package to the Commission which the Commission approved for formal public hearings.
—December 31, 1989. The proposed water quality standards were published in the November, 1989 Michigan Register along with a Notice of Public Hearing.
—February 20, 21 and 22, 1990. Public Hearings on the proposed standards were held in Lansing, Traverse City and Marquette, respectively.
—April 2, 1990. Public comment period ended.
—May 1990. Water Resources Commission approved revised water quality standards.
—September 1990. Revised water quality standards are to go before Joint Committee on Administrative Rules (JCAR) for approval/disapproval. The JCAR dropped this item from its agenda and did not address it during 1990. The Michigan

DNR has again submitted the existing revisions to JCAR for its review during February 1991.

This proposed rulemaking would Federally promulgate the criteria necessary to bring the State into full compliance with section 303(c)(2)(B). To fully protect State designated uses, and to ensure that the required criteria are adopted, EPA proposes to apply broadly the criteria in proposed § 131.36(b). At a minimum, EPA proposes to apply, to all appropriate State waters, the criteria in proposed § 131.36(b) for all priority toxic pollutants which are not the subject of approved State criteria. EPA also proposes to promulgate Federal criteria for priority toxic pollutants where any previously approved State criteria are insufficiently stringent to fully protect all designated uses, or where such previously approved State criteria are not applicable to all appropriate State designated uses. EPA invites public comment regarding any specific priority pollutants or water bodies for which Federal criteria may not be necessary to protect State designated uses.

For reasons which are fully discussed in the preamble, EPA has not attempted to determine the specific priority pollutants and water bodies that require criteria. However, EPA has determined that at least some Federal criteria are necessary to protect designated uses. This determination is supported by information in the record which demonstrates that priority toxic pollutants are discharged or present in surface waters at levels that can reasonably be expected to interfere with State designated uses. For some priority toxic pollutants, available data clearly demonstrate use impairment and the need for toxics criteria. For most priority toxic pollutants, however, available data on the discharge and presence of priority toxic pollutants are spatially and temporally limited. Nevertheless, EPA believes that the data for many of these pollutants are sufficient to satisfy the "reasonable expectation" test established in section 303(c)(2)(B). The information in the record which demonstrates that priority toxic pollutants are discharged or present and that Federal criteria are necessary may be summarized as follows:

—Priority toxic pollutants on the Michigan Section 304(l) short list (February 3, 1989) for which State criteria consistent with Section 303(c)(2)(B) have not been adopted and approved, including metals, dioxin, and polynuclear aromatic hydrocarbons.

—Presence in surface waters of the State of priority pollutants for which sufficient State numeric criteria have not been adopted, based on surface water monitoring data in STORET.

—Discharge to surface waters of priority pollutants for which sufficient State numeric criteria have not been adopted, based on data in the Toxics Release Inventory database and/or the Permit Compliance System database.

—1990 Michigan 305(b) Report.

—Current implementation of Michigan's Rule 57 in the State's NPDES program (e.g., Form 2c data, presence of water quality-based effluent controls in existing NPDES permits).

Minnesota has not been included in today's proposed rulemaking because the State has adopted revised criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's actions to respond to the 1987 section 303(c)(2)(B) requirements can be summarized as follows:

—December 1989. Minnesota Pollution Control Agency begins rulemaking proceedings on amendments to Minnesota Rules Chapter 7050.

—February 1 to March 16, 1990. Minnesota Pollution Control Agency holds nine public hearings addressing the revised standards.

—April 10, 1990. Public record for the standards revisions closed.

—May 10, 1990. Administrative Law Judge issued his report on the standards revisions.

—June 25, 1990. Minnesota Pollution Control Agency staff met with the Minnesota Pollution Control Agency Board—Water Quality Committee to discuss standards revision issues.

—July 24, 1990. Board approved and adopted the standards revisions.

—July 16, 1991. EPA approved the revised Minnesota water quality standards, including full approval of the revised criteria for priority toxic pollutants.

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B) it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Region 6

Arkansas is included in today's proposal because although the State has completed a review and adopted numeric criteria for some priority toxic pollutants in response to the statutory requirement, EPA has reason to believe that at least some additional criteria are necessary to comply with section 303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the State is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

Arkansas adopted some criteria for priority pollutants on November 1984 and January 1988. EPA approved these criteria on 1/28/85 and 5/6/88 and these criteria are not affected by today's rulemaking.

The State's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—November 1984. The State adopted revised water quality standards that included numeric criteria for 16 toxic substances to protect aquatic life. These were approved by EPA on January 28, 1985.

—January 1988. The State adopted revised water quality standards that included numeric criteria for 24 priority pollutants to protect aquatic life. These were approved by EPA on May 6, 1988.

—July 27, 1990. The State proposed revised water quality standards that included numeric criteria for 36 priority pollutants to protect aquatic life and for 13 priority pollutants to protect human health at a 10–6 risk.

—August 27, 1990. The State held a public hearing to receive public comment on the proposed revisions mentioned above.

This proposed rulemaking would Federally promulgate the criteria necessary to bring the State into full compliance with section 303(c)(2)(B). To fully protect State designated uses, and to ensure that the required criteria are adopted, EPA proposes to apply broadly the criteria in proposed § 131.36(b). At a minimum, EPA proposes to apply, to all appropriate State waters, the criteria in proposed § 131.36(b) for all priority toxic pollutants which are not the subject of approved State criteria. EPA also proposes to promulgate Federal criteria for priority toxic pollutants where any previously approved State criteria are insufficiently stringent to fully protect all designated uses, or where such previously approved State criteria are not applicable to all appropriate State designated uses. EPA invites public comment regarding any specific priority pollutants or water bodies for which Federal criteria may not be necessary to protect State designated uses.

For reasons which are fully discussed in the preamble, EPA has not attempted

to determine the specific priority pollutants and water bodies that require criteria. However, EPA has determined that at least some Federal criteria are necessary to protect designated uses. This determination is supported by information in the record which demonstrates that priority toxic pollutants are discharged or present in surface waters at levels that can reasonably be expected to interfere with State designated uses. For some priority toxic pollutants, available data clearly demonstrate use impairment and the need for toxics criteria. For most priority toxic pollutants, however, available data on the discharge and presence of priority toxic pollutants are spatially and temporally limited. Nevertheless, EPA believes that the data for many of these pollutants are sufficient to satisfy the "reasonable expectation" test established in section 303(c)(2)(B). A list of the pollutants requiring criteria was included in letters to the State dated February 15, 1990 and June 11, 1990 (copies are contained in the record). The information in the record which demonstrates that priority toxic pollutants are discharged or present and that Federal criteria are necessary may be summarized as follows:

—Priority toxic pollutants on the State section 304(l) short list for which State criteria consistent with Section 303(c)(2)(B) have not been adopted and approved,

—State efforts since 1987 to adopt additional numeric criteria for priority toxic pollutants, as described above. The State has initiated (but not completed) efforts to adopt new or revised chemical-specific, numeric criteria for 7 priority toxic pollutants. These efforts represent evidence of the State's recognition of the need for numeric criteria for these priority toxic pollutants.

—Presence in surface waters of the State of priority pollutants for which sufficient State numeric criteria have not been adopted, based on surface water monitoring data in STORET and the National Bioaccumulation Study.

—Discharge to surface waters of priority pollutants for which sufficient State numeric criteria have not been adopted, based on data in the Toxics Release Inventory database and/or the Permit Compliance System database.

Louisiana is included in today's proposal because although the State has adopted criteria for some priority toxic pollutants in response to the statutory requirement, EPA disapproved the lack of criteria for dioxin and has reason to believe that some additional criteria are necessary to comply with section 303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the State is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with Section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

The State completed a triennial revision of its water quality standards since passage of the Clean Water Act (CWA) section 303(c)(2)(B) and adopted revised standards on September 20, 1989. The revised numeric criteria were approved by EPA on December 19, 1989 with the exception of dioxin (no criterion proposed). Since this revision, a review of several databases—STORET, TRI, State 305(b) reports, and NPS assessments—indicated the need for Louisiana to adopt additional numeric criteria for mercury, lead, cadmium, copper and nickel via an Option 2 approach.

On March 20, 1991 the State adopted numeric criteria for 5 metals (cadmium, copper, lead, mercury and nickel). EPA received these revisions for our review on June 20, 1991.

Today's rule would only promulgate numeric criteria for dioxin and the metals listed above. Criteria approved on December 19, 1989 by EPA are not affected by today's proposed rulemaking.

New Mexico has not been included in today's proposed rulemaking because the State has adopted revised criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—June 6, 1988. The State proposed revised water quality standards that included numeric criteria for 11 priority pollutants to protect aquatic life. Additionally, the State proposed a narrative statement about protecting against toxic substances in domestic water supplies that create more than a 10–5 cancer risk.

—June 13, 1990. The State held a public hearing to receive public comment on the proposed revisions mentioned above.

—May 22, 1991. The State adopted numeric criteria for 14 priority pollutants. EPA received these revisions for our review on June 7, 1991.

—August 19, 1991. EPA approved the revised New Mexico water quality standards, including full approval of the revised criteria for priority toxic pollutants.

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B) it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Oklahoma has not been included in today's proposed rulemaking because the State has adopted criteria for priority pollutants in response to the section 303(c)(2)(B) requirement and received full approval.

The State's response to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—June 10, 1989. The State adopted revised water quality standards which included numeric criteria for priority toxic pollutants.

—November 1, 1989. The State submitted the adopted water quality standards with a State Attorney General's certification to EPA for approval/disapproval.

—January 18, 1990. EPA approved the revised State water quality standards, including full approval of the numeric criteria for priority toxic pollutants.

EPA fully approved the criteria for priority toxic pollutants adopted by Oklahoma on June 10, 1989 as being consistent with Option 1 for aquatic life criteria and Option 2 for human health criteria as described in the December 12, 1988 section 303(c)(3)(B) guidance document. EPA's review concluded that numeric criteria had been adopted for all priority toxic pollutants which "may reasonably be expected to interfere with designated uses."

If additional information is submitted during the public comment period asserting that the State is not in compliance with section 303(c)(2)(B), EPA will transmit these comments to Oklahoma and will reevaluate the Agency's determination of full compliance after Oklahoma's submittal of their 1992 revised water quality standards to EPA for our approval/disapproval.

Texas has not been included in today's proposed rulemaking because the State has adopted revised criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—April 7, 1988. The State adopted revised water quality standards that included numeric criteria for 30 toxic

substances to protect aquatic life. The numeric criteria adopted for mercury protected human health in addition to aquatic life.

—June 29, 1985. EPA approved the aquatic life criteria for 30 priority toxic pollutants and the human health criterion for mercury.

—December 24, 1990. The State issued proposed water quality standards revisions for public comment. The proposed revisions included numeric criteria for 29 priority pollutants.

—February 25, 1991. The State held a public hearing on the proposed revisions to the water quality standards mentioned above.

—June 12, 1991. The State adopted numeric criteria for 29 priority pollutants. EPA received these revisions for our review on July 1, 1991.

—September 25, 1991. EPA approved the revised Texas water quality standards, including full approval of the revised criteria for priority toxic pollutants.

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B) it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Region 7

Iowa has not been included in today's proposed rulemaking because the State has adopted revised criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—March 19, 1990—The Iowa Environmental Protection Commission adopted aquatic life use protection criteria for several priority toxic pollutants.

—April 9, 1990—The State submitted the adopted aquatic life criteria to EPA with a proposed effective date of May 23, 1990.

—May 3, 1990—The State submitted draft human health criteria to EPA.

—June 1, 1990—The State resubmitted draft human health criteria to EPA.

—July 11, 1990—The State published a notice of intended action concerning standards revisions for human health criteria and scheduled public hearings

—August 1, 2, and 7, 1990—The State held public hearings at three locations in the State.

—September 17, 1990—The State scheduled adoption by the Environmental Protection Commission for October 15, 1990.

—December 19, 1990. Standards become effective.

—June 11, 1991. EPA approved the revised State water quality standards as satisfying the requirement of section 303(c)(2)(B).

EPA fully approved the criteria for priority toxic pollutants adopted by Iowa on June 11, 1991, as being consistent with Option 1 of the December 12, 1988 guidance.

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B) it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

EPA has withheld approval of the aquatic life criteria revisions until the State completes and submits all of the revisions and documentation necessary under section 303 (c)(2)(B).

This proposed rulemaking would Federally promulgate the criteria necessary to bring the State into full compliance with section 303(c)(2)(B). To fully protect State designated uses, and to ensure that the required criteria are adopted, EPA proposes to apply broadly the criteria in proposed § 131.36(b). At a minimum, EPA proposes to apply, to all appropriate State waters, the criteria in proposed § 131.36(b) for all priority toxic pollutants which are not the subject of approved State criteria. EPA also proposes to promulgate Federal criteria for priority toxic pollutants where any previously approved State criteria are insufficiently stringent to fully protect all designated uses, or where such previously approved State criteria are not applicable to all appropriate State designated uses. EPA invites public comment regarding any specific priority pollutants or water bodies for which Federal criteria may not be necessary to protect State designated uses.

For reasons which are fully discussed in the preamble, EPA has not attempted to determine the specific priority pollutants and water bodies that require criteria. However, EPA has determined that at least some Federal criteria are necessary to protect designated uses. This determination is supported by information in the record which demonstrates that priority toxic pollutants are discharged or present in surface waters at levels that can reasonably be expected to interfere with State designated uses. For some priority toxic pollutants, available data clearly demonstrate use impairment and the need for toxics criteria. For most priority toxic pollutants, however, available data on the discharge and presence of priority toxic pollutants are spatially and temporally limited. Nevertheless, EPA believes that the data for many of these pollutants are sufficient to satisfy the "reasonable expectation" test established in section 303(c)(2)(B). The information in the record which demonstrates that priority toxic pollutants are discharged or present and that Federal criteria are necessary may be summarized as follows:

—Priority toxic pollutants on the State section 304 (l) short list including metals for which revised state criteria have not been adopted and approved.

—State efforts since 1987 to adopt additional numeric criteria for priority toxic pollutants, as described above. The State has initiated (but not completed) efforts to adopt new or revised chemical-specific, numeric criteria for ____ priority toxic pollutants. These efforts represent evidence of the State's recognition of the need for numeric criteria for these priority toxic pollutants.

—Regional Ambient Fish Tissue Monitoring data indicating elevated fish flesh concentrations of pesticides which are not currently covered with approved state criteria.

—STORET data indicating the presence in surface waters of priority toxic pollutants which are not currently covered with approved state criteria.

Kansas is included in today's proposal because although the state adopted numeric criteria for a few priority toxic pollution before the 1987 amendments, the state has not completed a review of their numeric criteria for priority toxic pollutants in response to the statutory requirements and the Environmental Protection Agency (EPA) has reason to believe that at least some additional criteria are necessary to comply with section 303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the State is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

Kansas adopted some criteria for priority toxic pollutants prior to the passage of section 303(c)(2)(B) on May 1, 1986 (State Regulation K.A.R. 28–16–28e). EPA approved these criteria on June 19, 1986, and most of these criteria are not affected by today's proposed rulemaking. (Those not affected are aquatic life criteria for nickel, silver, zinc, aldrin, chlordane, DDT, dieldrin,

endosulfan, endrin, heptachlor, lindane, and PCBs).

The state's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—January 1990—The state submitted a preliminary draft of numeric criteria for EPA prior to starting an internal and external review of water quality standards revisions.
—July 1990—The state stopped all action on the standards revisions citing concerns over the costs of compliance.
—January 1991—The state submitted a draft package of standards revisions to EPA including numeric criteria to satisfy section 303(c)(2)(B) and set a date of June 1991 for final adoption.

This proposed rulemaking would Federally promulgate the criteria necessary to bring the State into full compliance with section 303(c)(2)(B). To fully protect State designated uses, and to ensure that the required criteria are adopted, EPA proposes to apply broadly the criteria in proposed § 131.36(b). At a minimum, EPA proposes to apply, to all appropriate State waters, the criteria in proposed § 131.36(b) for all priority toxic pollutants which are not the subject of approved State criteria. EPA also proposes to promulgate Federal criteria for priority toxic pollutants where any previously-approved State criteria are insufficiently stringent to fully protect all designated uses, or where such previously-approved State criteria are not applicable to all appropriate State designated uses. EPA invites public comment regarding any specific priority pollutants or water bodies for which Federal criteria may not be necessary to protect State designated uses.

For reasons which are fully discussed in the preamble, EPA has not attempted to determine the specific priority pollutants and water bodies that require criteria. However, EPA has determined that at least some Federal criteria are necessary to protect designated uses. This determination is supported by information in the record which demonstrates that priority toxic pollutants are discharged or present in surface waters at levels that can reasonably be expected to interfere with State designated uses. For some priority toxic pollutants, available data clearly demonstrate use impairment and the need for toxics criteria. For most priority toxic pollutants, however, available data on the discharge and presence of priority toxic pollutants are spatially and temporally limited. Nevertheless, EPA believes that the data for many of these pollutants are sufficient to satisfy the "reasonable expectation" test established in section 303(c)(2)(B). The information in the record which demonstrates that priority toxic pollutants are discharged or present and that Federal criteria are necessary may be summarized as follows:

—Priority toxic pollutants on the state section 304(1) short and mini lists for which State criteria have not been adopted and approved, including metals.
—State efforts since 1987 to adopt additional numeric criteria for priority toxic pollutants, as described above. The State has initiated (but not completed) efforts to adopt new or revised chemical-specific, numeric criteria for ____ priority toxic pollutants. These efforts represent evidence of the State's recognition of the need for numeric criteria for these priority toxic pollutants.
—STORET data indicating the presence in surface water of priority toxic pollutants which are not currently covered with approved state criteria.

Missouri has not been included in today's proposed rulemaking because the State has adopted revised criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—March 17, 1989—Missouri Clean Water Commission adopted additional numeric criteria for priority toxic pollutants for aquatic life use protection.
—April 15, 1989—The adopted criteria became effective under State law.
—October 13, 1989—EPA approved criteria with a recommendation that Missouri review the need for additional human health criteria.
—August 6, 1990—The State held a public meeting to discuss human health criteria revisions.
—August 23, 1990—The State scheduled a public hearing and adoption before the Missouri Clean Water Commission for October 23, 1990.
—December 12, 1990. Clean Water Commission adopts water quality standards.
—January 30, 1991. Standards sumbitted to EPA for review.
—March 4, 1991. Standards become effective in State.
—June 11, 1991. EPA approves standards as complying with section 303(c)(2)(B).

EPA fully approved the criteria for priority toxic pollutants adopted by Missouri on June 11, 1991 as being consistent with Option 1 of the December 12, 1988 guidance.

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B) it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Nebraska has not been included in today's proposed rulemaking because the State has adopted revised criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—May 20, 1988—The state adopted numeric criteria for aquatic life protection for priority toxic pollutants.
—August 29, 1988—The adopted criteria became effective under state law.
—October 18, 1988—EPA approved Nebraska's Water Quality Standards noting that the need for additional human health criteria must be evaluated.
—December 1, 1989—The state adopted some numeric priority toxic pollutant criteria for a human health use (drinking water supply).
—February 20, 1990—The adopted criteria became effective under state law.
—January 17, 1990—DEC proposed human health fish consumption criteria for priority toxic pollutants.
—February 16, 1990—The state adopted the proposed human health fish consumption numeric criteria.
—June 27, 1990—The human health fish consumption numeric criteria became effective under state law.
—August 10, 1990—The state proposed revisions to mixing zone provisions of State Water Quality Standards which affect the application of numeric criteria.
—September 21, 1990—The state adopted proposed revisions to mixing zone policies.
—August 2, 1991. EPA approved the revised Nebraska water quality standards, including full approval of the revised criteria for priority toxic pollutants.

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B) it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Region 8

Colorado is included in today's proposal because, although Colorado has completed a review and adopted numeric criteria for some priority toxic pollutants in response to the statutory requirement, EPA has reason to believe that at least some additional criteria are necessary to comply with section 303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the State is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

Colorado's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—June 5, 1989—Region VIII notified the State that the priority pollutant standards under consideration for adoption would not fully satisfy the requirements of section 303(c)(2)(B).

—August 17, 1989—Colorado completed its triennial review and revised the State's Basic Standards and Methodologies. The revised Standards were submitted to EPA for review on October 6, 1989. The revised Basic Standards and Methodologies included new numeric criteria for some of the priority toxic pollutants; however, not all of the priority toxic pollutants for which EPA has developed 304(a) criteria were included in the revised State rule.

—January 17, 1990—Region VIII sent a letter to the State explaining the requirements for full compliance with section 303(c)(2)(B). The letter explained that where a State selected an option 2 approach to full compliance (i.e., option 2 as described in EPA's December 12, 1988 guidance and the Region's January 17, 1990 letter to the State), the burden was on the State to demonstrate that additional criteria beyond those already adopted were not needed.

—February 5, 1990—In a letter from the Colorado Water Quality Control Division to EPA Region VIII, Colorado notified EPA that it intended to meet the full compliance requirements by way of option 2. To date, however, the documentation supporting full compliance with option 2 has not been received.

—July 9, 1990—Region VIII sent a letter to the State commenting on what the Region considered to be needed revisions to the State's Basic Standards and Methodologies. In the letter, the Region again advised the State that the current toxics provisions of the Basic Standards and Methodologies were incomplete and subject to the federal promulgation. The letter explained the Agency's approach to the upcoming promulgation, and the proposed regulatory language and criteria values to be promulgated were enclosed for State review.

—July 12, 1990—In a memorandum to the State, Region VIII provided additional information on compliance with the toxic requirements and the upcoming federal promulgation. The memorandum included a listing of EPA published and modified toxics criteria which could be used in proposing needed amendments to the existing toxics provisions in the Basic Standards and Methodologies (modified criteria were based on the most recent information in IRIS).

—August 13, 1990—Region VIII sent an improved version of the toxics criteria chart to the State staff.

—September 19, 1990. Region VIII sent to the State a "strawman" data analysis which provided stream-specific information regarding the priority toxic pollutants that may require adoption of criteria to satisfy the option 2 full compliance requirements of section 303(c)(2)(B).

—February 21, 1991. The State proposed amendments to the Basic Standards and Methodologies for its July triennial review hearing. The proposed amendments include: (1) Revisions and additions to the existing aquatic life criteria, and (2) application of EPA's human health criteria to all class 1 waters and any class 2 waters which provide an exposure pathway via consumption of contaminated aquatic organisms and/or drinking water.

—May 21, 1991. Region VIII sent a letter to the State detailing three deficiencies in the State's February 21, 1991 proposed revisions to the Basic Standards and Methodologies: (1) Failure to explain why health-based standards applicable to water supply segments were not included for more than 40 priority toxic pollutants addressed by section 304(a) guidance, (2) failure to explain why health-based standards applicable to aquatic life segments were not included for more than 20 priority toxic pollutants addressed by section 304(a) guidance, and (3) failure to finally resolve within the Basic Standards and Methodologies the applicability of: (a) The numeric aquatic life and human health standards for inorganics, and (b) certain human health numeric standards (i.e., those that address human exposure from water and fish consumption) for organics. The Region VIII letter notified the State that these deficiencies would need to be addressed to satisfy the full compliance requirements and to ensure that Colorado would not be affected by the Federal section 303(c)(2)(B) promulgation.

—July 1, 1991. The State held a public hearing on the proposed standards revisions. At the hearing, EPA submitted written testimony that identified the specific issues and options related to section 303(c)(2)(B) compliance.

—August 20, 1991. In a letter to the State, EPA Region VIII approved the August 17, 1989 toxics criteria adopted by Colorado as partially fulfilling the requirements of section 303(c)(2)(B). The letter clearly indicated that additional State action would be required to achieve full compliance.

—October 8, 1991. The State Water Quality Control Commission adopted additional numeric criteria for priority toxic pollutants, including criteria for all such toxics addressed by EPA section 304(a) criteria guidance. The adopted standards were intended to resolve all issues related to section 303(c)(2)(B) compliance. Because EPA has not yet had sufficient opportunity to review and approve these standards, today's proposal is based on the standards previously adopted by the State on August 17, 1989.

This proposed rulemaking would Federally promulgate the criteria necessary to bring the State into full compliance with section 303(c)(2)(B). To fully protect State designated uses, and to ensure that the required criteria are adopted, EPA proposes to apply broadly the criteria in proposed § 131.36(b). At a minimum, EPA proposes to apply, to all appropriate State waters, the criteria in proposed § 131.36(b) for all priority toxic pollutants which are not the subject of approved State criteria. EPA also proposes to promulgate Federal criteria for priority toxic pollutants where any previously approved State criteria are insufficiently stringent to fully protect all designated uses, or where such previously approved State criteria are not applicable to all appropriate State designated uses. For example, to fully protect aquatic life uses from the impacts of inorganic priority toxic pollutants (including metals), EPA proposes to promulgate aquatic life criteria for only those particular segments and inorganic substances for which State aquatic life criteria have not been applied. EPA invites public comment regarding any specific priority pollutants or water bodies for which

Federal criteria may not be necessary to protect State designated uses.

For reasons which are fully discussed in the preamble, EPA has not attempted to determine the specific priority pollutants and water bodies that require criteria. However, EPA has determined that at least some Federal criteria are necessary to protect designated uses. This determination is supported by information in the record which demonstrates that priority toxic pollutants are discharged or present in surface waters at levels that can reasonably be expected to interfere with State designated uses. For some priority toxic pollutants, available data clearly demonstrate use impairment and the need for toxics criteria. For most priority toxic pollutants, however, available data on the discharge and presence of priority toxic pollutants are spatially and temporally limited. Nevertheless, EPA believes that the data for many of these pollutants are sufficient to satisfy the "reasonable expectation" test established in section 303(c)(2)(B). The information in the record which demonstrates that priority toxic pollutants are discharged or present and that Federal criteria are necessary may be summarized as follows:

—State efforts since 1987 to adopt additional numeric criteria for priority toxic pollutants, as described above. These efforts represent evidence of the State's recognition of the need for numeric criteria for these priority toxic pollutants.

—Presence in surface waters of the State of priority pollutants for which sufficient State numeric criteria have not been adopted, based on surface water monitoring data in STORET.

—Discharge to surface waters of priority pollutants for which sufficient State numeric criteria have not been adopted, based on data in the Toxics Release Inventory data base and/or the Permit Compliance System data base.

North Dakota has not been included in today's proposed rulemaking because the State has adopted revised criteria in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's response to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—May 1, 1989. North Dakota completed its triennial review and revised the State's standards. The revised standards were submitted to EPA for review on September 20, 1989. The revised standards included new numeric criteria for some of the priority toxic pollutants; however, not all of the priority toxic pollutants for which EPA has developed 304(a) criteria were included in the revised State rule.

—January 17, 1990. Region VIII sent a letter to the State explaining the requirements for full compliance with section 303(c)(2)(B). The letter explained that the burden was on the State to demonstrate that additional criteria beyond those already adopted were not needed.

—February 7, 1990. In a letter from the North Dakota Water Supply and Pollution Control Division to EPA Region VIII, North Dakota notified EPA that it intended to meet the full compliance requirements by way of option 1 (i.e., an option 1 approach as described in EPA's December 12, 1988 guidance document and the Region's January 17, 1990 letter to the State).

—July 12, 1990. In a memorandum to the State, Region VIII provided additional information on compliance with the toxics requirements and the upcoming federal promulgation. The memorandum included a listing of EPA published and modified toxics criteria which could be used in proposing needed amendments to the existing toxics provisions in the State standards (modified criteria were based on the most recent information in IRIS).

—August 13, 1990. Region VIII sent an improved version of the toxics criteria chart to the State staff.

—October 16, 1990. The Region approved the previously adopted State standards as partially fulfilling the section 303(c)(2)(B) requirements and notified the State that the standards would be considered incomplete pending completion of the full compliance requirements. The Regional WQS review letter also notified the State that the incomplete portions of the State rule would be subject to the proposed federal promulgation.

—November 15, 1990. North Dakota adopted additional standards for the priority toxic pollutants. The amended standards include criteria for all of the priority pollutants for which EPA has published 304(a) criteria plus additional criteria based on the most recent information in EPA's IRIS data base. The amended standards meet the requirements for full compliance with section 303(c)(2)(B). The amended standards became effective February 1, 1991, and the standards were submitted by the State for EPA review and approval on February 25, 1991.

—March 8, 1991. Region VIII approved the amended State water quality standards and advised the State that the amended standards met the full compliance requirements of section 303(c)(2)(B).

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B) it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

South Dakota has not been included in today's proposed rulemakingbecause the State has adopted revised criteria for priority toxic pollutants in response to the section 393(c)(2)(B) requirement and received full EPA approval.

South Dakota's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—October 8, 1987. South Dakota completed its triennial review and revised the State's Standards. The revised Standards were submitted to EPA for review on May 5, 1989. The revised Standards included a reference to EPA's Water Quality Criteria, 1986 as the numeric criteria incorporated in State Standards; however, the State did not include or identify certain information needed to distinguish which specific EPA criteria had been adopted as State Standards.

—January 17, 1990. Region VIII sent a letter to the State explaining the requirements for full compliance with section 303(c)(2)(B). The letter explained that incorporation of EPA's national criteria into State Standards by reference to EPA's Quality Criteria for Water, 1986 was acceptable; however, such a reference would have to include sufficient information to identify the specific numeric criteria which comprised State Standards. The needed information was not provided prior to today's proposal.

—February 13, 1990. Region VIII sent a letter to the State further explaining the issues that would have to be clarified before the Region would be able to grant final approval of the toxics portion of the State water quality standards.

—March 8, 1990. South Dakota further amended the State Standards to clarify the role of the Department of Natural Resources in applying the criteria in Quality Criteria for Water, 1986; however, the new amendments did not address the specific information needed to satisfy the full compliance requirements for section 303(c)(2)(B).

—July 12, 1990. Region VIII sent additional information to the State on

compliance with the toxics requirements and the upcoming federal promulgation. The memorandum included a listing of EPA published and modified toxics criteria which could be used in proposing needed amendments to the existing toxics provisions in the State standards (modified criteria were based on the most recent information in IRIS).

—August 13, 1990. Region VIII sent an improved version of the toxics criteria chart to the State staff.

—November 6, 1990. Region VIII sent additional information to the State further delineating the specific application information that would be needed to achieve approval of the toxics provisions of the water quality standards.

—March 6, 1991. In a letter from the Division of Environmental Regulation, South Dakota provided a complete interpretation of the toxics control provisions in section 74:03:02:14, the section of the South Dakota water quality standards which incorporates EPA's Quality Criteria for Water, 1986 by reference. The State's letter included a listing of the specific criteria which are considered to be standards of the State. The list included all of the published 304(a) criteria and identified the uses to which the criteria applied.

—March 13, 1991. The Region approved the adopted State criteria as fulfilling the section 303(c)(2)(B) requirements.

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B) it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Utah has not been included in today's proposed rulemaking because the State has adopted revised criteria in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's response to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—April 21, 1988. Utah completed its triennial review and revised the State's standards. The revised standards were submitted to EPA for review on February 10, 1989. The revised standards included new numeric criteria for some of the priority toxic pollutants for which EPA has developed 304(a) criteria were included in the revised State rule.

—January 17, 1990. Region VIII sent a letter to the State enplaning the requirements for full compliance with section 303(c)(2)(B). The letter explained that the burden was on the State to demonstrate that additional criteria beyond those already adopted were not needed.

—January 31, 1990. In a letter from the Utah Bureau of Water Pollution Control to EPA Region VIII, Utah notified EPA that it intended to meet the full compliance requirements by way of option 1 (i.e., an option 1 approach as described in EPA's December 12, 1988 guidance document and the Region's January 17, 1990 letter to the State).

—July 12, 1990. In a memorandum to the State, Region VIII provided additional information on compliance with the toxics requirements and the upcoming federal promulgation. The memorandum included a listing of EPA published and modified toxics criteria which could be used in proposing needed amendments to the existing toxics provisions in the State standards (modified criteria were based on the most recent information in IRIS).

—August 13, 1990. Region VIII sent an improved version of the toxics criteria chart to the State staff.

—November 29, 1990. The Region approved the previously adopted State standards as partially fulfilling the section 303(c)(2)(B) requirements and notified the State that the standards would be considered incomplete pending completion of the full compliance requirements. The Regional water quality standards review letter also notified the State that the incomplete portions of the State rule would be subject to the provisions of the proposed federal promulgation.

—January 18, 1991. Utah adopted additional standards for the priority toxic pollutants. The amended standards include criteria for all of the priority pollutants for which EPA has published 304(a) criteria. The amended standards meet the requirements for full compliance with section 303(c)(2)(B). The amended standards were submitted by the State for EPA review and approval on February 13, 1991.

—March 8, 1991. Region VIII approved the amended State water quality standards and advised the State that the amended standards met the full compliance requirements of section 303(c)(2)(B).

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B) it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Wyoming has not been included in today's proposed rulemaking because the State has adopted revised criteria in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's response to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—January 17, 1990. Region VIII sent a letter to the State explaining the requirements for full compliance with section 303(c)(2)(B). The letter explained that the burden was on the State to demonstrate that additional criteria beyond those already adopted were not needed.

—February 12, 1990. In a letter from the Wyoming Water Quality Division of the Department of Environmental Quality, Wyoming notified EPA that it intended to meet the full compliance requirements by way of option 1 (i.e., an option 1 approach as described in EPA's December 12, 1988 guidance document and the Region's January 17, 1990 letter to the State).

—May 29, 1990. Region VIII provided written comments for the Wyoming Environmental Quality Council triennial review hearing. The Region's comments further explained the requirements for full compliance with section 303(c)(2)(B).

—July 12, 1990. In a memorandum to the State, Region VIII provided additional information on compliance with the toxics requirements and the upcoming federal promulgation. The memorandum included a listing of EPA published and modified toxics criteria which could be used in proposing needed amendments to the existing toxics provisions in the State standards (modified criteria were based on the most recent information in IRIS).

—July 19, 1990. Region VIII provided additional written comment to the Wyoming Environmental Quality Council. The Region's comments provided further information on the toxics requirements, including specific lists of published and modified criteria for the priority pollutants which would meet the full compliance requirements.

—August 13, 1990. Region VIII sent an improved version of the toxics criteria chart to the State staff.

—October 3, 1990. Wyoming adopted additional standards for the priority toxic pollutants. The amended standards include criteria for all of the

priority pollutants for which EPA has published 304(a) criteria plus additional criteria based on the most recent information in EPA's IRIS data base. The amended standards meet the requirements for full compliance with section 303(c)(2)(B). The amended standards became effective November 29, 1990, and the standards were submitted by the State for EPA review and approval on December 24, 1990. Clarification of the legal standing of the newly adopted rule was provided with a memorandum from the State dated January 12, 1991.

—March 8, 1991. Region VIII approved the amended State water quality standards and advised the State that the amended standards met the full compliance requirements of section 303(c)(2)(B).

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B) it will be necessary to respond to those comments and reevaluate the Agency's determination of full compliance.

Montana has not been included in today's proposed rulemaking because the State has adopted revised criteria in response to the section 303(c)(2)(B) requirement and received full EPA approval. The State's response to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—September 23, 1988. The State adopted final water quality standards which included numeric criteria for the priority toxic pollutants (by reference to EPA's Quality Criteria for Water, 1986 through update #2 1987 including supporting information).

—December 9, 1988. The State submitted the adopted water quality standards with a State Attorney General certification to EPA for approval/disapproval.

—March 8, 1989. EPA approved the portion of the revised State water quality standards which responded to the requirements of section 303(c)(2)(B) (other portions of the revised standards were disapproved).

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B) it will be necessary to respond to those comments and reevaluate the Agency's determination of full compliance.

Region 9

American Samoa has not been included in today's proposed rulemaking because it has adopted revised criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

American Samoa's response to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—January 1990. American Samoa submitted draft water quality standards revisions to EPA and the public for review.

—February 1990. American Samoa held a public hearing on its proposed water quality standards revisions.

—September 7, 1990. The American Samoa Environmental Commission adopted its proposed water quality standards revisions which include numeric criteria for priority toxic pollutants.

—September 20, 1990. American Samoa submitted the adopted water quality standards to EPA for approval/disapproval.

—September 25, 1990. American Samoa submitted the State Attorney General certification.

—September 27, 1990. EPA approved the revised American Samoa water quality standards, including full approval of the revised numeric criteria for priority pollutants.

EPA fully approved the criteria for priority toxic pollutants adopted by American Samoa on September 27, 1990 based on a determination that the criteria are consistent with option 1 of the December 12, 1988 section 303(c)(2)(B) guidance document.

If additional information is submitted during the public comment period asserting that American Samoa has not fully complied with section 303(c)(2)(B), it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Arizona is included in today's proposal because, although the State adopted numeric criteria for some priority toxic pollutants before the 1987 amendments, the State has not completed a review of their numeric criteria for priority toxic pollutants in response to the statutory requirement and EPA has reason to believe that at least some additional criteria are necessary to comply with section 303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the State is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

The State's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—Late 1988. The State submitted a series of discussion papers to EPA and the public.

—June 7, 1989. The State submitted draft water quality standards revisions to EPA for review prior to issuing proposed standards for public comment.

—December 11, 1989. The State transmitted a Surface Water Quality Standards Triennial Review Briefing Book, dated December 8, 1989, to EPA and the public.

—February 15, 1990. The State submitted, to EPA and the public, draft proposed revisions to its Surface Water Quality Standards.

—March 16, 1990. The State submitted Proposed Surface Water Quality Standards Rules to EPA and the public.

—During 1988–90, the State held several public meetings and roundtables regarding the proposed water quality standards.

—October 26, 1990. Arizona prepared revised draft water quality standards which were released for comment October 29, 1990.

—December 14, 1990. EPA provided written comments to the States.

—January 15, 1991. Arizona prepared a re-draft of the water quality standards for review and comment.

—February 13, 1991. EPA provided written comments to the States.

—May 8, 1991. Arizona approval by the Governor's Regulatory Review Council on May 7, 1991 of the Navigable Water Quality Standards proposed rules and the Economic Impact Statement.

Also announced the schedule of oral proceedings and availability of the proposed rules.

Today's proposed rulemaking would Federally promulgate the criteria necessary to bring the State into full compliance with section 303(c)(2)(B). To fully protect State designated uses, and to ensure that the required criteria are adopted, EPA proposes to apply broadly the criteria in proposed § 131.36(b). At a minimum, EPA proposes to apply, to all appropriate State waters, the criteria in proposed § 131.36(b) for all priority toxic pollutants which are not included in approved State criteria. EPA also proposes to promulgate the § 131.36(b) criteria where any previously-approved State criteria are insufficiently stringent to fully protect all designated uses, or where such previously-approved State criteria are not applicable to all waters with relevant State designated uses. EPA invites public comment regarding any specific priority pollutants or water bodies for which Federal criteria may

not be necessary to protect State designated uses.

For reasons which are fully discussed in the preamble, EPA has not attempted to determine the specific priority pollutants and water bodies that require criteria. However, EPA has determined that at least some Federal criteria are necessary to protect designated uses. This determination is supported by information in the record which demonstrates that priority toxic pollutants are discharged or present in surface waters at levels that can reasonably be expected to interfere with State designated uses. For some priority toxic pollutants, available data clearly demonstrate use impairment and the need for section 303(c)(2)(B) criteria. For most priority toxic pollutants, however, available data on the discharge and presence of such pollutants are spatially and temporally limited. Nevertheless, EPA believes that the data for many of these pollutants are sufficient to satisfy the "reasonable expectation" test established in section 303(c)(2)(B). The information in the record which demonstrates that priority toxic pollutants are discharged or present and that section 303(c)(2)(B) criteria are necessary may be summarized as follows:

—Priority toxic pollutants on the State Section 304(l) lists (as updated), and supporting documentation, for which State criteria have not been adopted and approved, including metals, dioxin, and some organics.

—State efforts since 1987 to adopt additional numeric criteria for priority toxic pollutants, as described above. The State has initiated (but not completed) efforts to adopt new or revised chemical-specific, numeric criteria for 126 priority toxic pollutants. These efforts represent evidence of the State's recognition of the need for numeric criteria for these priority toxic pollutants.

—STORET data indicating the presence in surface waters of a majority of the priority toxic pollutants which are not covered with approved State criteria.

—Discharge to surface waters of priority pollutants for which sufficient State numeric criteria have not been adopted, based on data in the Toxics Release Inventory database and/or the Permit Compliance System database.

California is included in today's proposal because, although the State has completed a review and adopted numeric criteria for some priority toxic pollutants for some waters in response to the statutory requirement, EPA has reason to believe that at least some additional criteria are necessary to comply with section 303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the State is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

For ocean waters, the State adopted revised criteria on March 22, 1990, and EPA fully approved those criteria on June 23, 1990. Regarding inland waters and bays and estuaries, the State adopted numeric criteria for some priority toxic pollutants before the 1987 amendments and a few site specific criteria since 1987. Included among these criteria are numeric criteria for copper, cadmium and zinc applicable to the Sacramento River and its tributaries upstream of Hamilton City adopted by the State on August 16, 1984, and approved by EPA on August 7, 1985. Since the 1987 amendments, the State adopted numeric monthly mean and maximum criteria for selenium in the San Joaquin River from the mouth of the Merced River to Vernalis and monthly mean criteria in flows to Grasslands Water District, San Luis National Wildlife Refuge, and Los Banos State Wildlife Area on September 21, 1989; EPA approved these criteria on April 13, 1990, and, at the same time, disapproved selenium criteria for other locations. These approved numeric criteria comply with section 303(c)(2)(B) and are not amended by today's proposed rulemaking. Subsequent to these specific efforts, the State completed a review of their numeric criteria for priority toxic pollutants for State inland waters and bays and estuaries and transmitted them to EPA. EPA has reason to believe that at least some additional criteria are necessary to comply with section 303(c)(2)(B). In addition, several parties have petitioned State Court to restrain the SWRCB from utilizing the standards for inland waters and bays and estuaries.

The State's actions, regarding inland waters and bays and estuaries, to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—October 6, 1989. The State issued a staff report proposing methodologies for development of water quality criteria for statewide plans.

—December 1, 1989. EPA submitted written comments to State on its proposed methodology.

—January 29, 1990. The State issued draft water quality standards for inland surface waters and enclosed bays and estuaries for EPA and public review.

—February 28 and March 5, 1990. The State held public hearings on proposed standards revisions.

—March 29, 1990. EPA submitted written comments to the State on proposed standards revisions.

—August 16, 1990. The State held a public workshop on development and implementation of standards for agricultural drains and ephemeral streams. (EPA testified.)

—August 22, 1990. EPA submitted written comments to the State on development and implementation of standards for agricultural drains and ephemeral streams.

—November 2, 1990. The State issued revised draft water quality standards for EPA and public review.

—December 7, 1990. EPA submitted written comments on the revised draft water quality standards.

—December 10, 1990. The State held a hearing on the revised draft standards. (EPA testified.)

—February 8, 1991. EPA provided written comments to the State re: the agricultural drains section of the Inland Surface Waters Plan.

—March 26, 1991. The State issued drafts of the Statewide Water Quality Control Plans for Inland Surface Waters and Enclosed Bays and Estuaries.

—March 27, 1991. EPA provided written comments to the San Francisco Bay Regional Water Quality Control Board re: proposed interim objectives for toxic pollutants in the South Bay.

—April 10, 1991. EPA provided written comments to the State re: The Statewide Water Quality Control Plans for Inland Surface Waters and Enclosed Bays and Estuaries.

—April 10, 1991. EPA provided written comments to the State re: EPA's position on how to proceed with dioxin related programs.

—April 11, 1991. The State adopted the Statewide Waters Quality Control Plans for Inland Surface Water and Enclosed Bays and Estuaries.

—May 10, 1991. The State transmitted to EPA the Statewide Waters Quality Control Plans for Inland Surface Water and Enclosed Bays and Estuaries.

Today's proposed rulemaking would Federally promulgate the criteria necessary to bring the State into full compliance with section 303(c)(2)(B). To fully protect State designated uses, and to ensure that the required criteria are adopted, EPA proposes to apply broadly the criteria in proposed § 131.36(b). At a

minimum, EPA proposes to apply, to all State inland waters and bays and estuaries, the criteria in proposed § 131.36(b) for all priority toxic pollutants which are not included in EPA approved State criteria. EPA also proposes to promulgate section 303(c)(2)(B) criteria for priority toxic pollutants where any previously-approved State criteria are insufficiently stringent to fully protect all designated uses, or where such previously-approved State criteria are not applicable to all waters with relevant State designated uses. EPA invites public comment regarding any specific priority pollutants or water bodies for which Federal criteria may not be necessary to protect State designated uses.

For reasons which are fully discussed in the preamble, EPA has not attempted to determine the specific priority pollutants and water bodies that require criteria. However, EPA has determined that at least some additional Federal criteria are necessary to protect designated uses. This determination is supported by information in the record which demonstrates that priority toxic pollutants are discharged or present in surface waters at levels that can reasonably be expected to interfere with State designated uses. For some priority toxic pollutants, available data clearly demonstrate use impairment and the need for section 303(c)(2)(B) criteria. For most priority toxic pollutants, however, available data on the discharge and presence of such pollutants are spatially and temporally limited. Nevertheless, EPA believes that the data for many of these pollutants are sufficient to satisfy the "reasonable expectation" test established in section 303(c)(2)(B). The information in the record which demonstrates that priority toxic pollutants are discharged or present and that section 303(c)(2)(B) criteria are necessary may be summarized as follows:

—priority toxic pollutants discussed in the State Section 304(1) lists, and supporting documentation, for which State criteria have not been adopted and approved, including metals, dioxin, and some organics,

—State efforts since 1987 to adopt additional numeric criteria for priority toxic pollutants for inland waters and bays and estuaries, as described above. The State has completed efforts to adopt new or revised chemical-specific, numeric criteria for 68 priority toxic pollutants. These efforts represent evidence of the State's recognition of the need for numeric criteria for these priority toxic pollutants.

—STORET data indicating the presence in inland waters and bays and estuaries of priority toxic pollutants which are not covered with approved State criteria (e.g., detection of more than 40 priority toxic pollutants in the water column).

—Discharge to surface waters of priority pollutants for which sufficient State numeric criteria have not been adopted, based on data in the Toxics Release Inventory database and/or the Permit Compliance System database.

The Commonwealth of the Northern Mariana Islands (CNMI) is included in today's proposal because, although the State adopted numeric criteria for some priority toxic pollutants before the 1987 amendments, the State has not completed a review of their numeric criteria for priority toxic pollutants in response to the statutory requirement and EPA has reason to believe that at least some additional criteria are necessary to comply with section 303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the State is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

The Commonwealth's actions to respond to the 1987 section 303(c)(2)(B) requirements can be summarized as follows:

—March 22, 1990. The Commonwealth transmitted a letter to EPA indicating that its water quality standards revision process had been delayed.

—March 28, 1991. CNMI submitted draft water quality standards revisions to EPA for review.

—May 22, 1991. EPA provided comments to CNMI re: the draft revised standards.

Today's proposed rulemaking would Federally promulgate the criteria necessary to bring the State into full compliance with section 303(c)(2)(B). To fully protect State designated uses, and to ensure that the required criteria are adopted, EPA proposes to apply broadly the criteria in proposed § 131.36(b). At a minimum, EPA proposes to apply, to all appropriate State waters, the criteria in proposed § 131.36(b) for all priority toxic pollutants which are not included in approved State criteria. EPA also proposes to promulgate the § 131.36(b) criteria where any previously-approved State criteria are insufficiently stringent to fully protect all designated uses, or where such previously-approved State criteria are not applicable to all waters with relevant State designated uses. EPA invites public comment regarding any specific priority pollutants or water bodies for which Federal criteria may not be necessary to protect State designated uses.

For reasons which are fully discussed in the preamble, EPA has not attempted to determine the specific priority pollutants and water bodies that require criteria. However, EPA has determined that at least some Federal criteria are necessary to protect designated uses. This determination is supported by information in the record which demonstrates that priority toxic pollutants are discharged or present in surface waters at levels that can reasonably be expected to interfere with State designated uses. For some priority toxic pollutants, available data clearly demonstrate use impairment and the need for toxics criteria. For most priority toxic pollutants, however, available data on the discharge and presence of priority toxic pollutants are spatially and temporally limited. Nevertheless, EPA believes that the data for many of these pollutants are sufficient to satisfy the "reasonable expectation" test established in section 303(c)(2)(B). The information in the record which demonstrates that priority toxic pollutants are discharged or present and that Federal criteria are necessary may be summarized as follows:

—CNMI efforts since 1987 to adopt additional numeric criteria for priority toxic pollutants, as described above. CNMI has initiated (but not completed) efforts to adopt new or revised chemical-specific, numeric criteria for 108 priority toxic pollutants. These efforts represent evidence of the CNMI's recognition of the need for numeric criteria for these priority toxic pollutants.

—STORET data indicating the presence in CNMI waters of priority toxic pollutants which are not covered with approved CNMI criteria.

Guam has not been included in today's proposed rulemaking because Guam has adopted revised criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

Guam's response to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—July 2, 1987. Guam adopted revised water quality standards which include numeric criteria for priority toxic pollutants.

—August 1987. Guam submitted the adopted water quality standards with an Attorney General certification to EPA for approval/disapproval.
—September 30, 1987. EPA approved the revised Guam water quality standards, including full approval of the revised numeric criteria for priority toxic pollutants. EPA fully approved the criteria for priority toxic pollutants adopted by Guam on July 2, 1987. It has been determined since that time that the criteria are consistent with option 1 of the December 12, 1988 section 303(c)(2)(B) guidance document.

If additional information is submitted during the public comment period asserting that Guam has not fully complied with section 303(c)(2)(B), it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Hawaii is included in today's proposal because, although the State has completed a review and adopted numeric criteria for some priority toxic pollutants in response to the statutory requirement, EPA has reason to believe that at least some additional criteria are necessary to comply with section 303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the State is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

The State's actions to respond to the 1987 section 303(c)(2)(B) requirements can be summarized as follows:

—January 8, 1990. The State adopted revised criteria.
—February 9, 1990. Hawaii submitted the adopted water quality standards with a State Attorney General certification to EPA for approval/disapproval.
—May 9, 1990. EPA approved Hawaii's water quality standards noting that omission of human health limits for five toxic metals precluded full satisfaction of the section 303(c)(2)(B) requirement.
—May 29, 1990. The State responded to the EPA approval indicating plans to adopt human health limits for the five toxic metals.
—July 13, 1990. EPA clarified portions of the May 1990 approval letter.

Because the State has adopted criteria for priority toxic pollutants using an option I approach as described in EPA's December 12, 1988 guidance document EPA is taking an approach of proposing criteria for all remaining priority toxic pollutants which have been the subject of section 304(a)(1) criteria recommendations. EPA believes that the discharge or presence of these priority toxic pollutants can reasonably be expected to interfere with designated uses in the State and that Federal criteria therefore are necessary to protect Hawaii designated uses. This conclusion is based on the following information in the record:

—priority toxic pollutants on the State section 304(l) lists for which State criteria have not been adopted and approved, including these metals,
—STORET data indicating the presence in surface waters of these priority toxic pollutants.

Nevada is included in today's proposal because, although the State has completed a review and adopted numeric criteria for some priority toxic pollutants in response to the statutory requirement, EPA has reason to believe that at least some additional criteria are necessary to comply with section 303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the State is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

The State's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—May 24, 1988. The State held a public hearing on it's proposed water quality standards revisions.
—September 12, 1988. The State submitted draft water quality standards revisions to EPA and the public for review.
—September 20, 1988. EPA provided comments to Nevada regarding its proposed water quality standards for toxics.
—October 21, 1988. The State submitted revisions to the Nevada toxic material definition and bioassay procedures to EPA and the public for review.
—November 10, 1988. The State held a public hearing on its proposed water quality standards revisions.
—November 29, 1988. The State held a public hearing on its proposed water quality standards revisions. (Revisions to the definition of "toxic" were adopted following this hearing.)
—May 31, 1989. The State submitted draft water quality standards revisions to EPA and the public for review.
—June 22, 1989. EPA provided comments to Nevada regarding its proposed standards for toxics.
—August 9, 1989. The State submitted draft water quality standards revisions to EPA and the public for review.
—August 22, 1989. The State submitted draft water quality standards revisions and rationale to EPA.
—September 18, 1989. EPA provided comments on Nevada's proposed water quality standards for toxics.
—September 27, 1989. The State held a public hearing on its proposed water quality standards revisions. (Revisions to the bioassay requirements as part of the narrative toxics standard were adopted following this hearing.)
—February 26, 1990. The State submitted draft water quality standards revisions to EPA and the public for review.
—March 27, 1990. EPA provided comments on Nevada's proposed February 26, 1990 toxics standards.
—March 28, 1990. The State held a public hearing on its proposed water quality standards revisions.
—May 2, 1990. EPA provided comments regarding the latest proposed standards revisions.
—May 2, 1990. The State adopted water quality standards revision which included some numeric criteria for priority toxic pollutants.
—August 23, 1990. State transmitted approved water quality standards revisions without a State Attorney General Certification to EPA for approval/disapproval.
—September 28, 1990. The State Attorney General certified the May 2, 1990 adoption.
—January 16, 1991. EPA approved in part and disapproved in part standards adopted by the State and notified them of the actions they needed to take pursuant to the disapproval and that they had not fully satisfied section 303(c)(2)(B).
—March 14, 1991. The State responded to the January 1991 approval/disapproval of standards.

Today's proposed rulemaking would Federally promulgate the criteria necessary to bring the State into full compliance with section 303(c)(2)(B). To fully protect State designated uses, and to ensure that the required criteria are adopted, EPA proposes to apply broadly the criteria in proposed § 131.36(b). At a minimum, EPA proposes to apply, to all appropriate State waters, the criteria in proposed § 131.36(b) for all priority toxic pollutants which are not included in approved State criteria. EPA also

proposes to promulgate the § 131.36(b) criteria where any previously-approved State criteria are insufficiently stringent to fully protect all designated uses, or where such previously-approved State criteria are not applicable to all waters with relevant State designated uses. EPA invites public comment regarding any specific priority pollutants or water bodies for which Federal criteria may not be necessary to protect State designated uses.

For reasons which are fully discussed in the preamble, EPA has not attempted to determine the specific priority pollutants and water bodies that require criteria. However, EPA has determined that at least some Federal criteria are necessary to protect designated uses. This determination is supported by information in the record which demonstrates that priority toxic pollutants are discharged or present in surface waters at levels that can reasonably be expected to interfere with State designated uses. For some priority toxic pollutants, available data clearly demonstrate use impairment and the need for criteria. For most priority toxic pollutants, however, available data on the discharge and presence of such pollutants are spatially and temporally limited. Nevertheless, EPA believes that the data for many of these pollutants are sufficient to satisfy the "reasonable expectation" test established in section 303(c)(2)(B). The information in the record which demonstrates that priority toxic pollutants are discharged or present and that section 303(c)(2)(B) criteria are necessary may be summarized as follows:

—State efforts since 1987 to adopt additional numeric criteria for priority toxic pollutants, as described above. The State has initiated (but not completed) efforts to adopt new or revised chemical-specific, numeric criteria for 108 priority toxic pollutants. These efforts represent evidence of the State's recognition of the need for numeric criteria for these priority toxic pollutants.

—Presence in surface waters of the State of priority pollutants for which sufficient State numeric criteria have not been adopted, based on surface water monitoring data in STORET.

—Discharge to surface waters of priority pollutants for which sufficient State numeric criteria have not been adopted, based on data in the Toxics Release Inventory database and/or the Permit Compliance System database.

The Trust Territories of the Pacific Islands (Palau) has not been included in today's proposed rulemaking because Palau has adopted revised criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

Palau's response to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—November 7, 1990. Palau adopted revised water quality standards which include numeric criteria for priority toxic pollutants.

—December 12, 1990. Palau submitted the adopted water quality standards with an Attorney General certification to EPA for approval/disapproval.

—January 11, 1991. EPA approved the revised Palau water quality standards, including full approval of the revised numeric criteria for priority toxic pollutants.

EPA fully approved the criteria for priority toxic pollutants adopted by Palau on January 11, 1991 based on a determination that the criteria are consistent with option 1 of the December 12, 1988 section 303(c)(2)(B) guidance document.

If additional information is submitted during the public comment period asserting that Palau has not fully complied with section 303(c)(2)(B), it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Region 10

Alaska is included in today's proposal because although the State had previously adopted all section 304(a) criteria by reference, the State Attorney General has decided that the adoption by reference is invalid. Based on information in the record (see below), EPA has reason to believe that at least some criteria are necessary to comply with section 303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the State is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

Alaska's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—December 20, 1989. The State submitted draft water quality standards revisions to EPA and the public for review.

—April 6, 1990. The State held public hearings and accepted written comments on its proposed water quality standards revisions through this date.

—On November 4, 1991, Region 10 sent a letter to the State partially approving the State's incorporation by reference of EPA's toxic pollutant criteria; and noting the deficiencies which will be included in EPA's proposed rulemaking (e.g. Alaska's failure to adopt a human health criteria).

This proposed rulemaking would federally promulgate the criteria necessary to bring the State into full compliance with section 303(c)(2)(B). To fully protect State designated uses, and to ensure that the required criteria are adopted, EPA proposes to apply broadly the criteria in proposed § 131.36(b). At a minimum, EPA proposes to apply, to all appropriate State waters, the criteria in proposed § 131.36(b) for all priority toxic pollutants which are not the subject of approved State criteria. EPA also proposes to promulgate Federal criteria for priority toxic pollutants where any previously approved State criteria are insufficiently stringent to fully protect all designated uses, or where such previously approved State criteria are not applicable to all appropriate State designated uses. EPA invites public comment regarding any specific priority pollutants or water bodies for which Federal criteria may not be necessary to protect State designated uses.

For reasons which are fully discussed in the preamble, EPA has not attempted to determine the specific priority pollutants and water bodies that require criteria. However, EPA has determined that at least some Federal criteria are necessary to protect designated uses. This determination is supported by information in the record which demonstrates that priority toxic pollutants are discharged or present in surface waters at levels that can reasonably be expected to interfere with State designated uses. For some priority toxic pollutants, available data clearly demonstrate use impairment and the need for toxics criteria. For most priority toxic pollutants, however, available data on the discharge and presence of priority toxic pollutants are spatially and temporally limited. Nevertheless, EPA believes that the data for many of these pollutants are sufficient to satisfy the "reasonable expectation" test established in section 303(c)(2)(B). The information in the record which demonstrates that priority toxic pollutants are discharged or present and that Federal criteria are necessary may be summarized as follows:

—State efforts since 1987 to adopt additional numeric criteria for priority toxic pollutants, as described above.

The State has initiated (but not completed) efforts to adopt new or revised chemical-specific, numeric criteria for 103 priority toxic pollutants. These efforts represent evidence of the State's recognition of the need for numeric criteria for these priority toxic pollutants.

—STORET data indicating the presence in surface waters of priority toxic pollutants which are not currently covered with approved State criteria.

—Discharge to surface waters of priority pollutants for which sufficient State numeric criteria have not been adopted, based on data in the Toxics Release Inventory database and/or the Permit Compliance System database.

Idaho is included in today's proposal because although the State adopted some numeric criteria for human health protection for some priority toxic pollutants before the 1987 amendments, the State has not completed a review of their numeric criteria for priority toxic pollutants in response to the statutory requirement. Furthermore, the State's criteria protecting human health are based only on drinking water maximum contaminant levels; fish consumption is not protected, and EPA has reason to believe that at least some additional criteria are necessary to comply with section 303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the State is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

Idaho's action to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—July 23, 1990. The State submitted draft water quality standards revisions to EPA and the public for review.

This proposed rulemaking would federally promulgate the criteria necessary to bring the State into full compliance with section 303(c)(2)(B). To fully protect State designated uses, and to ensure that the required criteria are adopted, EPA proposes to apply broadly the criteria in proposed § 131.36(b). At a minimum, EPA proposes to apply, to all appropriate State waters, the criteria in proposed § 131.36(b) for all priority toxic pollutants which are not the subject of approved State criteria. EPA also proposes to promulgate Federal criteria for priority toxic pollutants where any previously approved State criteria are insufficiently stringent to fully protect all designated uses, or where such previously aapproved State criteria are not applicable to all appropriate State designated uses. EPA invites public comment regarding any specific priority pollutants or water bodies for which Federal criteria may not be necessary to protect State designated uses.

For reasons which are fully discussed in the preamble, EPA has not attempted to determine the specific priority pollutants and water bodies that require criteria. However, EPA has determined that at least some Federal criteria are necessary to protect designated uses. This determination is supported by information in the record which demonstrates that priority toxic pollutants are discharged or present in surface waters at levels that can reasonably be expected to interfere with State designated uses. For some priority toxic pollutants, available data clearly demonstrate use impairment and the need for toxics criteria. For most priority toxic pollutants, however, available data on the discharge and presence of priority toxic pollutants are spatially and temporally limited. Nevertheless, EPA believes that the data for many of these pollutants are sufficient to satisfy the "reasonable expectation" test established in section 303(c)(2)(B). The information in the record which demonstrates that priority toxic pollutants are discharged or present and that Federal criteria are necessary may be summarized as follows:

—Priority toxic pollutants on the State Section 304(l) short list for which State criteria have not been adopted and approved, including metals and some organics.

—STORET data indicating the presence in surface waters of priority toxic pollutants which are not currently covered with approved State criteria.

—Discharge to surface waters of priority pollutants for which sufficient State numeric criteria have not been adopted, based on data in the Toxics Release Inventory database and/or the Permit Compliance System database.

Oregon has not been included in today's proposed rulemaking because the State has adopted revised criteria for priority toxic pollutants in response to the section 303(c)(2)(B) requirement and received full EPA approval.

The State's response to the 1987 section 303(c)(2)(B) requirement can be summarized as follows.

—August 28, 1987. The State adopted revised water quality standards which included numeric criteria for priority toxic pollutants.

—January 26, 1988. The State submitted the adopted water quality standards with a State Attorney General certification to EPA for approval/disapproval.

—March 9, 1988. EPA approved the revised State water quality standards, including full approval of the revised numeric criteria for priority toxic pollutants.

EPA fully approved the criteria for priority toxic pollutants adopted by Oregon on February 12, 1989 as being consistent with option 2 of the December 12, 1988 section 303(c)(2)(B) guidance document.

If additional information is submitted during the public comment period asserting that the State has not fully complied with section 303(c)(2)(B) it will be necessary at that time to respond to those comments and reevaluate the Agency's determination of full compliance.

Washington is included in today's proposal because although the State adopted numeric criteria for some priority toxic pollutants before the 1987 amendments, the State has not adopted numeric criteria for any human health based criteria for priority pollutants, and EPA has reason to believe that at least some additional criteria are necessary to comply with section 303(c)(2)(B). Therefore, EPA has determined for purposes of today's proposed rulemaking that the State is not currently in compliance with section 303(c)(2)(B) because it has not adopted water quality standards consistent with section 303(c)(2)(B) which have been fully approved by the appropriate EPA Regional Administrator.

Washington adopted 26 freshwater and marine criteria which EPA fully approved on March 4, 1988 (see below). The State has not completed a review of their criteria for priority toxic pollutants in response to the statutory requirement and EPA has reason to believe that at least some additional criteria are necessary to comply with section 303(c)(2)(B).

The State's actions to respond to the 1987 section 303(c)(2)(B) requirement can be summarized as follows:

—February 9, 1988. The State submitted the adopted water quality standards with a State Attorney General certification to EPA for approval/disapproval.

—March 4, 1988. EPA approved the revised State water quality standards.

—July 20, 1990. Washington released its proposed water quality standards with public comments accepted through this date.

This proposed rulemaking would Federally promulgate the criteria

necessary to bring the State into full compliance with section 303(c)(2)(B). To fully protect State designated uses, and to ensure that the required criteria are adopted, EPA proposes to apply broadly the criteria in proposed § 131.36(b). At a minimum, EPA proposes to apply, to all appropriate State waters, the criteria in proposed § 131.36(b) for all priority toxic pollutants which are not the subject of approved State criteria. EPA also proposes to promulgate Federal criteria for priority toxic pollutants where any previously-approved State criteria are insufficiently stringent to fully protect all designated uses, or where such previously-approved State criteria are not applicable to all appropriate State designated uses. EPA invites public comment regarding any specific priority pollutants or water bodies for which Federal criteria may not be necessary to protect State designated uses.

For reasons which are fully discussed in the preamble, EPA has not attempted to determine the specific priority pollutants and water bodies that require criteria. However, EPA has determined that at least some Federal criteria are necessary to protect designated uses. This determination is supported by information in the record which demonstrates that priority toxic pollutants are discharged or present in surface waters at levels that can reasonably be expected to interfere with State designated uses. For some priority toxic pollutants, available data clearly demonstrate use impairment and the need for toxics criteria. For most priority toxic pollutants, however, available data on the discharge and presence of priority toxic pollutants are spatially and temporally limited. Nevertheless, EPA believes that the data for many of these pollutants are sufficient to satisfy the "reasonable expectation" test established in section 303(c)(2)(B). The information in the record which demonstrates that priority toxic pollutants are discharged or present and that Federal criteria are necessary may be summarized as follows:

—Priority toxic pollutants on the State Section 304(l) short list for which State criteria have not been adopted and approved, including metals and some organics.

—State efforts since 1987 to adopt additional numeric criteria for priority toxic pollutants, as described above. The State has initiated (but not completed) efforts to adopt new or revised chemical-specific, numeric criteria for 91 priority toxic pollutants. These efforts represent evidence of the State's recognition of the need for numeric criteria for these priority toxic pollutants.

—STORET data indicating the presence in surface waters of priority toxic pollutants which are not currently covered with approved State criteria.

—Discharge to surface waters of priority pollutants for which sufficient State numeric criteria have not been adopted, based on data in the Toxics Release Inventory database and/or the Permit Compliance System database.

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federal register

Tuesday
November 19, 1991

Part III

Department of Education

National English Literacy Demonstration Program for Individuals of Limited English Proficiency; Notice

DEPARTMENT OF EDUCATION

National English Literacy Demonstration Program for Individuals of Limited English Proficiency

AGENCY: Department of Education.

ACTION: Notice of proposed priorities for Fiscal Year 1991.

SUMMARY: The Secretary proposes priorities for awards to be made in fiscal year (FY) 1992 using funds appropriated in FY 1991 under the National English Literacy Demonstration Program. Under an absolute priority, Federal financial assistance will be used to create partnerships among service providers to develop and implement transitional programs in English literacy. The proposed partnerships must include at least one community-based organization and at least one community college or technical institute, but may also include other public or private nonprofit agencies, institutions or organizations. Within the same competition, under a competitive preference, up to thirty additional points will be awarded to transitional projects that include certain key components.

DATES: Comments must be received on or before the 30th day from the date of publication in the **Federal Register**.

ADDRESSES: Comments should be addressed to Laura Karl, U.S. Department of Education, 400 Maryland Avenue, SW., room 4512–MES, Washington, DC 20202–7327.

FOR FURTHER INFORMATION CONTACT: Laura Karl, U.S. Department of Education, 400 Maryland Avenue, SW., room 4512–MES, Washington, DC 20202–7327. Telephone: (202) 732–2365. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC Area Code, telephone 708–9300) between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION: In accordance with section 372(d), part C Adult Education Programs, the purpose of the National English Literacy Demonstration Program for Individuals of Limited English Proficiency is to develop innovative approaches and methods of English literacy education. These approaches and methods must be designed to help limited English proficient adults and out-of-school youth to achieve full competence in the English language.

As studies about literacy programs suggest, English literacy programs that help limited English proficient adults to realize both their employment and educational goals are more effective in increasing English proficiency than those programs that lack these mutually reinforcing relationships. Transitional English literacy programs are comprehensive programs that coordinate services among English-as-a-Second-Language (ESL) instructional levels and among service providers. Their purposes are to: (1) Help limited English proficient adults and out-of-school youth make the transition from one instructional level to another, and from one instructional service provider to another; and (2) prepare them for the literacy demands of vocational education, college transfer, or college credit programs.

As comprehensive programs, transitional English literacy programs provide a broad range of instruction. A partnership among service providers is necessary because one service provider often provides a different level of English literacy instruction than another. Community-based organizations, community colleges and technical institutes are specifically identified for inclusion in the partnership because they have often represented opposite ends of the English literacy instructional spectrum. Community-based organizations tend to provide beginning levels of ESL and literacy instruction, while community colleges and technical institutes tend to provide more advanced levels of ESL instruction that prepare individuals for participation in vocational or other academic programs. In many locales, it is likely that other service providers will also be included in the partnership, to ensure that all appropriate service providers will work together to provide a well-coordinated English literacy demonstration program. However, the Secretary believes that the participation of at least one community-based organization and at least one community college or technical institute is essential for each project.

Within the absolute priority for partnerships providing transitional programs in English literacy, the Secretary proposes to establish a competitive preference for projects containing certain key components. These components are identified later in this notice under the heading "Selection Criterion". From the demonstration projects that are funded, the Secretary hopes to derive new methods or approaches in program design, coordination of services, and English literacy instruction.

Note: The Adult Education Act authorizes the use of funds exclusively for adult education. Because the Act does not authorize the use of funds for vocational education, college transfer, or college credit programs, instruction for these purposes is not permitted under this program. Only those instructional methods or approaches designed to prepare limited English proficient individuals for participation in these programs or to increase their English literacy skills while they are enrolled in these programs are allowed.

The Secretary wishes to highlight, for potential applicants, that this program can help to further the purposes of AMERICA 2000, the President's education strategy to help America move itself toward the National Education Goals. Specifically, the program addresses Track III of the AMERICA 2000 strategy—Transforming America into "A Nation of Students"—and National Education Goal 5—ensuring that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. The publication of the proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priorities

Absolute Priority

Under section 372(d), Part C of the Adult Education Act, and in accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to fund under this competition only applications that meet the absolute priority for partnerships among service providers to develop and implement a transitional English literacy demonstration program. Eligible applicants for the National English Literacy Demonstration Program include public or private non-profit agencies, institutions, or organizations. Under this absolute priority, any eligible entity may apply. However, it must propose a partnership involving at least one community-based organization and at least one community college or technical institute. Note that because community-based organizations, community colleges and technical institutes are

themselves public or private non-profit agencies or institutions, they are eligible to submit an application as a partnership among themselves. Partnerships must be structured in accordance with 34 CFR 75.127–29. All partners must enter into a signed agreement, detailing the activities that each partner plans to perform, designating one partner to act as the applicant on behalf of the partnership, and binding each partner to the statements and assurances made by the applicant in the application.

Competitive Preference

Under section 372(d), Part C of the Adult Education Act, and in accordance with the Education Department General Administration Regulations (EDGAR) at 34 CFR 75.105(c)(2)(i), the Secretary proposes to give competitive preference to transitional projects that include the key components listed below. Up to thirty points will be awarded to applications that respond to the competitive preference in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program that appear in 34 CFR part 435.

Selection Criterion

The following selection criterion will be used to determine the extent to which a project responds to the competitive preference.

The Secretary will award up to thirty points for projects that develop and implement a transitional English literacy program that includes the following key components:

(1) Outreach efforts that identify those limited English proficient adults and out-of-school youth who are most in need of English literacy programs;

(2) An individualized education plan for each program participant, based on individual assessment and counseling;

(3) A transitional ESL curriculum that is content-based, and that facilitates a smooth transition among instructional levels and service providers;

(4) Support services and retention strategies throughout all phases of the program; and

(5) Coordination of services among all service providers.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Paperwork Reduction Act of 1980

These priorities contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of the proposed priorities to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

Public or private non-profit agencies, institutions, or organizations would be required to address the absolute priority in order to be considered by the Secretary for grants under this program. The Secretary needs and uses this information to determine whether proposed projects are likely to meet identified national needs. The annual public reporting burden for the collection of information is estimated to average 90 hours per response for 30 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 4519, Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m. Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

34 CFR parts 425 and 435.

Program Authority: 20 U.S.C. 1211a(d) *et seq.*

(Catalog of Federal Domestic Assistance Number 84.223A, National English Literacy Demonstration Program for Individuals of Limited English Proficiency)

Dated: November 13, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–27812 Filed 11–18–91; 8:45 am]

BILLING CODE 4000–01–M

Federal Register

Tuesday
November 19, 1991

Part IV

Department of Agriculture

Cooperative State Research Service

Special Research Grants; Water Quality Program for Fiscal Year 1992; Notice of Solicitation of Applications

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Special Research Grants; Water Quality Program for Fiscal Year 1992; Solicitation of Applications

Applications are invited for competitive grant awards under the Special Research Grants, Water Quality Program for fiscal year 1992.

The authority for this program is contained in section 2(c)(1)(A) of the Act of August 4, 1965, Public Law 89–106, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law No. 101–624 (7 U.S.C. 450i). This program is administered by the Cooperative State Research Service (CSRS) of the U.S. Department of Agriculture (USDA). Under this program, and subject to the availability of funds, the Secretary may award grants for periods not to exceed five years, for the support of research projects to further the program discussed below. Proposals may be submitted by State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals. Proposals from scientists at non-United States organizations will not be considered for support.

Funds will be awarded to support research seeking solutions to water quality problems that are within the scope of the Research Problem Areas listed below. A total of approximately $6,000,000 will be available for this program for fiscal year 1992. Maximum total funding will be $135,000 for a single institution/organization proposal, and $225,000 for a multi-institution/organization proposal, for a maximum funding period of up to three years.

Section 734 of Public Law No. 102–142, an Act Making Appropriations for Rural Development, Agriculture and Related Agencies programs for the fiscal year ending September 30, 1992, and for other purposes, prohibits CSRS from using funds available for fiscal year 1992 to pay indirect costs on research grants awarded competitively that exceed 14 per centum of the total direct costs under each award.

Applicable Regulations

Regulations applicable to this program include the following: (a) The administrative provisions governing the Special Research Grants Program, 7 CFR part 3400, as amended (56 FR 58146, November 15, 1991) which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; (b) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015; (c) the USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016; (d) the Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017, as amended; and (e) New Restrictions on Lobbying, 7 CFR part 3018.

Introduction to Program Description

The scope of research includes developing principles and understanding processes underlying soil and/or water quality degradation originating from agricultural practices that use certain pesticides, fertilizers and wastes. The capability to accurately and economically sample, interpret and predict occurrence of residual contaminants of soils and of water in vadose and ground water zones must be developed for both croplands and farmsteads. Results should be transferable to different soil and cropping areas and size scales, and contribute to development of a better understanding of sociological and economic implications of contamination or its prevention. Ultimately, effective and economically feasible avoidance and remedial technologies are needed that, when adopted, are corrective of agriculturally induced soil and water quality problems, resulting in a more sustainable agriculture.

In the water quality program, the term "AGRICULTURE" encompasses the production of food, feed, and fiber crops, trees and livestock, and includes rural residences and rural communities. Proposals on health risk problems are excluded for FY 1992 competition.

The research emphasis in Fiscal Year 1992 for this solicitation is on water quality with particular attention to ground water. Surface water quality problems are eligible, where they are shown in the proposal to be potential sources of ground water contamination.

Research Problem Areas (RPA) to be Supported in FY 1992

100. Assessment, Sampling and Testing Methods

110. *Field and Laboratory Analytical Methods.* Develop and validate new and improved soil and water testing methods.

120. *Sampling Methods.* Develop accurate, low-cost and practical methods for sampling soil and water for contaminants.

130. *Remote Sensing and Geographical Information Systems (GIS).* Develop and refine methods to detect, monitor and map water quality parameters, including contaminants, at a scale ranging from fields to regions.

140. *Risk Assessment.* Develop methods for assessing risks to contamination of water due to uncertainties in weather, soils, pests, etc.

200. Fate and Transport

210. *Soil Physical and Chemical Properties.* Role in affecting fate and transport of contaminants.

220. *Nitrogen.* Transformation and movement of nitrogen forms through soil and water.

230. *Pesticides.* Chemical, physical or biological transformation and movement of pesticides in soil and water.

240. *Biological Agents Affecting Water Quality.* Function of biological agents in affecting fate and transport processes.

250. *Model Development.* Develop and validate models to predict the fate and transport of contaminants within the root and vadose zones.

300. Management and Remediation Practices or Systems

310. *Application Technology.* Development of equipment or practices to improve the application of fertilizers, pesticides or wastes to reduce the contaminants in soil or ground water.

320. *Best Management Practices.* Develop and evaluate new and current management practices to increase use efficiency of production inputs to croplands and to reduce contaminant loads from farmsteads.

330. *Waste Management.* Develop practices for management of animal and other wastes applied to soils through timing, rate of application and cultural practices, to reduce contaminant load in soil and water.

340. *Irrigation, Drainage and Water Table Management.* Practices or systems to reduce leaching and reduce the contaminant load in soil and water.

350. *Bioremediation Methods.* Develop microorganisms or biological remediation processes to degrade, inactivate or transform contaminating agents to non-toxic forms.

360. *Integrated Management Systems.* Development of integrated pest management, soil management and crop management systems to enhance water quality, and increase the sustainability of agriculture.

370. *Models or Decision Aids.* Develop or modify models and/or decision aids to predict the effect of management practices on water quality.

400. Regional Application and Transferability of Research Results

410. *Model Development and Validation.* Develop and/or adapt and validate physical, economic or biological models to predict treatment effects to water quality in a region.

420. *Transferability of Research Data.* Develop techniques to determine the extent to which research data may be extended to another scale or to other locations with similar soils, climate and environment.

430. *Decision Aid Packages.* Develop water quality management decision aid packages in cooperation with Extension Service, Soil Conservation Service and other technology transfer agencies.

500. Social, Economic and Policy Considerations

510. *Acceptance/Adoption of Practices.* Develop and evaluate strategies to speed up the acceptance and adoption of improved water quality practices.

520. *Costs and Benefits.* Develop cost/benefit implications for implementation of environmentally sound water quality management practices.

530. *Incentives and Alternatives.* Develop and evaluate alternative management practices or incentive packages to protect our water resources.

540. *Regional Impacts and Policy Options.* Investigate the regional, national and international impact on water quality and the sustainability of agriculture due to adoption of alternative management practices, policies or water quality regulations.

Review Criteria

Proposals will be evaluated by a peer review group of qualified scientists. The composition of the group will be based upon the Research Problem Areas of the proposals as identified by the applicants. The following selection criteria will be used in lieu of those which appear in § 3400.15 of the administrative provisions governing the Special Research Grants Program:

Criteria	Maximum score
Overall Scientific and Technical Quality	40
—Scientific merit of proposed research	
—Clear, concise and achievable objectives	
—Technical soundness of procedures	
—Feasibility of attaining objectives	
Justification, Review of Literature and Current Research	20
—Relevance of proposed research	
—Importance of the problem	
—Literature relevant to proposed research	
Budget, Resources and Personnel	20
—Necessary facilities, resources and personnel available	
—Resources requested are essential for proposed research	
—Budget appropriate for proposed research	
—Adequate training and experience of investigators	
Collaboration	10
—Evidence or significant contributions by collaborators	
—Evidence and justification of multi-disciplinary and/or multi-organization collaboration	
Application of Research Results	10
—Planned application and implemention of research results	
—Extension, transferability and publication of results	
Total	100

How to Obtain Application Materials

Copies of this solicitation, the Grant Application Kit, an the administrative provisions governing this program, 7 CFR part 3400, may be obtained by writing to the address or calling the telephone number which follows: Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, Washington, DC 20250–2200, Telephone: (202) 401–5048.

What to Submit

Submit one (1) original and twelve (12) unbound copies securely stapled in upper left corner. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Each copy of each proposal must include a Form CSRS–661, "Grant Application." One copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. Form CSRS–661 and other required forms and certifications are contained in the Grant Application Kit. It should be noted that the November 1990 version of the Grant Application Kit must be used, as previous versions are obsolete.

Format for Research Grant Proposals. The administrative provisions governing the Special Research Grants Program, 7 CFR 3400.4(c), set forth instructions for the preparation of grant proposals. The following requirements are in addition to or deviate from those contained in 7 CFR 3400.4(c). In accordance with 7 CFR 3400.4(c), to the extent that any of the following additional requirements are inconsistent or in conflict with the instructions at 7 CFR 3400.4(c), the provisions of this solicitation shall apply.

Grant Application. Attach a completed and signed Grant Application, Form CSRS–661, to the front of the proposal. Be certain to list in Block #8 the number(s) assigned to the Research Problem Area(s) (RPA) listed above that best describe the greatest emphasis of the proposed research, then the second and third, if applicable (e.g., 210, 220, 250). One RPA is required and a maximum of 3 is permitted. This will be the basis of grouping proposals and for determining training and experience needed by the peer review panelists who will evaluate each proposal.

The proposal body includes the Title of Project, Objectives, Procedures, Justification, Literature, Current Research, Facilities and Equipment, and Collaborative Arrangements, and should be a maximum of 6 pages, including any figures and tables. Literature citations should be a maximum of 2 pages. Curriculum vitae principal investigators and professional personnel should be a *maximum of 2 Pages Each.* Type and paper size should be no smaller than 12 characters/inch, typed single space on one side of 8½" x 11" paper.

Abstract, and Key Words. Used to classify the proposal.

Abstract. Include factual, concise, and clear statements of proposed research as phrases or sentences. Limit length to 5 lines, or equivalent.

Key Words. Select 2 or 4 single or double words that describe the research emphasis.

Justification. Describe the water quality problems, or potential problems, including: Where they occur; relevance to site-specific, watershed, regional, State, and National size scales. The expected application or use of resulting information should be explained, for example: value to the economy, methods of chemical analyses, need for specific model, basis of recommendations, understanding of processes or relevancy to a specific water quality research program.

Multi-Institutions/Organizations. Proposals that qualify for multi-institution/organization status are eligible to apply for a larger funding level and must include: (i) Research collaborators from institutions or organizations that are administratively and budgetarily separate from the awardee institution; (ii) research collaborators from the cooperating institutions or organizations who contribute significantly and uniquely to the planning and conduct of the proposed research; and (iii) no greater funding to the awardee (primary) institution or organization for their scientists' use than would be allowed in a single institution/organization proposal.

Collaborative or cooperative arrangements with other institutions, organizations or agencies such as the Agricultural Research Service, Soil Conservation Service, Extension Service, U.S. Geological Survey, Environmental Protection Agency, and Economic Research Service through projects, such as Hydrologic Unit Areas, Management Systems Evaluation Areas (MSEA), Demonstration Sites, Farmstead Assessment and Area Studies, are encouraged.

Budget Form CSRS–55. A copy of Form CSRS–55, along with instructions for completing it, is included in the Grants Application Kit. Applicants should note the special instructions shown below when completing Form CSRS–55:

Item D., "Nonexpendable Equipment." Requested items of equipment must be itemized (by description and cost) on a separate sheet of paper attached to Form CSRS–55, or in the body of the proposal. The need for all requested equipment must be fully justified in the proposal.

Item F., "Travel." The type and extent of travel and its relationship to project objectives should be described and justified. It should be noted that the terms and conditions of any grant awarded under this program will require Principal Investigators to participate in at least one annual regional or national research reporting, evaluation and planning workshop or conference, for the purpose of interstate, interagency and interdisciplinary coordination in this Federal-State jointly planned water quality program. Funds may be requested under this budget category for these workshop/conference costs.

Item I., "All Other Direct Costs." Subawards are to be shown on each budget sheet of the primary budget. Subawardee budgets should be provided on separate forms in the same detail.

Item K., "Indirect Costs." The recovery of indirect costs under this program may not exceed the lesser of the grantee institution's official negotiated indirect cost rate or the equivalent of 14% of total direct costs. This limitation also applies to the recovery of indirect costs under any subawardee or subcontract budget.

The body of the grant proposal should be limited to a maximum of 6 pages (single-spaced), exclusive of required forms, abstracts and key words, personnel support, research timetable, bibliography, (maximum of 2 pages), and curriculum vitae of the principal investigator(s), senior associate(s) and other professional personnel (maximum of 2 pages each). Reduction by photocopying or other means for the purpose of meeting these page limits is not permitted. Attachments of appendices is discouraged and should be included only if pertinent to understanding the proposal. Reviewers are not required to read beyond the maximum page limits stated to evaluate the proposal.

All copies of a proposal must be mailed in one package. Every effort should be made to ensure that the proposal contains all pertinent information when initially submitted.

Where and When to Submit Grant Applications

Each research grant application must be submitted by the date set forth below to:

Proposal Services Branch, Awards Management Division, Office of Grants and Programs Systems, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, Washington, DC 20250–2200.

Program related questions should be directed to any of the following:

Dr. Berlie L. Schmidt, Dr. Maurice L. Horton, Dr. Birl Lowery—Phone No. (202) 401–4504, Fax No. (202) 401–1706.

Please note: Hand delivered proposals or those delivered by overnight express service should be brought or sent to: room 303, Aerospace Center, 901 D Street SW., Washington, DC 20024.

To be considered for funding during fiscal year 1992, proposals must be postmarked by January 21, 1992.

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Supplementary Information

The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, on November 13, 1991.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 91–27798 Filed 11–18–91; 8:45 am]

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federal register

Tuesday
November 19, 1991

Part V

The President

Proclamation 6376—National Philanthropy Day, 1991

Legislative

Federal Register
Vol. 56, No. 223
Tuesday, November 19, 1991

Presidential Documents

Title 3—

The President

Proclamation 6376 of November 15, 1991

National Philanthropy Day, 1991

By the President of the United States of America

A Proclamation

Public philanthropy has long been a hallmark of American life. The earliest settlers in this country were people of great faith and conviction, and they well understood the Biblical injunction to extend kindness and hospitality to others. Yet the spirit of voluntary association and giving was not only a virtue but also a practical necessity for those residing on the frontier.

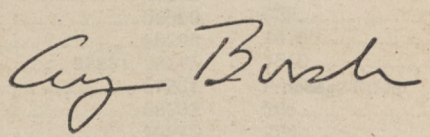
Today, even with the best efforts of Federal, State, and local government, voluntary service remains essential to solving our Nation's most serious social problems. Accordingly, concerned and generous Americans are engaged in voluntary activities that range from providing job training and employment for the homeless to protecting the environment, preventing disease, assisting parents of needy families, and encouraging young people to stay in school.

Last year, Americans contributed more than $100 billion in support of charitable organizations and activities. However, public philanthropy is not just about money. Millions of Americans—people of every age, race, and walk of life—give of their time and their talents in voluntary community service. These "Points of Light" are helping to supply food and clothing for the needy; they are promoting important advances in biomedical research; and they are providing vital support to schools, churches, hospitals, museums, and a host of other institutions. These Americans are demonstrating that you don't have to be wealthy to be a philanthropist, you just have to care.

In grateful recognition of all those who conduct and support the work of our Nation's charitable organizations, the Congress, by Senate Joint Resolution 96, has designated November 19, 1991, as "National Philanthropy Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim November 19, 1991, as National Philanthropy Day. I encourage the people of the United States to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of November, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



[FR Doc. 91-27988
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Reader Aids

Federal Register

Vol. 56, No. 223

Tuesday, November 19, 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, NOVEMBER

56145-56288.....1
56289-56460.....4
56461-56566.....5
56567-56918.....6
56919-57230.....7
57231-57480.....8
57481-57572.....12
57573-57792.....13
57793-57968.....14
57969-58172.....15
58173-58298.....18
58299-58490.....19

CFR PARTS AFFECTED DURING NOVEMBER

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.

3 CFR

Proclamations:
6368.....56145
6369.....56919
6370.....57793
6371.....57795
6372.....57797
6373.....57967
6374.....57969
6375.....58299
6376.....58489

Executive Orders:
May 28, 1912 (Revoked by PLO 6906).....57806
November 8, 1912 (Revoked by PLO 6905).....57805
May 31, 1915 (Revoked by PLO 6908).....57806
12735 (Continued by Notice of November 14, 1991).....58171
12780.....56289

Administrative Orders

Memorandums:
October 21, 1991.....56147

Presidential Determinations:
No. 92-4 of October 24, 1991.....56567

Notices:
November 14, 1991.....57969

5 CFR

Proposed Rules:
531.....56276
550.....56276
575.....56276
771.....56276

7 CFR

226.....58173
301.....57573, 57579
401.....58301
434.....56569
435.....56569
441.....57231
445.....57971971
446.....57971
447.....56569
451.....56569
802.....56293
907.....57231, 58175
908.....57231
979.....58302
1600.....56275
1610.....56461
1942.....58177
3200.....57950
3400.....58146

Proposed Rules:
Ch. IV.....56605
401.....57296
425.....58323
959.....58324
1139.....57298
1413.....56335
1951.....58325
1955.....56474

9 CFR

Proposed Rules:
1.....57991
2.....57991

10 CFR

171.....57587, 57590

Proposed Rules:
Ch. I.....57603
600.....56944

11 CFR

100.....56570
102.....56570
106.....56570, 57864
110.....56570
113.....56570
116.....56570
9001.....56570
9002.....56570
9003.....56570
9004.....56570
9005.....56570
9006.....56570
9007.....56570
9012.....56570
9031.....56570
9032.....56570
9033.....56570
9034.....56570
9035.....56570
9036.....56570
9037.....56570
9038.....56570
9039.....56570

12 CFR

201.....58303
709.....56921
922.....56691
931.....56691
932.....56691, 56929
1410.....57232
1510.....57481

Proposed Rules:
208.....56949
225.....56949

13 CFR

108.....57588

120.....57588

14 CFR

39.....56149–56153, 56462, 56929, 57233–57236, 57373, 57483–57485, 57588, 57590
43.....57570
61.....56571
71.....56463, 56464, 56931, 57486, 57799, 57971, 57973
75.....57973
97.....56464, 56571
1204.....57591

Proposed Rules:

Ch. I.....56174
21.....56605
25.....56605
39.....56174–56177, 57994, 58002, 58189, 58193, 58328
71.....56480, 56481, 56607, 56951, 56952, 57866, 57867
75.....56608
255.....57603

15 CFR

400.....56544

Proposed Rules:

925.....57868
1150.....56953, 57869

16 CFR

Proposed Rules:

453.....58330

17 CFR

210.....57237
229.....57237
230.....56294
239.....56294, 57237
240.....57237
270.....56154, 56294
274.....56294

Proposed Rules:

180.....56482
240.....57605, 58194
249.....57605

18 CFR

2.....56544, 57255
154.....56544, 57255
157.....56544, 57255
271.....56466
284.....56544, 57255
375.....56544, 57255
380.....56544, 57255

19 CFR

101.....57487

Proposed Rules:

101.....56179
141.....56608
142.....56608

20 CFR

404.....57928
416.....57928
655.....56860

Proposed Rules:

416.....58198

23 CFR

140.....56576
1327.....57255, 57373

Proposed Rules:

1212.....56692

24 CFR

Ch. I.....56544
86.....57488
570.....56902
813.....57489
913.....57489

Proposed Rules:

10.....57869
17.....56336
214.....58158
961.....57871

25 CFR

Ch. III.....57373

Proposed Rules:

502.....56278, 56282, 57373

26 CFR

1.....58003
52.....56303
602.....56303

Proposed Rules:

1.....56545, 56609, 57374, 57605, 58003
301.....56545, 58199

27 CFR

Proposed Rules:

4.....58199

28 CFR

0.....56578
16.....58304

29 CFR

508.....56860
1910.....57593
2615.....57977
2617.....57980
2676.....57983

Proposed Rules:

1910.....57036
1915.....57036
1926.....57036
2617.....58014

30 CFR

202.....57256
206.....57256
210.....57256
212.....57256
915.....56578
948.....58306

Proposed Rules:

795.....57376
870.....57376
872.....57376
873.....57376
874.....57376
875.....57376
876.....57376
886.....57376
916.....58018

31 CFR

211.....56931

32 CFR

Ch. I.....58179
247.....58179
275.....57984
286i.....58179
290.....56932
292a.....56595, 57799
294.....57984
295.....58179
297.....58179
298.....58180
298b.....58180
310.....57800
311.....57801
313.....57801
314.....57801
315.....57801
317.....57802
318.....57802
319.....56595
321.....57802
322.....57802
323.....57803
719.....57803
1286.....57803

Proposed Rules:

199.....57498

33 CFR

117.....57287, 57490

Proposed Rules:

26.....58292
95.....56180
100.....56180
117.....56609, 56610
155.....58202
157.....56284
173.....56180
174.....56180
175.....56180
177.....56180
179.....56180
181.....56180
183.....56180

34 CFR

318.....57198
328.....56456
690.....56911

Proposed Rules:

363.....57778

36 CFR

228.....56155
1254.....58311

37 CFR

307.....56157

38 CFR

3.....57985
4.....57985
8.....57492

39 CFR

111.....57724
265.....56933, 57805, 57984

Proposed Rules:

3001.....56955

40 CFR

51.....57288
52.....56158, 56159, 56467, 57492
62.....56320
80.....57986
81.....56694
122.....56548
261.....58312
271.....57593
721.....56470

Proposed Rules:

52.....56485
122.....56555
131.....58420
704.....57144
799.....57144

41 CFR

101–47.....56935
302–4.....57289
303–1.....57289
303–2.....57289

42 CFR

62.....56596

Proposed Rules:

36.....56691
400.....56612
420.....56612
421.....56612

43 CFR

Public Land Orders:

6884.....56275
6849 (Corrected by PLO 6907).....57806
6890.....58122
6901.....56321
6902.....56322
6903.....56936
6904.....56936
6905.....57805
6906.....57806
6907.....57806
6908.....57806
6909.....57807

Proposed Rules:

4.....58330

44 CFR

64.....58313

Proposed Rules:

83.....58019

45 CFR

Proposed Rules:

Ch. XXV.....57404
301.....58205
303.....58205

46 CFR

583.....56322

Proposed Rules:

25.....56180
31.....56284
32.....56284
35.....56284
382.....57807
552.....57298
586.....56487

47 CFR

Ch. I.....56937
1.....56599, 57596, 57808
2.....57808
13.....56599
15.....57823
21.....57596, 57806
22.....58315
64.....56160
68.....56160, 57823
73.....56166–56169, 56472, 56473, 56602, 56938, 56939, 57290–57294, 58315
74.....56169, 57596, 57808
78.....57596
80.....57495, 57987

94.....57808
97.....56171

Proposed Rules:

Ch. I.....57300
2.....56611
69.....57301
73.....56181, 56182, 56489, 56490, 57302, 57606, 57608, 57871, 58207
76.....56329
80.....56955, 57501
90.....56611

48 CFR

328.....58315
352.....57602, 58315
950.....57824
952.....57824
970.....57824
1631.....57496
1652.....57496
1801.....56691
1815.....56691
1852.....56691

Proposed Rules:

15.....57182
23.....58296
52.....58296
515.....56956
538.....56956
935.....56621

49 CFR

171.....57560
173.....57560
571.....56323, 56940
572.....57830
575.....57968
821.....56172
1145.....58317
1313.....58320

Proposed Rules:

107.....56962
171.....56962
533.....58020
541.....56339
552.....56343
582.....56963
1063.....56490

50 CFR

16.....56942
17.....56325, 57844
32.....58180
33.....58180
216.....56603
227.....58184
247.....56603
285.....56544
298.....58184
301.....57294
611.....56603
641.....58188
663.....56603, 58321
672.....56943, 57989

Proposed Rules:

12.....57872
13.....57872
14.....57502, 57872
17.....56344, 56491, 56882, 57503, 58020, 58026, 58332–58348
20.....57872
21.....57872
Ch. VI.....58214
646.....57302
672.....56355, 56623, 58214
675.....56355, 56623, 58214
681.....58029

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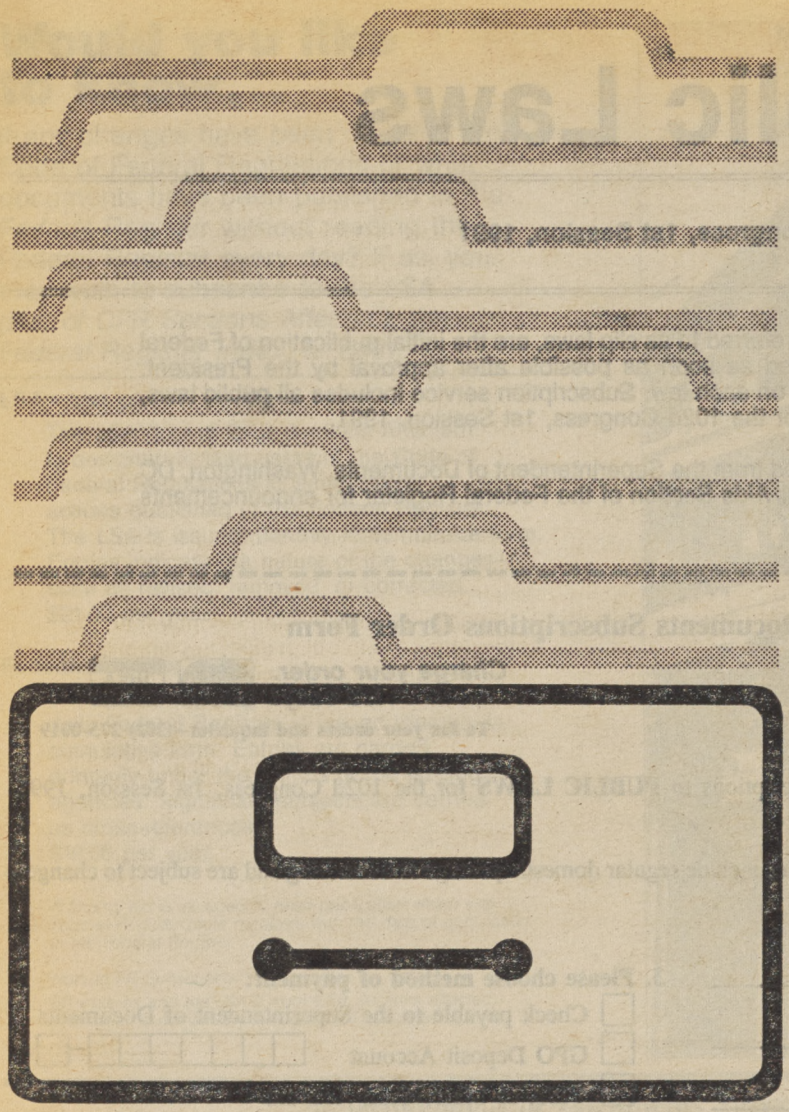

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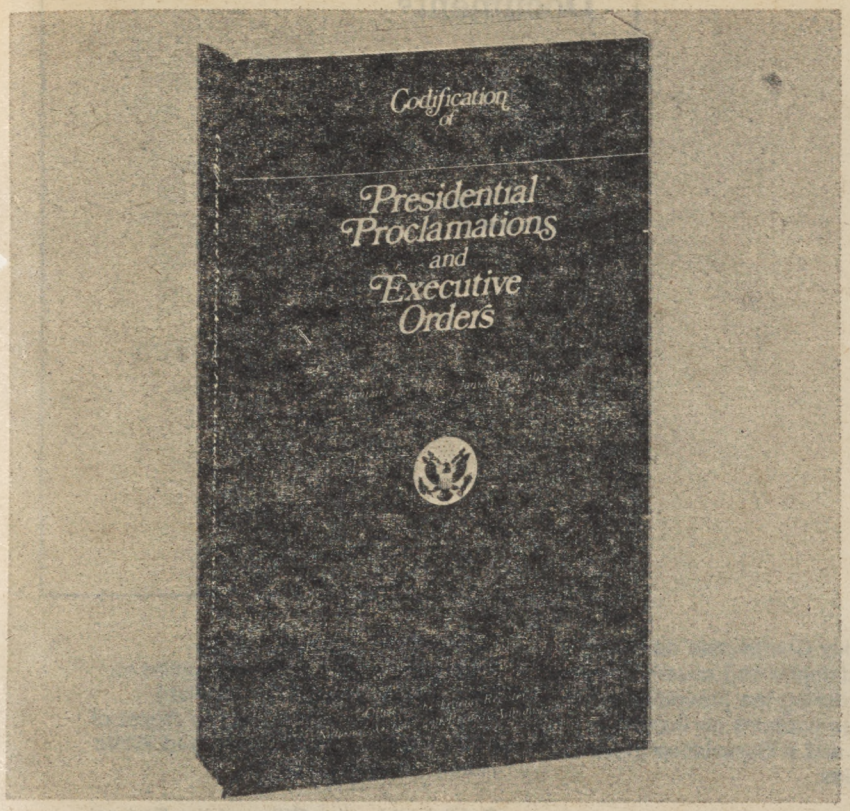

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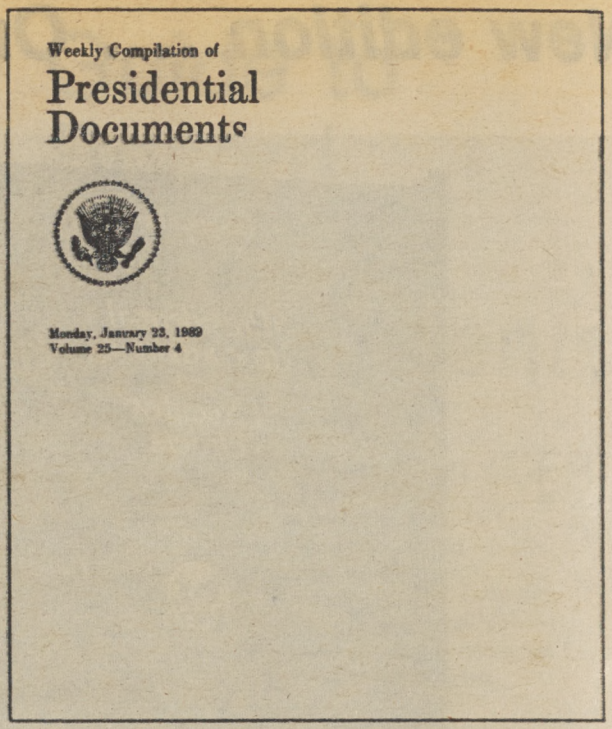

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