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Friday
May 10, 1991

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, and New York City 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.

NEW YORK, NY

WHEN: May 21, at 9:00 am
WHERE: 26 Federal Plaza
Room 305 B and C
New York, NY
RESERVATIONS: Federal Information Center
1-800-347-1997

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202-523-5240 (voice); 202-523-5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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Rules and Regulations

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

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2636

Confidential Reporting of Payments to Charitable Organizations in Lieu of Honoraria; Deferral of Effective Date

AGENCY: Office of Government Ethics.

ACTION: Deferral of effective date of interim rule provision.

SUMMARY: The Office of Government Ethics (OGE) is deferring the effective date of its interim rule provision for the executive branch on confidential reporting of payments to charities in lieu of honoraria (56 FR 1727–1728, January 17, 1991). The regulation, 5 CFR 2636.205, will now become effective on October 15, 1991.

DATES: The effective date of 5 CFR 2636.205 is deferred until October 15, 1991.

ADDRESSES: Any comments or questions should be sent to Leslie L. Wilcox or William E. Gressman, Office of Government Ethics, suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

FOR FURTHER INFORMATION CONTACT: Ms. Wilcox or Mr. Gressman of OGE at the address above, telephone (202/FTS) 523–5757, FAX (202/FTS) 523–6325.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics published 5 CFR 2636.205, the confidential reporting provision for payments to charitable organizations in lieu of honoraria, as an interim rule in the **Federal Register** last January 17, 1991 and provided for an effective date of May 15, 1991 (see 56 FR 1721–1730; the remainder of the interim regulation, entitled "Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria," was effective January 1, 1991 and continues in effect).

OGE is still working on a draft confidential standard reporting form to collect the information specified in 5 CFR 2636.205 and the underlying section of the Ethics in Government Act as amended, 5 U.S.C. appendix 102(a)(1)(A). Because the new form will collect information from some members of the public (terminees who file after leaving the Government) as well as current Federal employees, it must be submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35 (the § 2636.205 regulation itself was approved thereunder by OMB on April 10, 1991). In addition, since the form will be a standard form, OGE will also submit it to the General Services Administration (GSA) for its review and approval in accordance with standard form clearance procedures. In order to allow sufficient time for OGE to prepare the new reporting form, submit it to OMB and GSA for approval, and provide for a public comment period before final issuance of the form, the Office of Government Ethics has determined to defer the effective date of the 5 CFR 2636.205 reporting regulation until October 15, 1991.

Approved: May 6, 1991.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 91–11104 Filed 5–9–91; 8:45 am]

BILLING CODE 6345–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 919

[Docket No. FV-91-278]

Peaches Grown in Mesa County, Colorado; Amendment of Office of Management and Budget Form Number; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order; correction.

SUMMARY: This action corrects the reference to a form number assigned to the ballot material for the Mesa County peach grower continuance referendum order. The incorrect number (OMB No. 0581–0089) was listed in the referendum order published in the **Federal Register** on March 28, 1991, on page 12866. The correct number for Mesa County peach ballot material is OMB No. 0581–0139. This action is necessary to identify the correct form number assigned to the Mesa County peach marketing order referendum ballot material.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable, Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 475–3919.

SUPPLEMENTARY INFORMATION: The document to be corrected was issued under Marketing Agreement and Order No. 919, as amended, (7 CFR part 919), regulating the handling of peaches grown in Mesa County, Colorado. The document, Docket No. FV–91–250, was published on March 28, 1991, at page 12865. Near the top of the first column of page 12866, an incorrect Office of Management and Budget (OMB) form number was listed for the Mesa County, Colorado, referendum ballot material. The correct form number should be OMB No. 0581–0139.

Therefore, the following correction is hereby made:

In the March 28, 1991, issue of the **Federal Register** (56 FR 12865), in the last paragraph of the third column, beginning on page 12865, the reference to the ballot material form number, as corrected, should read as follows:

* * * * *

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the ballot material that will be used in the referendum herein ordered has been submitted to and approved by the Office of Management and Budget (OMB) and has been assigned OMB No. 0581–0139.

* * * * *

Dated: May 6, 1991.

Robert C. Kerney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–11179 Filed 5–9–91; 8:45 am]

BILLING CODE 3410–02–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

FOIA Fee Schedule

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Establishment of FOIA fee schedule.

SUMMARY: The Defense Nuclear Facilities Safety Board published in the **Federal Register** issue of Wednesday, May 8, 1991, its final rule implementing the Freedom of Information Act (FOIA). This Fee Schedule is issued in conjunction with the rule to implement the fee provisions of the FOIA.

EFFECTIVE DATE: May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004, (202) 208-6387.

SUPPLEMENTARY INFORMATION: The FOIA requires each federal agency covered by the act to specify a schedule of fees applicable to processing of requests for agency records. 5 U.S.C. 552(a)(4)(A)(i). On March 15, 1991, the Board published for comment in the **Federal Register** its proposed FOIA fee schedule (56 FR 11114). No comments were received in response to that notice and the Board is now establishing that fee schedule. The Board separately published for comment on March 8, 1991, its proposed rules implementing the FOIA (56 FR 9902). The Board's final rules implementing the FOIA were published in the **Federal Register** issue of Wednesday, May 8, 1991.

This notice establishes the Board's initial FOIA fee schedule. Pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations issued today, the Board's General Manager will update this schedule once every 12 months.

Board Action

Accordingly, the Board establishes the following schedule of fees for services performed in response to FOIA requests:

DEFENSE NUCLEAR FACILITIES SAFETY BOARD SCHEDULE OF FEES FOR FOIA SERVICES

[Implementing 10 CFR 1703.107(b)(6)]

Search or review charge...	$38.00 per hour.[1]
Copy charge (paper) (8.5" x 11").	$.05 per page or generally available commercial rate.[2]
Copy charge (3.5" diskette).	$5.00 per diskette.
Copy charge (audio cassette).	$3.00 per cassette.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD SCHEDULE OF FEES FOR FOIA SERVICES—Continued

[Implementing 10 CFR 1703.107(b)(6)]

Copying large documents (*e.g.*, maps, diagrams).	Actual commercial rates.

[1] Represents average hourly pay rate for Board employees, plus 22% for employee benefits.

[2] The Board will have records commercially copied when other Board business does not permit timely copying by Board personnel. The Board does not expect the generally available commercial rate to be higher than $.05 per page. However, that rate is not within the Board's control and may change during the course of coverage of this fee schedule.

Dated: May 6, 1991.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 91-11046 Filed 5-9-91; 8:45 am]

BILLING CODE 6820-KD-M

INTERNATIONAL BOUNDARY AND WATER COMMISSION

22 CFR Part 1104

Protection of Archaeological Resources

AGENCY: United States Section, International Boundary and Water Commission.

ACTION: Final rule.

SUMMARY: The United States Section, International Boundary and Water Commission (IBWC), by this rule intends to implement the provisions of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-470LL), as amended. The purpose of the Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before October 31, 1979.

EFFECTIVE DATE: This rule is effective on May 10, 1991.

ADDRESSES: United States Section, International Boundary and Water Commission, 4171 North Mesa, suite C-310, El Paso, Texas 79902-1422.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Echlin, U.S. Section Staff Environmentalist, (915) 534-6704.

SUPPLEMENTARY INFORMATION: Section 470 of the Archaeological Resources Protection Act of 1979 (15 U.S.C. 470aa, *et seq.*) requires each Federal agency to promulgate regulations for the protection of archaeological resources located on public lands under its control. The United States Forest Service, United States Department of Agriculture, developed a uniform agency regulation for that purpose, which is found at 36 CFR part 296.

The following final regulation is based upon the above-referenced uniform regulation, pursuant to the above-referenced Act. It applies to all public lands controlled by the United States Section, International Boundary and Water Commission, United States and Mexico. This agency controls various public lands, generally situated along the international boundary between the United States and Mexico, some of which contain known archaeological sites.

This final regulation expressly prohibits certain activities with regard to archaeological resources located on such public lands under the agency's control, and it establishes procedures for issuance of permits for other activities. It establishes procedures for imposition of civil penalties for violations, and provides for rewards for information leading to civil or criminal punishment of violators, in accordance with the underlying act. It also contains other rules pertaining to the agency's responsibilities for the protection of archaeological resources, including reporting requirements.

The proposed rule was published in the **Federal Register** (56 FR 389-395) on January 4, 1991. The comment period ended February 4, 1991, without comments received on the proposed rule.

List of Subjects in 22 CFR Part 1104

Protection of archaeological resources.

Title 22 CFR is amended by adding part 1104 as follows:

PART 1104—PROTECTION OF ARCHAEOLOGICAL RESOURCES

Sec.
1104.1 Purpose.
1104.2 Definitions.
1104.3 Prohibited acts.
1104.4 Permit requirements and exceptions.
1104.5 Application for permits and information collection.
1104.6 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.
1104.7 Issuance of permits.
1104.8 Terms and conditions of permits.
1104.9 Suspension and revocation of permits.
1104.10 Appeals relating to permits.

Sec.
1104.11 Relationship to section 106 of the National Historic Preservation Act.
1104.12 Custody of archaeological resources.
1104.13 Determination of archaeological or commercial value and cost of restoration and repair.
1104.14 Assessment of civil penalties.
1104.15 Civil penalty amounts.
1104.16 Other penalties and rewards.
1104.17 Confidentiality of archaeological resource information.
1104.18 Report to the Secretary of the Interior.

Authority: Pub. L. 96-95, 93 Stat. 721 (16 U.S.C. 470aa-11) (Sec. 10(a).) Related Authority: Pub. L. 59-209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86-523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470a-t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95-341, 92 Stat. 469 (42 U.S.C. 1996).

§ 1104.1 Purpose.

(a) The regulations in this part implement provisions of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-11) by establishing the definitions, standards, and procedures to be followed by the Commissioner in providing protection for archaeological resources, located on public lands through permits authorizing excavation and/or removal of archaeological resources, through civil penalties for unauthorized excavation and/or removal, through provisions for the preservation of archaeological resource collections and data, and through provisions for ensuring confidentiality of information about archaeological resources when disclosure would threaten the archaeological resources.

(b) The regulations in this part do not impose any new restrictions on activities permitted under other laws, authorities, and regulations relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

§ 1104.2 Definitions.

As used for purposes of this part:

(a) *Archaeological resource* means any material remains of human life or activities which are at least 100 years of age, and which are of archaeological interest.

(1) *Of archaeological interest* means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation.

(2) *Material remains* means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated.

(3) The following classes of material remains (and illustrative examples), if they are at least 100 years of age, are of archaeological interest and shall be considered archaeological resources unless determined otherwise pursuant to paragraph (a)(4) or (a)(5) of this section:

(i) Surface or subsurface structures, shelters, facilities, or features (including, but not limited to, domestic structures, storage structures, cooking structures, ceremonial structures, artificial mounds, earthworks, fortifications, canals, reservoirs, horticultural/agricultural gardens or fields, bedrock mortars or grinding surfaces, rock alignments, cairns, trails, borrow pits, cooking pits, refuse pits, burial pits or graves, hearths, kilns, post molds, wall trenches, middens);

(ii) Surface or subsurface artifact concentrations or scatters;

(iii) Whole or fragmentary tools, implements, containers, weapons and weapon projectiles, clothing, and ornaments (including, but not limited to, pottery and other ceramics, cordage, basketry and other weaving, bottles and other glassware, bone, ivory, shell, metal, wood, hide, feathers, pigments, and flaked, ground, or pecked stone);

(iv) By-products, waste products, or debris resulting from manufacture or use of human-made or natural materials;

(v) Organic waste (including but not limited to, vegetable and animal remains, coprolites);

(vi) Human remains (including, but not limited to, bone, teeth, mummified flesh, burials, cremations);

(vii) Rock carvings, rock paintings, intaglios and other works of artistic or symbolic representation;

(viii) Rockshelters and caves or portions thereof containing any of the above material remains;

(ix) All portions of shipwrecks (including but not limited to, armaments, apparel, tackle, cargo);

(x) Any portion or piece of any of the foregoing.

(4) The following material remains shall not be considered of archaeological interest, and shall not be considered to be archaeological resources for purposes of the Act and this part, unless found in a direct physical relationship with archaeological resources as defined in this section:

(i) Paleontological remains;

(ii) Coins, bullets, and unworked minerals and rocks.

(5) The Commissioner may determine that certain material remains, in specified areas under the Commissioner's jurisdiction, and under specified circumstances, are not or are no longer of archaeological interest and are not to be considered archaeological resources under this part. Any determination made pursuant to this subparagraph shall be documented. Such Determination shall in no way affect the Commissioner's obligations under other applicable laws or regulations.

(b) *Arrowhead* means any projectile point which appears to have been designed for use with an arrow.

(c) *Commissioner* means the head of the United States Section, International Boundary and Water Commission, United States and Mexico, and his delegate.

(d) *Public lands* means lands to which the United States of America holds fee title, and which are under the control of the U.S. Section, International Boundary and Water Commission, United States and Mexico.

(e) *Indian tribe* as defined in the Act means any Indian tribe, band, nation, or other organized group or community. In order to clarify this statutory definition for purposes of this part, *Indian tribe* means:

(1) Any tribal entity which is included in the annual list of recognized tribes published in the **Federal Register** by the Secretary of the Interior pursuant to 25 CFR part 54;

(2) Any other tribal entity acknowledged by the Secretary of the Interior pursuant to 25 CFR part 54 since the most recent publication of the annual list;

(f) *Person* means an individual, corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the United States, or of any Indian tribe, or of any State or political subdivision thereof.

(g) *State* means any of the fifty states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(h) *Act* means the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-11.), as amended.

§ 1104.3 Prohibited acts.

(a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands unless such activity is pursuant to a permit issued under

§ 1104.7 or exempted by § 1104.4(b) of this part.

(b) No person may sell, purchase, exchange, transport, or receive any archaeological resource, if such resource was excavated or removed in violation of:

(1) The prohibitions contained in paragraph (a) of this section; or

(2) Any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

§ 1104.4 Permit requirements and exceptions.

(a) Any person proposing to excavate and/or remove archaeological resources from public lands, and to carry out activities associated with such excavation and/or removal, shall apply to the Commissioner for a permit for the proposed work, and shall not begin the proposed work until a permit has been issued. The Commissioner may issue a permit to any qualified person, subject to appropriate terms and conditions, provided that the person applying for a permit meets conditions in § 1104.7(a) of this part.

(b) Exceptions:

(1) No permit shall be required under this part for any person conducting activities on the public lands under other permits, leases, licenses, or entitlements for use, when those activities are exclusively for purposes other than the excavation and/or removal of archaeological resources, even though those activities might incidentally result in the disturbance of archaeological resources. General earth-moving excavation conducted under a permit or other authorization shall not be construed to mean excavation and/or removal as used in this part. This exception does not, however, affect the Commissioner's responsibility to comply with other authorities which protect archaeological resources prior to approving permits, leases, licenses, or entitlements for use; any excavation and/or removal of archaeological resources required for compliance with those authorities shall be conducted in accordance with the permit requirements of this part.

(2) No permit shall be required under this part for any person collecting for private purposes any rock, coin, bullet, or mineral which is not an archaeological resource as defined in this part, provided that such collecting does not result in disturbance of any archaeological resource.

(3) No permit shall be required under section 3 of the Act of June 8, 1906 (16 U.S.C. 432) for any archaeological work for which a permit is issued under this part.

(c) Persons carrying out official agency duties under the Commissioner's direction, associated with the management of archaeological resources, need not follow the permit application procedures of § 1104.5. However, the Commissioner shall insure that provisions of §§ 1104.7 and 1104.8 have been met by other documented means, and that any official duties which might result in harm to or destruction of any Indian tribal religious or cultural site, as determined by the Commissioner, have been the subject of consideration under § 1104.6.

(d) Upon the written request of the Governor of any State, on behalf of the State or its educational institutions, the Commissioner shall issue a permit, subject to the provisions of §§ 1104.4(b)(5), 1104.6, 1104.7(a) (3), (4), (5), (6), and (7), 1104.8, 1104.9, 1104.11, and 1104.12(a) to such Governor or to such designee as the Governor deems qualified to carry out the intent of the Act, for purposes of conducting archaeological research, excavating and/or removing archaeological resources, and safeguarding and preserving any materials and data collected in a university, museum, or other scientific or educational institution approved by the Commissioner.

(e) Under other statutory, regulatory, or administrative authorities governing the use of public lands, authorizations may be required for activities which do not require a permit under this part. Any person wishing to conduct on public lands any activities related to but believed to fall outside the scope of this part should consult with the Commissioner, for the purpose of determining whether any authorization is required, prior to beginning such activities.

§ 1104.5 Application for permits and information collection.

(a) Any person may apply to the Commissioner for a permit to excavate and/or remove archaeological resources from public lands and to carry out activities associated with such excavation and/or removal.

(b) Each application for a permit shall include:

(1) The nature and extent of the work proposed, including how and why it is proposed to be conducted, proposed time of performance, locational maps, and proposed outlet for public written dissemination of the results.

(2) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training, and experience in accord with the minimal qualifications listed in § 1104.7(a).

(3) The name and address of the individual(s), if different from the individual(s) named in paragraph (b)(2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.

(4) Evidence of the applicant's ability to initiate, conduct, and complete the proposed work, including evidence of logistical support and laboratory facilities.

(5) Where the application is for the excavation and/or removal of archaeological resources on public lands, the names of the university, museum, or other scientific or educational institution in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documents and to safeguard and preserve these materials as property of the United States.

(c) The Commissioner may require additional information, pertinent to land management responsibilities, to be included in the application for permit and shall so inform the applicant.

(d) Paperwork Reduction Act. The information collection requirement contained in § 1104.5 of these regulations has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0037. The purpose of the information collection is to meet statutory and administrative requirements in the public interest. The information will be used to assist the Commissioner in determining that applicants for permits are qualified, that the work proposed would further archaeological knowledge, that archaeological resources and associated records and data will be properly preserved, and that the permitted activity would not conflict with the management of the public lands involved. Response to the information requirement is necessary in order for an applicant to obtain a benefit.

§ 1104.6 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.

(a) If the issuance of a permit under this part may result in harm to, or destruction of, any Indian tribal

religious or cultural site on public lands, as determined by the Commissioner, at least 30 days before issuing such a permit the Commissioner shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9 of the Act.

(1) Notice by the Commissioner to any Indian tribe shall be sent to the chief executive officer or other designated official of the tribe. Indian tribes are encouraged to designate a tribal official to be the focal point for any notification and discussion between the tribe and the Commissioner.

(2) The Commissioner may provide notice to any other Native American group that is known by the Commissioner to consider sites potentially affected as being of religious or cultural importance.

(3) Upon request during the 30-day period, the Commissioner may meet with official representatives of any Indian tribe or group to discuss their interests, including ways to avoid or mitigate potential harm or destruction such as excluding sites from the permit area. Any mitigation measures which are adopted shall be incorporated into the terms and conditions of the permit under § 1104.8.

(4) When the Commissioner determines that a permit applied for under this part must be issued immediately because of an imminent threat of loss or destruction of an archaeological resource, the Commissioner shall so notify the appropriate tribe.

(b)(1) In order to identify sites of religious or cultural importance, the Commissioner shall seek to identify all Indian tribes having aboriginal or historic ties to the lands under the Commissioner's jurisdiction and seek to determine, from the chief executive officer or other designated official of any such tribe, the location and nature of specific sites of religious or cultural importance so that such information may be on file for land management purposes. Information on site eligible for or included in the National Register of Historic Places may be withheld from public disclosure pursuant to section 304 of the Act of October 15, 1966, as amended (16 U.S.C. 470w-3).

(2) If the Commissioner becomes aware of a Native American group that is not an Indian tribe as defined in this part but has aboriginal or historic ties to public lands under the Commissioner's jurisdiction, the Commissioner may seek to communicate with official representatives of that group to obtain information on sites they may consider to be of religious or cultural importance.

(3) The Commissioner may enter into agreement with any Indian tribe or other Native American group for determining locations for which such tribe or group wishes to receive notice under this section.

§ 1104.7 Issuance of permits.

(a) The Commissioner may issue a permit, for a specified period of time appropriate to the work to be conducted, upon determining that:

(1) The applicant is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in archaeological theory and methods, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed, and also meets the following minimum qualifications:

(i) A graduate degree in anthropology or archaeology, or equivalent training and experience;

(ii) The demonstrated ability to plan, equip, staff, organize, and supervise activity of the type and scope proposed;

(iii) The demonstrated ability to carry research to completion, as evidenced by timely completion of theses, research reports, or similar documents;

(iv) Completion of at least 16 months of professional experience and/or specialized training in archaeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity the individual proposes to conduct under authority of a permit; and

(v) Applicants proposing to engage in historical archaeology should have had at least one year of experience in research concerning archaeological resources of the prehistoric period.

(2) The proposed work is to be undertaken for the purpose of furthering archaeological knowledge in the public interest, which may include but need not be limited to, scientific or scholarly research, and preservation of archaeological data;

(3) The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of the public lands concerned;

(4) Where the proposed work consists of archaeological survey and/or data recovery undertaken in accordance with other approved uses of the public lands, and the proposed work has been agreed to in writing by the Commissioner pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f), paragraphs (a)(2) and (a)(3) of this section shall be deemed satisfied by the prior approval;

(5) Evidence is submitted to the Commissioner that any university, museum, or other scientific or educational institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records; and

(6) The applicant has certified that, not later than 90 days after the date the final report is submitted to the Commissioner, the following will be delivered to the appropriate official of the approved university, museum, or other scientific or educational institution, which shall be named in the permit:

(i) All artifacts, samples, collections, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit where the permit is for the excavation and/or removal of archaeological resources from public lands.

(b) When the area of the proposed work would cross jurisdictional boundaries, so that permit applications must be submitted to more than one Federal agency, the Commissioner shall coordinate the review and evaluation of applications and the issuance of permits.

§ 1104.8 Terms and conditions of permits.

(a) In all permits issued, the Commissioner shall specify:

(1) The nature and extent of work allowed and required under the permit, including the time, duration, scope, location, and purpose of the work;

(2) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit;

(3) The name of any university, museum, or other scientific or educational institutions in which any collected materials and data shall be deposited; and

(4) Reporting requirements.

(b) The Commissioner may specify such terms and conditions as deemed necessary, consistent with this part, to protect public safety and other values and/or resources, to secure work areas, to safeguard other legitimate land uses, and to limit activities incidental to work authorized under a permit.

(c) Initiation of work or other activities under the authority of a permit

signifies the permittee's acceptance of the terms and conditions of the permit.

(d) The permittee shall not be released from requirements of a permit until all outstanding obligations have been satisifed, whether or not the term of the permit has expired.

(e) The permittee may request that the Commissioner extend or modify a permit.

(f) The permittee's performance under any permit issued for a period greater than 1 year shall be subject to review by the Commissioner, at least annually.

§ 1104.9 Suspension and revocation of permits.

(a) *Suspension or revocation for cause.* (1) The Commissioner may suspend a permit issued pursuant to this part upon determining that the permittee has failed to meet any of the terms and conditions of the permit or has violated any prohibition of the Act or § 1104.3. The Commissioner shall provide written notice to the permittee of the suspension, the cause thereof, and the requirements which must be met before the suspension will be removed.

(2) The Commissioner may revoke a permit upon assessment of a civil penalty under § 1104.14 upon the permittee's conviction under section 6 of the Act, or upon determining that the permittee has failed after notice under this section to correct the situation which led to suspension of the permit.

(b) *Suspension or revocation for management purposes.* The Commissioner may suspend or revoke a permit, without liability to the United States, its agents, or employees, when continuation of work under the permit would be in conflict with management requirements not in effect when the permit was issued. The Commissioner shall provide written notice to the permittee stating the nature of and basis for the suspension or revocation.

§ 1104.10 Appeals relating to permits.

Any affected person may appeal permit issuance, denial of permit issuance, suspension, revocation, and terms and conditions of a permit.

§ 1104.11 Relationship to section 106 of the National Historic Preservation Act.

Issuance of a permit in accordance with the Act and this part does not constitute an undertaking requiring compliance with section 106 of the Act of October 15, 1966 (16 U.S.C. 470f). However, the mere issuance of such a permit does not excuse the Commissioner from compliance with section 106 where otherwise required.

§ 1104.12 Custody of archaeological resources.

(a) Archaeological resources excavated or removed from the public lands remain the property of the United States.

(b) The Commissioner may provide for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, when such resources have been excavated or removed from public lands under the authority of a permit issued by the Commissioner.

§ 1104.13 Determination of archaeological or commercial value and cost of restoration and repair.

(a) *Archaeological value.* For purposes of this part, the archaeological value of any archaeological resource involved in a violation of the prohibitions in § 1104.3 of this part or conditions of a permit issued pursuant to this part shall be the value of the information associated with the archaeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(b) *Commercial value.* For purposes of this part, the commercial value of any archaeological resource involved in a violation of the prohibitions in § 1104.3 of this part or conditions of a permit issued pursuant to this part shall be its fair market value. Where the violation has resulted in damage to the archaeological resource, the fair market value should be determined using the condition of the archaeological resource prior to the violation, to the extent that its prior condition can be ascertained.

(c) *Cost of restoration and repair.* For purposes of this part, the cost of restoration and repair of archaeological resources damaged as a result of a violation of prohibitions or conditions pursuant to this part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following:

(1) Reconstruction of the archaeological resource;

(2) Stabilization of the archaeological resource;

(3) Ground contour reconstruction and surface stabilization;

(4) Research necessary to carry out reconstruction or stabilization;

(5) Physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance;

(6) Examination and analysis of the archaeological resource including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;

(7) Reinterment of human remains in accordance with religious custom and State, local, or tribal law, where appropriate, as determined by the Commissioner;

(8) Preparation of reports relating to any of the above activities.

§ 1104.14 Assessment of civil penalties.

(a) The Commissioner may assess a civil penalty against any person who has violated any prohibition contained in § 1104.3 or who has violated any term or condition included in a permit issued in accordance with the Act and this part.

(b) *Notice of violation.* The Commissioner shall serve a notice of violation upon any person believed to be subject to a civil penalty, either in person or by registered or certified mail (return receipt requested). The Commissioner shall include in the notice:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provision(s) of this part or to a permit issued pursuant to this part allegedly violated;

(3) The amount of penalty proposed to be assessed, including any initial proposal to mitigate or remit where appropriate, or a statement that notice of a proposed penalty amount will be served after the damages associated with the alleged violation have been ascertained;

(4) Notification of the right to file a petition for relief pursuant to paragraph (d) of this section, or to await the Commissioner's notice of assessment, and to request a hearing in accordance with paragraph (g) of this section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.

(c) The person served with a notice of violation shall have 45 calendar days from the date of its service (or the date of service of a proposed penalty amount, if later) in which to respond. During this time the person may:

(1) Seek informal discussions with the Commissioner;

(2) File a petition for relief in accordance with paragraph (d) of this section;

(3) Take no action and await the Commissioner's notice of assessment;

(4) Accept in writing or by payment the proposed penalty, or any mitigation or remission offered in the notice. Acceptance of the proposed penalty or mitigation or remission shall be deemed a waiver of the notice of assessment and of the right to request a hearing under paragraph (g) of this section.

(d) *Petition for relief.* The person served with a notice of violation may request that no penalty be assessed or that the amount be reduced, by filing a petition for relief with the Commissioner within 45 calendar days of the date of service of the notice of violation (or of a proposed penalty amount, if later). The petition shall be in writing and signed by the person served with the notice of violation. If the person is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.

(e) *Assessment of penalty.* (1) The Commissioner shall assess a civil penalty upon expiration of the period for filing a petition for relief, upon completion of review of any petition filed, or upon completion of informal discussions, whichever is later.

(2) The Commissioner shall take into consideration all available information, including information provided pursuant to paragraphs (c) and (d) of this section or furnished upon further request by the Commissioner.

(3) If the facts warrant a conclusion that no violation has occurred, the Commissioner shall so notify the person served with a notice of violation, and no penalty shall be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Commissioner shall determine a penalty amount in accordance with § 1104.15.

(f) *Notice of assessment.* The Commissioner shall notify the person served with a notice of violation of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The Commissioner shall include in the notice of assessment:

(1) The facts and conclusions from which it was determined that a violation did occur;

(2) The basis in § 1104.15 for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

(3) Notification of the right to request a hearing, including the procedures to be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

(g) *Hearings.* (1) Except where the right to request a hearing is deemed to have been waived as provided in paragraph (c)(4) of this section, the person served with a notice of assessment may file a written request for a hearing with the adjudicatory body specified in the notice. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request as specified in the notice of assessment, personally or by registered or certified mail (return receipt requested).

(2) Failure to deliver a written request for a hearing within 45 days of the date of service of the notice of assessment shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. 554. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part, and shall not be limited by the amount assessed by the Commissioner under paragraph (f) of this section or any offer of mitigation or remission made by the Commissioner.

(h) *Final administrative decision.* (1) Where the person served with a notice of violation has accepted the penalty pursuant to paragraph (c)(4) of this section, the notice of violation shall constitute the final administrative decision;

(2) Where the person served with a notice of assessment has not filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the notice of assessment shall constitute the final administrative decision;

(3) Where the person served with a notice of assessment has filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the decision resulting from the hearing or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(i) *Payment of penalty.* (1) The person assessed a civil penalty shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal has been filed with a United States District Court as provided in section 7(b)(1) of the Act.

(2) Upon failure to pay the penalty, the Commissioner may request the Attorney General to institute a civil action to collect the penalty in a United States District Court for any district in which the person assessed a civil penalty is found, resides, or transacts business. Where the Commissioner is not represented by the Attorney General, a civil action may be initiated directly by the Commissioner.

(j) *Other remedies not waived.* Assessment of a penalty under this section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.

§ 1104.15 Civil penalty amounts.

(a) *Maximum amount of penalty.* (1) Where the person being assessed a civil penalty has not committed any previous violation of any prohibition in § 1104.3 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be the full cost of restoration and repair of archaeological resources damaged plus the archaeological or commercial value of archaeological resources destroyed or not recovered.

(2) Where the person being assessed a civil penalty has committed any previous violation of any prohibition in § 1104.3 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be double the cost of restoration and repair plus double the archaeological or commercial value of archaeological resources destroyed or not recovered.

(3) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

(b) *Determination of penalty amount, mitigation, and remission.* The Commissioner may assess a penalty amount less than the maximum amount of penalty and may offer to mitigate or remit the penalty.

(1) Determination of the penalty amount and/or a proposal to mitigate or remit the penalty may be based upon any of the following factors:

(i) Agreement by the person being assessed a civil penalty to return to the Commissioner archaeological resources removed from public lands;

(ii) Agreement by the person being assessed a civil penalty to assist the Commissioner in activity to preserve, restore, or otherwise contribute to the protection and study of archaeological resources on public lands;

(iii) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act or this part;

(iv) Demonstration of hardship or inability to pay, provided that this factor shall only be considered when the

person being assessed a civil penalty has not been found to have previously violated the regulations in this part;

(v) Determination that the person being assessed a civil penalty did not willfully commit the violation;

(vi) Determination that the proposed penalty would constitute excessive punishment under the circumstances;

(vii) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

(2) When the penalty is for a violation which may have had an effect on a known Indian tribal religious or cultural site on public lands, the Commissioner should consult with and consider the interests of the affected tribe(s) prior to proposing to mitigate or remit the penalty.

§ 1104.16 Other penalties and rewards.

(a) Section 6 of the Act contains criminal prohibitions and provisions for criminal penalties. Section 8(b) of the Act provides that archaeological resources, vehicles, or equipment involved in a violation may be subject to forfeiture.

(b) Section 8(a) of the Act provides for rewards to be made to persons who furnish information which leads to conviction for a criminal violation or to assessment of a civil penalty. The Commissioner may certify to the Secretary of the Treasury that a person is eligible to receive payment. Officers and employees of Federal, State, or local government who furnish information or render service in the performance of their official duties, and persons who have provided information under § 1104.15(b)(1)(iii) shall not be certified eligible to receive payment of rewards.

§ 1104.17 Confidentiality of archaeological resource information.

(a) The Commissioner shall not make available to the public, under subchapter II of chapter 5 of title 5 of the United States Code or any other provision of law, information concerning the nature and location of any archaeological resource, with the following exceptions:

(1) The Commissioner may make information available, provided that the disclosure will further the purposes of the Act and this part, or the Act of June 27, 1960, as amended (16 U.S.C. 469–469c), without risking harm to the archaeological resource or to the site in which it is located.

(2) The Commissioner shall make information available, when the Governor of any State has submitted to the Commissioner a written request for information, concerning the archaeological resources within the requesting Governor's State, provided that the request includes:

(i) The specific archaeological resource or area about which information is sought;

(ii) The purpose for which the information is sought; and

(iii) The Governor's written commitment to adequately protect the confidentiality of the information.

§ 1104.18 Report to the Secretary of the Interior.

The Commissioner, when requested by the Secretary of the Interior, shall submit such information as is necessary to enable the Secretary to comply with section 13 of the Act.

Dated: April 15, 1991.

Conrad G. Keyes, Jr.,

Principal Engineer, Planning.

[FR Doc. 91–9971 Filed 5–9–91; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 701 and 702

[T.D. 8349]

RIN 1545–AP21

Financing of Presidential Election Campaigns

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under new part 701, Presidential Election Campaign Fund (the "Fund"), and new part 702, Presidential Primary Matching Payment Account, of title 26 of the CFR, relating to the financing of presidential election campaigns. The final regulations clarify issues arising under sections 9006, 9008, and 9037 of the Internal Revenue Code of 1986, including the timing of certain transfers to the Fund, the establishment of certain accounts within the Fund, the transfer of certain amounts to the accounts, and the allocation of payments where amounts in the accounts are insufficient to fully satisfy all valid claims for payment. These final regulations are necessary because it is projected, for the 1992 and subsequent presidential elections, that there will be insufficient amounts in the Fund to fully satisfy all valid claims for payment. In addition, the regulations are necessary because, even if sufficient amounts are eventually deposited in the Fund to fully satisfy all valid claims, the Fund may not have sufficient amounts at the time those claims are presented. The final regulations affect all eligible recipients of amounts from the Fund.

DATES: This document is effective on May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Joel S. Rutstein of the Office of Assistant Chief Counsel (Income Tax and Accounting), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attn. CC:CORP:T:R: (IA–74–90), or telephone 202–566–4430 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Presidential Election Campaign Fund

Under section 6096, individuals whose tax liability for the taxable year is $1 or more may designate on their tax returns that $1 be paid over to the Presidential Election Campaign Fund. Chapter 95 of the Internal Revenue Code of 1986 (sections 9001 through 9013) established the Fund. Chapter 96 of the Code (sections 9031 through 9042) established the Presidential Primary Matching Account within the Fund.

Section 9006(a) requires the Secretary to transfer monies not in excess of the amounts designated by taxpayers under section 6096 to the Fund. Pursuant to Chapters 95 and 96, payments from the Fund are made for three purposes: (a) Payments to the national committee of each major and minor party for their nominating conventions ("convention payments"), (b) payments to the eligible candidates of a political party for President and Vice-President ("general election payments"), and (c) payments to eligible candidates seeking the nomination of a political party to be President ("primary matching payments").

For the purpose of making convention payments, section 9008 establishes a separate account in the Fund (the "Convention Account"). Payments from the Convention Account are made upon certification to the Secretary by the Federal Election Commission (the "Commission"). Pursuant to section 9008(a), payments from the Convention Account must be provided for before any general election payments are made.

No separate account is established by chapter 95 for the purpose of making general election payments. Section 9037(a) directs the Secretary to establish within the Fund an additional separate account for the purpose of making primary matching payments, called the Presidential Primary Matching Payment Account (the "Primary Account").

Pursuant to section 9037(a), the Secretary is directed to deposit into the Primary Account "the amount available after the Secretary determines that amounts for payments under section 9006(c) [general election payments] and for payments under section 9008(b)(3) [convention payments] are available for such payments."

Section 9037(b) directs the Secretary to transfer from the Primary Account those amounts certified by the Commission to candidates seeking nomination for President. In making transfers to candidates of the same political party, the Secretary is directed to seek to achieve an equitable distribution of such amounts, taking into account "the sequence in which * * * certifications [from the Commission] are received."

Pursuant to section 9008(e), convention payments are made beginning on July 1 of the calendar year preceding the year of the convention. Under sections 9005(a) and 9006(b), general election payments are made to candidates after they are nominated. Finally, section 9032(6) provides that primary matching payments are made beginning on the first day of the calendar year in which the presidential election is held.

Notice of Proposed Rulemaking

By letters dated February 12, 1990, and July 11, 1990, the Commission notified the Treasury Department that the Commission projected that the Fund would lack sufficient money to fully finance the 1992 and subsequent presidential elections. In its letter dated July 11, 1990, the Commission requested that the Treasury Department promulgate regulations to allocate amounts in the Fund in case of a shortfall. In response to this request, the Treasury Department published a notice of proposed rulemaking in the **Federal Register** on December 13, 1990, proposing regulations allocating amounts in the Fund in the event of a shortfall (55 FR 51301). Written comments responding to this notice were received. A public hearing was held on February 11, 1991. After consideration of the comments (including the comments presented at the public hearing), the proposed regulations are adopted as final regulations with the revisions discussed below.

Explanation of Provisions

Section 701.9006–1(a) provides that the Secretary shall determine at least once a month the amounts designated to the Fund by individuals under section 6096 and promptly transfer those amounts to the Fund. Amounts transferred to the Fund after September 30 of the year following a presidential election shall only be used to satisfy certifications relating to future presidential elections.

Section 701.9006–1(b) provides that the Secretary shall establish, within the Fund, three separate accounts, designated as the Presidential Nominating Convention Account, the Presidential and Vice Presidential Nominee Account, and the Presidential Primary Matching Payment Account.

Section 701.9006–1(c) provides that the Secretary shall deposit in the Presidential Nominating Convention Account such amounts as the Secretary determines, in consultation with the Federal Election Commission, are required to make the payments prescribed by section 9008(b)(3). The Secretary shall make this deposit only from amounts that have actually been transferred to the Presidential Election Campaign Fund under § 701.9006–1(a).

Section 701.9006–1(d) provides that after making the transfers prescribed by § 701.9006–1(c), the Secretary shall deposit in the Presidential and Vice Presidential Nominee Account such amounts as the Secretary determines, in consultation with the Federal Election Commission, are required to make the payments prescribed by section 9006(b). The Secretary shall make this deposit only from amounts that have actually been transferred to the Presidential Election Campaign Fund under § 701.9006–1(a).

Section 702.9006–1(e) provides that for a presidential election, after making the prescribed transfers to the Presidential Nominating Convention Account and the Presidential and Vice Presidential Nominee Account, including certain adjustments, the Secretary shall not make any additional deposits to those accounts until October 1 of the year following that presidential election.

Section 702.9037–1 provides that, after making the transfers prescribed by § 701.9006–1(c) and § 701.9006–1(d), the Secretary shall deposit any amounts in the Fund into the Presidential Primary Matching Payment Account. The Secretary shall make this deposit only from amounts that have actually been transferred to the Presidential Election Campaign Fund under § 701.9006–1(a). Promptly after the end of each month, the Secretary shall notify the Federal Election Commission of the total deposits made to the account in the month and the balance in the account at the end of the month. Finally, any amount remaining in this account after October 31 of the year following a presidential election shall be returned to the Fund.

Section 702.9037–2(a) provides that the Federal Election Commission shall certify to the Secretary the full amount of payment to which a candidate is entitled under section 9036. Except as provided in § 702.9037–2(c), promptly after the end of each calendar month, but not before the matching payment period described in section 9032(6), the Secretary shall pay the amounts certified by the Commission in the preceding calendar month to the candidates.

Section 702.9037–2(b) provides that promptly after all the payments under paragraph (a) have been made for a calendar month, the Secretary shall notify the Federal Election Commission of the amount paid to each candidate for the calendar month and the balance remaining in the Presidential Primary Matching Payment Account.

Section 702.9037–2(c) provides that if the amounts certified by the Federal Election Commission in a calendar month exceed the balance in the Presidential Primary Matching Payment Account on the last day of such month, the amount to be paid to a candidate is the amount determined by multiplying the amount certified by the Commission for the candidate in the calendar month by the ratio of the balance in the account on the last day of the calendar month over the total amount certified by the Commission for all the candidates in the calendar month. In addition, any amount certified by the Commission, but not paid to a candidate because of § 702.9037–2(c), is treated as an amount certified by the Commission for the candidate in the succeeding calendar month.

Section 702.9037–2(d) provides an example illustrating the rules in § 702.9037–2(c).

Public Comments

Commentators representing four organizations submitted comments on the notice of proposed rulemaking. Each commentator argued that the proposed regulation, if adopted, would cause less money to be paid from the Presidential Primary Matching Payment Account during the earlier months of a presidential election year.

In particular, these comments were directed at the provision of the proposed regulation requiring amounts in the Fund to be "set aside" for convention and general election payments before remaining amounts in the Fund may be used for making primary matching payments. Three commentators proposed the same alternative to the

"set aside" method. Their proposal would require the Secretary to project the amount that would accumulate in the Fund between the time primary matching payments begin (January 1 of the presidential election year) and the time general election payments are made (typically July or August of the presidential election year). These projections would be used to estimate the amount of primary matching payments that could be made during that period while leaving an amount in the Fund sufficient to make the general election payments when those payments were due. The projection would be based on historical trends in taxpayer deposits to the Fund calculated by the Commission.

This alternative proposal is not adopted in the final regulations. The statutory scheme for the Fund sets out a priority: convention payments are to be made before general election payments are made. In turn, with regard to primary matching payments, the Secretary is specifically directed to make such payments only after determining that amounts are available to make convention and general election payments.

Any method requiring a projection of amounts that will be transferred to the Fund necessarily creates the possibility that the Secretary will be unable to satisfy the statutory priority of payments. For example, if the amount added to the Fund is lower than the amount projected, there may be insufficient amounts in the Fund to make general election payments when due. While this possibility can be mitigated to a certain extent by reducing the amounts actually paid to candidates to allow a margin for error, the possibility cannot be completely eliminated so long as a projection method is used. Permitting this possibility to exist would itself be inconsistent with the statutory priority of payments prescribed for the Fund.

The language of the statute reinforces this conclusion. Section 9037(a) requires the Secretary to determine that amounts for convention payments and general election payments are available before the Secretary makes primary matching payments (emphasis added). Use of the words "are available" demonstrates that Congress intended that the Secretary ensure conformity with the statutory priority of payments by actually setting aside amounts sufficient to make convention payments and general election payments before allowing primary matching payments to be made. Had Congress contemplated the use of projections in determining the amount of primary matching payments that could be made, it could have chosen words such as "will be available" or "are likely to be available" to reflect such an intent.

One commentator proposed the implementation of a "line of credit" that the Secretary could draw on in situations where there were insufficient amounts in the Presidential Primary Matching Payment Account. This proposal was not adopted because it is contrary to the clear language of section 9006(c). That section provides that where the Secretary determines that amounts in the Fund are insufficient to make all required payments, "moneys shall not be made available from any other source for the purpose of making such payments."

One commentator questioned whether proposed § 701.9006–1(e) would allow for adjustments to any of the accounts. Proposed § 701.9006–1(e) provides that after making transfers to the Presidential Nominating Convention Account and the Presidential and Vice Presidential Nominee Account for a presidential election, the Secretary shall not make any additional deposits to those accounts until October 1 of the year after that presidential election. The commentator pointed out that this rule could be interpreted to prevent the Secretary from making necessary adjustments to the funding of those accounts after their initial funding. For example, the commentator noted that an adjustment to the funding of the Presidential Nominating Convention Account to account for inflation is typically calculated in February of the election year. The commentator also noted that payments from the Presidential and Vice Presidential Nominee Account may be necessary for minor or new party candidates after the election, and that additional deposits may be necessary in order to make these payments.

Proposed § 701.9006–1(e) is not intended to prevent these types of adjustments. Therefore, proposed § 701.9006–1(e) has been revised to clarify that these types of adjustments may be made.

One commentator suggested that the Secretary notify the Commission monthly on the balance in the Presidential Primary Matching Payment Account. Proposed § 702.9037–1 has been revised to require such notification promptly after the end of each calendar month.

One commentator suggested that the regulations make clear that the Commission is required to certify to the Secretary the full amount of a payment to which a candidate is entitled. Proposed § 702.9037–2(a) has been revised to clarify this point.

Finally, one commentator questioned one effect of the rule in proposed § 702.9037–2(b). The commentator pointed out that this rule can result in an earlier-certified candidate receiving more than a later-certified candidate, despite the fact that both candidates may be certified for equal amounts. This effect is demonstrated in the example in proposed § 702.9037–2(c) that is adopted here as § 702.9037–2(d) without change. In this example, through March 1992, candidate X is certified for $2000x and is paid $1400x. Candidate Z is certified for $2600x and is paid $650x. This result occurs because no certifications were received for candidate Z in February. Although no certifications were actually received for candidates X and Y in March, under proposed § 702.9037–2(b), the unpaid certifications of candidates X and Y from February are treated as received in March.

The rule in proposed § 702.9037–2(b) has been moved to § 702.9037–2(c) and adopted without change, because Code section 9037(b) is clear that in seeking to achieve an equitable distribution of funds under Code section 9037(a), the Secretary shall take into account the sequence in which certifications are received.

Special Analyses

It has been determined that these final rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these final regulations is Joel S. Rutstein, Office of the Assistant Chief Counsel (Income Tax and Accounting), Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR Part 701

Campaign funds, Political candidates, Elections.

26 CFR Part 702

Campaign funds, Administrative practice and procedure, Political candidates.

Adoption of Amendments to the Regulations

Par. 1. Part 701 is added to read as follows:

PART 701—PRESIDENTIAL ELECTION CAMPAIGN FUND

Sec.

701.9006–1 Presidential Election Campaign Fund.

Authority: 26 U.S.C. 7805.

§ 701.906–1 Presidential Election Campaign Fund.

(a) *Transfer of amounts to the Presidential Election Campaign Fund.* The Secretary shall determine at least once a month the amount designated by individuals under section 6096 to the Presidential Election Campaign Fund ("Fund") established under section 9006(a). The Secretary shall then promptly transfer from the general fund of the Treasury that amount to the Fund. Only amounts transferred to the Fund on or before September 30 following a presidential election shall be used to satisfy certifications relating to that presidential election.

(b) *Creation of separate accounts within the Presidential Election Campaign Fund.* The Secretary shall establish, within the Presidential Election Campaign Fund, three separate accounts, designated as the Presidential Nominating Convention Account, the Presidential and Vice Presidential Nominee Account, and the Presidential Primary Matching Payment Account.

(c) *Transfer of amounts to the Presidential Nominating Convention Account.* The Secretary shall deposit in the Presidential Nominating Convention Account such amounts as the Secretary determines, in consultation with the Federal Election Commission (the "Commission"), are required to make the payments prescribed by section 9008(b)(3). The Secretary shall make this deposit only from amounts that have actually been transferred to the Presidential Election Campaign Fund under § 701.9006–1(a).

(d) *Transfer of amounts to the Presidential and Vice Presidential Nominee Account.* After making the transfers prescribed by § 701.9006–1(c), the Secretary shall deposit in the Presidential and Vice Presidential Nominee Account such amounts as the Secretary determines, in consultation with the Commission, are required to make the payments prescribed by section 9006(b). The Secretary shall make this deposit only from amounts that have actually been transferred to the Presidential Election Campaign Fund under § 701.9006–1(a).

(e) *Limit on additional deposits.* After making the transfers prescribed by §§ 701.9006–1(c) and 701.9006–1(d) for a presidential election, including any transfers on account of adjustments under section 9008(b)(5) and post-election entitlements under section 9004(a)(3), the Secretary shall not make any additional deposits to those accounts until October 1 of the year following that presidential election.

(f) *Transfer of amounts to the Presidential Primary Matching Payment Account.* See § 702.9037–1 for rules relating to transfers of amounts to the Presidential Primary Matching Payment Account.

Par. 2. Part 702 is added to read as follows:

PART 702—PRESIDENTIAL PRIMARY MATCHING PAYMENT ACCOUNT

Sec.

702.9037–1 Transfer of amounts to the Presidential Primary Matching Payment Account.

702.9037–2 Payments from the Presidential Primary Matching Payment Account.

Authority: 26 U.S.C. 7805.

§ 702.9037–1 Transfer of amounts to the Presidential Primary Matching Payment Account.

The Secretary shall deposit amounts into the Presidential Primary Matching Payment Account only to the extent that there are amounts in the Presidential Election Campaign Fund after the transfers prescribed by §§ 701.9006–1(c) and 701.9006–1(d). The Secretary shall make this deposit only from amounts that have actually been transferred to the Presidential Election Campaign Fund under § 701.9006–1(a). Promptly after the end of each month the Secretary shall notify the Federal Election Commission of the total deposits made to the account in the month and the balance in the account at the end of the month. Any amounts in the account after October 31 following a presidential election shall be returned to the Presidential Election Campaign Fund for the purpose of making the transfers prescribed by §§ 701.9006–1 (c), (d), and (f) for the next presidential election.

§ 702.9037–2 Payments from the Presidential Primary Matching Payment Account.

(a) *In general.* The Federal Election Commission (the "Commission") shall certify to the Secretary the full amount of payment to which a candidate is entitled under section 9036. Except as provided in paragraph (c) of this section, promptly after the end of each calendar month, but not before the beginning of the matching payment period under section 9032(6), the Secretary shall pay the amounts certified by the Commission in the preceding calendar month from the Presidential Primary Matching Payment Account to the candidate.

(b) *Notification to the Federal Election Commission.* Promptly, after all the payments under paragraph (a) of this section have been made for a calendar month, the Secretary shall notify the Commission of the amount paid to each candidate for the calendar month and the balance remaining in the Presidential Primary Matching Payment Account.

(c) *Payments to candidates in the case of shortfall.* If the amount certified by the Commission in a calendar month exceeds the balance in the Presidential Primary Matching Payment Account on the last day of the calendar month, the amount paid to a candidate for that month under paragraph (a) of this section is the amount determined by multiplying the amount certified by the Commission for the candidate during the calendar month by the ratio of the balance in the account on the last day of the calendar month over the total amount certified by the Commission for all the candidates during the calendar month. Any amount certified by the Commission, but not paid to a candidate because of this paragraph (c), is treated as an amount certified by the Commission for that candidate during the succeeding calendar month.

(d) *Example.* The provisions of paragraph (c) of this section may be illustrated by the following example.

Example. X, Y, and Z are eligible candidates. On February 11, 1992, the Secretary receives certifications by the Commission for X in the amount of $2000x and Y in the amount of $500x. There is no certification for Z. The Secretary does not receive any other certifications during February 1992. On February 29, 1992, the balance in the Presidential Primary Matching Payment Account is $1500x. Under paragraph (c) of this section, X's payment for February 1992 is $1200x ($2000x (the amount certified by the Commission for X during February 1992) multiplied by $1500x (the balance in the account on the last day of February 1992) over $2500x (the total amount certified by the

Commission for all candidates during February 1992)). The amount not paid to X, $800x ($2000x minus $1200x), is treated as certified by the Commission for X during March 1992, the succeeding calendar month. Under paragraph (c) of this section, Y's payment for February 1992 is $300x ($500x multiplied by $1500x over $2500x). The amount not paid to Y, $200x ($500x minus $300x), is treated as certified by the Commission for Y during March 1992. On March 10, 1992, no certifications are received for X and Y, but the Secretary receives a certification by the Commission for Z in the amount of $2600x. The Secretary does not receive any other certifications during March 1992. On March 31, 1992, the balance in the account is $900x. Under paragraph (c) of this section, X's payment for March 1992 is $200x ($800x (the amount treated as certified by the Commission for X during March 1992) multiplied by $900x (the balance in the account on the last day of March 1992) over $3600x (the total amount treated as certified or actually certified by the Commission for all candidates during March 1992)). Under paragraph (c) of this section, Y's payment for March 1992 is $50x ($200x multiplied by $900x over $3600x). Under paragraph (c) of this section, Z's payment for March 1992 is $650x ($2600x multiplied by $900x over $3600x). The amounts not paid to X, Y, and Z for March 1992 are treated as certified by the Commission during April 1992.

Dated: April 18, 1991.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91-11206 Filed 5-9-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Order No. 1491-91]

Organization of the Department of Justice; United States National Central Bureau, International Criminal Police Organization

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is amending § 0.34 of title 28 of the Code of Federal Regulations, which concerns the general functions of the Chief of the United States National Central Bureau, International Criminal Police Organization (INTERPOL-USNCB). The amendment revises paragraph (c) to reflect the Chief of INTERPOL-USNCB's participation in the Executive Committee of INTERPOL-USNCB.

EFFECTIVE DATE: April 30, 1991.

FOR FURTHER INFORMATION CONTACT: Maurice Ross, Special Assistant to the Deputy Attorney General, U.S. Department of Justice, Washington, DC 20530, (202) 514-1904.

SUPPLEMENTARY INFORMATION: In 1988, INTERPOL-USNCB's Management Policy Group was structured in a manner perceived at the time to be the most efficient and effective means of reviewing and developing INTERPOL programs and policies. The Chief of INTERPOL-USNCB served as a member of the Management Policy Group.

In actual practice over the years, responsibility for INTERPOL programs came to be centered in what is known as the Executive Committee in INTERPOL-USNCB. Thus, the structure and composition of the current Management Policy Group no longer adequately reflects the management needs of INTERPOL-USNCB. The formal creation of an Executive Committee of INTERPOL-USNCB and the restructuring of the Management Policy Group offer a more efficient and effective structure for reviewing, developing and implementing INTERPOL programs and policies. This amendment reflects these changes by eliminating the description of the Management Policy Group and by adding membership on the Executive Committee of INTERPOL-USNCB to the list of functions assigned to the Chief of INTERPOL-USNCB.

As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities. It is not a major rule within the meaning of Executive Order 12291

List of Subjects in 28 CFR Part 0

Administrative practice and procedure, Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, 28 CFR part 0 is amended to read as follows:

PART 0—[AMENDED]

1. The authority citation for part 0 is revised to read as follows:

Authority: 5 U.S.C. 301, 2303, 3103; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 878(a), 881(d), 904; 22 U.S.C. 263a, 1621-1645o, 1622, note; 28 U.S.C. 509, 510, 515, 516, 519, 524, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801, *et seq.*; 50 U.S.C. App. 1989b, 2001-2017p; Pub. L. No. 91-513, sec. 501; Pub. L. No. 101-203; EO 11919; EO 11267; EO 11300.

2. Paragraph (c) of § 0.34 is revised to read as follows:

§ 0.34 General functions.

* * * * *

(c) Serve as a member of the Executive Committee of INTERPOL-United States National Central Bureau (INTERPOL-USNCB).

* * * * *

Dated: April 30, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91-10784 Filed 5-9-91; 8:45 am]

BILLING CODE 4410-01-M

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Jurisdiction and Reopening of Transfer Treaty Cases; Correction

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule; correction.

SUMMARY: The Parole Commission is correcting a typographical error which appeared in the publication of the final rule relating to reopening or modifying a release determination for inmates transferred pursuant to treaty.

EFFECTIVE DATE: May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Richard K. Preston, Staff Attorney, United States Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815, Telephone (301) 492-5959.

The **Federal Register** published on Monday, April 22, 1991, page 16272, column 2, the first word of the first sentence of § 2.62 (k)(l) is corrected by removing the word "As" and replacing it with the word "At".

Dated: May 6, 1991.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 91-11119 Filed 5-9-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 91-019]

Empire State Regatta, Albany, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation of 33 CFR 100.104.

SUMMARY: This notice puts into effect the permanent regulations, 33 CFR 100.104, for the Empire State Regatta to begin on Friday, June 7, 1991 at 12:01 pm

through 8 pm on June 9, 1991. The regulations in 33 CFR 100.104 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congestion at the time of the event. The purpose of this regulation is to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: The regulations, 33 CFR 100.104 are effective from 12:01 pm on Friday, June 7, 1991 to 8 pm on June 9, 1991, and will be in effect each year thereafter during the same time period on the first or second weekend (Friday, Saturday, and Sunday) in June as published in a **Federal Register** Notice and the Coast Guard Local Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: Lieutenant (jg) Eric G. Westerberg, (617) 223-8310.

DRAFTING INFORMATION: The drafters of this notice are LTJG E.G. Westerberg, project officer, First Coast Guard District Boating Safety Division, and LT R.E. Korroch, project attorney, First Coast Guard District Legal Division.

SUPPLEMENTARY INFORMATION: This notice provides the effective period for the permanent regulation governing the 1991 running of the Empire State Regatta in Albany, New York. The regulations, 33 CFR 100.104, will be in effect from 12:01 pm on June 7, 1991 through 8 pm on June 9, 1991. A portion of the Hudson River will be closed during this time to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that area between the Interstate Route 90 bridge and the Dunn Memorial bridge in Albany, New York. Further public notification, including the full text of the regulations will be accomplished through advance notice in the First Coast Guard District Local Notice to Mariners.

Dated: May 7, 1991.

R.I. Rybacki,

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

[FR Doc. 91-11173 Filed 5-9-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3955-8]

Colorado; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Colorado has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed the Colorado application and has made a decision, subject to public review and comment, that the Colorado hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve the Colorado hazardous waste program revisions. The Colorado application for program revision is available for public review and comment.

DATES: Final authorization for Colorado shall be effective July 9, 1991 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on the Colorado program revision application must be received by the close of business June 10, 1991.

ADDRESSES: Copies of the Colorado program revision application are available from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses for inspection and copying: Hazardous Materials and Waste Management Division, Colorado Department of Health, 4210 East 11th Avenue, Denver, Colorado 80220, Phone: 303/331-4830; U.S. EPA Headquarters Library, PM211A, 401 M Street SW., Washington, DC 20460, Phone: 202/382-5926; EPA Region VIII, Library, 999 18th Street, Denver, CO 80202-2405, Phone: 303/293-1444. Written comments should be sent to David Schaller, at the address below.

FOR FURTHER INFORMATION CONTACT: David Schaller, Section Chief, RCRA Management Branch, Program Support Section, 999 18th Street, Denver, CO 80202-2405, Phone: 303/293-7540.

SUPPLEMENTARY INFORMATION:

A. Background

The States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain others changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260-266 and 124 and 270.

B. Colorado

Colorado initially received final authorization on November 2, 1984. Colorado received additional authorizations for revisions to its program on November 7, 1986 and July 14, 1989. On February 28, 1989 and on February 28, 1990, Colorado submitted applications for additional program modifications. Today, Colorado is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed the Colorado applications, and has made an immediate final decision that the Colorado hazardous waste program revision satisfies all requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional modifications to the Colorado hazardous waste program. The public may submit written comments on EPA's immediate final decision up until June 10, 1991. Copies of the Colorado application for program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of the Colorado hazardous waste program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

The State of Colorado submitted a draft application for further revision of its authorized hazardous waste program on February 28, 1989. An amendment to this application which added changes to the program description, was received on May 25, 1989. EPA reviewed this application and on September 12, 1990 sent its comments to the State. Among the concerns of the EPA were a lack of adequate regulatory authority for the analysis required by its hazardous

waste tank program and an ability by Colorado to require general waste analysis. The State's response to EPA's comments was received on January 21, 1991. This response adequately addressed the concerns of EPA on this application.

A second draft application which requested authorization of additional modification to the State hazardous waste program was received on February 28, 1990.

Both of the Colorado applications to modify its hazardous waste program authorization have been found to be consistent and equivalent to the federal hazardous waste program. Neither of these applications provide for the Colorado program to be broader in scope than is the EPA program.

Permits issued under the EPA program for treatment, storage, or disposal are deemed by the Colorado Department of Health to have a permit under Colorado Revised Statute 25-15-303(3). All EPA permits which have been issued for that part of the program which is being authorized today become State permits at the time of authorization. EPA will transfer permit applications to the State for completion under the State's regulations.

Colorado has adopted hazardous waste regulations similar to the EPA regulations under the Resource Conservation and Recovery Act. Because Colorado implements Colorado regulations when they become effective, the program in the application is similar to the federal program under the Resource Conservation and Recovery Act. The program is being and has been implemented in the past by Colorado.

Colorado has not requested hazardous waste program authority on Indian lands. The Environmental Protection Agency retains all hazardous waste authority under RCRA which applies to Indian lands in Colorado.

TABLE I.—PROVISIONS COVERED BY THIS PROGRAM AUTHORIZATION REVISION

HSWA or FR reference	State equivalent *
1. Liability Coverage, 51 FR 25350, 7/11/86.	266.16, 266.18.
2. Standards for Storage and Treatment Tank System, 51 FR 25470, 7/14/86.	260.10, 261.4, 262.34, 264.15, 264.110, 264.73, 264.110, 266.10, 264.190 through 264.199, 265.13, 265.15, 265.73, 265.110, 265.190 through 265.201, 266.10, 100.11, 100.41.

TABLE I.—PROVISIONS COVERED BY THIS PROGRAM AUTHORIZATION REVISION—Continued

HSWA or FR reference	State equivalent *
3. Corrections to Listing of Commercial Chemical Products and Appendix VIII Constituents, 51 FR 28296, 8/6/86.	261.33.
4. Biennial Report Correction, 51 FR 28556, 8/8/86.	264.75, 265.75.
5. Exports of Hazardous Waste, 51 FR 28664, 8/8/86.	261.5, 261.6, 262.41, 262.50 through 262.58, 262.60, 62.70, 263.20.
6. Waste Minimization Certification, 51 FR 55190, 9/1/86.	263.20.
7. Listing of EBDC, 51 FR 37725, 10/24/86.	261.32.
8. Land Disposal Restrictions, 51 FR 40572, 11/7/86 and 52 FR 21010, 6/4/87.	260.1, 260.3, 260.10, 260.20, 261.1, 261.4 through 261.7, 261.20, 261.30, 262.11, 263.12, 264.1, 264.13, 264.73, 265.1, 265.13, 265.73, 268.1, through 268.4, 268.6, 268.7, 268.30, 268.31, 268.40, through 268.44, 268.50, 100.41, 100.43, 100.60.
9. Revised Manual SW-846, 52 FR 8072, 3/16/87.	100.47, 260.11.
10. Closure/Post Closure Care, 52 FR 8704, 3/19/87.	265.228.
11. Definition of Solid Waste Corrections, 52 FR 21306, 6/5/87.	261.33, 267.20.
12. Part B Information Requirements, 52 FR 23447, 6/22/87.	100.41.
13. California List Waste Restrictions, 52 FR 25759, 7/8/87.	100.20, 100.63, 260.11, 262.70, 264.13, 265.13, 268.1, through 268.4, 268.7, 268.30, 268.32, 268.40, 268.42, 268.50.
14. List (Phase 1) of Hazardous Constituents for Ground-water Monitoring, 52 FR 25942, 7/9/87.	100.41, 264.98, 264.99.
15. Identification and Listing of Hazardous Waste, 52 FR 26012, 7/10/87.	261.33.
16. Exception Reporting for Small Quantity Generators of Hazardous Waste, 52 FR 35894, 9/23/87.	262.42, 262.44.
17. Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee, 52 FR 44314, 11/18/87.	266.16.
18. HSWA Codification Rule (Part 2)—Corrective Action Application Requirements, Corrective Action beyond facility boundary, Permit Modification, Permit As Shield, Permit Conditions to Protect Human Health And The Environment, And Post-Closure Permits. 52 FR 45788, 12/1/87.	100.10, 100.41, 100.46, 100.61.

TABLE I.—PROVISIONS COVERED BY THIS PROGRAM AUTHORIZATION REVISION—Continued

HSWA or FR reference	State equivalent *
19. Hazardous Waste Miscellaneous Units. 52 FR 46946, 12/10/87.	100.41, 260.10, 264.10, 264.15, 264.18, 264.73, 264.90, 264.111, 264.112, 264.117, 264.118, 264.600 through 264.603, 266.12, 266.13, 266.16.
20. Technical Corrections; Identification and Listing of Hazardous Waste, 53 FR 13382, 4/22/88.	100.20, 100.63.

* Unless indicated as otherwise, all references are to Sections of 6 CCR 1007-3.

C. Decision

I conclude that the Colorado application for program revision meets all of the statutory and established regulatory requirements by RCRA. Accordingly, Colorado is granted final authorization to operate its hazardous waste program as revised in the February 28, 1989 and February 28, 1990, applications in lieu of the federal hazardous waste program. Colorado now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out other aspects of the RCRA program, subject to the limitation of its February 28, 1989 and February 28, 1990 revised program applications and previously approved authorities. Colorado also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Colorado's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This

rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 30, 1991.

James J. Scherer,

Regional Administrator.

[FR Doc. 91-11169 Filed 5-9-91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 281

[FRL-3955-5]

Georgia; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination on State of Georgia Application for Final Approval.

SUMMARY: The State of Georgia has applied for final approval of its underground storage tank program under subtitle I of the Resources Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Georgia application and determined, subject to public review and comment, that the Georgia Underground Storage Tank Program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting approval to the State to operate its program unless adverse public comment shows the need for further review. The Georgia application for final approval is available for public review and comment.

DATES: Final authorization for the Georgia underground storage tank program shall be effective at 1 p.m. on July 9, 1991, unless EPA publishes a prior **Federal Register** action withdrawing this final rule. All comments on the Georgia final approval application must be received by the close of business on June 10, 1991.

ADDRESSES: Copies of the Georgia final approval application are available during the hours between 8 a.m. and 4 p.m. at the following addresses for inspection and copying: Georgia Environmental Protection Division, Underground Storage Tank Unit, 3420 Norman Berry Drive, 7th floor, Hapeville, Georgia 30354, phone: 404/669-3927 (after the 14th of June, please call to obtain the new address); U.S. EPA Headquarters Library, PM211A, 401 M Street, SW., Washington, DC 20460, phone: 202/382-5926; and U.S. EPA Region IV, Underground Storage Tank Section, 345 Courtland Street, NE., Atlanta, Georgia 30365, phone: 404/347-3866. Written comments should be sent to Chief, Underground Storage Tank Section, Attention John K. Mason, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, phone: 404/347-3866.

FOR FURTHER INFORMATION CONTACT: Jon E. Isbell, Georgia State Program Officer, Underground Storage Tank Section, U.S. EPA, Region IV, Atlanta, Georgia 30365, phone: 404/347-3866.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. To qualify for final authorization, a State's program must: (1) Be "no less stringent" than the Federal program; and (2) provide for adequate enforcement (sections 9004(a) of RCRA, 42 U.S.C. 6991c(b)).

On April 3, 1990, EPA acknowledged receiving from the State of Georgia a completed official application to obtain final approval to administer its underground storage tank program. Prior to its submission, the State of Georgia provided an opportunity for public notice and comment in the development of its underground storage tank program as required under section 281.509(b). The State adopted by reference the corresponding Federal UST regulations. The State's rules first became effective on July 1, 1988, and where amended February 18, 1990. On March 14, 1991, EPA received an amended application from the State which satisfied EPA's final review comments dated October 24, 1990.

B. Decision

After reviewing the amended Georgia application, I conclude that the State's program meets all of the requirements necessary to qualify for final approval. Accordingly, the State of Georgia is granted final approval to operate its underground storage tank program. The State of Georgia now has the responsibility for managing underground storage tank facilities within its borders and carrying out all aspects of the UST program. The State of Georgia also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 9005 of RCRA U.S.C. 6991d and to take enforcement actions under section 9006 of RCRA U.S.C. 6991e.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval effectively suspends the applicability of certain Federal regulations in favor of the State of Georgia's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks within the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Administrative practice and procedure, Hazardous materials, State program approval, and Underground storage tanks.

Authority: This notice is issued under the authority of Sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6974(b), and 6991(c).

Dated: April 29, 1991.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 91-11168 Filed 5-9-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or

show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood Insurance, Flood Plains.

The authority citation for part 67 continues to read as follows:

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

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Guntersville (city), Marshall County (FEMA Docket No. 7006)	
Tennessee River: Within community	*596
Big Spring Creek:	
At mouth	*596
About 3.76 miles upstream of U.S. Highway 431	*604
Maps available for inspection at the City Hall, 341 Gunter Avenue, Guntersville, Alabama.	
ARKANSAS	
Ashdown (city), Little River County (FEMA Docket No. 7006)	
Hurricane Creek:	
At confluence of East Tributary	*306
Approximately 0.13 river mile upstream of State Route 32	*328
East Tributary:	
At its confluence with Hurricane Creek	*308
At the downstream side of State Route 32	*330
South Tributary:	
At its confluence with East Tributary	*313
Approximately 0.01 river mile upstream of State Route 32 (Rankin Street)	*325
Maps available for inspection at the City Hall, 250 N. 2nd Street, Ashdown, Arkansas.	
Bryant (city), Saline County (FEMA Docket No. 7003)	
Crooked Creek:	
At the downstream corporate limits	*351
Approximately .15 river mile upstream of State Route 183	*393
Crooked Creek Tributary:	
At the confluence with Crooked Creek	*373
Approximately .42 river mile upstream of confluence with Crooked Creek	*397
Bryant Tributary:	
At the confluence with Crooked Creek	*353
Approximately .18 river mile upstream of Yvonne Dam	*392
Hurricane Creek:	
Upstream side of Union Pacific Railroad	*350
Downstream side of Boone Road	*356
Maps available for inspection at the City Hall, 210 West 3rd Street, Bryant, Arkansas.	
Chester (town), Crawford County (FEMA Docket No. 7006)	
Clear Creek (Upper Reach):	
At downstream corporate limits	*836
Approximately 900 feet upstream of Brown Street	*862
Maps available for inspection at the Town Hall, Chester, Arkansas.	
Crawford county (Unincorporated Areas) (FEMA Docket No. 7006)	
Arkansas River:	
Approximately 6.5 navigation miles downstream of Interstate Route 540	*405
At upstream County boundary	*418
Lee Creek: Approximately .2 river mile upstream of County Route 64 (Rena Road)	
Town Branch:	
Approximately 0.4 river mile upstream of the confluence with Ned Lake	*394
Approximately 0.61 river mile upstream of State Route 59	*398
Flat Rock Creek:	
Approximately 0.82 river mile downstream of the confluence of Town Branch overflow	*395
Approximately 0.08 river mile upstream of Rudy Road	*472
Clear Creek (Upper Reach):	
Approximately .27 river mile downstream of Burlington Northern Railroad	*805
Approximately .25 river mile upstream of Brown Street	*863
Frog Bayou:	
Approximately 0.95 river mile downstream of Union Pacific Railroad	*422
At the confluence of Clear Creek (Lower Reach)	*751
Warloop Creek:	
Approximately 400 feet upstream of U.S. Route 71 and State Route 282	*752
Approximately 950 feet upstream of U.S. Route 71 and State Route 282	*755
Frog Bayou Tributary:	
At confluence with Frog Bayou	*436
Approximately 400 feet upstream of County Route 19 (Colkum Lane)	*441
Clear Creek (Lower Reach):	
At the confluence with Frog Bayou	*751
At the Burlington Northern Railroad	*766
Pigeon Creek:	
At confluence with Frog Bayou	*690
Approximately 550 feet upstream of Wall Street	*746
Mulberry River:	
Approximately 530 feet downstream of confluence of Little Mulberry Creek	*392
At Interstate Route 40	*411
Little Mulberry Creek:	
At confluence with Mulberry River	*392
Approximately .92 mile upstream of U.S. Route 64	*410
Morris Branch Tributary: Approximately 0.6 mile upstream of Interstate Route 40 on-ramp (westbound lane)	*515
Maps available for inspection at Crawford County Courthouse, Van Buren, Arkansas.	
Kibler (city), Crawford County (FEMA Docket No. 7006)	
Curry Branch:	
Approximately 0.69 river mile from confluence with Frog Bayou	*400
Approximately 0.46 river mile upstream of South Cedar Road	*439
Maps available for inspection at the City Hall, Alma, Arkansas.	
Pulaski county (Unincorporated Areas) (FEMA Docket No. 7006)	
Arkansas River:	
At downstream County boundary	*230
At upstream County boundary	*275
White Oak Bayou:	
Confluence with Arkansas River	*258
Approximately 350 feet upstream of the confluence of Newton Creek	*260
Little Maumelle River:	
Confluence with Arkansas River	*262
Approximately 400 feet upstream of Missouri Kansas Texas Railroad	*265
Taylor Loop Creek:	
Confluence with Little Maumelle River	*264
City of Little Rock corporate limits	*264
Fourche Creek:	
Confluence with Arkansas River	*249
At the downstream corporate limits for the City of Little Rock	*249
Ison Creek:	
Confluence with Taylor Loop Creek	*264
Little Rock corporate limits	*264

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at 105 Main Street, Wallace Building, Room 902, Little Rock, Arkansas.	
CALIFORNIA	
Grass Valley (city), Nevada County (FEMA Docket No. 7008)	
Wolf Creek:	
Just downstream of Idaho-Maryland Road near intersection of Sutton Way	*2,528
Just upstream of confluence of White Water Creek	*2,558
Little Wolf Creek:	
Just upstream of State Highway 49	*2,389
Just upstream of South Auburn Street	*2,407
Just above a private drive, 1,000 feet upstream of South Auburn Steet	*2,451
Approximately 350 feet upstream of a private drive	*2,452
Maps are available for review at City Hall, 125 East Main Street, Grass Valley, California.	
CONNECTICUT	
Derby (city), New Haven County (FEMA Docket No. 6990)	
Housatonic River:	
Approximately 700 feet upstream of confluence of Naugatuck River	*22
Approximately .2 mile downstream of upstream corporate limits	*40
Maps available for inspection at the City Clerk's Vault, City Hall, 35 Fifth Street, Derby, Connecticut.	
FLORIDA	
Baker County (unincorporated areas) (FEMA Docket No. 7003)	
St. Marys River:	
At downstream county boundary	*61
At confluence of Middle Prong St. Marys River	*89
North Prong St. Marys River:	
At confluence of Middle Prong St. Marys River	*89
About 1.0 mile upstream of State Road 2	*116
Middle Prong St. Marys River:	
At mouth	*90
Just downstream of State Road 250	*121
South Prong St. Marys River:	
At mouth	*70
Just downstream of State Road 125	*96
Little River:	
At mouth	*100
About 2.0 miles upstream of Baxter Road	*113
Turkey Creek:	
At mouth	*95
About 1.8 miles upstream of mouth	*107
Cedar Creek:	
At mouth	*77
Just downstream of State Road 229	*135
Maps available for inspection at the County Courthouse, 55 N. 3rd Street, MacClenny, Florida.	
Fort Pierce (city), St. Lucie County (FEMA Docket No. 6991)	
Atlantic Ocean: About 100 feet east of intersection of Indiatlantic Drive and South Ocean Drive	#1
Atlantic Ocean/Indian River:	
At intersection of Sunset Isles Road and Eucalyptus Avenue	*5
About 300 feet east of intersection of Indiatlantic Drive and South Ocean Drive	*14
Moores Creek:	
At mouth	*5
Just upstream of South 29th Street	*22
Fivemile Creek: Within community	*17
Maps available for inspection at the Building Department, City Hall Annex, 315 Avenue A, Fort Pierce, Florida.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Jefferson County (unincorporated areas) (FEMA Docket No. 7003)	
Raysor Creek:	
At mouth	*71
At divergence with Wolf Creek	*81
Wolf Creek:	
About 0.97 mile downstream of CSX railroad	*81
Just upstream of CSX railroad	*86
Just downstream of U.S. Route 90	*90
Gulf of Mexico:	
Just south of intersection of State Road 59 and U.S. Route 98	*12
At mouth of Aucilla River	*23
Aucilla River:	
Just upstream of U.S. Route 98	*11
Just downstream of State Road 146	*86
Beasley Creek:	
At mouth	*64
About 2.0 miles upstream of State Road 257	*75
Ward Creek:	
About 0.85 mile upstream of mouth	*88
Just downstream of State Road 259	*93
Maps available for inspection at the County Courthouse, Monticello, Florida.	
Liberty County (unincorporated areas) (FEMA Docket No. 7003)	
Big Gully Creek:	
At mouth	*41
At confluence of South Creek	*52
South Creek:	
At mouth	*52
Just downstream of unnamed road	*82
Apalachicola River:	
At southern county boundary	*20
At northern county boundary	*72
Telogia Creek:	
About 3.0 miles upstream of mouth	*36
Just downstream of Apalachicola Northern Railroad	*56
Camp Branch:	
About 1700 feet upstream of mouth	*103
Just downstream of State Road 379	*122
Just upstream of State Road 379	*128
Just downstream of unnamed road	*131
Just upstream of unnamed road	*136
About 0.8 mile upstream of State Road 389A	*157
Black Creek:	
At county boundary	*20
About 4.5 miles upstream of county boundary	*34
Maps available for inspection at the County Courthouse, Bristol, Florida.	
Port St. Lucie (city), St. Lucie County (FEMA Docket No. 6991)	
Blakeslee Creek Tributary:	
At mouth	*7
About 0.97 mile upstream of mouth	*10
Winters Creek:	
About 1300 feet upstream of mouth	*7
About 1.6 miles upstream of mouth	*9
North Fork St. Lucie River:	
About 1.15 miles downstream of Port St. Lucie Boulevard	*7
About 2.6 miles upstream of Prima Vista Boulevard	*8
Indian River:	
About 50 feet east of Walton Road and State Road 707	*7
Along Shoreline	*11
Blakeslee Creek:	
About 500 feet upstream of mouth	*7
About 1.37 miles upstream of mouth	*7
Maps available for inspection at the Building Department, City Hall, 121 SW., Port St. Lucie Boulevard, Port St. Lucie, Florida.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
St. Lucie Village (town), St. Lucie County (FEMA Docket No. 6991)	
Indian River:	
About 700 feet east of intersection of Milton Road and Old Dixie Highway	*5
Just east of intersection of Chamberlain Boulevard and Indian River Drive	*9
Maps available for inspection at the St. Lucie Village Town Hall, St. Lucie Boulevard, St. Lucie Village, Florida.	
GEORGIA	
Calhoun (city), Gordon County (FEMA Docket No. 7003)	
Oostanaula River:	
About 0.72 miles downstream of North River Street	*630
About 1.79 miles upstream of North River Street	*633
Oothcalooga Creek:	
At mouth	*630
About 200 feet downstream of Lily Pond Road	*640
Tributary No. 1:	
At mouth	*633
About 1550 feet upstream of U.S. Route 41	*640
Tributary No. 2:	
At mouth	*637
About 750 feet upstream of State Route 53	*654
Maps available for inspection at City Hall, 200 North Wall Street, Calhoun, Georgia.	
Gordon County (unincorporated areas)	
Oostanaula River:	
Just downstream of State Route 156	*625
About 2000 feet upstream of confluence of Camp Creek	*638
Oothcalooga Creek:	
At mouth	*630
Just downstream of Lilly Pond Road	*641
Tributary No. 1;	
At mouth	*633
About 1550 feet upstream of U.S. Route 41	*640
Tributary No. 2:	
At mouth	*637
About 750 feet upstream of State Route 53	*654
Maps available for inspection at the Building Inspection Department, County Courthouse, 318 N. River Street, Calhoun, Georgia.	
Spalding County (Unincorporated Areas) (FEMA Docket No. 7003)	
Buck Creek:	
Just upstream of Barnesville Road	*676
About 700 feet upstream of South McDonough Road	*754
Cabin Creek:	
Just upstream of Wani Road	*656
Just downstream of Walkers Mill Dam	*692
Just upstream of Walkers Mill Dam	*703
Just downstream of McDonough Road	*720
Troublesome Creek:	
Just upstream of Smoak Road	*705
About 1.75 miles upstream of Jordon Hill Road	*785
Maps available for inspection at the Building Inspector's Office, County Annex Building, Griffin, Georgia.	
KANSAS	
Cherokee County (unincorporated areas) (FEMA Docket No. 7006)	
Spring Lake: Within community	*819
Spring River:	
Just upstream of U.S. Highway 66	*819
Just downstream of Columbus Street	*827
Shoal Creek:	
At mouth	*819
Just downstream of State Highway 26	*833
Maps available for inspection at the County Courthouse, Columbus, Kansas.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Cowley County (unincorporated areas) (FEMA Docket No. 7006)	
Polecat Creek:	
About 1.9 miles upstream of mouth	*1,169
At northern county boundary	*1,207
Stewart Creek:	
About 2.1 miles upstream of mouth	*1,155
About 1.0 mile upstream of State Highway 15	*1,196
Rock Creek:	
About 1.3 miles upstream of mouth	*1,168
At northern county boundary	*1,213
Richland Creek:	
At mouth	*1,248
About 4500 feet upstream of County Highway 1	*1,272
Lower Dutch Creek:	
At mouth	*1,343
About 1.25 mile upstream of County Highway	*1,360
Dutch Creek:	
At mouth	*1,187
At confluence of Lower Dutch Creek	*1,343
Timber Creek Tributary 1:	
At mouth	*1,335
About 1.17 mile upstream of County Highway	*1,364
Timber Creek:	
At mouth	*1,132
At northern county boundary	*1,474
Walnut River:	
Just upstream of Union Pacific Railroad	*1,069
About 1.60 mile upstream of confluence of Timber Creek	*1,132
Cedar Creek:	
At mouth	*1,155
About 1,400 feet downstream of Timber Lake No. 35 Dam	*1,275
Rock Creek Tributary:	
At Eastern County Boundary	*928
About 2.93 mile upstream of confluence of Whartenby Creek	*1,005
Acker Creek:	
At Mouth	*935
At county boundary	*1,039
Bear Creek:	
At Mouth	*947
About 300 Feet upstream of Private Road	*1,027
Otter Creek:	
At eastern county boundary	*959
About 3,700 feet upstream of State Highway 38	*1,086
Cedar Creek Tributary:	
At Mouth	*936
About 2,350 feet upstream of U.S. Highway 166	*1,043
North Cedar Creek:	
At eastern county boundary	*930
About 4.1 miles upstream of U.S. Highway 166	*1,072
Arkansas River:	
Just upstream of Atchison, Topeka and Santa Fe Railway	*1,072
Just downstream of Atchison, Topeka and Santa Fe Railway	*1,146
Just upstream of Atchison, Topeka and Santa Fe Railway	*1,151
About 1,650 feet upstream of county boundary	*1,157
C Street Canal:	
Just downstream of Hickory Avenue	*1,103
About 0.36 mile upstream of 8th Street	*1,116
Black Crook Creek:	
At mouth	*1,121
Just downstream of Union Pacific Railroad	*1,131
Timber Creek Lake: Entire shoreline	1,263
Timber Lake No. 2: Entire shoreline	*1,467
Timber Lake No. 3: Entire shoreline	*1,459
Timber Lake No. 4: Entire shoreline	*1,445
Timber Lake No. 5: Entire shoreline	*1,428
Timber Lake No. 6: Entire shoreline	*1,413
Timber Lake No. 7: Entire shoreline	*1,415
Timber Lake No. 8: Entire shoreline	*1,392
Timber Lake No. 9: Entire shoreline	*1,372
Timber Lake No. 10: Entire shoreline	*1,399
Timber Lake No. 11: Entire shoreline	*1,408
Timber Lake No. 12: Entire shoreline	*1,369
Timber Lake No. 13: Entire shoreline	*1,348
Timber Lake No. 14: Entire shoreline	*1,363
Timber Lake No. 15: Entire shoreline	*1,329
Timber Lake No. 17: Entire shoreline	*1,327
Timber Lake No. 18: Entire shoreline	*1,315
Timber Lake No. 20: Entire shoreline	*1,392
Timber Lake No. 21: Entire shoreline	*1,321
Timber Lake No. 22: Entire shoreline	*1,301
Timber Lake No. 23: Entire shoreline	*1,306
Timber Lake No. 24: Entire shoreline	*1,289
Timber Lake No. 25: Entire shoreline	*1,277
Timber Lake No. 26: Entire shoreline	*1,248
Timber Lake No. 27: Entire shoreline	*1,238
Timber Lake No. 28: Entire shoreline	*1,225
Timber Lake No. 30: Entire shoreline	*1,199
Timber Lake No. 31: Entire shoreline	*1,219
Timber Lake No. 32: Entire shoreline	*1,282
Timber Lake No. 33: Entire shoreline	*1,299
Timber Lake No. 34: Entire shoreline	*1,288
Timber Lake No. 35: Entire shoreline	*1,301
Rock Lake No. 4: Entire shoreline	*1,251
Rock Lake No. 5: Entire shoreline	*1,295
Maps available for inspection at the County Courthouse, Winfield, Kansas.	
KENTUCKY	
Hopkins County (unincorporated areas) (FEMA Docket No. 7007)	
Pleasant Run:	
At mouth	*401
About 850 feet upstream of Illinois Central Railroad	*428
Otter Creek:	
Just upstream of State Route 1033	*381
About 1,350 feet upstream of Wolf Hollow Road	*435
Flat Creek:	
Just upstream of Free Henry Road	*402
Just downstream of CSX railroad (downstream crossing)	*413
Just upstream of CSX railroad (downstream crossing)	*420
About 1.4 miles upstream of U.S. Route 41A	*434
Green River:	
At northern county boundary	*387
At confluence of Pond River	*388
Drakes Creek:	
At confluence of Pleasant Run	*401
About 1.40 miles upstream of confluence of Craborchard Creek	*413
Craborchard Creek:	
At mouth	*409
About 1,300 feet upstream of Pennyrile Parkway	*412
Maps available for inspection at the County Courthouse, Madisonville, Kentucky.	
Marshall County (unincorporated areas) (FEMA Docket No. 7006)	
Little Cypress Creek:	
At mouth	*342
Just downstream of State Route 795	*362
Barrett Branch:	
At mouth	*343
About 2,800 feet upstream of Bennett Road	*346
East Fork Clarks River:	
About 500 feet downstream of Purchase Parkway	*358
About 3,000 feet upstream of confluence of Watch Creek	*374
Watch Creek:	
Just upstream of Walnut Grove-Olive Johnson Road	*386
About 1,700 feet upstream of U.S. Route 641	*442
Cypress Creek:	
At mouth	*342
Just downstream of Lakeview Church Road	*348
Little John Creek:	
At mouth	*348
About 400 feet downstream of State Route 95	*358
Tennessee River:	
At downstream county boundary	*342
About 2,100 feet downstream of Kentucky Dam	*345
Just upstream of Kentucky Dam	*375
About 1.9 miles upstream of U.S. Route 68	*375
Maps available for inspection at the County Courthouse, Vinton, Kentucky.	
LOUISIANA	
Iberville Parish (unincorporated areas) (FEMA Docket No. 7006)	
Lower Grand River:	
Approximately 0.8 mile upstream of downstream Parish Boundary	*7
At confluence of Bayou Plaquemine	*9
Bayou Plaquemine:	
At confluence with Lower Grand River	*9
Approximately 2.3 miles upstream of confluence with Lower Grand River	*10
Mound Ditch:	
Approximately 0.8 mile upstream with Lower Grand River	*9
Approximately 1.5 miles upstream of confluence with Lower Grand River	*9
Spanish Lake:	
Entire shoreline with community	*11
Bayou Manchac: At Bayou Paul Road	*15
Maps available for inspection at the Courthouse, 600 Meriam Street, Plaquemine, Louisiana.	
Sabine Parish (unincorporated areas) (FEMA Docket No. 7006)	
Bayou La Nana:	
Approximately .7 mile downstream of Kansas City Southern Railway	*200
At confluence of San Jose Creek	*203
Harpoon Bayou:	
At confluence of San Jose Creek	*203
Approximately 1.2 miles upstream of State Route 1217	*241
Phillips Creek:	
Approximately .7 mile downstream of State Route 1217	*225
Approximately .5 mile upstream of State Route 6	*247
Blackwell Creek:	
At the confluence with Phillips Creek	*229
Approximately .7 mile upstream of State Route 6	*255
San Jose Creek:	
At confluence with Harpoon Bayou	*203
Approximately 200 feet upstream of Kansas City Southern Railway	*232
San Jose Creek Tributary:	
At Kansas City Southern Railway	*232
Approximately 760 feet upstream of Kansas City Southern Railway	*234
Bayou Scie:	
Approximately 200 feet downstream of State Route 475	*182
Approximately .8 mile upstream of State Route 1216	*213
Midkiff Creek:	
Approximately .5 mile downstream of State Route 474	*239
Approximately 1,900 feet downstream of Mill Road	*256
Maps available for inspection at the Courthouse, Police Jury Office, Many, Louisiana.	
Zwolle (town), Sabine Parish (FEMA Docket No. 7006)	
Bayou Scie:	
Approximately 200 feet downstream of State Route 475	*182
Approximately 100 feet downstream of State Route 1216	*195
Maps available for inspection at the Town Hall, Zwolle, Louisiana.	
MAINE	
Addison (town), Washington County (FEMA Docket No. 7006)	
Atlantic Ocean	
Pleasant Bay:	
Shoreline at Seal Cove	*12
Shoreline at the Ladle (Island)	*22
Pleasant River:	
Entire shoreline within community	*12
West River:	
Shoreline at Grays Cove	*12
Shoreline at Lane Road extended	*13
Indian River:	
Shoreline at Crowley Island Road	*12
Shoreline at north side of Doyle Island	*13

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Wohoa Bay:	
Shoreline at Cape Split Road extended	*15
Shoreline at Kent Cove	*22
Western Bay:	
Shoreline at Seaduck Rock	*13
Shoreline at west side of Outer Sand Island	*22
Maps available for inspection at the Town Hall, Addison, Maine.	
Berwick (town), York County (FEMA Docket No. 7006)	
Salmon Falls River:	
Approximately 0.6 mile downstream of New Dam Road	*70
Upstream corporate limits	*190
Maps available for inspection at the Town Hall, Berwick, Maine.	
Franklin (town), Hancock County (FEMA Docket No. 7006)	
Card Mill Stream:	
At confluence with Hog Bay	*11
At Donnell Pond Dam	*117
Mill Brook:	
At confluence with Taunton Bay	*11
At Great Pond Dam	*55
Egypt Bay: Entire shoreline within the community	*11
Taunton Bay: Entire shoreline within the community	*11
Hog Bay: Entire shoreline within the community	*11
Georges Pond: Entire shoreline within the community	*164
Great Pond: Entire shoreline within the community	*55
Donnell Pond: Entire shoreline within the community	*119
Maps available for inspection at the Town Office, Franklin, Maine.	
Glenburn (town), Penobscot County (FEMA Docket No. 7006)	
Pushaw Lake: Entire shoreline within community	*121
Maps available for inspection at the Town Office, Bangor, Maine.	
Houlton (town), Aroostook County (FEMA Docket No. 7006)	
Meduxnekeag River:	
Approximately 1,875 feet downstream of Lowery Road	*299
Approximately 330 feet upstream of upstream corporate limits	*379
B Stream:	
At confluence with Meduxnekeag River	*332
Approximately 110 feet upstream of "B" Road	*390
Pearce Brook:	
At confluence with Meduxnekeag River	*330
Approximately 0.7 mile upstream of Hollywood Road	*467
Brown Brook:	
At confluence with Pearce Brook	*363
Approximately 35 feet upstream of upstream crossing of U.S. Route 1	*403
Maps available for inspection at the Town Office, 21 Water Street, Houlton, Maine.	
Livermore Falls (town), Androscoggin County (FEMA Docket No. 7006)	
Androscoggin River:	
Downstream corporate limits (County boundary)	*291
Upstream corporate limits	*332
Maps available for inspection at the Town Office, Livermore Falls, Maine.	
Machiasport (town), Washington County (FEMA Docket No. 7006)	
Atlantic Ocean:	
Machias Bay:	
Along shoreline at Pettagrow Cove	*12
Along east shoreline of Howard Point	*20
Little Kennebec Bay:	
Along shoreline at Spruce Cove	*12
Along west shoreline of Point of Main	*17
Maps available for inspection at the Town Offices, Machiasport, Maine.	
North Haven (town), Knox County (FEMA Docket No. 7006)	
Atlantic Ocean:	
West Penobscot Bay:	
Along shoreline at Wooster Cove	*23
Along shoreline of Mill Stream	*10
East Penobscot Bay:	
Along shoreline at Marsh Cove	*13
At Mullen Head	*15
Fox Islands Thorofare:	
Along shoreline at Cubby Hole	*11
At Crabtree Point	*16
Maps available for inspection at the Town Office, North Haven, Maine.	
Penobscot (town), Hancock County (FEMA Docket No. 7006)	
Clements Stream:	
Confluence with Penobscot River	*10
Approximately 420 feet upstream of State Route 166	*26
Mill Brook:	
Confluence with Northern Bay	*11
Approximately 0.5 mile upstream of State Routes 175 and 199	*67
Unnamed Stream:	
Approximately 80 feet upstream of confluence with Penobscot River	*10
Approximately 550 feet upstream of State Route 166	*36
Atlantic Ocean:	
Penobscot River:	
At confluence with Clements Stream	*10
Approximately 1,000 feet west of intersection of State Routes 166 and 175	*16
Northern Bay: Entire shoreline within community	*11
Bagaduce River: Entire shoreline within community	*11
Toddy Pond: Entire shoreline within community	*165
Maps available for inspection at the Penobscot Town Hall, Penobscot, Maine.	
Somerville (town), Lincoln County (FEMA Docket No. 7006)	
James Pond: Entire shoreline within community	*200
Long Pond: Entire shoreline within community	*187
Sheepscot River:	
At confluence with Long Pond	*187
Approximately 1 mile upstream of State Route 105	*200
Maps available for inspection at the Town Clerk's Office, Jefferson, Maine.	
Stetson (town), Penobscot County (FEMA Docket No. 7006)	
Pleasant Lake: Entire shoreline within community	*240
Maps available for inspection at the Town Offices, Stetson, Maine.	
MASSACHUSETTS	
Becket (town), Berkshire County (FEMA Docket No. 7006)	
Yokum Brook:	
At Maple Street	*1,199
Approximately 50 feet upstream of upstream crossing of State Route 8	*1,450
Walker Brook:	
Approximately 15 feet downstream of U.S. Route 20	*1,279
At downstream side of State Route 8	*1,287
Robinhood Lake: Entire shoreline within community	*1,533
Maps available for inspection at the Town Clerk's Vault, Town Hall, Becket, Massachusetts.	
Sandwich (town), Barnstable County (FEMA Docket No. 7006)	
Atlantic Ocean:	
On Cape Cod Canal approximately 1,500 feet inland of mouth	*10
Upstream end of Mill Creek	*11
Areas along entire shoreline adjacent to coastal frontal sand dunes and northeast of Saltmarsh and Foster Roads and North Shore Boulevard	*13
At Scusset Beach	*15
Northeast of Carleton Drive East	*16
Maps available for inspection at the Building Inspector's Office, 270 Quaker Meetinghouse Road, Sandwich, Massachusetts.	
Savoy (town), Berkshire County (FEMA Docket No. 7006)	
Westfield River—Savoy Hollow Brook:	
Approximately 50 feet downstream of Griffin Hill Road	*1,692
Approximately 75 feet upstream of State Route 8A	*1,824
Maps available for inspection at the Town Clerk's Vault, Main Road, Savoy, Massachusetts.	
NEW HAMPSHIRE	
New London (town), Merrimack County (FEMA Docket No. 7006)	
Sunapee Lake: Entire shoreline within the community	*1,095
Otter Pond: Entire shoreline within the community	*1,129
Maps available for inspection at the Selectmen's Office, New London, New Hampshire.	
Tamworth (town), Carroll County (FEMA Docket No. 6997)	
Bearcamp River:	
At downstream corporate limits	*431
At upstream corporate limits	*593
Maps available for inspection at the Town Hall, Tamworth, New Hampshire.	
NEW JERSEY	
Dover (township), Ocean County (FEMA Docket No. 7000)	
Atlantic Ocean:	
At intersection of Peterson Lane and Ocean Terrace	*11
At intersection of Eighth Avenue and Ocean Avenue	*11
Entire shoreline within community	*13
Toms River:	
Approximately .4 mile upstream of Oak Ridge Parkway	*22
At upstream corporate limits	*56
Maps available for inspection at the Township Clerk's Office, Municipal Building, 33 Washington Street, Toms River, New Jersey	
Hope (township), Warren County (FEMA Docket No. 6997)	
Beaver Brook:	
Downstream corporate limits	*353
Downstream of Interstate 80	*424
Honey Run:	
At the confluence with Beaver Brook	*396
Approximately 30 feet upstream of State Route 610	*412
Maps available for inspection at the Hope Municipal Building, Hope, New Jersey.	
NEW MEXICO	
Valencia County (unincorporated areas) (FEMA Docket No. 7003)	
Rio Grande:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1.9 miles upstream of State Route 49	*4,860
Approximately 4.7 miles upstream of State Route 49	*4,873
Hells Canyon Wash:	
Approximately 1.1 miles downstream of State Route 236	*4,836
Approximately 0.6 mile upstream of Village of Bosque Farms corporate	*4,864
Maps available for inspection at the Planning and Zoning Office, County Courthouse, Los Lunas, New Mexico.	
NEW YORK	
Freedom (town), Cattaraugus County (FEMA Docket No. 7006)	
Clear Creek:	
At Bray Road	*1,532
At upstream crossing of State Route 98	*1,759
Maps available for inspection at the Town Clerk's Office, 1170 Eagle Street, Sandusky, New York.	
Harrison (town), Westchester County (FEMA Docket No. 7006)	
Brentwood Brook:	
Just upstream of Harrison Avenue	*44
At Ramapo Terrace Road	*73
Nelson Creek:	
At confluence with Brentwood Brook	*62
Approximately 1,780 feet upstream of Iroquois Trail	*104
Lecount Creek:	
Approximately 840 feet upstream of confluence with Mamaroneck River	*36
Approximately 1,280 feet upstream of West Street	*46
West Branch Blind Brook:	
Approximately 240 feet upstream of confluence with Blind Brook	*128
At Beverly Road	*216
Maps available for inspection at Harrison Municipal Building, 1 Heinemann Place, Harrison, New York.	
Southport (town), Chemung County (FEMA Docket No. 7006)	
South Creek Tributary:	
At confluence with South Creek	*916
Approximately 0.7 mile upstream of Miller Hill Road	*1,290
Maps available for inspection at the Town Hall, 1139 Pennsylvania Avenue, Elmira, New York.	
NORTH CAROLINA	
Chatham County (unincorporated areas) (FEMA Docket No. 7003)	
Pokeberry Creek:	
About 1.2 miles downstream of U.S. Route 15	*346
Just downstream of SR 1528	*386
Loves Creek:	
At mouth	*504
About 1.1 miles upstream of U.S. Route 421 Bypass	*550
Rocky River:	
About 500 feet downstream of confluence of Loves Creek	*504
About 500 feet upstream of confluence of Loves Creek	*504
Little Indian Creek:	
At mouth	*251
About 2.2 miles upstream of mouth	*254
Indian Creek:	
At mouth	*251
About 2,075 feet upstream of confluence of Bear Creek	*251
Deep River:	
About 350 feet downstream of confluence of Indian Creek	*251
About 1,200 feet upstream of confluence of Indian Creek	*251
Haw River:	
At downstream county boundary	*401
At eastern county boundary	*415
Maps available for inspection at the County Planning Office, County Health and Office Building, 112 East Street, Pittsboro, North Carolina.	
Cleveland County (unincorporated areas) (FEMA Docket No. 7003)	
Buffalo Creek:	
Just upstream of Road 198	*602
Just downstream of Kings Mountain Dam	*666
Muddy Fork:	
At mouth	*657
About 2,000 feet upstream of confluence of Muddy Fork Tributary	*754
Muddy Fork Tributary:	
At mouth	*750
Just downstream of SR 2008	*791
Kings Mountain Reservoir: Along shoreline	*739
Maps available for inspection at the Planning and Mapping Department, County Courthouse, Room 200, Shelby, North Carolina.	
Gates County (unincorporated areas) (FEMA Docket No. 7003)	
Harrell Swamp:	
At mouth	*27
Just upstream of SR 1320	*35
Jady Branch:	
About 2,800 feet downstream of Gum Branch	*11
Just downstream of State Road 137	*19
Raynor Swamp:	
About 1,000 feet downstream of confluence of Harrell Swamp	*27
About 500 feet upstream of confluence of Harrell Swamp	*27
Chowan River:	
At southern county boundary	*8
About 2.84 miles upstream of southern county boundary	*8
Maps available for inspection at the Building Inspection Office, County Courthouse, Gatesville, North Carolina.	
Martin County (unincorporated areas) (FEMA Docket No. 7003)	
Roanoke River:	
About 7.86 miles downstream of U.S. Route 13	*8
About 9.13 miles upstream of U.S. Route 13	*15
Maps available for inspection at the Building Inspection Office, County Governmental Center, Williamston, North Carolina.	
Sampson County (unincorporated areas) (FEMA Docket No. 7003)	
South River:	
About 0.93 mile downstream of U.S. Route 701	*52
About 1.73 miles upstream of State Road 24	*103
Great Coharie Creek:	
About 2.16 miles downstream of State Road 24	*85
About 700 feet upstream of SR 1311	*97
Williams Old Mill Branch:	
At confluence with Great Coharie Creek	*92
Just downstream of McKoy Street	*111
Just upstream of McKoy Street	*119
Just downstream of Cemetery Road	*132
Black River:	
About 600 feet downstream of State Road 411	*48
At confluence of Great Coharie Creek	*53
Beaverdam Swamp:	
About 1,050 feet downstream of SR 1800	*144
Just downstream of SR 1703	*171
Kill Swamp:	
About 1,100 feet downstream of U.S. Route 701	*139
Just downstream of Interstate 40	*145
Just upstream of Interstate 40	*164
Just downstream of SR 1710	*165
Maps available for inspection at the County Inspection Department, 313 East Rowan Road, Clinton, North Carolina.	
Vance County (unincorporated areas) (FEMA Docket No. 7003)	
Tar River:	
About 1,200 feet downstream of confluence of Buffalo Creek	*222
About 4.1 miles upstream of U.S. Route 1	*246
Tabbs Creek:	
At mouth	*234
About 2,900 feet upstream of SR 1100	*238
Maps available for inspection at the County Manager's Office, County Courthouse, Henderson, North Carolina.	
NORTH DAKOTA	
Harwood (city), Cass County (FEMA Docket No. 7007)	
Sheyenne River:	
At northernmost corporate limit and between the Burlington Northern Railroad and Interstate Highway 29	*891
Intersection of Bender Boulevard and Bender Lane	*891
Just upstream of County Highway 22 and west of Interstate Highway 29	*893
At southern corporate limit and between Burlington Northern Railroad and Interstate Highway 29	*891
Red River of the North:	
At northernmost corporate limit and east of Burlington Northern Railroad	*890
Just downstream of County Highway 22	*890
At southernmost corporate limit and east of Burlington Northern Railroad	*891
Maps are available for review at the Harwood City Office, Main Street, Harwood, North Dakota.	
OHIO	
Blanchester (village), Clinton County (FEMA Docket No. 7006)	
Stonelick Creek:	
About 1,700 feet downstream of Wright Street	*956
About 1.2 miles upstream of Wright Street	*978
Maps available for inspection at the Village Hall, 101 East Main Street, Blanchester, Ohio.	
Delphos (city), Allen and Van Wert Counties (FEMA Docket No. 7006)	
Jennings Creek:	
Just upstream of Pohlman Road	*761
About 2,650 feet upstream of Norfolk Southern Railway	*773
Flat Fork Creek:	
About 2,100 feet downstream of Seventh Street	*763
About 3,200 feet upstream of Spencerville Avenue	*776
Maps available for inspection at the City Hall, 608 North Canal, Delphos, Ohio.	
Hancock County (unincorporated areas) (FEMA Docket No. 7006)	
Blanchard River:	
Just upstream of County Route 16	*749
Just downstream of County Route 2	*873
Eagle Creek:	
Just upstream of Sixth Street	*784
Just upstream of Township Road 32	*861
Lyle Creek:	
Just upstream of Williams Street	*780
About 0.9 mile upstream of County Route 205	*787
Howard Run:	
About 600 feet downstream of County Route 95	*794
About 1,150 feet upstream of County Route 95	*796
Maps available for inspection at the County Courthouse, 300 South Main Street, Findley, Ohio.	
Monroe (village), Butler and Warren Counties (FEMA Docket No. 7006)	
Shaker Creek:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just upstream of Conrail	*653
About 1.4 miles upstream of Union Road	*668
Millers Creek:	
About 1,400 feet downstream of Cincinnati Dayton Road	*653
About 0.5 mile upstream of State Route 63	*675
Maps available for inspection at the Village Hall, 233 South Main Street, Monroe, Ohio.	
OHIO	
Pickerington (village), Fairfield and Franklin Counties (FEMA Docket No. 7006)	
Georges Creek:	
About 550 feet downstream of Long Road	*793
About 2,900 feet upstream of Long Road	*807
Blacklick Creek:	
About 1.52 miles downstream of Tussing Road	*804
About 1,500 feet upstream of Tussing Road	*829
Sycamore Creek:	
About 2,350 feet downstream of Hill Road South	*813
About 750 feet upstream of Conrail	*843
Sycamore Creek Overflow:	
Just downstream of Conrail	*833
About 2,550 feet upstream of Conrail	*842
Maps available for inspection at the Village Hall, 500 Hereford Drive, Pickerington, Ohio.	
Salineville (village), Columbiana and Jefferson Counties (FEMA Docket No. 7006)	
Riley Run:	
Just upstream of Haiti Road	*865
About 4,150 feet upstream of Salineville Road	*950
Nancy Run:	
At mouth	*876
Just downstream of upstream Conrail railroad	*889
Maps available for inspection at the Village Hall, 38 Washington Street, Salineville, Ohio.	
PENNSYLVANIA	
Armagh (township), Mifflin County (FEMA Docket No. 7007)	
Laurel Creek:	
At confluence with Laurel Creek Overflow Channel	*693
At upstream crossing of U.S. Route 322	*927
Laurel Creek Overflow Channel:	
At confluence with Honey Creek	*669
At confluence of Laurel Creek	*693
Honey Creek:	
At downstream corporate limits	*622
Approximately 240 feet upstream of the abandoned railroad bridge near Naginey Quarrey	*670
Maps available for inspection at the Township Office, 2nd Floor Mellon Bank Building, Main Street, Milroy, Pennsylvania.	
Austin (borough), Potter County (FEMA Docket No. 7006)	
Freeman Run:	
Approximately 400 feet downstream of downstream corporate limits	*1,311
Approximately 1.5 miles upstream of State Route 607	*1,441
West Branch of Freeman Run:	
At confluence with Freeman Run	*1,327
At upstream corporate limits	*1,446
Maps available for inspection at the Borough Office, Austin, Pennsylvania, call secretary for appointment (814) 647-8686.	
Brown (township), Mifflin County (FEMA Docket No. 7006)	
Kishacoquillas Creek:	
At downstream corporate limits	*570
Approximately 0.9 mile upstream of West Railroad Street	*611
Tea Creek:	
At confluence with Kishacoquillas Creek	*593
Approximately 800 feet upstream of State Route 1005 (Reedsville Road)	*643
Honey Creek:	
At confluence with Kishacoquillas Creek	*593
At upstream corporate limits	*622
Maps available for inspection at the Township Building, Brown, Pennsylvania.	
Connellsville (township), Fayette County (FEMA Docket No. 7006)	
Youghiogheny River:	
At the downstream corporate limits	*863
At the upstream corporate limits	*944
Galley Run:	
At the downstream corporate limits	*864
Approximately 260 feet upstream of CSX Transportation Bridge	*872
Mounts Creek:	
At the downstream corporate limits	*888
At the confluence of Whites Run	*927
Maps available for inspection at the Secretary's Office, 604 Rodgers Avenue, Connellsville, Pennsylvania.	
Hawley (borough), Wayne County (FEMA Docket No. 7007)	
Lackawaxen River:	
Downstream corporate limits	*884
Upstream side of Church Street	*887
Approximately 1,450 feet upstream of Church Street	*890
Approximately 180 feet upstream of U.S. Route 6	*893
Upstream corporate limits	*898
Maps available for inspection at the Borough Building, Hawley, Pennsylvania.	
Jackson (township), Venango County (FEMA Docket No. 7007)	
Sugar Creek:	
Approximately .6 mile downstream of State Route 427	*1,096
Approximately 1.0 mile upstream of TR 607	*1,202
East Branch Sugar Creek:	
At the confluence with Sugar Creek	*1,135
Approximately 1.3 miles upstream of TR-593	*1,154
Lake Creek:	
Approximately 100 feet downstream of Borough of Cooperstown corporate limits	*1,145
At TR 605	*1,238
Maps available for inspection at the Jackson Township Municipal Building, R.D. 1, Cooperstown, Pennsylvania.	
Osceola (township), Tioga County (FEMA Docket No. 7006)	
Cowanesque River:	
At downstream corporate limits	*1,146
Approximately 1,200 feet upstream of upstream corporate limits	*1,185
Maps available for inspection at the Township Office, Main Street, Osceola, Pennsylvania.	
Pike (township), Potter County (FEMA Docket No. 7006)	
Pine Creek:	
At downstream corporate limits	*1,341
At upstream corporate limits	*1,482
Maps available for inspection at the Secretary's Residence, 72 Clinton Street, Galeton, Pennsylvania. Call for appointment at (814) 848-7575.	
Roulette (township), Potter County (FEMA Docket No. 7006)	
Allegheny River:	
Approximately 1,000 feet downstream of confluence of Burt Hollow	*1,510
Approximately 160 feet upstream of confluence of Trout Brook	*1,549
Maps available for inspection at the Township Office, Railroad Avenue and Ought Street, Roulette, Pennsylvania.	
Sadsbury (township), Crawford County (FEMA Docket No. 7007)	
Conneaut Lake: Entire shoreline within community	*1,075
Maps available for inspection at the Sadsbury Township Municipal Building, Conneaut Lake, Pennsylvania.	
Scrubgrass (township), Venango County (FEMA Docket No. 7006)	
Allegheny River:	
At downstream corporate limits	*880
Approximately 500 feet upstream of upstream corporate limits	*931
Maps available for inspection at the Secretary's Home, R.D. #3, Emlenton, Pennsylvania.	
Sharon (township), Potter County (FEMA Docket No. 7006)	
Oswayo Creek:	
Approximately 1,260 feet downstream of T-386	*1,482
Approximately 1,480 feet upstream of the upstream corporate limits	*1,572
Honeoye Creek:	
At downstream corporate limits	*1,478
Approximately 0.6 mile upstream of State Route 4014	*1,488
Maps available for inspection at the Township Hall, Millport, Pennsylvania.	
Shinglehouse (borough), Potter County (FEMA Docket No. 7006)	
Oswayo Creek:	
At the downstream corporate limits	*1,471
Approximately 1,100 feet upstream of the upstream corporate limits	*1,484
Honeoye Creek:	
At the confluence with Oswayo Creek	*1,475
At the upstream corporate limits	*1,478
Maps available for inspection at the Borough Office, 40 Honeoye Street, Shinglehouse, Pennsylvania. Call secretary for appointment at (814) 697-6711.	
Shippingport (borough), Beaver County (FEMA Docket No. 7007)	
Ohio River:	
At downstream corporate limits	*694
At upstream corporate limits	*697
Maps available for inspection at the Municipal Building, Secretary's Office, P.O. Box 76, State Route 3016, Shippingport, Pennsylvania.	
Sterling (township), Wayne County (FEMA Docket No. 7007)	
West Branch Wallenpaupack Creek:	
Approximately 5,250 feet downstream of State Routes 191 and 196	*1,290
At confluence of Wilcox Creek and upstream corporate limits	*1,300
Maps available for inspection at the Township Building, Spring Hill Road, Sterling, Pennsylvania.	
Sweden (township), Potter County (FEMA Docket No. 7006)	
Mill Creek:	
Approximately 350 feet downstream of downstream corporate limits	*1,750
Approximately 1,550 feet upstream of State Route 44	*1,802
Maps available for inspection at the Township Secretary's Residence, call for an appointment (814) 274-8829.	
Valley (township), Montour County (FEMA Docket No. 7006)	
Indian Creek:	
At confluence with Mauses Creek	505
At Township Route 371	*609

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Mauses Creek:	
Approximately 1,200 feet downstream of State Routes 642 and 45	*488
Approximately 300 feet upstream of confluence with Indian Creek	*506
Maps available for inspection at the Township Building, Indian Run Road, Valley, Pennsylvania.	
SOUTH CAROLINA	
Dillion County (unincorporated areas) (FEMA Docket No. 7006)	
Maple Swamp:	
About 500 feet downstream of 1st Avenue	*105
About 325 feet upstream of CSX Railroad	*138
Catfish Canal:	
About 350 feet downstream of U.S. Route 301	*67
Just upstream of State Highway 151	*97
Ropers Mill Branch:	
At mouth	*102
Just downstream of CSX Railroad	*119
Just upstream of CSX Railroad	*128
Just upstream of State Highway 195	*128
Little Pee Dee River:	
About 2,000 feet downstream of State Route 9	*88
About 1.4 miles upstream of Interstate 95	*103
Maps available for inspection at the County Courthouse, Dillion, South Carolina.	
TENNESSEE	
Benton County, (unincorporated areas) (FEMA Docket No. 7003)	
Tennessee River:	
About 5.75 miles downstream of CSX Railroad	*375
About 6 miles upstream of Interstate 40	*376
Cypress Creek:	
At mouth	*375
Just downstream of Old Route 69	*401
Charlie Creek:	
At mouth	*378
Just downstream of Washington Avenue	*444
Burnside Creek:	
At mouth	*375
Just downstream of Flatwoods Church Road	*423
Cane Creek:	
At mouth	*375
About 1,050 feet upstream of Post Oak Avenue	*427
Maps available for inspection at the County Courthouse, Camden, Tennessee.	
Weakley County (unincorporated areas) (FEMA Docket No. 7003)	
Mud Creek:	
Just upstream of State Route 22	*366
Just downstream of Brasfield Road	*411
Just downstream of State Route 89	*417
Maps available for inspection at the County Courthouse, Dresden, Tennessee.	
TEXAS	
Bastrop (city), Bastrop County (FEMA Docket No. 7006)	
Colorado River:	
Approximately .5 mile downstream of State Route 71	*352
At confluence of Piney Creek	*354
Gills Branch:	
Approximately 700 feet upstream of the confluence with the Colorado River	*353
Approximately 1,600 feet upstream of Farm Street	*397
Shallow Flooding: East Missouri-Kansas Railroad from Gills Branch to Cedar Street	#2
Maps available for inspection at the Bastrop City Hall, Bastrop, Texas.	
Bastrop County (unincorporated areas) (FEMA Docket No. 7006)	
Colorado River:	
Approximately 4.2 miles downstream of Missouri-Kansas-Texas Railroad	*339
Approximately 9.6 miles upstream of Loop 150	*369
Cedar Creek:	
Approximately 1.1 miles downstream of FM 535	*410
Approximately 3.7 miles upstream of FM 535	*432
Gills Branch:	
At the confluence with Colorado River	*353
Approximately 1,300 feet upstream of confluence with Colorado River	*353
Maps available for inspection at the County Courthouse, 804 Pecan, Bastrop, Texas.	
San Saba (city), San Saba County (FEMA Docket No. 7003)	
San Saba River:	
At downstream corporate limits	*1,198
Approximately .5 mile downstream of China Creek Road	*1,205
Maps available for inspection at the City Hall, San Saba, Texas.	
San Saba County (unincorporated areas) (FEMA Docket No. 7003)	
San Saba River:	
Approximately 1.03 miles downstream of Old Pecan Grove Road	*1,196
Approximately 2.6 miles upstream of China Creek Road	*1,212
Colorado River:	
At the downstream County boundary	*1,028
Approximately 11.7 miles upstream of downstream County boundary	*1,061
Maps available for inspection at the San Saba County Courthouse, San Saba, Texas.	
VERMONT	
Bethel (town), Windsor County (FEMA Docket No. 7006)	
White River:	
At downstream corporate limits	*533
At upstream corporate limits	*580
Second Branch White River:	
Approximately 650 feet downstream of downstream corporate limits	*526
At upstream corporate limits	*548
Third Branch White River:	
At confluence with White River	*541
Approximately 1,200 feet upstream of upstream corporate limits	*607
Maps available for inspection at the Town Clerk's Office, Town Hall, Bethel, Vermont.	
Glover (town), Orleans County (FEMA Docket No. 7006)	
Barton River:	
At the downstream corporate limits	*899
Approximately 150 feet upstream of Steep Hill Road	*1,168
Maps available for inspection at the Town Clerk's Office, Glover, Vermont.	
Granville (town), Addison County (FEMA Docket No. 7007)	
White River:	
At downstream corporate limits	*922
Approximately 0.4 mile upstream of confluence of Alder Meadow Brook	*1,023
Alder Meadow Brook:	
At confluence with White River	*980
Approximately 600 feet upstream of upstream crossing of State Route 100	*1,038
Maps available for inspection at the Town Clerk's Vault, Granville, Vermont.	
Hancock (town), Addison County (FEMA Docket No. 7007)	
White River:	
At the downstream corporate limits	*873
At the upstream corporate limits	*922
Hancock Branch:	
At the confluence with White River	*905
Approximately 0.87 mile upstream of State Route 125	*1,116
Maps available for inspection at the Town Clerk's Vault, Hancock, Vermont	
Randolph (town), Orange County (FEMA Docket No. 7006)	
Third Branch White River:	
Approximately 2.0 miles downstream of confluence of Trout Brook	*606
Approximately 300 feet upstream of Central Vermont Railroad	*675
Second Branch White River:	
Approximately 0.4 mile downstream of confluence of Kingsbury Brook	*547
Approximately 0.5 mile upstream of confluence of Shows Brook	*664
Ayers Brook:	
At confluence with Third Branch White River	*632
Approximately 2.0 miles upstream of Peth Road Bridge	*699
Maps available for inspection at the Town Clerk's Vault, Randolph, Vermont.	
Rochester (town), Windsor County (FEMA Docket No. 7006)	
White River:	
At downstream corporate limits	*754
At upstream corporate limits	*873
West Branch White River:	
At confluence with White River	*821
Approximately 2 miles upstream of State Route 73	*987
Maps available for inspection at the Town Office, Rochester, Vermont.	
VIRGINIA	
Isle of Wight County (unincorporated areas) (FEMA Docket No. 7007)	
Blackwater River:	
Approximately 1.9 miles downstream of CSX Transportation	*14
Approximately 1.2 miles upstream of State Route 620	*33
James River:	
Adjoining Estuaries	*8.5
Shoreline along Mogarts Beach	*12
Maps available for inspection at the Department of Community Development, County Courthouse, Isle of Wight, Virginia.	
Page County (unincorporated areas) (FEMA Docket No. 7007)	
Dry Run:	
At confluence with Hawksbill Creek	*765
Approximately 1,000 feet upstream of State Route 611	*1,001
Pass Run:	
At confluence with Hawksbill Creek	*702
At confluence with Rocky Branch	*976
Rocky Branch:	
At confluence with Pass Run	*976
Approximately 70 feet upstream of State Route 612	*1,214
Hawksbill Creek:	
Approximately 1,200 feet downstream of State Route 642	*800
Approximately 1,300 feet upstream of State Route 642	*802
Maps available for inspection at the Administrative Building, 108 South Court Street, Luray, Virginia 22835.	
WISCONSIN	
Arcadia (city), Trempealeau County (FEMA Docket No. 6991)	
Trempealeau River:	
About 2,900 feet downstream of West Main Street	*726
About 1.5 miles upstream of West Main Street	*734
Turton Creek:	
At mouth	*731

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
About 2,100 feet upstream of Oak Street	*740
Maps available for inspection at the City Hall, 203 Main Street, Arcadia, Wisconsin.	
Bloomer (city), Chippewa County (FEMA Docket No. 6991)	
Duncan Creek:	
About 1.2 miles downstream of Newman Street	*988
About 1.1 miles upstream of Bloomer Dam	*1,001
Maps available for inspection at the City Hall, 1503 Main Street, Bloomer, Wisconsin.	
Oneida County (unincorporated areas) (FEMA Docket No. 7006)	
Wisconsin River:	
About 5,000 feet downstream of confluence of Pelican River	*1,526
Just downstream of County Highway D	*1,578
Pelican River:	
About 600 feet upstream of mouth	*1,527
About 1.5 miles upstream of Germond Road	*1,531
Tomahawk River:	
About 4,000 feet downstream of confluence of Rocky Run	*1,487
About 1.3 miles upstream of confluence of Rocky Run	*1,494
Maps available for inspection at the County Courthouse, Rhinelander, Wisconsin.	
Rhinelander (city), Oneida County (FEMA Docket No. 7006)	
Wisconsin River:	
About 3,850 feet downstream of confluence of Pelican River	*1,526
Just downstream of Rhinelander Dam	*1,546
Just upstream of Rhinelander Dam	*1,558
Pelican River:	
At mouth	*1,527
About 2,100 feet upstream of Oneida Avenue	*1,527
Maps available for inspection at the City Hall, 135 S. Stevens Street, Rhinelander, Wisconsin.	
Sturgeon Bay (city), Door County (FEMA Docket No. 7006)	
Little Creek:	
At mouth	*585
Just upstream of Michigan Street	*605
Sturgeon Bay:	
Within community	*585
Maps available for inspection at the City Hall, 36 S. Third Avenue, Sturgeon Bay, Wisconsin.	
WYOMING	
Cheyenne (city), Laramie County (FEMA Docket No. 7000)	
Crow Creek:	
Approximately 940 feet downstream of Morrie Avenue	*6,009
At Deming Drive	*6,022
Just upstream of West 9th Street	*6,035
Just downstream of West 19th Street	*6,055
Approximately 300 feet upstream of Westland Road	*6,072
Dry Creek:	
Approximately 500 feet upstream of U.S. Highway 30	*5,971
Just upstream of Hilltop Road	*6,011
Approximately 400 feet upstream of Mountain Road	*6,029
Just downstream of Seminole Road	*6,097
Just upstream of Education Drive	*6,131
Approximately 200 feet upstream of Vista Lane	*6,146
Western Hills Draw:	
(North Fork Dry Creek)	
Just upstream of Interstate Highway 25	*6,151
Just downstream of Evergreen Street	*6,165
At Ranger Drive	*6,177
Approximately 100 feet upstream of Hawthorne Drive	*6,212
Maps are available for inspection at the City Engineer's Office, 2101 O'Neil Avenue, Cheyenne, Wyoming.	

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
CALIFORNIA	
Big Bear Lake (city), San Bernardino County, California (FEMA Docket No. 7003)	
Rathbun Creek:	
Approximately 500 feet upstream of Big Bear Lake	6,744
Approximately 200 feet downstream of SR18	6,785
Approximately 60 feet upstream of Elm Street	6,851
Approximately 320 feet upstream of Moonridge Road	6,908
At Lassen Drive	7,105
Maps are available for review at the City Hall, Community Development Department, 39707 Big Bear Boulevard, Big Bear Lake, California.	
FLORIDA	
St. Lucie County (Unincorporated Areas) (FEMA Docket No. 6991)	
Tenmile Creek Tributary:	
At mouth	*20
Just downstream of McCarty Road	*20
Tenmile Creek:	
At confluence with North Fork St. Lucie River	*10
Just downstream of Sunshine State Parkway	*16
Just downstream of Okeechobee Road	*21
Taylor Creek:	
About 500 feet upstream of mouth	*11
About 1.78 miles upstream of St. Lucie Boulevard	*19
Fivemile Creek:	
At mouth	*10
Just downstream of Whiteway Dairy Road	*17
Just downstream of Peterson Road	*17
Platts Branch:	
At mouth	*10
Just downstream of U.S. Route 1	*12
Winters Creek:	
At mouth	*7
About 1300 feet upstream of mouth	*7
Blakeslee Creek:	
At mouth	*7
About 500 feet upstream of mouth	*7
North Fork St. Lucie River:	
About 2.3 miles downstream of Port St. Lucie Boulevard	*7
At confluence of Tenmile Creek	*10
Atlantic Ocean/Indian River:	
About 750 feet west of Mimosa Avenue and Coconut Drive	*5
Along shoreline, about 1.2 miles east of Blue Hole Point	*15
Atlantic Ocean:	
About 150 feet east of Banyan Road and Tamarino Drive intersection	#1
About 250 feet east of Banyan Road and Tamarino Drive intersection	#2
Maps available for inspection at the Community Development Department, Administration Complex, 2300 Virginia Avenue, Fort Pierce, Florida.	
NEW MEXICO	
Hobbs (city), Lea County (FEMA Docket No. 6990)	
Shallow Flooding Area:	
Between Tenth Street	#1
Between Tenth Street and Texas-New Mexico Railroad	#1
From Texas-New Mexico Railroad to southwest area of Airport to northwest area of Airport	#1
From northwest area of Airport to southeast area of Airport	#1
From Tenth Street to northwest area of Airport	#1
Between Stanolind Road and Dunnam Street	#1
Between Turner Street and Green Acres Drive	#1
Between Green Acres Drive and Jefferson Street	#1
West of Jefferson Street to the Texas-New Mexico Railroad tracks	#1
North of State Route 18 going northwest and parallel to Texas-New Mexico Railroad tracks	#1
State Route 18 from Joe Harvey Boulevard to intersection of Silver Avenue and Knowles Road along Northwest Drive	#1
Between Joe Harvey Boulevard and Kiowa Street	#1
State Route 18 and McKinley	#2
North of crescent to 500 feet south of North Acres Dirve	#2
Between Marland Boulevard and Harr Street	#3
Between Stadium Drive and Green Acres Drive	#3
Between Jefferson Street and approximately 1,000 feet west of the intersection of State Routes 18 and 132	#3
Ponding Area: Between Stadium Drive and Marland Boulevard	*3,613
Stream 2:	
Dal Paso Boulevard	*3,635
Approximately 0.5 miles upstream of Fowler Drive	*3,642
Stream 3:	
Dal Paso Boulevard	*3,653
Approximately 0.6 miles upstream of Knowles Road	*3,672
Maps available for inspection at the City Hall, 300 N. Turner, Hobbs, New Mexico.	
NEW YORK	
Mamakating (town), Sullivan County (FEMA Docket No 7003)	
Basher Kill:	
At State Route 17	*513
Approximately 1.6 miles upstream of McDonald Road	*533
Homowack Kill:	
At corporate limits	*390
At second crossing of U.S. Route 209	*532
Tributary to Homowack Kill:	
Confluence with Homowack Kill	*531
Approximately 150 feet upstream of Fish Hatchery Road	*599
Pine Kill:	
At downstream corporate limits	*516
At confluence of Tributary to Pine Kill	*1,050
Tributary to Pine Kill:	
At the confluence with Pine Kill	*1,050
Approximately 2,115 feet upstream of Knob Hill Road	*1,245
Platte Kill:	
At confluence with Shawangunk Kill	*362
At upstream corporate limits	*1,036
Tributary to Platte Kill:	
At confluence with Platte Kill	*526
Approximately 15 feet upstream of Roosa Gap and Pleasant Valley Road	*715
Sandburg Creek:	
At downstream corporate limits	*461
At upstream corporate limits	*829
Shawangunk Kill:	
At confluence of Platte Kill	*362
At upstream corporate limits	*564
Tributary 1 to Shawangunk Kill:	
At confluence with Shawangunk Kill	*384
Approximately 1,170 feet upstream of Ski Run Road	*541
Tributary 2 to Shawangunk Kill:	

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
At confluence with Shawangunk Kill	*380
Approximately 345 feet upstream of Ski Run Road	*389
Willsey Brook:	
At corporate limits	*688
Approximately 130 feet upstream of Park Road	*1,565
Tributary 1 to Willsey Brook:	
At downstream corporate limits	*705
Approximately 0.6 mile upstream of County Route 168A	*1,174
Tributary 2 to Willsey Brook:	
At confluence with Willsey Brook	*1,039
Approximately 140 feet upstream of Downy Road	*1,118
Maps available for inspection at the Town Hall, Route 209, Wurtsboro New York.	

Issued: April 23, 1991.

C. M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-11081 Filed 5-9-91; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61, 65, and 69

[CC Docket No. 87-313, FCC 91-115]

RIN 3060-AE38

Policy and Rules Concerning Rates for Dominant Carriers

AGENCY: Federal Communications Commission [FCC].

ACTION: Final rule; order on reconsideration.

SUMMARY: The Commission has adopted an Order on Reconsideration affirming its conclusion that incentive regulation (or "price cap" regulation) constitutes an improvement over rate of return regulation for local exchange carriers. This action results in the replacement of the rate of return regulatory model with one that directly limits rates by means of price caps. The Commission has affirmed its finding that the price cap method of regulation will promote efficiency and innovation, and will benefit consumers more effectively than rate of return regulation. The Order on Reconsideration provides some modification and clarification of the underlying Order.

EFFECTIVE DATES: Section 61.45(d) and 69.105(b) are effective June 30, 1991; all other provisions are effective June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Jacqueline Spindler, Common Carrier Bureau, (202) 632-6917.

SUPPLEMENTARY INFORMATION:

Background

Notice of Proposed Rulemaking, In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313. *Adopted:* August 4, 1987. *Released:* August 21, 1987. 52 FR 33962 (Sept. 9, 1987). By the Commission. Further Notice of Proposed Rulemaking, In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313. *Adopted:* May 12, 1988. *Released:* May 23, 1988. 53 FR 22356 (June 15, 1988). By the Commission. Supplemental Notice of Proposed Rulemaking, CC Docket No. 87-313. *Adopted:* March 8, 1990. *Released:* March 12, 1990. 55 FR 12526 (Apr. 4, 1990). By the Commission. Second Report and Order, CC Docket No. 87-313. *Adopted:* September 19, 1990. *Released:* October 4, 1990. 55 FR 42375 (Oct. 19, 1990). By the Commission, Commissioner Duggan concurring in part and dissenting in part and issuing a separate statement. See also Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket No. 89-624, 5 FCC Rcd 7507 (1990).

Summary of Order on Reconsideration

This is a summary of the Commission's Report on Reconsideration in In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, FCC 91-115, Adopted: April 9, 1991, and Released April 17, 1991. Commissioner Duggan concurring in part and dissenting in part and issuing a statement.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1411 21st St., NW., Washington, DC 20037.

I. Introduction

1. This Order on Reconsideration generally affirms the Commission's *LEC Price Cap Order* adopted September 19, 1990, while providing some clarification and modification of that order. The *LEC Price Cap Order* concluded a comprehensive examination of incentive regulation for local exchange carriers by adopting a new system of regulating the interstate common carrier services of the largest of these carriers. The new regulatory system, known as price cap regulation, is designed to increase local exchange carrier productivity by harnessing profit-making incentives common to all businesses; to establish rate ceilings that require carriers to decrease rates after inflation; and to encourage carriers to provide innovative, high quality services.

2. This Order: (1) Clarifies the sharing and adjustment mechanism as to the imposition of interest and the use of total interstate data; (2) clarifies that inside wire amortizations will be treated as an exogenous cost change; (3) requires that inside wire amortizations and reserve deficiency amortizations be included in the annual price cap filings; (4) permits exogenous treatment of paybacks of excess deferred taxes; (5) permits the use of historical, instead of forecast, demand in the calculation of the national average carrier common line charge; (6) amends the tariff requirements for new service filings; and (7) clarifies service quality reporting requirements. These alterations to the price cap rules will become effective in time to permit price cap LECs to amend their first annual price cap tariffs, currently pending, to reflect the changes made in this Order on Reconsideration prior to the July 1, 1991 effective date of the tariff filings.

3. Price cap regulation of LECs is designed to produce greater benefits for both ratepayers and carriers than they would have received under the prior system of regulation. Unlike the previous, cost-plus system of regulation that capped profits, price cap regulation encourages LECs to earn reasonably higher profits than were formerly allowed. But in a regulatory system that caps prices, higher profits must be generated through productivity gains. LECs must become more efficient, and offer innovative, high quality services in order to succeed under a price cap regime. If a LEC fails to keep pace with the productivity requirement embedded in the cap, it risks seeing its earnings erode. Ratepayers benefit from the innovation that price cap regulation is intended to spur and from a series of protections built into the design of the price cap system itself. Foremost among these protections are the requirements that rates decrease on an inflation-adjusted basis and that LECs share higher achieved earnings with ratepayers.

4. The architecture of the price cap system for LECs begins with the design of the rate cap. As adopted, the cap is composed of a limited number of elements that together provide a benchmark of how price cap LECs' costs will change over time. For special access, traffic sensitive access, and interexchange offerings, the cap is

composed of three elements. The first element, inflation, is measured by the Gross National Product Price Index (GNP-PI). Second, a productivity offset, selected on the basis of the amount by which LEC productivity growth has historically exceeded the economy generally, is subtracted from the inflation element. Third, specified exogenous cost changes that generally are outside the carriers' control, and often result from regulatory changes, are added to the formula. The cap is calculated once a year, for LEC tariffs effective July 1.

5. The formula used to cap non-traffic sensitive access rates, or common line charges, is slightly different. This difference stems from the unique characteristics of the carrier common line charge, which recovers a portion of non-traffic sensitive costs on a traffic sensitive, per minute basis. As adopted, the common line cap formula includes an adjustment that rewards LECs for half the growth in common line minutes. This formula recognizes the fact that LECs have some ability to influence interstate usage of local common lines, but that usage is also affected by other factors, including efforts and prices of long distance carriers. Due to the formula's characteristics, the Commission refers to the common line formula as the "Balanced 50/50" plan to distinguish it from the numerous other cap proposals that were considered for common line. It also recognizes that the Balanced 50/50 formula, while rewarding LECs for increasing demand, creates a more difficult challenge for LECs to meet than the common line formula previously proposed in this docket.

6. In addition to adopting a common line formula that is more challenging to LECs, the *LEC Price Cap Order* made important revisions to the productivity offset of 3 percent previously considered. Based on a staff study of LEC productivity since divestiture, as well as on a staff study of long term productivity, the price cap rules mandate a productivity offset of 3.3 percent, and include in the cap mechanism a means of inducing LECs to pursue even higher productivity gains if possible. Price cap LECs may elect to set their price caps by using a 4.3 percent productivity offset. Election of the higher productivity offset lowers the price cap, thereby benefiting ratepayers. However, election of the higher offset also permits the LEC to retain a larger share of its earnings, thereby benefiting the LEC if it can increase its productivity.

7. To ensure that the productivity offsets we selected for our LEC price cap system benefit ratepayers of each and every LEC regulated under price caps, the Commission imposed an incentive-based method of ensuring that ratepayers share in the benefits a price cap system can produce. If a LEC selects the 3.3 percent productivity offset and outperforms it, the LEC will be entitled to retain all of its earnings up to 100 basis points (or 1 percent) above the unitary rate of return established for rate of return carriers. A carrier using the 3.3 percent productivity offset to establish prices must share with its customers 50 percent of its earnings between 100 and 500 basis points (1 to 5 percent) above the unitary rate of return, and 100 percent of earnings in excess of 500 basis points above the unitary rate of return. Based on the 11.25 percent unitary rate of return currently in effect, this mechanism allows a carrier that dramatically exceeds the productivity requirements of the price cap formula to reach an effective equivalent of up to 14.25 percent rate of return.

8. If a carrier elects a more challenging productivity offset of 4.3 percent, the carrier lowers its rates an additional 1 percent, and can retain more of its earnings, if it is able to earn higher profits. In this case, the carrier can retain all of its earnings up to 200 basis points (or 2 percent) above the unitary rate of return established for rate of return carriers. This carrier would share with its customers 50 percent of its earnings between 200 and 600 basis points (2 to 6 percent) above the unitary rate of return, and 100 percent of its earnings in excess of 600 basis points above the unitary rate of return. In electing to lower prices to a level reflecting a higher 4.3 percent productivity offset, the carrier's effective maximum rate of return would be 15.25 percent. Thus, under the sharing mechanism, carriers that are able to produce significantly greater than anticipated gains in productivity, as evidenced by earnings well above those expected in a rate of return environment, are required to share the benefits of their performance with ratepayers in the form of rate decreases.

9. In addition to guarding against the possibility that the productivity offsets selected may be too low for a given company in a particular year, the price cap regulations guard against the possibility that the formula will force rates to a level that results in unusually low earnings. The plan includes a lower end adjustment mechanism to ensure that the plan automatically corrects itself should the established productivity factor for the industry prove to be too demanding for a given company. The lower adjustment mechanism is 100 basis points (1 percent) below the unitary rate of return. If a carrier's earnings drop below this level for one year, that carrier will be entitled to an automatic prospective upward adjustment to its cap in the following year.

10. Moreover, the Commission takes a cautious approach in applying price cap regulations to the LEC industry. Price cap regulation is mandatory only for the seven Regional Bell Operating Companies (RBOCs) and GTE Telephone Operating Companies (GTOC). Other LECs may elect price cap regulation at their option, as long as they are not participants in the National Exchange Carrier Association cost and revenue pools. Companies and their affiliates are required to enter price caps, or volunteer for price caps, on an "all-or-nothing" basis. The all-or-nothing rule is intended to prevent cost shifting from affiliates subject to price caps to affiliates regulated under rate of return. Average schedule affiliates, which do not have the same incentives to shift costs, are exempted from the all-or-nothing rule. The rules permit an annual opportunity for election of price cap regulation, but once regulated pursuant to price caps, LECs cannot elect to return to rate of return regulation.

11. Rather than establish one price cap for all of a LEC's interstate services, the plan divides interstate offerings into four groups, or baskets, each subject to its own cap. The groupings are borrowed from the interstate access structure contained in the Commission's part 69 rules. If a LEC elects the higher 4.3 percent productivity factor, it must do so for all four of its baskets. As discussed above, the common line basket is capped using the Balanced 50/50 method. The traffic sensitive basket and the special access basket use the index method. Interexchange services are capped based on the productivity offset we use to cap AT&T services, 3 percent, although a LEC electing a 4.3 percent offset (1 percent above the minimum productivity requirement) for its access baskets will, however, be required to use a 4 percent offset (1 percent above the 3 percent offset used for AT&T) for its interexchange basket.

12. Division of LEC services into four baskets, each subject to a separate cap, sharply limits LEC pricing flexibility and incentives to shift costs. To further protect ratepayers from substantial price changes, the price cap rules identify service categories within the baskets, and limit the annual price movements in these categories to plus or minus 5 percent per year, adjusted for

changes in the cap. The traffic sensitive basket is subdivided into three service categories: local switching, local transport, and information. The special access basket contains four categories: (1) Voice grade, WATS, metallic, and telegraph; (2) audio and video; (3) high capacity and Digital Data Service; and (4) wideband data and wideband analog. The price cap rules also create separate subindices for two offerings within the high capacity and Digital Data Service category, one for DS1 and one for DS3 services. These separate subindices limit price movements of DS1 and DS3 services to plus or minus 5 percent per year, adjusted for changes in the price cap.

13. Together, the price cap limits and pricing bands used in the traffic sensitive and special access baskets form a "no-suspension zone" within which LECs may easily change prices. Rate changes that conform to these limits are presumed lawful and permitted to take effect under streamlined review, on 14 days' notice. Should a LEC decide to file rates outside the no-suspension zone, the price cap rules require more rigorous scrutiny. More extensive documentation is required, the presumption of lawfulness disappears, and longer notice periods apply. Above-cap and above-band fillings carry a heavy burden of justification and a strong likelihood of suspension.

14. Special rules apply to new, restructured, and excluded services. New services, defined as those that expand a ratepayer's range of choices, are filed on 45 days' notice and must be accompanied by a showing demonstrating that the new service will increase net revenues for the LEC over a specified period of time. Once new services have been in effect for a period of time that allows the observation of demand, these services are included in the relevant price cap basket and service category. New offerings that represent fundamental changes to our part 69 access structure, such as the implementation of Open Network Architecture, may be subject to additional requirements established in other Commission proceedings. Restructured services, those that simply redefine existing offerings, are also subject to 45-day notice requirements, and are not presumed lawful. A few services, such as one-time and contract services and pre-subscription change charges, are excluded from price caps. These services are subject to traditional tariff review procedures. Applying standard statistical conventions, all indices were initialized at a level of 100, beginning six months before the implementation of price cap regulation on January 1, 1991. Therefore, July 1, 1990 rates are used as the starting point for price cap indices, adjusted downward to implement the 11.25 percent industry rate of return adopted by the Commission on the same day as the LEC price cap rules.

15. Price cap regulation is carefully designed to permit the continued operation of programs that provide assistance to small and high cost telephone companies and their subscribers. The price cap plan makes no changes to programs such as Link Up America, Lifeline Assistance, the Universal Service Fund, Long Term Support, and Transitional Support, that assist small carriers and their customers. Moreover, the *LEC Price Cap Order* pledges to begin further proceedings on issues of concern for small and mid-sized LECs.

16. To ensure its continued ability to evaluate the price cap system, as well as to evaluate whether the incentives created in the plan operate in the public interest, the Commission retains existing monitoring of LECs' operations. The Commission will also undertake a comprehensive performance review of the system after the end of the third year. The review, to be completed during the fourth year of the plan, will evaluate all aspects of local exchange carrier performance, and make any adjustments to the plan that are warranted.

17. Incentive regulation is expected to encourage LECs to maintain and enhance service quality and innovation. Nonetheless, the Order adopted additional service quality monitoring to respond to commenters' concerns and to provide data for the performance review to be undertaken at the end of three years. Semi-annual reporting continues to be required of the BOCs, and has been extended to GTOC. In addition, all LECs regulated under price caps are required to submit quarterly reports on post-dial delay, network blockage, complaints, trouble reports, installation intervals, repair intervals, and switch downtime. The *LEC Price Cap Order* directs the Common Carrier Bureau to devise a reporting system and to include it in the Bureau's automated reporting system, ARMIS. In addition to monitoring service quality parameters as revealed through network performance, price cap regulation includes a requirement that the LECs for whom price cap regulation is mandatory report on their investment in the telecommunications infrastructure. The new annual reporting requirement, which is based on reporting received from the RBOCs and GTOC in the rate of return proceeding, will monitor LEC network development as shown in LEC equipment and facilities.

II. Modifications on Reconsideration

A. Sharing and Interest

18. The *LEC Price Cap Order* concluded that adjustments of LEC PCIs to share high earnings with their customers should include an interest component. *LEC Price Cap Order*, 5 FCC Rcd at 6801, para. 124. While many parties support this determination, the LECs generally oppose interest payments. Supporting parties, including interexchange carriers and large users, urge that the Commission's requirements regarding the precise calculation of amounts to be shared by means of price cap adjustments be clarified to note the level at which interest should be included. Although some LECs argue against the imposition of interest in the sharing mechanism, the Commission determined that the inclusion of interest is a fairer reflection of the equities and creates a more effective price cap plan, since interest properly recognizes the true value of the delay in the recognition of those benefits. Rather than considering interest payment as a disincentive to achieve high productivity, the Commission states that it adds to the LECs' incentive to calculate the lowest possible rates for users. The Commission rejects challenges to its legal authority to impose interest on sharing.

19. In response to questions about calculation of interest, the Commission states that interest will be calculated based on the amount to be shared and the period of time that elapses between when the amount was earned and when it is paid. Stating that it will resolve matters concerning the implementation of sharing in the same frame of reference it used to develop this mechanism itself—the balancing of consumer interests and LEC incentives, and the desire to ensure that each receives or retains its proper share of productivity gains achieved through the operation of the price cap plan. To that end, the Commission states that interest amounts will be calculated from the day after the end of the period giving rise to the adjustment, to the midpoint of the period when the adjustment is in effect. The Commission also directs that amounts triggering sharing be "grossed up" to reflect relevant state, local, and federal taxes. Stating that the rate at which interest is calculated must not penalize or disadvantage the LEC, which

has accepted and exceeded a challenging productivity offset through increasing its efforts and efficiency, and that the customer must likewise receive its fair share of these productivity gains, and must not be required to provide a below-market rate loan to the LEC, the Commission directs that interest be calculated at the level of the prescribed rate of return calculated in the *Represcription Order.*

B. Amortizations

20. In the *Further Notice* in this proceeding, the Commission proposed to treat as exogenous inside wire amortizations. *Further Notice*, 3 FCC Rcd at 3422–23, paras. 419–420. The Commission reasoned that, although the LECs were entitled to recover the amortized amounts from ratepayers, upon expiration of the inside wire amortizations, the costs should be removed from rates in recognition of the newly-deregulated status of inside wire. No further reference to inside wire amortizations is made in the discussions of exogenous costs in the *Second Further Notice* and the *LEC Price Cap Order*. The Commission finds on reconsideration that inside wire amortizations should be treated exogenously. The Commission stated in the *LEC Price Cap Order* that reserve depreciation amortizations generally will be treated as exogenous PCI reductions. *LEC Price Cap Order*, 5 FCC Rcd at 6808, para. 173. Upon reconsideration, it decides that amortizations ought to be reflected in annual price cap tariffs, effective July 1. It will allow exogenous adjustments for reserve deficiency amortizations and inside wire amortizations only on an annualized basis, to avoid excessive rate churn. Since the annualized exogenous treatment of reserve deficiency amortizations and inside wire amortizations that expire during the tariff year could result in a mismatch of revenues and expenses, the Commission directs carriers to normalize the amortization by booking to Account 1439, Deferred Charges, the excess amortization expenses during the amortization period, and charging the deferred amount to expense over the remainder of the tariff year.

C. Exogenous Treatment of Tax Changes

21. The Commission stated in the *LEC Price Cap Order* that if a LEC can show that a particular tax law change produces costs not reflected in the GNP-PI, the Commission will consider exogenous treatment of that tax law change. Finding that such a showing has been made with regard to two effects of the Tax Reform Act of 1986, the payback of excess deferred taxes and the repeal of the investment tax credit, the Commission grants LECs' requests for exogenous treatment of the flow-through of these changes. The Commission directs that each price cap LEC may include in its annual filing data showing the effect on its PCI.

D. NACCL Calculation

22. As adopted, the LEC price cap regulations are designed to make use of actual historical demand data, instead of forecast demand data. Elimination of demand forecasting is one of the ways in which price cap regulation reduces the administrative burden associated with regulation. In the case of the national average carrier common line rate, however, the *LEC Price Cap Order* required price cap carriers to continue to forecast common line demand pursuant to part 69.105(b). *LEC Price Cap Order*, 5 FCC Rcd at 6826, para. 329.

23. NECA, supported by the largest LECs, renews the suggestion that historical demand data can be used to calculate the national average carrier common line rate, and says this can be done without significantly affecting Long Term Support payments. The Commission states that it prefers the use of historical rather than projected data, and that it is not persuaded that any LEC would have any strong incentive to manipulate carrier common line rates or seriously threaten the objectives of the Long Term Support Program. The Commission believes that the benefits that may be derived from NECA's proposal outweigh any possible problems, and states that NECA's methodology will greatly simplify the preparation of the national average carrier common line rate, which is consistent with the goals of price cap regulation. Therefore, the Commission adopts NECA's methodology, and revises § 69.105(b) of the Rules accordingly.

E. New Services

24. The *LEC Price Cap Order* defines new services as those that expand customers' range of options. *LEC Price Cap Order*, 5 FCC Rcd at 6824, para. 314. The Commission decided, as it had done with AT&T, to fold new services into the cap at the first annual price cap filing following a base year in which the new service had been offered, a period of between 6 and 18 months, depending upon the timing of the introduction of the new service. Carriers were directed initially to support each new service tariff with a demonstration that the offering will yield positive net revenue, measured on a present value basis, within the lesser of a 24-month period after an annual price cap tariff that includes the new service takes effect, or 36 months from the date the new service becomes effective. The Commission decides on reconsideration to defer final determination of this matter to the part 69 ONA proceeding. It decides for the interim to supplement the net revenue "floor" with the retention of the traditional new services tariff review support, and to return to the issue of new service pricing in the part 69 ONA proceeding.

25. In addition to demonstrating that the new service generates net revenue, the Commission will require, on an interim basis, that LECs support new services with a traditional cost showing. The Commission believes that, as an interim solution, its decision to continue to use our pre-price caps approach pending completion of the part 69 proceeding is reasonable, and that, in the short term, neither carriers nor customers will be harmed by this interim approach.

F. Service Quality Monitoring

26. In the *LEC Price Cap Order*, the Commission reaffirmed its commitment to assuring the availability of high quality, innovative communications services, and to the development of the telecommunications infrastructure needed to provide those services. *LEC Price Cap Order*, 5 FCC Rcd at 6827, para. 332. One of the Commission's fundamental goals is to encourage the development of a competitive, innovative, and excellent American communications system. We believe that price cap regulation will serve even better than rate of return regulation to encourage the LECs to maintain and expand the excellence of the network. LECs have natural efficiency incentives to modernize the network: Modern facilities increase capacity (and thus revenues) while decreasing maintenance (and thus costs). Further, LECs are encouraged to upgrade their equipment and facilities in order to provide a broad range of services at a reasonable range of rates, since their interstate revenues are to a large extent usage-sensitive. LECs must provide high quality service on their large customers will complain or will find other service providers. Finally, opportunities presented by incentive regulation for enhancing efficiency in the LEC industry include the opportunity to provide better incentives for innovation. By creating incentives for carriers to become more productive, incentive regulation generates powerful motives to innovate.

27. Despite its conviction that incentive regulation will stimulate LECs

to maintain and increase the high level of service presently available, the Commission decided in the *LEC Price Cap Order* to expand its data collection of service quality and infrastructure development indicators. In response to parties' expressed concerns, in the desire to accumulate a substantial database for our performance review, and in an abundance of caution, it directed the Common Carrier Bureau to develop reporting requirements to allow monitoring of LEC service quality and infrastructure development. The Bureau has reviewed the pleadings submitted here and has engaged in informal discussions with numerous sources. The Bureau's *March 8 Public Notice* suggests reporting modifications that respond to these pleadings and discussions. On reconsideration the Commission fine-tunes the expectations expressed in the *LEC Price Cap Order*, affirming its general conclusions.

Post-Dial Delay

28. The Commission has defined post-dial delay (PDD) as the time between the dialing of the last digit and the response of a "winkback," or the acknowledgement of signal receipt, from the interexchange carrier. *LEC Price Cap Order*, 5 FCC Rcd at 6828, para. 344. LECs have submitted arguments that this definition is unclear or impracticable, and that the measurement and reporting of post-dial delay would involve extreme difficulty and expense, while yielding minimal benefit. They argue that our other service quality reporting requirements provide data sufficient to monitor the same characteristics as would be monitored by post-dial delay data. On reconsideration, the Commission states that it is persuaded that the measuring and reporting of post-dial delay using the D-ASPEN system would be so expensive and burdensome as to be unwarranted on a cost-benefit basis. It is reluctant, however, to remove the post-dial delay reporting requirement from the service quality reports, despite great confidence in the other service quality reporting requirements. Since the Bureau is presently investigating service quality reporting requirements in some detail, and its *March 8 Public Notice* solicits further comment on post-dial delay reporting, and since one BOC suggests that information related to post-dial delay can be gleaned from data submitted in the ARMIS infrastructure reports, the Commission directs the Bureau to evaluate means of monitoring post-dial delay that are less burdensome that the D-ASPEN system. In particular, it asks the Bureau to investigate the feasibility of requiring price cap LECs to include in their service quality reports data with respect to post-dial delay based on calculations derived from facilities and routing data supplied in their infrastructure reports.

Other Service Quality Measurements

29. Some commenters assert that the transmission quality parameters in the monitoring reports could sufficiently monitor voice circuit quality if they are modified to reflect consistent standards, and are disaggregated geographically and by service, but that they are still inadequate to monitor data transmission quality. They also suggest that LECs be required to include in their tariffs specifications of service quality levels they will provide. The Commission states that it has repeatedly expressed the importance it attaches to service quality and infrastructure development, and that it is committed to taking the steps necessary to further improve them. It directs the Bureau to consider petitioners' arguments, and notes that the Bureau has solicited comment on the matters of geographic, demographic, and service category disaggregation, data transmission indicators, the inclusion of service quality parameters in LEC tariffs, and definitions and explanations generally, in its *March 8 Public Notice*. The Commission encourages interested parties to comment upon the costs and benefits of such steps, and it incorporates relevant comments from this proceeding in the Bureau's record.

Geographically Disaggregated Reporting

30. The *LEC Price Cap Order* requires that service quality data be filed at the study area level, and be disaggregated as to special access and switched access. *LEC Price Cap Order*, 5 FCC Rcd at 6830–31, paras. 359–360. In light of the comments submitted on reconsideration, the Commission states that the Bureau, in its proceeding, may further fine-tune the reporting requirements, to address concerns raised in the reconsideration pleadings, including questions of geographic and service-level disaggregation. The Commission directs the Bureau to balance the usefulness of service quality and infrastructure reports against the burden imposed upon price cap LECs to provide them. If the Bureau concludes that the level of geographic aggregation or service level detail should be adjusted, these and similar modifications are within the Bureau's delegated authority. To the extent that pleadings here are relevant to the Bureau's determinations, they are incorporated in the record of that proceeding.

Standards

31. The Commission declined to establish national standards, reasoning that the existing high level of service quality, in combination with price cap incentives and state monitoring programs, negated any need for standards at the present time. *LEC Price Cap Order*, 5 FCC Rcd at 6829–32, paras. 350–371. The Commission reiterates that it will consider developing standards, sanctions, and other appropriate enforcement mechanisms if we become aware that those measures are required. It delegates to the Bureau the question of requiring that LECs place service quality standards in their interstate access tariffs.

32. The Commission determined that infrastructure and service quality reports are to be included in ARMIS. *LEC Price Cap Order*, 5 FCC Rcd at 6828, 6829, paras. 342, 352. The reports currently filed in ARMIS are accounting reports, however, not service quality or infrastructure reports. ARMIS is located in and administered by the Accounting and Audits Division of the Bureau, while service quality and infrastructure are monitored by the Industry Analysis Division. While the new reports will be filed in ARMIS for convenience and accessibility, they will be in the purview of the Industry Analysis Division for purposes of monitoring and evaluation. Copies will be available both through ARMIS and through the Industry Analysis Division. The Bureau's proceeding will further clarify filing requirements.

III. Conclusion and Ordering Clauses

33. The rules adopted here revising tariff filing requirements and the adjustment formulas will be effective June 30, 1991, as specified below, in order to implement these revisions prior to the July 1, 1991 tariff effective date. We find good cause to make these rules effective on less than 30 days' notice after publication in the **Federal Register**. See 5 U.S.C. 553(b)(B). These revisions are necessary to insure that the substantial benefits of the price cap plan to the public are maximized. If these rules are not in effect when the price cap tariffs take effect on July 1, 1991, the benefits resulting from these rules will be delayed for a full year after that filing, or until July 1, 1992. Further, the rule revisions adopted here require only minor revisions to the companies' price cap filing submitted April 2, 1991, so that the companies required to take action within less than 30 days from **Federal Register** publication have adequate time to do so.

34. Accordingly, *It is ordered*, pursuant to sections 151, 154 (i) and (j), 201–205, 303(r), and 405 of the Communications Act, 47 U.S.C. 151, 154 (i) and (j), 201–205, 303(r), and 405, that the petitions for reconsideration, partial reconsideration and/or clarification filed in this proceeding are denied, except as provided herein.

35. *It is further ordered* that, pursuant to sections 154 (i) and (j), 201–205, 303(r), and 405 of the Communications Act, 47 U.S.C. 151, 154 (i) and (j), 201–205, 303(r), 405, and section 553 of title 5, United States Code, that §§ 61.45(d) and 69.105(b) of this Commission's Rules, 47 CFR 61.45(d) and 69.105(b), are amended as set forth below effective June 30, 1991.

36. *It is further ordered*, pursuant to sections 154 (i) and (j), 201–205, 303(r), and 405 of the Communications Act, 47 U.S.C. 151, 154 (i) and (j), 201–205, 303(r), and 405, that §§ 61.48(d), 61.49(g), 65.600(d), and 65.703 of this Commission's Rules, 47 CFR 61.48(d), 61.49(g), 65.600(d), and 65.703, are amended as set forth below effective 30 days after publication in the **Federal Register.**

Federal Communications Commission.

Donna R. Searcy,

Secretary.

List of Subjects

47 CFR Part 61

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Price cap tariff filing and review procedures.

47 CFR Part 65

Administrative practice and procedure, Communications common carriers, Reporting and recordkeeping requirement.

47 CFR Part 69

Communications common carriers reporting and recordkeeping requirements and telephone.

Amendments to the Code of Federal Regulations

Title 47 of the CFR, parts 61, 65, and 69, are amended as follows:

PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.45 is amended by revising paragraph (d)(1)(ii), adding paragraph (d)(1)(viii), and revising paragraphs (d) (2) and (3) as follows:

§ 61.45 Adjustments to the PCI for local exchange carriers.

* * * * *

(d) * * *

(1) * * *

(ii) Such changes in the Uniform System of Accounts as the Commission shall permit or require

* * * * *

(viii) Inside wire amortizations.

(2) Local exchange carriers specified in § 61.41(a)(2) or (a)(3) of this part shall also make such temporary exogenous cost changes as may be necessary to reduce PCIs to give full effect to any sharing of base period earnings required by the sharing mechanism set forth in 47 CFR parts 61, 65 and 69. Such exogenous cost changes shall include interest, computed at the prescribed rate of return, from the day after the end of the period giving rise to the adjustment, to the midpoint of the period when the adjustment is in effect.

(3) Local exchange carriers specified in § 61.41(a)(2) or (a)(3) of this part shall, in their annual access tariff filing, recognize all exogenous cost changes attributable to modifications during the coming tariff year in the obligations specified in § 61.45(d)(1)(IV) as well as those changes attributable to alterations in their Subscriber Plant Factor and the Dial Equipment Minutes factor, and completions of inside wire amortizations and reserve deficiency amortizations.

* * * * *

3. Section 61.48 is amended by redesignating paragraph (d) as paragraph (d)(1), and adding new paragraph (d)(2) to read as follows:

§ 61.48 Transition rules for price cap formula calculations.

* * * * *

(d) * * *

(2) Carriers electing price cap regulation under § 61.41(a)(3) of this part in a year after 1991 shall file initial price cap tariffs not later than April 2 of the year of election, to be effective on July 1 of the year of election. Each PCI, API, and SBI shall be assigned an initial value prior to adjustment of 100, corresponding to the costs and rates in effect as of January 1 of the year of election.

4. Section 61.49 is amended by redesignating paragraph (g) as paragraph (g)(1), revising the last sentence of paragraph (g)(1), and adding new paragraph (g)(2) to read as follows:

§ 61.49 Supporting information to be submitted with letters of transmittal for tariffs of carriers subject to price cap regulation.

* * * * *

(g)(1) * * * Each carrier making such a tariff filing must, at the time the new service is incorporated into the price cap index, submit data sufficient to make the API and PCI calculations required by §§ 61.46(b) and 61.44(c) of this part, and, as necessary, to make the SBI calculations provided in § 61.47 (b) or (c) of this part.

(2) In addition to the requirements of § 61.49(g)(1), each tariff filing submitted by a local exchange carrier specified in § 61.41(a) (2) or (3) of this part that introduces a new service that will later be included in a basket must be accompanied by cost data sufficient to establish that the new service will not recover more than a just and reasonable portion of the carrier's overhead costs.

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

5. The authority citation for part 65 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

6. Section 65.600 is amended by revising paragraph (d) to read as follows:

§ 65.600 Rate of return reports.

* * * * *

(d)(1) Each local exchange carrier or group of affiliated carriers subject to §§ 61.41 through 61.49 of this chapter shall file with the Commission within three (3) months after the end of each calendar year a report of its total interstate rate of return for that year. Such filings shall include a report of the total revenues, total expenses and taxes, operating income, and the rate base. Reports shall be filed on the appropriate form prescribed by the Commission (see § 1.795 of this chapter) and shall provide full and specific answers to all questions propounded and information requested in the currently effective form. The number of copies to be filed shall be specified in the applicable report form. At least one copy of the report shall be retained in the principal office of the respondent and shall be filed in such manner as to be readily available for reference and inspection.

(2) Each local exchange carrier or group of affiliated carriers subject to §§ 61.41 through 61.49 of this chapter shall file with the Commission within fifteen (15) months after the end of each calendar year a report reflecting any corrections or modifications to the report filed pursuant to paragraph (d)(1) of this section. Reports shall be filed on

the appropriate form prescribed by the Commission (see § 1.795 of this chapter) and shall provide full and specific answers to all questions propounded and information requested in the currently effective form. The number of copies to be filed shall be specified in the applicable report form. At least one copy of the report shall be retained in the principal office of the respondent and shall be filed in such manner as to be readily available for reference and inspection.

§ 65.703 [Amended]

7. Section 65.703 is amended by removing paragraph (h).

PART 69—ACCESS CHARGES

8. The authority citation for part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

9. Section 69.105 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 69.105 Carrier common line.

* * * * *

(b) * * *

(2) For association Carrier Common Line tariff participants:

(i) The premium originating Carrier Common Line charge shall be one cent per minute, except as described in § 69.105(b)(3), and

(ii) The premium terminating Carrier Common Line charge shall be computed as follows:

(A) For each telephone company subject to price cap regulation, multiply the company's proposed premium originating rate by a number equal to the sum of the premium originating base period minutes and a number equal to 0.45 multiplied by the non-premium originating base period minutes of that telephone company;

(B) For each telephone company subject to price cap regulation, multiply the company's proposed premium terminating rate by a number equal to the sum of the premium terminating base period minutes and a number equal to 0.45 multiplied by the non-premium terminating base period minutes of that telephone company;

(C) Sum the numbers computed in paragraphs (b)(2)(ii) (A) and (B) of this section for all companies subject to price cap regulation;

(D) From the number computed in paragraph (b)(2)(ii)(C) of this section, subtract a number equal to one cent times the sum of the premium originating base period minutes and a number equal to 0.45 multiplied by the non-premium originating base period minutes of all telephone companies subject to price cap regulation, and;

(E) Divide the number computed in paragraph (b)(2)(ii)(D) of this section by the sum of the premium terminating base period minutes and a number equal to 0.45 multiplied by the non-premium terminating base period minutes of all telephone companies subject to price cap regulation.

(3) If the calculations described in § 69.105(b)(2) result in a per minute charge on premium terminating minutes that is less than once cent, both the originating and terminating premium charges for the association CCL tariff participants shall be computed by dividing the number computed in paragraph (b)(2)(ii)(C) of this section by a number equal to the sum of the premium originating and terminating base period minutes and a number equal to 0.45 multiplied by the sum of the non-premium originating and terminating base period minutes of all telephone companies subject to price cap regulation.

* * * * *

Statement of Commissioner Ervin S. Duggan

Concurring in Part, Dissenting in Part

In Re: Policy and Rules Concerning Rates for Dominant Carriers (CC Docket No. 87-313), Order on Reconsideration

Last September, I dissented on one small part of our initial order adopting price caps for local exchange telephone companies. I had reservations about the common line formula that the majority chose—and because the Commission today chooses not to reconsider its choice of a common line formula, I will again dissent on that portion. As I said in my September statement, I question that formula because it gives the companies, rather than ratepayers, the full benefit of growth in demand over common lines. The formula could result in carrier common line rates under price caps that are higher than they would have been under rate of return regulation.

Today, however, I want to emphasize my support for this new endeavor, rather than any residual reservations I may have.

Today we launch a great undertaking: we reaffirm the adoption of price caps for local exchange telephone companies. Thus this Commission enters into a hopeful and promising partnership with the telephone companies—a partnership that I have every reason to believe will bear fruit in greater innovation, greater efficiency, and greater investment in new technology.

By adopting incentive regulation, we have offered the local exchange companies a challenge—to perform in a way that they have never had the incentive to do before. I'm excited about the possibilities. Incentive regulation, in my judgment, has the potential to advance this industry and to fundamentally improve the way that telephone companies do business.

Some people, including me, have occasionally voiced concerns about this new venture. They ask, for example, whether telephone companies will maintain high service quality levels under price caps. Those are serious concerns. But one of the FCC's primary responsibilities is to ensure that the high quality phone service we take for granted continues. Undeniably, price caps will provide incentives to cut costs. We need to be sure that cost-cutting measures do not cut into service quality or network investment—and we will do that. That is why we have asked the Common Carrier Bureau to determine what data we will need to monitor service quality and investment and to ensure that no degradation occurs.

Three items in particular seem worthy to me of comment as that monitoring proceeding goes forward.

First, it appears to me that we would benefit from receiving data that is broken down by service category and by geographic area. That would help the Commission learn whether cost-cutting measures under price caps were disproportionately affecting rural areas or services that face little competition.

Second, I hope parties will comment on the proposal that carriers should include service quality standards or goals in their tariffs. One benefit of having standards in the tariffs would be to enable customers and the Commission to measure a company's service quality against that of other carriers and against general industry performance. I wonder whether this might be a useful approach.

Third, all of us will watch with great interest, hoping that price caps does indeed provide incentives for investment in important technologies like signalling system 7.

Our monitoring of service quality and network investment is part of our responsibility to ensure that the incentives we have created are working as we have hoped. We have something else going for us: These companies have given the public the best telephone service in the world. They have a great tradition. Today we have every reason to believe that that tradition and these new incentives will work together to create a great new future for these companies and for American consumers.

[FR Doc. 91-11151 Filed 5-9-91; 8:45]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91-23; Notice 1]

Federal Motor Vehicle Safety Standards: Air Brake Systems

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

ACTION: Final rule; technical amendment.

SUMMARY: The most recent edition of title 49 of the Code of Federal Regulations contains errors with respect to NHTSA's air brake systems standard. This notice corrects those errors, so that the replacement for this edition of the Code of Federal Regulations will be accurate. No new obligations or duties are imposed on any party as a result of these corrections, since they merely incorporate the provisions as intended by the agency.

EFFECTIVE DATE: June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Marvin L. Shaw, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366-2992.

SUPPLEMENTARY INFORMATION: It has come to this agency's attention that the most recent edition of title 49 of the Code of Federal Regulations (CFR), revised as of October 1, 1990, contains errors with respect to Standard No. 121, *Air brake systems.* (49 CFR 571.121.) It appears that certain amendments published in the **Federal Register** have not been properly incorporated into the CFR. This notice makes the following changes to correct this error.

First, what appears in the current CFR as the second sentence of S5.6 was actually an amendment to S6, as published at 43 FR 48648 (October 19, 1978). This correction notice moves this sentence to its proper place at the end of the text in S6 and deletes the sentence in S5.6. Second, the current CFR does not contain section S5.6.4, despite an amendment in 41 FR 29704 (July 19, 1976) which included this provision. Third, the current CFR does not include S6.1.10.1, despite an amendment correcting the standard to add this provision in 41 FR 32221 (August 2, 1976).

This amendment imposes no duties or responsibilities on any party, nor does it alter any existing obligations. Instead this amendment will ensure that the public will have a correct copy of Standard No. 121 in title 49 of the Code of Federal Regulations. Accordingly, NHTSA finds for good cause that notice and opportunity for comment on this rulemaking is unnecessary. In addition, because the amendments are technical in nature, the agency finds for good cause shown that an effective date earlier than 180 days after issuance of the rule is in the public interest, and the amendment is effective 30 days after publication in the **Federal Register.**

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—[AMENDED]

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

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

§ 571.121 [Amended]

2. In § 571.121, Standard No. 121, section S5.6 is revised to read as follows:

* * * * *

S5.6 *Parking brake system.* Each vehicle other than a trailer converter dolly shall have a parking brake system that under the conditions of S6.1 meets the requirements of S5.6.1 or S5.6.2, at the manufacturer's option, and the requirements of S5.6.3 and S5.6.4. However, any agricultural commodity trailer, heavy hauler trailer, or pulpwood trailer shall meet the requirements of this section or, at the option of the manufacturer, the requirements of § 393.43 of this title.

* * * * *

3. In § 571.121, Standard No. 121 is amended by adding S5.6.4 after S5.6.3.5 as follows:

* * * * *

S5.6.4 *Parking brake control—trucks and buses.* The parking brake control shall be separate from the service brake control. It shall be operable by a person seated in the normal driving position. The control shall be identified in a manner that specifies the method of control operation. The parking brake control shall control the parking brakes of the vehicle and of any air braked vehicle that it is designed to tow.

* * * * *

4. In § 571.121, Standard No. 121, section S6 is revised to read as follows:

* * * * *

S6 *Conditions.* The requirements of S5 shall be met by a vehicle when it is tested according to the conditions set forth below, without replacing any brake system part or making any adjustments to the brake system except as specified. Unless otherwise specified, where a range of conditions is specified, the vehicle must be capable of meeting the requirements at all points within the range. On vehicles equipped with automatic brake adjusters, the automatic brake adjusters must remain activated at all times. Compliance of vehicles manufactured in two or more stages may, at the option of the final-stage manufacturer, be demonstrated to comply with this standard by adherence to the instructions of the incomplete vehicle manufacturer provided with the vehicle in accordance with § 568.4(a)(7)(ii) and § 568.5 of title 49 of the Code of Federal Regulations.

* * * * *

5. In § 571.121, Standard No. 121 is revised by adding S6.1.10.1, as follows:

* * * * *

S6.1.10.1 The control trailer conforms to this standard.

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Issued on: May 7, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-11176 Filed 5-9-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 900833-1095]

RIN 0648-AD18

Groundfish of the Gulf of Alaska, Groundfish Fishery of the Bering Sea and Aleutian Islands Area

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

ACTION: Interim final rule; request for comments.

SUMMARY: NOAA issues an interim final rule to implement revised Amendment 16 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea/Aleutian Islands (BSAI) and revised Amendment 21 to the FMP for the Gulf of Alaska (GOA) Groundfish Fishery. The interim final rule is effective immediately upon filing with the Office of the Federal Register. The public will have 30 days to comment on the interim rule. NOAA will respond to the comments received and issue a final rule.

These regulations will enhance prohibited species bycatch management in the BSAI and GOA by: (1) Holding operators of individual trawl vessels accountable for their bycatch of halibut and red king crab during their participation in specified groundfish fisheries, and (2) clarifying and revising fishery closures which are triggered by the attainment of prohibited species bycatch allowances specified for the "Domestic Annual Processing (DAP) other fishery" under 50 CFR 675.21. This action is deemed necessary to promote

management and conservation of groundfish and other fish resources. It is intended to further the goals and objectives included in the FMPs that govern these fisheries.

DATES: Effective May 6, 1991. Comments on the interim final rule are invited through June 5, 1991.

ADDRESSES: Comments may be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802. Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) prepared for revised Amendments 16 and 21 may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson (Fisheries Management Division, Alaska Region, NMFS) 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the GOA and BSAI areas are managed by the Secretary of Commerce (Secretary) according to FMPs prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations for the foreign fisheries at 50 CFR part 611 and for the U.S. fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fishery are found at 50 CFR part 620.

In the trawl, hook-and-line, and pot groundfish fisheries, incidental (bycatch) species, including crab, halibut, herring, and salmon are taken along with targeted groundfish species. Conflicts arise when bycatch in one fishery reduces the amount of a species available for harvest in another fishery. The bycatch problem also is a particularly contentious allocation issue because crab, halibut, herring, or salmon fishermen value the use of these species very differently than groundfish fishermen. During 1990, the Council adopted management measures to limit crab, halibut, and herring bycatch in the groundfish fisheries. During 1991, the Council is expected to consider additional bycatch management measures, including those to limit salmon bycatch.

At its June 25-30, 1990, meeting, the Council adopted Amendments 16 and 21 for submission to the Secretary for review and approval. The Amendments included authorization of a bycatch incentive program. The proposed rule to implement the Amendments contained several bycatch management measures, including a program to encourage individual groundfish vessel operators to avoid excessive bycatch rates of prohibited species (55 FR 38347, September 18, 1990). The Council anticipated that this "vessel incentive program," commonly referred to as the "penalty box" program, would reduce overall prohibited species bycatch rates within the BSAI and GOA groundfish fisheries. On November 9, 1990, the Secretary approved the management measures in Amendments 16 and 21, except for the penalty box program as described in §§ 672.26 and 675.26 of the proposed rule. The reasons for the denial are set forth in the final rule implementing the approved portions of Amendments 16 and 21 (56 FR 2700, January 24, 1991).

Based on the partial disapproval of Amendments 16 and 21, the Director, NMFS, Alaska Region (Regional Director), notified the Council that the penalty box program, as proposed under the Amendments, could not be implemented. Under section 304(b)(2) of the Magnuson Act, the Regional Director also recommended actions the Council could take to develop a vessel incentive program that would conform with applicable legal requirements.

Based on the Regional Director's recommendations, the Council adopted a revised vessel incentive program during a November 15, 1990, teleconference meeting to resubmit to the Secretary for review and approval under section 304(b)(3) of the Magnuson Act. Proposed regulations were published on January 16, 1991 (56 FR 1612), and comments were invited until January 31, 1991. Comments received are summarized and responded to in the "Public comments received" section.

On February 1, 1991, the Secretary approved revised Amendments 16 and 21 that would authorize an incentive program to reduce prohibited species bycatch. This interim final rule implements the revised Amendments by holding individual vessel operators and owners accountable for their bycatch of halibut and red king crab during their participation in specified groundfish fisheries. The following describes specific changes between the proposed rule and the interim final rule, the purpose of the vessel incentive program, and the specific elements of the vessel incentive program set forth in the final rule. The following also addresses clarifications and revisions to fishery closures under § 675.21(c)(2).

Changes Between the Proposed Rule and the Interim Final Rule

The interim final rule makes three substantive changes in the proposed rule. First, the interim final rule deletes proposed revisions to the BSAI fishery definitions set forth in § 675.21(b)(4) for purposes of monitoring prohibited species catch (PSC) limits and adds fishery definitions proposed for the fisheries included in the incentive program in a new § 675.26(b). The original intent of NMFS in proposing revisions to fishery definitions under § 675.21(b)(4) was to establish one set of fishery definitions for monitoring PSC limits and the incentive program. NMFS subsequently determined that the proposed fishery definitions did not allow for proper accounting of fishery bycatch allowances under § 675.21, and that such accounting would be accomplished more appropriately under the existing fishery definitions which are based on retained catch composition. The fishery definitions for the incentive program are based on total groundfish catch composition. They are moved from § 675.21(b)(4) to a new § 675.26(b). Furthermore, new § 675.26(b) includes only fishery definitions necessary to delineate the Pacific cod and flatfish fisheries that will be monitored under the incentive program.

Second, the interim final rule revises regulations at § 672.26(d) and § 675.26(d) to require that observers use random sampling procedures to sample hauls and to incorporate technical editorial changes. Although the methodology currently employed by NMFS is the best available for calculating vessel bycatch rates for the purposes of the incentive program, the interim final rule provides NMFS with flexibility to modify the methodology to incorporate new developments in the collection of larger sample sizes and computation of total catch weights.

Third, the interim final rule differs from the proposed rule by clarifying fishery closures under § 675.21(c)(2) to more closely conform this section with the intent of the regulations to limit the catch of prohibited species. This provision is discussed further under "Revision of fishery closures under § 675.21(c)(2)."

Justification for a Vessel Incentive Program

A vessel incentive program is necessary to encourage vessel operators to take actions while fishing that result in lower bycatch rates and better conservation and management of marine resources among competing

users. Directed fishing for groundfish results in incidental fishing mortality of crab, halibut, and other prohibited species. The incidental take of crab and halibut is one of several competing uses of these resources. Crab and halibut also may be used as current or future target catch in their respective fisheries, or may contribute to the productivity of the crab and halibut stocks or the productivity of other components of the ecosystem. However, their uses, other than as incidental catch require that the crab and halibut remain in the sea.

Existing regulations at §§ 675.21 and 672.20(f) establish PSC limits to control the bycatch of crab and halibut in the groundfish trawl fisheries in the BSAI and halibut in the groundfish trawl, hook-and-line, and pot fisheries in the GOA. In 1990, the PSC limits resulted in the closures of specified trawl and hook-and-line fisheries and reductions in groundfish catch that imposed costs on entities that could have benefited from continued fishing in fisheries that would have otherwise remained open.

Problems facing the groundfish fisheries that are intended to be addressed by the vessel incentive program are: (1) No incentive exists for vessel operators to change fishing practices to reduce bycatch, and (2) the actions of a few operations, that fish in a manner that results in higher bycatch rates, can impose substantial costs on the rest of the fleet.

For a given PSC limit, or apportionment thereof, the amount of groundfish that can be harvested prior to a PSC-limit-induced closure is determined by the average bycatch rate of the fishery. Therefore, a PSC limit should act as an incentive to fishermen to reduce bycatch rates. The increased opportunity to harvest groundfish, which results from reduced bycatch rates, benefits the groundfish fleet as a whole. Practically, individual operations often harvest groundfish rapidly and ignore bycatch to meet directed catch expectations of the individual vessels before the fishery is closed.

This operating procedure results in bycatch rates that are unnecessarily high and that, in turn, cause the industry to reach PSC limits more quickly. A much higher cost on the fishery is imposed through foregone opportunity to harvest available groundfish than if the rate at which PSC limits are reached were reduced. A fishing operation that concentrates on keeping its bycatch rate low bears the costs of doing so in terms of decreased catch and increased operating costs to fish "cleaner." Currently, the operation does not receive benefits proportional to its reduction of bycatch or the costs it incurs to fish "cleaner." An operation that does not act to control its bycatch rates will not bear such costs. Also, it will not likely share the cost of the foregone opportunities it imposes on the fishery as a whole by contributing to premature closures. Indeed, such an operation may receive a disproportionately large share of the benefit of actions taken by others to reduce the fishery's average bycatch rate.

The vessel incentive program implemented by this interim final rule is intended to decrease the costs in terms of foregone opportunity that the PSC limits could impose on the trawl fisheries and to establish a comprehensive, effective, equitable, and efficient long-term bycatch management regime. The revised vessel incentive program differs from the penalty box program in three respects: (1) It will be applied to fewer BSAI and GOA fisheries having new target fishery definitions; (2) it will be based on seasonal fixed bycatch rate standards; and (3) it will rely upon civil penalties, civil forfeitures, and permit sanctions authorized under sections 307–310 of the Magnuson Act that could be assessed against those found in violation of the bycatch rate standards.

Description of the Vessel Incentive Program Under Regulations Implementing Revised Amendments 16 and 21

1. Scope of the Vessel Incentive Program

The revised incentive program applies to: (1) Halibut bycatch in the BSAI and GOA Pacific cod trawl fisheries, the BSAI flatfish fisheries, and the GOA "bottom rockfish" trawl fishery; and (2) red king crab bycatch in the BSAI flatfish fisheries in Zone 1, as defined in § 675.2. All catcher/processor vessels and catcher vessels (including those that deliver unsorted codends to mothership processors) participating in these fisheries and for which observer data are collected will participate in the incentive program.

The Council selected the Pacific cod, bottom rockfish, and flatfish trawl fisheries for inclusion under the revised vessel incentive program. These fisheries were selected because (1) NMFS has operational and administrative ability to monitor and enforce a vessel incentive program only for a limited number of fisheries in 1991, (2) NMFS and the groundfish industry have identified these fisheries as having higher halibut or crab bycatch rates than other groundfish fisheries, (3) they are the fisheries most susceptible to premature fishery closures under existing PSC limit restrictions, and (4) reduced bycatch rates in these fisheries will provide the greatest benefit to other groundfish trawl fisheries in terms of increased opportunity to harvest groundfish under shared bycatch allowances

2. Fishery Definitions

Under the interim final rule, fishery definitions for the BSAI and GOA groundfish trawl fisheries are set forth for purposes of determining whether a vessel will be held accountable for its weekly bycatch rate of crab and halibut under the incentive program. The fishery definitions for purposes of the incentive program are based on the species composition of a vessel's total groundfish catch. These definitions differ from those set forth under § 675.21(b)(4) which are based on the species composition of retained catch and are used for the purpose of monitoring PSC limits.

The analysis from which the incentive program fishery definitions are derived is set forth in the EA/RIR/FRFA prepared for the revised Amendments 16 and 21. The analysis is based on at-sea observer data on groundfish catch composition and corresponding prohibited species bycatch rates collected from the 1990 DAP fisheries. The hierarchy of fishery categories set forth below for the BSAI and the GOA fishery definitions are based upon NMFS' examination of historical observer data on groundfish catch composition and how closely a fishery's groundfish catch composition reflected intended target operations. For purposes of the incentive program, data on the species composition of a vessel's groundfish catch during any weekly reporting period will be derived from observer data collected from observed catch of allocated groundfish species.

BSAI fisheries. At the end of each weekly reporting period, a trawl vessel's BSAI catch composition of groundfish for which a total allowable catch (TAC) has been specified under § 675.20 will be used by NMFS to assign it to one of four fisheries for that week. The following four categories are listed in priority. The first of these categories which the vessel meets will determine the fishery to which the vessel is assigned.

1. Greenland turbot fishery, if Greenland turbot is at least 35 percent of the vessel's allocated groundfish catch.

2. Pacific cod fishery, if Pacific cod is at least 45 percent of the vessel's allocated groundfish catch.

3. Flatfish fishery, if yellowfin sole, rock sole, and other flatfish comprise at least 40 percent of the vessel's allocated groundfish catch.

4. Other non-pelagic trawl fishery, if pollock is less than 95 percent of the vessel's allocated groundfish catch.

In the BSAI, a vessel would be subject to the vessel incentive program if NMFS assigns it to the Pacific cod or the flatfish fishery based on the vessel's weekly observed catch composition. Although neither the Greenland turbot fishery nor the "other non-pelagic trawl fishery" are included under the vessel incentive program, definitions for these fisheries are specified to clarify the hierarchy used to define the Pacific cod and flatfish fisheries.

GOA fisheries. Under the interim final rule, a trawl vessel's observed GOA groundfish catch of the TAC species each week, excluding arrowtooth flounder, will be used as a basis for assigning it to one of three fisheries for that week. Arrowtooth flounder is excluded because, although this species may comprise a large percentage of groundfish catch, it typically is not retained. The first of the following three categories that a vessel meets will determine the fishery to which the vessel is assigned by NMFS.

1. Pacific cod fishery, if Pacific cod is at least 45 percent of the vessel's allocated groundfish catch.

2. Bottom rockfish fishery, if rockfish (Pacific Ocean perch, shortraker/rougheye rockfish, slope rockfish, demersal shelf rockfish, and thornyhead rockfish, in the aggregate) is at least 30 percent of the vessel's allocated groundfish catch.

3. Other non-pelagic trawl fishery, if pollock is less than 95 percent of the vessel's groundfish catch.

A vessel would be subject to the vessel incentive program if it is assigned to either the Pacific cod fishery or the rockfish fishery.

3. Bycatch Rate Standards

Under the vessel incentive program, NOAA will establish a bycatch rate standard for each fishery monitored under the incentive program. Any vessel whose monthly bycatch rate exceeds a bycatch rate standard is in violation of these regulations.

Red king crab and halibut bycatch rate standards for vessels in the Pacific cod, rockfish, and flatfish trawl fisheries will be determined by NMFS on the basis of seasonal fixed bycatch rates that will be established semi-annually. NMFS will use seasonal bycatch rate standards to adjust for fluctuations in the factors that affect bycatch rates. The standards will be based on criteria listed below including observed average bycatch rates.

The halibut bycatch rate standards will be based on average bycatch rates observed in the BSAI or GOA. Halibut bycatch rate standards are established separately for each of the BSAI Pacific cod, BSAI flatfish, GAO Pacific cod, and GOA bottom rockfish fisheries.

The red king crab bycatch rate standards established for the BSAI flatfish fisheries will be based on bycatch rates observed in Zone 1. Compliance with red king crab bycatch rates standards will be monitored only for Zone 1.

Vessel owners will be provided notice of the bycatch rate standards against which they will be judged. Prior to January 1 and July 1 of each year, bycatch rate standards will be published by NMFS in the **Federal Register.** These standards will be in effect for specified seasons within the 6-month periods of January 1 through June 30 and July 1 through December 31, respectively. Inseason revisions to those bycatch rate standards may be made when deemed appropriate by the Regional Director through notice in the **Federal Register.** The bycatch rate standards for a fishery and revisions to those standards will be based on previous bycatch rates and other relevant criteria, including:

(A) Previous years' average observed bycatch rates for the fishery;

(B) Immediately preceding season's average observed bycatch rates for the fishery;

(C) The prohibited species bycatch allowances and associated fishery closures specified for the fishery;

(D) Anticipated groundfish harvests for that fishery;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Regional Director.

The analysis presented in the EA/RIR/FRFA used bycatch rate standards equal to the average bycatch rate exhibited by vessels with the lowest bycatch rates in the GOA and BSAI. These vessels accounted for approximately 80 percent of the catch in the 1990 DAP trawl fisheries for Pacific cod, rockfish, and flatfish. For the GOA analysis, halibut bycatch rates were determined based on allocated groundfish catch excluding arrowtooth flounder.

At its December 3–7, 1990, meeting, the Council recommended alternative bycatch rate standards based on 1990 average quarterly bycatch rates exhibited by all vessels that participated in these fisheries. If a fishery had not operated during a quarter, the Council recommended using historical joint venture processing bycatch rates for that quarter. The Council also recommended that GOA bycatch rate standards for the Pacific cod trawl fishery be based on average bycatch rates observed in the Central Regulatory Area rather than in the GOA as a whole. The Council recognized that bycatch rates of halibut in the Central Regulatory Area are typically higher than in other areas of the GOA. A bycatch rate standard based on a GOA-wide average would be too conservative for the Pacific cod fishery in the Central Regulatory Area. These standards are set forth in Table 1.

Council recommendations for bycatch rate standards are generally higher than those analyzed in the EA/RIR/FRFA. However, the Council expressed its view that its recommended rates would meet the intent of the Council to reduce overall bycatch rates during the first year of a vessel incentive program.

The Secretary concurs in the Council's recommendation to exclude arrowtooth flounder when assigning a vessel to a fishery based upon its weekly GOA groundfish catch, because bycatch amounts of arrowtooth flounder continue to comprise a relatively large percentage of the catch in other directed groundfish fisheries. The Secretary is aware that some groundfish processors have expressed an interest in processing amounts of arrowtooth flounder caught as bycatch in other directed groundfish fisheries. The Secretary has determined, therefore, that contrary to the bycatch rate standards analyzed in the EA/RIR/FRFA, NMFS will include arrowtooth flounder when estimating bycatch rates for vessels participating in the GOA Pacific cod and bottom rockfish fisheries. This determination could result in lower estimates of bycatch rates for vessels that operate in directed fisheries with large bycatch amounts of arrowtooth flounder.

The Secretary has determined that neither the considerations for arrowtooth flounder bycatch in the GOA trawl fisheries discussed above, nor the bycatch rate standards recommended by the Council undermine the intent of the incentive program to reduce prohibited species bycatch rates. The Secretary also recognizes that experience obtained under the 1991 program could be used to refine bycatch management measures and associated bycatch rate standards under subsequent rulemaking. The Secretary, therefore, concurs in the Council's recommended bycatch rate standards.

TABLE 1.—BYCATCH RATE STANDARDS FOR THE 1991 VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA BY FISHERY AND QUARTER

Fishery and quarter	1991 bycatch standard
Halibut bycatch as kg of halibut/mt of allocated groundfish catch	
BSAI Pacific cod	
Qt 1	13.5
Qt 2	18.5
BSAI flatfish	
Qt 1	13.1
Qt 2	3.0
GOA rockfish	
Qt 1—2	40.0
GOA Pacific cod	
Qt 1	33.1
Qt 2	41.3
Zone 1 red king crab bycatch rates (number of crab/mt of allocated groundfish)	
BSAI flatfish	
Qt 1	2.88
Qt 2	1.50

4. Observer Sampling Procedures

For the purposes of the incentive program, fisheries observers will sample in a random manner catches taken by domestic fishing vessels to determine compliance with bycatch rate standards specified for the fishery. The sampling methods used by observers and the level of sampling that can be accomplished by an observer are limited by the physical characteristics of the variety of vessels involved in the groundfish fisheries and the diversity of processing and operational procedures used aboard those vessels. NMFS believes the random sampling methods established for observers are practical and reasonable, given such constraints and the intent to cause minimal disruption of fishing and processing operations. NMFS further believes the random sampling procedures will reasonably reflect a vessel's total catch composition of groundfish and prohibited species.

NMFS Observer Program guidelines will require observers to follow standardized procedures to sample the catch to obtain the necessary data for the incentive program. These procedures require an observer to sample at random at least 50 percent of a vessel's total number of trawl hauls retrieved while the observer is on board, as recorded in the vessel's daily logbook (which is required to be kept under §§ 672.5 and 675.5). Observers will take a minimum of 100 kilograms of fish from each haul sampled to estimate the species composition and prohibited species bycatch rates. Haul samples will be taken from different parts of the net, holding bins, or conveyor belts. Samples will be taken prior to sorting of the haul by the crew for processing or discarding of the catch. NMFS believes these sampling procedures adequately take into consideration any possible stratification of species that may occur within the catch.

It is a violation of 50 CFR parts 672.27 and 675.25 for any member of the crew of a vessel or processing plant to interfere with or bias the sampling procedure employed by an observer, including by sorting or discarding any catch before sampling. It also is a violation of these regulations to prohibit or bar by command, impediment, threat, coercion, or by refusal of reasonable assistance an observer from collecting samples.

5. Calculations of Vessel Bycatch Rates

While an observer is at sea, the observer will report to NMFS on at least a weekly basis the total number of red king crab, total weight in kilograms of halibut, and total weight in metric tons of each allocated groundfish species in all of the samples taken by the observer from each trawl haul. Based on statistical methodologies set forth in incentive program guidelines, NMFS will calculate a vessel's bycatch rate for each fishery in which it participates during a month. Those calculations will be derived using the total round weight in kilograms of halibut or number of red king crab observed in haul samples taken by the observer during that month and the total round weight in metric tons of allocated groundfish in those samples. Upon request, the observer will give the vessel operator access to the data the observer collects while on board the vessel that will be used by NMFS to estimate the vessel's bycatch rate. The vessel operator, therefore, will be able to monitor the vessel's bycatch rate.

6. Determinations

At the end of each fishing month, NMFS will use observed data that has been checked, verified, and analyzed, to calculate the monthly bycatch rates of red king crab and/or halibut for each vessel during the periods it was assigned to each of the BSAI flatfish fishery, the BSAI/GOA Pacific cod fisheries, or the GOA bottom rockfish fishery during that month. Each calculated monthly bycatch rate will be compared with the corresponding fixed bycatch rate standard specified for each of those fisheries to which the vessel was assigned. A bycatch rate for a fishing month that is above the applicable bycatch rate standard constitutes a violation of the regulations implementing the vessel incentive program. Any such case will be referred for review to NOAA Office of General Counsel, the office responsible for bringing civil penalty and other legal proceedings.

For purposes of the vessel incentive program, a "fishing month" is defined as a time period calculated on the basis of weekly reporting periods. Each fishing month will begin on the first day of the first weekly reporting period that has at least 4 days in the associated calendar month and will end on the last day of the last weekly reporting period that has at least 4 days in that same calendar month. Based on this definition, the 1991 fishing months are specified as the following periods:

Month 1: January 1 through February 3;
Month 2: February 4 through March 3;
Month 3: March 4 through March 31;
Month 4: April 1 through April 28;
Month 5: April 29 through June 2;
Month 6: June 3 through June 30;
Month 7: July 1 through July 28;
Month 8: July 29 through September 1;
Month 9: September 2 through September 29;
Month 10: September 30 through November 3;
Month 11: November 4 through December 1; and
Month 12: December 2 through December 31.

7. Public Release of Vessel Bycatch Rates

A rule is being proposed, as part of a separate action, to implement changes to the Observer Plan authorizing NMFS to publicize inseason unverified observed bycatch rates of individual vessels. If such authority is approved, NMFS could post unverified weekly observed bycatch rates that could be used by vessel operators as guidance for adjusting fishing operations to reduce bycatch rates. At a minimum NMFS would continue to release a vessel's unverified observed bycatch rate to the vessel's operator or owner. Whether NMFS exercises authority for public release of observed bycatch rates, inseason weekly rates available to the industry would continue to be based on unverified observer data and subject to revision as observers are debriefed and their data are analyzed.

Revision of fishery closures under § 675.21(c)(2)

Directed fishing closures resulting from the attainment of prohibited species bycatch allowances specified for the "DAP other fishery" under § 675.21(c)(2) are clarified based on the standards for directed fishing set forth under § 675.20(h). Furthermore, closures of the directed trawl fishery for Pacific cod with other than pelagic trawl gear under § 675.21(c)(2) are revised so that directed fishing for Pacific cod with all trawl gear configurations is prohibited

once the "DAP other fishery" reaches a prohibited species bycatch allowance.

This action is necessary to prohibit Pacific cod fishermen from circumventing the intent of fishery closures under § 675.21 to reduce prohibited species bycatch once a fishery has reached a specified prohibited species bycatch allowance. The intent of the Council when it adopted fishery closures that prohibited the use of other than pelagic trawls was to curtail halibut and crab bycatch once the "DAP other fishery" reached a bycatch allowance. The Council's intent for these closures and for the definition of pelagic trawl gear to reduce prohibited species bycatch rates was analyzed in the EA/RIR/IRFA prepared for Amendments 16/21. However, once 1991 fishery closures were implemented, some vessel operators continued to fish for Pacific cod with pelagic trawl gear on or near the bottom in a manner that maintained commercial harvests of Pacific cod, as well as high bycatch rates of prohibited species. In recognition of the fact that fishermen will continue to use pelagic trawl gear on or near the bottom once a closure under § 675.21(c)(2) has been implemented, NMFS is redefining the closures of the Pacific cod fishery to prohibit directed fishing of Pacific cod by all trawl vessels in the applicable portions of the BSAI once the "DAP other fishery" has reached a prohibited species bycatch allowance.

The closure modification is implemented under this interim final rule because NMFS had not anticipated the Pacific cod fishery to fish with pelagic trawl gear. Immediate action must be taken to prevent further directed trawl fishing for Pacific cod after the prohibited species bycatch allowance has been attained. During 1991, fishing for Pacific cod with pelagic trawl gear once the "DAP other fishery" attained its first quarter halibut bycatch allowance resulted in continued high halibut bycatch rates. Furthermore, additional bycatch amounts of halibut caught with pelagic trawl gear were credited against the following season's bycatch allowance. This situation is expected to continue once the second quarter's bycatch allowance is reached. As a result, the Council's intent for seasonal apportionment of the halibut PSC limit is undermined, smaller amounts of halibut bycatch are available to Pacific cod fishermen who use traditional non-pelagic trawl gear, and earlier closures to the traditional trawl fishery are triggered. Moreover, without this action, the halibut PSC limit established for trawl gear in the FMP will be exceeded by a significant amount.

Public Comments Received

Five letters of comment were received on the proposed rule to implement the incentive program during the public comment period (January 31, 1991). They are summarized and responded to as follows:

Comment 1. The bycatch rate standard proposed for the BSAI flatfish fishery during the second quarter of 1991 (0.3 percent) should be evaluated to ensure the PSC cap for halibut is not exceeded, but does not impose undue hardship on the fleet. Specifically, the second quarter bycatch rate standards are especially harmful to factory trawlers, which will be entering the rock sole fishery after the closing of the first pollock season.

Response: The bycatch rate standards established for the first half of 1991 were based on average bycatch rates exhibited by the 1990 Pacific cod and flatfish fisheries and the 1988–1990 joint venture processing (JVP) flatfish fisheries. The bycatch rate standard specified for the second quarter flatfish fishery (0.3 percent) was recommended by the Council for the following reasons: (1) This rate approximates JVP bycatch rates in the flatfish fishery over the past three years; (2) the rock sole roe fishery typically concludes by April 1 when the reduced bycatch rate standard would be effective; and (3) the DAP yellowfin sole fishery exhibited, through voluntary industry efforts to control halibut bycatch, halibut bycatch rates that averaged less than 0.2 percent during the third and fourth quarters of 1990. Based on this information, the second quarter bycatch rate standards should not impose more hardship on factory trawlers relative to other trawl vessels operating in the flatfish fisheries.

Comment 2. Established bycatch rate standards should allow for maximum utilization of a fishery's TAC without exceeding its prohibited species bycatch allowance. Sanctions should be authorized only if vessel bycatch rates would lead to exhaustion of the prohibited species bycatch allowance prior to full utilization of the TAC.

Response: Vessels participating in the 1990 and 1991 groundfish trawl fisheries typically exhibit average bycatch rates that lead to exhaustion of prohibited species bycatch allowances prior to full utilization of groundfish quotas. The intent of the incentive program is to reduce vessel bycatch rates in specified trawl fisheries, not to establish bycatch rate standards that are so low as to place most vessels in jeopardy of violation. Therefore, the Regional Director, after consultation with the Council, has specified 1991 bycatch rate standards for the first half of 1991 that are based on average fishery bycatch rates. Each vessel is in violation if its estimated bycatch rate for a month exceeds a bycatch rate standard. The Secretary recognizes that the bycatch rate standards specified for 1991 do not ensure full utilization of groundfish TACs under existing prohibited species bycatch allowances. He also recognizes that trawl vessel owners and operators may be unduly burdened if lower bycatch rate standards were implemented during the first year of the incentive program. Therefore, he has concurred in the Council's recommended bycatch rate standards for the first half of 1991.

Vessel operators should become increasingly proficient at avoiding bycatch and reducing bycatch rates to a level that would allow for fuller harvest of groundfish TACs. The Regional Director will consider any new evidence on the ability of domestic vessels to avoid bycatch as he specifies seasonal bycatch rate standards or inseason adjustments to those standards.

Comment 3. When establishing PSC limits, the Secretary should evaluate the value of the various fisheries and should set limits to ensure the maximum value to the nation.

Response: This rulemaking does not address existing PSC limits. The Secretary considered the costs and benefits associated with the PSC limits and associated bycatch management measures under Amendments 16 and 21 to the groundfish FMPs (56 FR 2700, January 24, 1991).

Comment 4. The halibut bycatch rates for each vessel should be calculated from total catch weights rather than from sampled weights from the catch. The methodology of basing the calculation of vessel bycatch rates on only sample weights from total catch will result in biased and inaccurate bycatch rates on any time sample weights do not constitute a uniform percentage of total catch weight. Specifically, the methodology proposed to calculate vessel bycatch rates will consistently overestimate halibut bycatch in the Pacific cod fishery because large catches of cod usually have low halibut bycatch rates while much smaller catches of cod have higher halibut bycatch rates.

Response: Observers will use random sampling procedures that NMFS believes will result in data that will reasonably reflect a vessel's catch composition. NMFS will use the best procedures available to sample hauls for

purposes of the incentive program and will work with industry to develop procedures that could allow for larger sample sizes and determinations of total catch weights.

Comment 5. The vagueness, lack of definition, and arbitrariness inherent in the proposed incentive program are unfair to conscientious vessel operators who make every effort to maintain low bycatch rates to the extent that groundfish production is reduced. Specifically, (1) application of the proposed incentive program is likely to vary widely from vessel to vessel, (2) the amount of which the standard bycatch rate could be exceeded before NOAA General Counsel would prosecute a violation appears to be quite discretionary, and (3) the criteria for assessing the extent of civil penalties is vague and undefined.

Response: (1) Regulations to implement the incentive program have been revised to provide for uniform procedures that will be applied in determining violations. Any vessel that participates in a fishery monitored under the incentive program is subject to prosecution if its bycatch rate for a month exceeds a bycatch rate standard. (2) NOAA General Counsel will evaluate the evidence in each case subject to prosecution that is referred to it, and will initiate legal proceedings whenever warranted. (3) Evidence of a violation will be based upon calculations of bycatch rates using a standard methodology set forth in NMFS incentive program guidelines that will be applied to all vessels participating in the fisheries monitored under the incentive program. Under section 308 of the Magnuson Act (16 U.S.C. 1858), any person who is determined, after opportunity for a hearing before an administrative law judge, to have violated regulations implementing the incentive program is subject to a civil penalty of up to $100,000 for each violation. In determining the amount of a penalty to assess for a violation under these regulations, the Secretary must apply the standard prescribed by section 308, which provides that the Secretary will consider the nature, circumstances, extent, and gravity of the prohibited acts committed, and, with respect to the violator, the degree of culpability and history of prior offenses, ability to pay, and such other matters as justice may require.

Comment 6. Although the proposed bycatch rate standards were based on the best available information, experience to date indicates that they are too low and NMFS should be prepared to use the proposed inseason authority to adjust those rates if a compelling case can be made.

Response: The Regional Director has the inseason authority to revise bycatch rate standards based on the criteria and information set forth in §§ 672.26(c) and 675.26(c) of this rule.

The Secretary finds that the procedures described above will reasonably satisfy requirements for determining compliance with the vessel incentive program and, therefore, implements this final rule.

Classification

Upon receipt of a revised amendment from a Council, section 304(b)(3)(B) of the Magnuson Act (16 U.S.C. 1854(b)(3)(B)), as amended by Public Law 99–659, requires the Secretary to immediately review the revised proposed regulations submitted by the Council and thereafter publish such revised proposed regulations that would implement the revised amendments. The Secretary has determined that revised Amendments 16 and 21 and the interim final rule that implements these Amendments are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law.

The Council prepared an EA for revised Amendments 16 and 21. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), found that no significant impact on the quality of the environment will occur as a result of this rule. A copy of the EA may be obtained from the Council (see **ADDRESSES**).

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/FRFA prepared by the Council. A copy of the RIR is available from the Council (see **ADDRESSES**).

The Assistant Administrator concludes that this rule will have significant effects on a substantial number of small entities. These effects have been discussed in the EA/RIR/FRFA, a copy of which may be obtained from the Council (see **ADDRESSES**).

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

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. Since the appropriate State agency did not reply within the statutory time period, consistency is automatically inferred.

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

This rule must be effective immediately to reduce high bycatch rates of halibut and red king crab that occur in fast-paced groundfish fisheries. Additionally, the closure modifications under § 675.21(c) are necessary to reduce prohibited species bycatch rates once prohibited species bycatch allowances are reached, allow for longer periods of fishing before directed fishing for Pacific cod with non-pelagic trawl gear is prohibited, and avoid exceeding the halibut PSC limit established for trawl gear by a significant amount. The Assistant Administrator finds that reasons justifying promulgation of this rule make it contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under sections 553 (b) and (d) of the Administrative Procedure Act. Additional comment on the interim final rule will be accepted for a period of 30 days after the effective date.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Fishing vessels.

Dated: May 6, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

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

2. In § 672.7, a new paragraph (f) is added as follows:

§ 672.7 General prohibitions.

* * * * *

(f) Exceed a bycatch rate standard specified for a vessel under § 672.26.

3. A new § 672.26 is added as follows:

§ 672.26 Program to reduce prohibited species bycatch rates.

(a) *General.* (1) A vessel's bycatch rate, as calculated at the end of a fishing month under paragraph (d) of this section, while participating in the fisheries identified in paragraph (b) of this section, shall not exceed bycatch

rate standards referenced in paragraph (c) of this section.

(2) *Definitions for purposes of this section*—(i) *Observed or observed data* refers to data collected by observers who are certified under the NMFS Observer Program authorized under § 672.27.

(ii) *Bycatch rate* refers to the ratio of the total round weight of halibut, in kilograms, to the total round weight, in metric tons, of groundfish for which a TAC has been specified under § 672.20 of this part while participating in the Pacific cod or bottom rockfish fisheries as defined in paragraph (b) of this section.

(iii) *Fishing month* refers to a time period calculated on the basis of weekly reporting periods as follows: each fishing month begins on the first day of the first weekly reporting period that has at least 4 days in the associated calendar month and ends on the last day of the last weekly reporting period that has at least 4 days in that same calendar month. Dates of each fishing month will be announced in the **Federal Register** notices published under paragraph (c)(2) of this section.

(b) *Fisheries.* A vessel will be subject to this section if the groundfish catch of the vessel is observed on board the vessel, or on board a mothership processor that receives unsorted codends from the vessel, at any time during a weekly reporting period; and the vessel is assigned under paragraph (d)(3)(i)(A) of this section to either the Pacific cod fishery or the bottom rockfish fishery defined in paragraphs (b) (1) and (2) of this section. During any weekly reporting period, a vessel's observed catch composition of groundfish species for which a TAC has been specified under § 672.20 of this part, excluding arrowtooth flounder, will determine the fishery to which the vessel is assigned, as follows:

(1) The *Pacific cod fishery* means trawl fishing that results in an observed groundfish catch during a weekly reporting period that is composed of 45 percent or more of Pacific cod;

(2) The *bottom rockfish fishery* means trawl fishing that does not qualify as a Pacific cod fishery under paragraph (b)(1) of this section and results in an observed groundfish catch during a weekly reporting period that is comprised of 30 percent or more of rockfish species of the genus *Sebastes* and *Sebastolobus* in the aggregate, except for the rockfish species that comprise the pelagic shelf rockfish category (*Sebastes melanops, S. mystinus, S. ciliatus, S. entomelas,* and *S. flavidus*);

(3) Other non-pelagic trawl fishery if pollock is less than 95 percent of the vessel's observed groundfish catch.

(c) *Bycatch rate standards*—(1) *Establishment of bycatch rate standards.* (i) Prior to January 1 and July 1 of each year, the Regional Director will publish a notice in the **Federal Register** specifying bycatch rate standards for the fisheries identified in paragraph (b) of this section that will be in effect for specified seasons within the 6-month periods of January 1 through June 30 and July 1 through December 31, respectively. Bycatch rate standards will remain in effect until revised by a notice in the **Federal Register.** The Regional Director may adjust bycatch rate standards as frequently as he considers appropriate.

(ii) Bycatch rate standards for a fishery and adjustments to such standards will be based on the following information and considerations:

(A) Previous years' average observed bycatch rates for that fishery;

(B) Immediately preceding season's average observed bycatch rates for that fishery;

(C) The bycatch allowances and associated fishery closures specified under § 672.20(f);

(D) Anticipated groundfish harvests for that fishery;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Regional Director.

(2) *Procedure.* (i) Bycatch rate standards or adjustments to such standards specified under this section will not take effect until the Secretary has published the proposed bycatch rate standards or adjustments to such standards in the **Federal Register** for public comment for a period of 30 days unless the Secretary finds for good cause that such notice and public comment are impracticable, unnecessary, or contrary to the public interest.

(ii) If the Secretary decides, for good cause, that bycatch rate standards or adjustments to such standards are to be made effective without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, bycatch rate standards or adjustments to such standards will be received by the Regional Director for a period of 15 days after the effective date of the notice.

(iii) During any such 15-day period, the Regional Director will make available for public inspection, during business hours, the aggregate data upon which bycatch rate standards or adjustments to such standards were based.

(iv) If written comments are received during any such 15-day period that oppose or protest bycatch rate standards or adjustments to such standards issued under this section, the Secretary will reconsider the necessity for the bycatch Standards or adjustment to such standards and, as soon as practicable after that reconsideration, will either:

(A) Publish in the **Federal Register** a notice of continued effectiveness of bycatch rate standards or adjustment to such standards, responding to comments received; or

(B) Modify or rescind bycatch rate standards or adjustment to such standards.

(v) Notices of adjustments to bycatch rate standards issued by the Secretary under paragraph (c) of this section will include the following information:

(A) A description of the adjustment to one or more bycatch rate standards specified for a fishery;

(B) The reasons for the adjustment and the determinations required under paragraph (c)(1)(ii) of this section; and

(C) The effective date and any termination date of such adjustment. If no termination date is specified, the adjustment will remain in effect until revised by subsequent notice in the **Federal Register** under paragraph (c) of this section.

(d) *Vessel bycatch rates*—(1) *Observed data.* For purposes of this section, observed data collected for each haul sampled during a day will include the date, position (Federal reporting area) where trawl gear for the haul was retrieved, total round weight of groundfish, in metric tons, in the portion of the haul sampled by groundfish species or species group for which a TAC has been specified under § 672.20 of this part, and total round weight of halibut, in kilograms, in the portion of the haul sampled.

(2) *Observer sampling procedures.* (i) NMFS will randomly predetermine the hauls to be sampled by an observer during the time the observer is on a vessel.

(ii) An observer will:

(A) Take samples at random from throughout the haul, and

(B) Take samples prior to sorting of the haul by the crew for processing or discarding of the catch.

(iii) An observer will sample a minimum of 100 kilograms of fish from each haul sampled.

(iv) While an observer is at sea, the observer will report to NMFS, on at least a weekly basis, the data for

sampled hauls set forth in paragraph (d)(1) of this section.

(v) Upon request, the observer will allow the vessel operator to see all observed data set forth under paragraph (d)(1) of this section that the observer submits to NMFS.

(3) *Determination of individual vessel bycatch rates*—(i) *Calculation of monthly bycatch rates.* (A) For each vessel, the Regional Director will aggregate from sampled hauls the observed data collected during a weekly reporting period on the total round weight, in metric tons, of each groundfish species or species group for which a TAC has been specified under § 672.20 of this part to determine to which of the fisheries described in paragraph (b) of this section the vessel should be assigned for that week.

(B) At the end of each fishing month during which an observer sampled at least 50 percent of a vessel's total number of trawl hauls retrieved while an observer was on board (as recorded in the vessel's daily logbook required under § 672.5 of this part), the Regional Director will calculate the vessel's bycatch rate based on observed data for each fishery described in paragraphs (b)(1) and (2) of this section to which the vessel was assigned for any weekly reporting period during that fishing month. Only observed data that has been checked, verified, and analyzed by NMFS will be used to calculate vessel bycatch rates for purposes of this section.

(C) The bycatch rate of a vessel for a fishery described under paragraph (b)(1) or (2) of this section during a fishing month is a ratio of halibut to groundfish that is calculated by using the total round weight of halibut (in kilograms) in samples during all weekly reporting periods in which the vessel was assigned to that fishery and the total round weight of the groundfish (in metric tons) for which a TAC has been specified under § 672.20 in samples taken during all such periods.

(ii) *Compliance with bycatch rate standards.* A vessel has exceeded a bycatch rate standard for a fishery if the vessel's bycatch rate for a fishing month, as calculated under paragraph (d)(3)(i)(C) of this section, exceeds the bycatch rate standard established for that fishery under paragraph (c) of this section.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

4. The authority citation for part 675 continues to read as follows:

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

5. In § 675.7, a new paragraph (g) is added as follows:

§ 675.7 Prohibitions.

* * * * *

(g) Exceed a bycatch rate standard specified for a vessel under § 675.26.

6. In § 675.21, the section and paragraphs (c)(2)(i), (c)(2)(ii), (c)(2)(iii), and (c)(2)(iv) are revised to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

* * * * *

(c) * * *

(2) * * *

(i) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch either of the PSC bycatch allowances or seasonal apportionments of bycatch allowances of red king crabs or *C. bairdi* in Zone 1 while participating in the "DAP other fishery" as defined in paragraph (b)(4) of this section, the Secretary will publish a notice in the **Federal Register** closing Zone 1 to directed fishing for:

(A) Pollock by trawl vessels using other than pelagic trawl gear for the remainder of the year or for the remainder of the fishing season; and

(B) Pacific cod by vessels using trawl gear for the remainder of the year or for the remainder of the fishing season.

(ii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the PSC bycatch allowance or seasonal apportionment of the bycatch allowance of *C. bairdi* in Zone 2 while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** closing Zone 2 to directed fishing for:

(A) Pollock by trawl vessels using other than pelagic trawl gear for the remainder of the year or for the remainder of the fishing season; and

(B) Pacific cod by vessels using trawl gear for the remainder of the year or for the remainder of the fishing season.

(iii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch the primary PSC bycatch allowance or seasonal apportionment of the bycatch allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** closing Zones 1 and 2H to directed fishing for:

(A) Pollock by trawl vessels using other than pelagic trawl gear for the remainder of the year or for the remainder of the fishing season; and

(B) Pacific cod by vessels using trawl gear for the remainder of the year or for the remainder of the fishing season.

(iv) If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch the secondary PSC bycatch allowance or seasonal apportionment of the bycatch allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** closing the Bering Sea and Aleutian Islands Management Area to directed fishing for:

(A) Pollock by trawl vessels using other than pelagic trawl gear for the remainder of the year or for the remainder of the fishing season; and

(B) Pacific cod by vessels using trawl gear for the remainder of the year or for the remainder of the fishing season.

* * * * *

7. A new § 675.26 is added as follows:

§ 675.26 Program to reduce prohibited species bycatch rates.

(a) *General.* (1) A vessel's bycatch rate, as calculated at the end of a fishing month under paragraph (d) of this section, while participating in the fisheries identified in paragraph (b) of this section, shall not exceed bycatch rate standards referenced in paragraph (c) of this section.

(2) *Definitions for purposes of this section*—(i) *Observed or observed data* refers to data collected by observers who are certified under the NMFS Observer Program authorized under § 675.25.

(ii) *Bycatch rate* refers to:

(A) The ratio of total round weight of halibut, in kilograms, to the total round weight, in metric tons, of groundfish for which a TAC has been specified under § 675.20 while participating in the Pacific cod or flatfish fisheries, as defined in paragraph (b) of this section; and

(B) The ratio of number of red king crab to the total round weight, in metric tons, of groundfish for which a TAC has been specified under § 675.20 while participating in the flatfish fishery, as defined in paragraph (b) of this section.

(iii) *Fishing month* refers to a time period calculated on the basis of weekly reporting periods as follows: each fishing month begins on the first day of the first weekly reporting period that has at least 4 days in the associated calendar month and ends on the last day of the last weekly reporting period that has at least 4 days in that same calendar month. Dates of each fishing month will be announced in the **Federal Register**

notices published under paragraph (c)(2) of this section.

(b) *Fisheries.* A vessel will be subject to this section if the groundfish catch of the vessel is observed on board the vessel, or on board a mothership processor that receives unsorted codends from the vessel, at any time during a weekly reporting period; and the vessel is assigned under paragraph (d)(3) of this section to either the Pacific cod fishery or the flatfish fishery as defined in paragraphs (b)(2) and (b)(3) of this section. During any weekly reporting period, a vessel's observed catch composition of groundfish species for which a TAC has been specified under § 675.20 of this part will determine the fishery to which the vessel is assigned, as follows:

(1) The *Greenland turbot fishery* means fishing with trawl gear during any weekly reporting period that results in an observed catch of Greenland turbot that is 35 percent or more of the total amount of groundfish caught during the week;

(2) The *Pacific cod fishery* means fishing with trawl gear during any weekly reporting period that:

(A) Results in an observed catch of Pacific cod that is 45 percent or more of the total amount of groundfish caught during the week, and

(B) Does not qualify as a "Greenland turbot fishery";

(3) The *flatfish fishery* means fishing with trawl gear during any weekly reporting period that:

(A) Results in an observed catch of yellowfin sole, rock sole, and "other flatfish," in the aggregate, that is 40 percent or more of the total amount of groundfish caught during the week, and

(B) Does not qualify as a "Greenland turbot" or "Pacific cod" fishery;

(4) The *"other non-pelagic trawl fishery"* means fishing with trawl gear during any weekly reporting period that:

(A) Results in an observed catch of pollock that is less than 95 percent of the total amount of groundfish caught during the week, and

(B) Does not qualify as a "Greenland turbot," "Pacific cod," or "flatfish" fishery.

(c) *Bycatch rate standards*—(1) *Establishment of bycatch rate standards.* (i) Prior to January 1 and July 1 of each year, the Regional Director will publish a notice in the **Federal Register** specifying bycatch rate standards for the fisheries identified in paragraph (b) of this section that will be in effect for specified seasons within the 6-month periods of January 1 through June 30 and July 1 through December 31, respectively. Bycatch rate standards will remain in effect until revised by a notice in the **Federal Register.** The Regional Director may adjust bycatch rate standards as frequently as he considers appropriate.

(ii) Bycatch rate standards for a fishery and adjustments to such standards will be based on the following information and considerations:

(A) Previous years' average observed bycatch rates for that fishery;

(B) Immediately preceding season's average observed bycatch rates for that fishery;

(C) The bycatch allowances and associated fishery closures specified under § 675.21;

(D) Anticipated groundfish harvests for that fishery;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Regional Director.

(2) *Procedure.* (i) Bycatch rate standards or adjustments to such standards specified under this section will not take effect until the Secretary has published the proposed bycatch rate standards or adjustments to such standards in the **Federal Register** for public comment for a period of 30 days unless the Secretary finds for good cause that such notice and public comment are impracticable, unnecessary, or contrary to the public interest.

(ii) If the Secretary decides, for good cause, that bycatch rate standards or adjustments to such standards are to be made effective without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, bycatch rate standards or adjustments to such standards will be received by the Regional Director for a period of 15 days after the effective date of the notice.

(iii) During any such 15-day period, the Regional Director will make available for public inspection, during business hours, the aggregate data upon which bycatch rate standards or adjustments to such standards were based.

(iv) If written comments are received during any such 15-day period that oppose or protest bycatch rate standards or adjustments to such standards issued under this section, the Secretary will reconsider the necessity for the bycatch rate standards or adjustment to such standards and, as soon as practicable after that reconsideration, will either:

(A) Publish in the **Federal Register** a notice of continued effectiveness of bycatch rate standards or adjustment to such standards, responding to comments received; or

(B) Modify or rescind bycatch rate standards or adjustment to such standards.

(v) Notices of adjustments to bycatch rate standards issued by the Secretary under paragraphs (c) of this section will include the following information:

(A) A description of the adjustment to one or more bycatch rate standards specified for a fishery;

(B) The reasons for the adjustment and the determinations required under paragraph (c)(1)(ii) of this section; and

(C) The effective date and any termination date of such adjustment. If no termination date is specified, the adjustment will remain in effect until revised by subsequent notice in the **Federal Register** under paragraph (c) of this section.

(d) *Vessel bycatch rates.*—(1) *Observed data.* For purposes of this section, observed data collected for each haul sampled during a day will include the date, position (Federal reporting area) where trawl gear for the haul was retrieved, total round weight of groundfish, in metric tons, in the portion of the haul sampled by groundfish species or species group for which a TAC has been specified under § 675.20 of this part, and total round weight of halibut, in kilograms, and total number of red king crab, in the portion of the haul sampled.

(2) *Observer sampling procedures.* (i) NMFS will randomly predetermine the hauls to be sampled by an observer during the time the observer is on a vessel.

(ii) An observer will:

(A) Take samples at random from throughout the haul, and

(B) Take samples prior to sorting of the haul by the crew for processing or discarding of the catch.

(iii) An observer will sample a minimum of 100 kilograms of fish from each haul sampled.

(iv) While an observer is at sea, the observer will report to NMFS, on at least a weekly basis, the data for sampled hauls set forth in paragraph (d)(1) of this section.

(v) Upon request, the observer will allow the vessel operator to see all observed data set forth under paragraph (d)(1) of this section that the observer submits to NMFS.

(3) *Determination of individual vessel bycatch rates.*—

(i) *Calculation of monthly bycatch rates.* (A) For each vessel, the Regional Director will aggregate from sampled hauls the observed data collected during a weekly reporting period on the total round weight, in metric tons, of each groundfish species or species group for

which a TAC has been specified under § 675.20 of this part to determine to which of the fisheries described in paragraph (b) of this section the vessel should be assigned for that week.

(B) At the end of each fishing month during which an observer sampled at least 50 percent of a vessel's total number of trawl hauls retrieved while an observer was on board (as recorded in the vessel's daily logbook required under § 675.5 of this part), the Regional Director will calculate the vessel's bycatch rate based on observer data for each fishery described in paragraphs (b)(2) and (3) of this section to which the vessel was assigned for any weekly reporting period during that fishing month. Only observed data that has been checked, verified, and analyzed by NMFS will be used to calculate vessel bycatch rates for purposes of this section.

(C) The bycatch rate of a vessel for a fishery described under paragraphs (b)(2) or (3) of this section during a fishing month is a ratio of halibut to groundfish that is calculated by using the total round weight of halibut (in kilograms), or total number of red king crab, in samples during all weekly reporting periods in which the vessel was assigned to that fishery and the total round weight of the groundfish (in metric tons) for which a TAC has been specified under § 675.20 in samples taken during all such periods.

(ii) *Compliance with bycatch rate standards.* A vessel has exceeded a bycatch rate standard for a fishery if the vessel's bycatch rate for a fishing month, as calculated under paragraph (d)(3)(i)(C) of this section, exceeds the bycatch rate standard established for that fishery under paragraph (c) of this section.

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Proposed Rules

Federal Register
Vol. 56, No. 91
Friday, May 10, 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

Agricultural Marketing Service

7 CFR Part 1099

[DA-91-008]

Milk in the Paducah, Kentucky Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal that would suspend portions of the producer milk definition of the Paducah, Kentucky milk order for an indefinite period. The suspension would increase the amount of milk that may be shipped directly from the farm to nonpool plants and still be priced under the order. The suspension was requested by Dairymen, Inc. (DI), a cooperative association that represents producers who supply the market. DI contends that the suspension is necessary because of changed marketing conditions and to permit the efficient marketing of milk of dairy farmers who have historically supplied the market.

DATES: Comments are due on or before May 17, 1991.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-6274.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Paducah, Kentucky marketing area is being considered for and indefinite period:

In § 1099.13(c)(3), the words, "33 percent of".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days to permit completion of the required procedures to make the action effective as soon as possible, if this is found necessary.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would suspend portions of the producer milk definition of the Paducah, Kentucky milk order for an indefinite period. The proposal would allow more milk to be shipped directly from farms to nonpool plants and still be priced and pooled under the order.

The order provides that a handler may divert up to 33 percent of the producer milk that is received by the handler. A suspension would increase the diversion limits to a volume equal to the volume of producer milk actually received during the month. This provision was indefinitely suspended on November 2, 1988 (53 FR 44853) as it applied to a cooperative association.

The suspension was requested by Dairymen, Inc. (DI), a cooperative association that represents producers who supply the market and who indicated that their request was supported by Associated Milk Producers, Inc. (AMPI). DI contends that their association and AMPI operate under a common marketing agreement in the Paducah area and, therefore, diversions of producer milk to nonpool plants by each association are considered as diversions by one handler. DI contends, that in recent months, because of the tight diversion limits, the two associations, as a single handler, have not been able to pool all the milk of their membership which has historically been pooled in the order.

DI said that marketing conditions have changed since these diversion provisions were last modified. In recent years, DI's aid, the Turner Dairies' pool plant at Fulton, Kentucky, has relied on its Covington, Tennessee plant, which is fully regulated under the Memphis, Tennessee, order to produce a substantial proportion of its Class II products. The milk needed to process these Class II products, said DI, is from milk diverted from the Fulton, Kentucky, plant.

DI indicated that the Ryan Milk Company located at Murray, Kentucky (partially regulated handler) has a greater need for milk. Class I utilization at this plant, says DI, has increased to about 40 percent, therefore, diversions to such plant adds Class I sales to the Paducah, Kentucky pool. DI said that, historically, the source of milk at this plant has been producer milk diverted from pool plants regulated under the Paducah, Kentucky order.

List of Subjects in 7 CFR Part 1099

Milk marketing orders.

The authority citation for 7 CFR part 1099 continues to read as follows:

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

Signed at Washington, DC, on May 6, 1991.

Daniel D. Haley,

Administrator.

[FR Doc. 91-11180 Filed 5-9-91; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket Nos. PRM-20-14, PRM-20-15, PRM-20-17, PRM-20-18]

Petitions Requesting Below Regulatory Concern Exemptions

AGENCY: Nuclear Regulatory Commission.

ACTION: Deferral of action.

SUMMARY: The Nuclear Regulatory Commission (NRC) has initiated a consensus-building process to clarify differences and to work toward resolving the issues related to the implementation of its "Below Regulatory Concern" policy with regard to waste disposal. The intent of this notice is to announce that during this consensus-building process the NRC will defer action on petitions for rulemaking that request below regulatory concern waste disposal exemptions.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, U.S. Nuclear Regulatory Commission, telephone (301) 492-1803.

SUPPLEMENTARY INFORMATION: On July 3, 1990 (55 FR 27522), the NRC published in the **Federal Register** its below regulatory concern policy statement that describes a framework for considering proposals for exemptions from regulation. The policy statement was developed to provide a framework to aid in determining when radiation levels are so low that they do not require the imposition of regulatory controls to ensure protection of the public health and safety and the environment. The below regulatory concern policy did not approve specific exemptions or establish binding standards. However, the policy statement provides guidance for making decisions on whether to grant specific exemptions in categories such as—

(1) The release of sites containing residual radioactivity;

(2) The distribution of consumer products containing small amounts of radioactivity;

(3) The disposal of certain wastes containing very low levels of radioactivity; or

(4) The recycling or reuse of slightly radioactive materials.

Since the adoption of its below regulatory concern policy, the NRC has received numerous comments concerning the waste disposal aspects of this policy. Comments have been received from members of Congress, State governments, local governments, local governments, the public, industry, Federal agencies, and governmental and professional associations. As a result, the NRC has initiated a consensus-building process. The goal of this process is to identify issues, clarify concerns, and develop recommendations to the Commission, which may, if appropriate, include revisions to the below regulatory concern policy as it relates to issues involving exemptions for disposal of wastes containing very low levels of radioactivity. The first step in this process will be to assess the feasibility of using consensus-building techniques to address below regulatory concern issues. This assessment will be presented for Commission review in May 1991 and will include a public meeting of the commission on this subject on May 21, 1991.

While carrying out this consensus-building process, the NRC will defer action on all pending or future petitions for rulemaking for below regulatory concern waste disposal exemptions. Generic staff technical activities directed at obtaining a more complete understanding of the characteristics and volumes of waste streams nationwide will continue. The decision to defer action on these petitions is not intended to reflect upon the merits of the petitions or the NRC's ultimate decision as to their disposition. The pending petitions on which the NRC intends to defer action are described below.

PRM-20-14 submitted by the University of Utah. The petitioner requests that the Commission amend its regulations in two areas. The first request is to expand the list of materials allowed to be disposed of under the provisions of 10 CFR 20.306 to include biodegradable animal bedding material and excreta. The second request is that a new section be added to the regulations to allow disposal of biodegradable animal tissue, bedding, and excreta containing very low concentrations of short-lived radionuclides in a sanitary landfill and to allow disposal of liquid scintillation medium containing very low concentrations of short-lived radionuclides in an approved hazardous waste landfill. The Commission noticed receipt of this petition in the **Federal Register** on January 30, 1984 (49 FR 3667).

PRM-20-15 submitted by the Edison Electric Institute and the Utility Waste Management Group. The petitioners request that the Commission issue a regulation governing the disposal of low-level, radioactively contaminated waste oil from nuclear power plants by establishing radionuclide concentrations in waste oil at which disposal may be carried out without regard to the radioactive content of the waste. The Commission received this petition on July 31, 1984, and published a proposed rule which, if adopted, would constitute a partial denial and a partial granting of the petition on August 29, 1988 (53 FR 32914).

PRM-20-17 submitted by the Rockefeller University. The petitioner requests that the Commission amend its regulations to expand the provisions of 10 CFR 20.306 under which a licensee may dispose of animal tissue containing small amounts of sulfur-35, calcium-45, chromium-51, iodine-125, and iodine-131 below specified concentrations without regard to its radioactivity by expanding the list of radioactive isotopes for which unregulated disposal is permitted. The petitioner also requests that the Commission make the unregulated disposal of these wastes a matter with which all jurisdictions must comply. The Commission noticed receipt of this petition in the **Federal Register** on October 21, 1988 (53 FR 41342).

PRM-20-18 submitted by the Rockefeller University. The petitioner requests that the Commission amend it regulations to expand the provisions of 10 CFR 20.306 to allow the on-site incineration of solid biomedical waste (paper, glass, and plastic trash) containing limited quantities of very low concentrations of hydrogen-3 and carbon-14. The Commission noticed receipt of this petition in the **Federal Register** on October 31, 1988 (53 FR 43896).

Dated at Rockville, MD, this 6th day of May 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-11213 Filed 5-9-91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

10 CFR Part 1046

Docket No. SA-RM-91-1001

Security Skills Training and Qualifications Standards for Protective Force Personnel

AGENCY: Office of Security Affairs, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Department of Energy (DOE) is proposing to amend part 1046 of chapter X of title 10 of the Code of Federal Regulations (CFR) by adding

new sections setting forth requirements regarding access authorizations and security skills training and qualification, including firearms qualification, for DOE contractor personnel responsible for the protection of DOE facilities. One purpose of these regulations is to assure that protective force personnel meet the eligibility criteria of DOE regulations at 10 CFR part 710 for access to classified matter or significant quantities of special nuclear material. Another purpose is to assure that protective force personnel at DOE facilities can perform their normal and emergency duties effectively and without undue hazard to themselves, fellow employees, the plant site, and general public. Generally, the proposed regulations require protective force personnel to meet DOE security clearance standards and to complete successfully formal basic and annual training in security skills and knowledge. The proposed regulations also would require security inspectors (protective force personnel armed pursuant to section 161k. of the Atomic Energy Act of 1954, (42 U.S.C. 2201(k)) to pass firearms qualification tests. Each security inspector would be required to demonstrate firearms proficiency at least semiannually on DOE standardized courses of fire, with all firearms reasonably expected by DOE contractor management to be employed within the security inspector's assigned duties.

DATES: Written comments (five copies) must be received by 4:00 p.m., no later than July 9, 1991. DOE will hold 3 public hearings on the proposed rule. Indicated below are the dates of the hearings:

Argonne, Illinois Hearing: June 21—9:00 a.m.

Requests to speak at the hearing must be received by DOE on or before June 19, 1991.

Las Vegas, Nevada Hearing: June 14—3:00 p.m.

Requests to speak at the hearing must be received by DOE on or before June 12, 1991.

Oak Ridge, Tennessee Hearing: June 28—9:00 a.m.

Requests to speak at the hearing must be received by DOE on or before June 26, 1991.

ADDRESSES: Written (five copies) comments and requests to speak at the hearing should be addressed to:

William J. Desmond, Chief, Physical Security Branch, U.S. Department of Energy, Office of Security Affairs, SA-121, Washington, DC 20585, (301) 353-4244.

The hearing locations are:

Argonne, IL:
Holiday Inn Willowbrook, West Ballroom, 7800 Kingery Highway (Route 83), Willowbrook, IL 60521
Las Vegas, NV:
U.S. DOE, Nevada Operations Office, 2753 South Highland Drive, Auditorium, Las Vegas, NV 89109
Oak Ridge, TN:
American Museum of Science & Energy, Lecture Room 1&2, 300 South Tulane Avenue, Oak Ridge, TN 37830

Copies of the transcripts of the public hearings and written comments will be available for inspection and photocopying in the Freedom of Information (FOI) Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays.

Copies of the DOE "Firearms Qualification Courses," as revised, may be read in the FOI public reading rooms at the following additional locations:

U.S. DOE, Albuquerque Operations Office, National Atomic Museum, Building 20358—Kirtland Air Force Base, Wyoming Boulevard, Albuquerque, NM 87115
U.S. DOE, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439
U.S. DOE, Idaho Operations Office, 1776 Science Center Drive, Idaho falls, ID 83402
U.S. DOE, Nevada Operations Office, 2753 South Highland Drive, Las Vegas, NV 98193-8518
U.S. DOE, Oak ridge Operations Office, 200 Administration Road, Oak Ridge, TN 37831-8510
U.S. DOE, Rocky Flats Office, Front Range Community College Library, 3645 West 112 Avenue, Westminster, CO 80030
U.S. DOE, Richland Operations Office, 825 Jadwin Avenue, Richland, WA 99352
U.S. DOE, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612
U.S. DOE, Savannah River Operations Office, Gregg-Granite Library, University of South Carolina-Aiken, 171 University Parkway, Aiken, SC 29801

Requests for copies of the DOE "Firearms Qualification Courses," as revised, should be submitted to: William J. Desmond, Chief, Physical Security Branch, U.S. Department of Energy, Office of Security Affairs, SA-121, Washington, DC 20585, (301) 353-4244.

FOR FURTHER INFORMATION CONTACT:

William J. Desmond, Chief, Physical Security Branch, U.S. Department of Energy, Office of Security Affairs, SA-121, Washington, DC 20585, (301) 353-4244

Jo Ann Williams, U.S. Department of Energy, Office of General Counsel, GC-12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-0806

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion
III. Public Comment Procedures
IV. Procedural Requirements

I. Background

The Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*) declares it "to be the policy of the United States that * * * the development, use, and control of atomic energy shall be * * * subject at all times to the paramount objective of making the maximum contribution to the common defense and security" (42 U.S.C. 2011). Congress specifically found that "(t)he development, utilization and control of atomic energy for military and for all other purposes are vital to the common defense and security," and that "(s)ource and special nuclear material, production facilities, and utilization facilities, are affected with the public interest, and regulation * * * of the facilities used in connection therewith is necessary in the national interest to assure the common defense and security and to protect the health and safety of the public" (42 U.S.C. 2012(a) and (e)). One of the purposes of the Atomic Energy Act of 1954 is "to effectuate the policies set forth above by providing for * * * a program for Government control of the possession, use and production of atomic energy and special nuclear material * * * to make the maximum contribution to the common defense and security, "42 U.S.C. 2013(c). Responsibility for the "regulation" of Government-owned nuclear facilities and nuclear weapons was transferred to the Secretary of Energy by the Department of Energy Organization Act, (42 U.S.C. 7151). The authority to prescribe implementing regulation is found in section 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201) and section 644 of the Department of Energy Organization Act (42 U.S.C. 7254).

The nation-wide nuclear program administered by the Secretary of Energy is conducted principally at nuclear facilities owned by the Federal Government. Most of these facilities, however, are operated under contracts with private industry and are protected by contractor protective force personnel. Because of the nature of the material, equipment, data, and personnel found at these facilities, each facility must be afforded a high degree of physical security. Such security is provided, in part, by the uninterrupted presence of armed and unarmed DOE or DOE contractor protective force personnel.

The threat of terrorist or other malevolent activities at sites where nuclear materials and weapons are located presents a real and present danger. DOE's protective force is the first line of human defense against terrorist or other assault on this Nation's nuclear facilities, weapons, materials, and technologies.

II. Discussion

Recognizing the need to formalize its security policies, particularly as they relate to contractor personnel, DOE has in recent years promulgated two-protective force-related regulations. To implement the statutory authority of its security inspectors to carry firearms and to make arrests under certain circumstances, DOE promulgated 10 CFR part 1047, "Limited Arrest Authority and Use of Force by Protective Force Officers" (50 FR 30929, July 31, 1985). In 10 CFR part 1046, "Physical Protection of Security Interests," DOE adopted regulations establishing medical and physical fitness qualification standards for protective force personnel (49 FR 46097 November 23, 1984).

DOE now proposes to amend its 10 CFR part 1046 to specify requirements for the contractor protective force in addition to the present medical and physical fitness requirements. DOE does not view this action as imposing new requirements, but simply as formalizing, and in some instances standardizing, long-standing requirements. DOE has historically utilized a series of internal orders to set forth its security policies, including requirements for protective force personnel. Such internal orders regarding security date back to the days of the Atomic Energy Commission, a predecessor agency of DOE.

The purpose of proposed § 1046.14 is to formalize the requirement that protective force personnel have appropriate current access authorization for the highest level of classified matter under that individual's protection. Security inspector personnel who have access to Category I or II quantities of special nuclear material (SNM) will be "Q" cleared. This security clearance requirement is mandated by Executive Order 12356, "National Security Information," and the Atomic Energy Act of 1954, as amended, as implemented by 10 CFR part 710.

Proposed § 1046.15(a) sets forth the requirement that protective force personnel successfully complete a formal training program established in accordance with a proposed appendix B "Security Training and Qualification." Just as in its internal orders on protective force training and qualification, DOE would not, in proposed § 1046.15(a) or proposed appendix B, generally specify detailed requirements. Instead, in most instances, performance-oriented requirements are specified and DOE contractors are given flexibility to develop and administer training programs to meet site-specific needs subject to DOE oversight and approval. This is also the approach used by the Nuclear Regulatory Commission (NRC) for the training and qualification of the security force of NRC licensees in 10 CFR part 73, appendix B, "General Criteria for Security Personnel."

Protective force personnel would be required by proposed Appendix B to be trained prior to initial assignment and annually thereafter. The employing contractor would be required to maintain individual training records until 5 years after termination of the individual as a member of the protective force, unless a longer retention period is specified by other requirements.

Proposed § 1046.15(b) would formalize and standardize DOE's security policy of requiring security inspectors to demonstrate firearms proficiency. Section 161k. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(k)) provides statutory authority for DOE and DOE contractor security inspectors to carry firearms and to make arrests. Section 161k. states *inter alia*:

> k. (DOE may) authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. (DOE) may also authorize such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States and located at facilities owned by or contracted to the United States or being transported to or from such facilities as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties.

Since enactment of section 161k. almost 40 years ago, DOE and its predecessor agencies have required each person armed pursuant to that section to demonstrate the ability to use the firearm effectively and safely. Firearms proficiency has been a critical element of internal orders on security policy. Over the years, the specifics of how proficiency must be demonstrated have been modified or adjusted to keep pace with protective requirements.

The development of the specific firearms qualification standards set forth in the proposed regulations began in 1987. While there had long been at least an annual qualification requirement under various approved courses of fire used at individual DOE installations, DOE foresaw a need for a standard course for each firearm at all of its installations.

In September of 1987 the DOE Firearms Working Group, a committee of firearms experts, was formed. Based on information from the DOE Central Training Academy, the Federal Bureau of Investigation, other law enforcement agencies, and the military the committee formulated courses of fire for the handgun, rifle, and shotgun (day and night qualification). Each course was designed to be as practical and combat-oriented as possible in order to prepare security inspectors for any possible firearms confrontation that might occur. Based on the validation report of this committee, DOE in October of 1988 published its "Firearms Qualification Courses." The "Firearms Qualification Courses" further define the specific firearms proficiency requirements of the current DOE internal order, DOE Order 5632.7 (February 1988), the substance of which DOE now proposes to formalize with this rulemaking. The October 1988 "Firearms Qualification Courses" have been revised to add courses on the submachine gun, light machine gun, and selective fire machine gun.

Briefly, proposed § 1046.15(b) would require that security inspectors demonstrate firearms proficiency by passing semiannual tests and would require that the testing be done under a standard course of fire for each of the firearms that the DOE contractor management reasonably expects the security inspector to employ within assigned duties. These courses are designed to evaluate competencies in types of lighting conditions under which the individual firearm may be used. The number of qualifying attempts is limited.

Proposed § 1046.16 would establish the requirement that DOE contractors formally evaluate and certify that protective force personnel have successfully completed all training and testing requirements set forth in appendix B. The DOE contractor must retain documentation of certification for each individual until 5 years after the termination of the individual as a member of the protective force, unless a longer retention period is specified by other requirements.

The proposed regulations would also (1) amend § 1046.3 to add a definition of the term "Special Response Team" (2) add a new § 1046.4 "Use of Number and Gender."

III. Public Comment Procedures

A. Written Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposals set forth in this Notice.

Comments should be identified on the outside of the envelope and on the documents themselves, with the designation, "Part 1046 Amendments Rulemaking," Docket Number SA-RM-91-1001.

All comments received on or before the date indicated at the beginning of this notice will be considered by DOE before taking final action on this notice of proposed rulemaking.

All comments received will be available for public inspection in the DOE Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Any person submitting information which that person believes to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy as well as four copies from which the information claimed to be confidential has been deleted. DOE shall make the final determination regarding any such claim of confidentiality. This procedure is set forth in 10 CFR 1004.11 (53 FR 15661, May 3, 1988).

B. Public Hearings

DOE will hold three public hearings on this proposed rule. DOE has chosen the locations for these hearings so as to afford an opportunity for affected persons to select from different locations in order to participate in the rulemaking process. The hearing locations, dates and times are listed in the **ADDRESSES** and **DATES** section of this Notice. Speakers will be notified before the date of the hearing as to the time for their presentations. Speakers are requested to submit five written copies of their statement of DOE at the hearing.

A DOE panel will conduct each hearing. DOE reserves the right to schedule a person's respective presentation and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based upon the number of persons requesting to be heard. These will not be judicial or evidentiary-type hearings. Questions may be asked to speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements.

The hearings will be open to all persons on a space-available basis. It is the intention of DOE to provide a hearing site with sufficient seating capacity for the expected level of participation.

Any person wishing to make an unscheduled oral statement to the panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. Everyone who has signed in by 9:30 a.m. on the day of the hearing will be given an opportunity to address the panel. The hearing may be adjourned at any time if all persons present have had the opportunity to speak.

The hearings will be recorded by a court reporter. Anyone interested in purchasing the transcript should contact the court reporter directly. A copy of the transcript will be available for viewing at the address indicated in the "**ADDRESSES**" section of this notice.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

If DOE must cancel a hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register**.

IV. Procedural Requirements

A. Executive Order 12291

This notice of proposed rulemaking was reviewed under Executive Order 12291 (46 FR 12193, February 27, 1981). DOE has concluded that the rule is not a "major rule" under the Executive Order because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, State, Federal, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets. Pursuant to section 3(c)(3) of Executive Order 12291, these proposed rules were submitted to the Director of OMB for a 10-day review. The Director has concluded his review under that Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*), requires, in part, that an agency prepare an initial regulatory flexibility analysis for any proposed rules unless it determines that the proposed rules will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular proposed rule, the agency must publish a notification and an explanation of that determination in the **Federal Register**. The rules proposed in this notice deal with training and qualification of protective force personnel. The proposed rules' economic impact on small businesses is negligible. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, DOE certifies that these proposed rules will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

DOE has determined that the proposed regulations are not a major Federal action with significant environmental impact and, therefore, do not require preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et. seq.*).

D. Paperwork Reduction Act

The collection of information requirements in these proposed rules will be submitted to the Office of Management and Budget in accordance with section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and procedures implementing that Act, 5 CFR 1320.1 *et seq.*

E. Section 404 of the Department of Energy Organization Act of 1977

Pursuant to the requirements of section 404(a) of the Department of Energy Organization Act (42 U.S.C. 7174), DOE has referred this notice of proposed rulemaking, concurrently with the issuance hereof, to the Federal Energy Regulatory Commission for its determination as to whether the proposal would significantly affect any matter within the Commission's jurisdiction. The Commission will have until the close of the comment period to make this determination.

List of Subjects in 10 CFR Part 1046

Government contractor employees, Medical and physical fitness, Security measures, firearms qualification

standards, security skills and knowledge.

For the reasons set out in the preamble, part 1046 of chapter X, title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC, this 7th day of May, 1991.

John C. Tuck,

Under Secretary.

PART 1046—PHYSICAL PROTECTION OF SECURITY INTERESTS

1. The authority citation for part 1046 would be revised to read as follows:

Authority: U.S.C. 2011 *et seq.* and 42 U.S.C. 7101 *et seq.*

§ 1046.3 [Amended]

2. In § 1046.3, a definition for "Special Response Team member" would be added in alphabetical order to read as follows:

* * * * *

Special Response Team member. A security inspector who has been selected to be part of a unit specially trained to provide additional protection capability.

* * * * *

3. A new § 1046.4 would be added to read as follows:

§ 1046.4 Use of number and gender.

As used in this part, words in the singular also include the plural and words in the masculine also include the feminine and vice versa, as the use may require.

4. New §§ 1046.14, 1046.15 and 1046.16 would be added to read as follows:

§ 1046.14 Access authorization.

Protective force personnel shall possess current access authorization for the highest level of classified matter to which they potentially have access. Security inspector personnel who have access to Category I or II quantities of special nuclear material (SNM) will be "Q" cleared. The specific level of access authorization for each duty assignment shall be designated by the site security organization and approved by the Head of the Field Element. Security inspectors shall possess a minimum of an "L" or DOE Secret access authorization.

§ 1046.15 Training and qualification for security skills and knowledge.

(a) DOE contractors shall only employ as protective force personnel individuals who successfully meet the requirements of a formal training program established in accordance with appendix B, "Training and Qualification for Security Skills and Knowledge," to this subpart. The DOE contractor shall maintain individual training records until 5 years after the termination of the individual as a member of the protective force, unless a longer retention period is specified by other requirements.

(b) DOE contractors shall employ as security inspectors, including Special Response Team members, only individuals who are fully qualified and meet the firearms qualification standards set forth in appendix B to this subpart.

§ 1046.16 Certification.

DOE contractors shall employ as protective force personnel only individuals who have successfully completed all applicable training and qualification standards set forth in this subpart including appendices A and B. The DOE contractor shall maintain records of certification for each individual until 5 years after the termination of the individual as a member of the protective force, unless a longer retention period is specified by other requirements.

5. Appendix B to subpart B would be added to read as follows:

Appendix B to Subpart B of Part 1046—Training and Qualification for Security Skills and Knowledge

A. *Applicability.* This appendix B to subpart B of part 1046 specifies performance-oriented requirements for the security training and qualification of DOE contractor guards and security inspectors, including Special Response Team members.

B. *Training and qualifications.* (1) DOE contractors responsible for protective force personnel shall establish formal qualification requirements to ensure the competencies needed by protective force members to perform the tasks required to fulfill their assigned responsibilities. The qualification requirements shall be supported by a formal training program which develops and maintains, in an effective and efficient manner, the knowledge, skills and abilities required to perform assigned tasks. The qualification and training programs shall be based upon criteria established by the Central Training Academy (CTA) as approved by the Director, Office of Safeguards and Security and shall be approved by the Head of the Field Organization. The formal qualification and training program shall:

(a) Be based on a valid and complete set of job tasks, with identified levels of skills and knowledge needed to perform the tasks;

(b) Be aimed at achieving a well-defined, minimum level of competency required to perform each task acceptably;

(c) Employ standardized lesson plans with clear performance objectives as a basis for instruction;

(d) Include valid performance-based testing to determine and certify job readiness (i.e. qualification);

(e) Be documented so that individual and overall training status is easily accessible. Individual training records shall be retained until 5 years after termination of the employee as a member of the protective force, unless a longer retention period is specified by other requirements.

(2) DOE contractors responsible for training protective force personnel shall prepare and review annually a task analysis detailing all of the required actions for a specific job assignment. The task analysis shall be used to prepare a job description and as a basic input document for local training requirements.

(3) *Guards.*

(a) *Training requirements.* Prior to initial assignment to duty, each guard shall successfully complete a basic training course designed to provide the minimum level of skills and knowledge needed to competently perform all tasks associated with guard job responsibilities. The required tasks and minimum levels of competency shall be determined by a site-specific job task analysis, but shall include task areas found in (c) below as appropriate. The training program shall be approved by the Head of the Field Organization and where applicable will include, but not necessarily be limited to, the following types of instruction:

1. Orientation/standards of conduct;
2. Security education/operations and material control and accountability;
3. Safety training;
4. Legal requirements and responsibilities;
5. Weaponless self-defense;
6. Intermediate force weapons;
7. Communications;
8. Vehicle operations; and
9. Post and patrol operations.

(b) *Refresher training.* Each guard shall successfully complete a course of refresher training at least every 12 months to maintain the minimum level of competency required for the successful performance of tasks associated with guard job responsibilities. The type and intensity of training shall be determined by a site-specific job task analysis and shall be approved by the Head of the Field Organization. Failure to achieve a minimum level of competency shall result in the guard's placement in a remedial training program. The remedial training program shall be tailored to provide the guard with the necessary training to afford a reasonable opportunity to meet the level of competency required by the job task analysis. Failure to demonstrate competency at the completion of the remedial program shall result in loss of guard status.

(c) *Knowledge, skills and abilities.* Each guard shall possess the skills necessary to protect DOE security interests from theft and other acts that may cause adverse impacts on national security or the health and safety of the public. The requirements for each guard to demonstrate proficiency, familiarity, knowledge, skills, and abilities of the responsibilities identified in the job task analysis include, but are not limited to:

1. Procedures for conducting physical checks of repositories containing classified matter;

2. Operation of all vehicles as required by duty assignment;

3. Site and facility policies and procedures governing the guard's role in site protection;

4. Federal and state-granted authority applicable to assigned activities and relative responsibilities between the protective force and other law enforcement agencies;

5. Post or patrol operations including:

a. Access control systems, procedures and operation

b. Contraband detection

c. Search techniques for persons, packages and vehicles

d. Badging and escort responsibilities

e. Familiarity and recognition of various types of sensitive matter being protected including the normal location, routine uses, and movements of the material at the duty post

f. Incident reporting

g. Methods of weaponless self defense

h. Elementary first aid and CPR

i. Basic fire fighting equipment and agents and their use.

(4) *Security inspectors.*

(a) *Training requirements.* Prior to initial assignment to duty, each security inspector shall successfully complete a basic training course designed to provide the minimum level of skills and knowledge needed to competently perform all tasks associated with security inspector job responsibilities. The required tasks and minimum levels of competency shall be determined by a site-specific job task analysis, but shall include task areas found in (c) below as appropriate. The training program shall be approved by the Head of the Field Organization and where applicable will include, but not necessarily be limited to, the following types of instruction:

1. Firearms training;
2. Orientation/standards of conduct;
3. Physical training;
4. Security education/operations and material control and accountability;
5. Safety training;
6. Legal requirements and responsibilities;
7. Tactical training;
8. Weaponless self-defense;
9. Intermediate force weapons;
10. Communications;
11. Vehicle operations; and
12. Post and patrol operations.

(b) *Refresher training.* Each security inspector shall successfully complete a course of refresher training at least every 12 months to maintain the minimum level of competency required for the successful performance of tasks associated with security inspector job responsibilities. The type and intensity of training shall be determined by a site-specific job task analysis and shall be approved by the Head of the Field Organization. Failure to achieve a minimum level of competency shall result in the security inspector's placement in a remedial training program. The remedial training program shall be tailored to provide the security inspector with the necessary training to afford a reasonable opportunity to meet the level of competency required by the job task analysis. Failure to demonstrate competency at the completion of the remedial program shall result in loss of security inspector status.

(c) *Knowledge skills and abilities.* Each security inspector shall possess the individual and team skills necessary to enable that security inspector to protect DOE security interests from theft, sabotage, and other acts that may cause adverse impacts on national security or the health and safety of the public and to protect life and property. The requirements for each security inspector to demonstrate proficiency, familiarity, knowledge, skills, and abilities of the responsibilities identified in the job task analysis include, but are not limited to:

1. Knowledge and proficiency in the use and care of all weapons as required by duty assignment;

2. Operation of all vehicles as required by duty assignment;

3. Operation of all communication equipment as required by duty assignment;

4. Knowledge of and the ability to apply site and facility policies and procedures governing the security inspector's role in site protection;

5. Knowledge of Federal and state-granted authorities applicable to assigned activities and the relative responsibilities between the protective force and local law enforcement agencies in both normal and emergency operations.

6. Knowledge of and the ability to apply DOE policy on the use of deadly force and limited arrest authority as set forth in 10 CFR part 1047;

7. Proficiency in post and patrol operations including:

a. Access control systems, procedures and operation

b. Contraband detection

c. Search techniques and systems for individuals, packages and vehicles

d. Badging and escort responsibilities

e. Response to and assessment of alarm annunciations and other indications of intrusion

f. Familiarity and recognition of various types of sensitive matter being protected including the normal location, routine uses, and movements of the material at the assigned duty post

g. Observation and physically checking buildings, rooms and repositories containing classified matter

h. Incident reporting

i. Response to civil disturbances (e.g., strikes, demonstrators)

j. Methods of self-defense and of arrest and detention

k. Elementary first aid and CPR

l. Familiarity with basic fire fighting equipment and agents and their use

m. Basic procedures and elements of investigations

n. Tactical skills

(5) *Special Response Team.*

(a) *Training requirements.* Prior to initial assignment to duties as a Special Response Team member, a security inspector shall successfully complete a basic training course designed to provide the minimum level of skills and knowledge needed to competently perform all tasks associated with Special Response Team job responsibilities. The required tasks and minimum levels of competency shall be determined by a site-specific job task analysis, but shall include the task areas identified for security inspectors and specialized task areas found in (c) below as appropriate. The training program shall be approved by the Head of the Field Organization.

(b) *Refresher training.* Each security inspector assigned as a Special Response Team member shall successfully complete a course of refresher training at least every 12 months to maintain the minimum level of competency required for the successful performance of tasks associated with security inspector and Special Response Team job responsibilities. The type and intensity of training shall be determined by a site-specific job task analysis and shall be approved by the Head of the Field Organization.

(c) *Knowledge, skills and abilities.* Special Response Team members shall be security inspectors with special training and shall possess the individuals and team skills to provide additional protection capability as demanded by the particular targets, threats and vulnerabilities existing at their assigned DOE facilities. In addition to security inspector requirements, the requirements for each Special Response Team member to demonstrate proficiency, familiarity, knowledge, skills, and abilities of the responsibilities identified in the job task analysis include, but are not limited to:

1. Operate as a member of a mobile disciplined response team to engage and defeat adversaries as defined by the approved threat guidance for the facility.

2. Provide and operate special weapons and other equipment which may be necessary to protect a particular facility or to effectively engage an adversary with advanced capabilities.

3. Operate from special tactical vehicles which may be necessary for the protection of a particular facility.

(6) *Specialized requirements.* Each person who is assigned specialized responsibilities outside the scope of normal security inspector and Special Response Team duties shall successfully complete the appropriate basic and required periodic training. This training shall enable the individual to achieve and maintain the minimum level of skill and knowledge needed to competently perform the tasks associated with the specialized job responsibilities, as well as maintain mandated certification, if applicable. Such personnel include, but are not limited to, flight crews, instructors, armorers, Central Alarms System operators, crisis negotiators, investigators, canine handlers, and law enforcement specialists. The scope of such duties shall be based on site-specific needs.

(7) *Supervisors.*

(a) *Training Requirements.* Protective force personnel who are assigned supervisory responsibilities shall successfully complete the appropriate basic and annual training necessary to achieve and maintain the minimum level of skill and knowledge needed to competently perform their supervisory job responsibilities. The required tasks and minimum levels of competency shall be determined by a site-specific job task analysis and the specialized task areas found in (b) below as appropriate.

(b) *Knowledge, skills and abilities.* Each supervisor shall possess the skills necessary to effectively direct the actions of assigned personnel to protect DOE security interests from theft and other acts that may cause adverse impacts on national security or the health and safety of the public. The requirements for each supervisor to demonstrate proficiency, familiarity, knowledge, skills, and abilities of the responsibilities identified in the job task analysis include, but are not limited to:

1. Knowledge of the duties and qualifications of all supervised personnel;

2. Familiarity with the basic operating functions of facilities for which the supervisor has protection responsibilities;

3. Assurance that subordinates and their equipment are ready for duty at the start of each duty shift and the inspection of each duty post at least twice per shift, personally or by other means;

4. Assurance that all duty logs and reports have been properly completed, distributed, and acted upon.

(8) *Training exercises.* Exercises of various types shall be included in the training process for the purposes of achieving and maintaining skills and assessing individual and team competency levels. The types and frequency of training exercises are to be determined by the Head of the Field Organization or by the training needs analysis conducted as part of the training program. The training program shall include as a minimum, the following:

(a) *General.* At least monthly, exercises shall be conducted involving each shift. These exercises are to be planned so as to exercise the protective force's ability to prevent the successful completion of those adversarial acts defined in the approved site-threat statement.

(b) *Special Response Teams.* Personnel assigned Special Response Team responsibilities shall participate in exercises at least monthly. Such exercises shall involve the type of situations and scenarios appropriate to site-specific conditions.

(c) *Local Law Enforcement Agencies.* Protective forces shall exercise at least annually in coordination with the FBI and local law enforcement agencies that would assist the protective force during an incident.

(d) A record of each training exercise shall be prepared for management review and planning and retained for a period of 5 years, unless a longer retention period is specified by other requirements.

(9) *Firearms qualification standards.*

(a) No persons shall be authorized to carry a firearm as a security inspector until the responsible Head of the Field Organization is assured that the individual who is to be armed as qualified in accordance with firearms standards.

(b) As a minimum, each security inspector shall meet the applicable firearms qualification standards every 6 months. The local DOE Operations Office shall permit the qualification to be accomplished any time prior to the actual 6 month anniversary date. The actual qualification date will serve to establish a new anniversary date for firearms qualification. In the case of a headquarters or field audit, or other situation directed by the Head of the Field Organization, a security inspector may be required to demonstrate the ability to meet qualification standards.

(c) Each security inspector shall qualify with all weapons required by duty assignment. Each security inspector shall be required to qualify with each firearm as indicated in the DOE requirements of the DOE qualification courses.

(d) Each security inspector shall qualify with the same type (model) of firearm and ammunition equivalent in trajectory and recoil as used while on duty. This ammunition shall be listed on the DOE approved ammunition list.

(e) Each security inspector shall be given a basic principles of firearms safety presentation prior to any range activity. This does not require that a firearms safety presentation be given for each course of fire, but does require that prior to the start of range training or qualification for a given period (e.g., initial qualification, semiannual (every 6 months) qualification, training or range practice) each security inspector shall be given a range safety presentation.

(f) Only courses of fire endorsed by the DOE Central Training Academy as meeting the operational needs of the DOE and approved by the Office of Safeguards and Security (SA-10) as standardized DOE qualification courses, shall be used for firearms qualification.

(g) Security inspectors shall be allowed two initial attempts to qualify semiannually. A Range Master or other person in charge of the range shall state to security inspector(s) on the firing line that "THIS IS A QUALIFYING RUN." Once this statement is made by the Range Master or person in charge, "this qualifying run" shall constitute a qualification attempt. Each security inspector shall be provided two qualifying attempts. The security inspector shall qualify during one of these attempts.

(h) Failure to qualify shall result in suspension of a security inspector's authority under section 161k. of the Atomic Energy Act of 1954 to carry firearms and to make arrests. The security inspector shall then enter a remedial firearms training program developed and approved by the Head of the Field Organization. The remedial firearms training program shall be tailored to provide the security inspector with the necessary training to afford a reasonable opportunity to meet the firearms qualification standards.

(i) Any security inspector who, upon completion of the remedial training course, fails to qualify after two subsequent, additional attempts shall lose the security inspector status and his authority to carry firearms and to make arrests under section 161k. of the Atomic Energy Act of 1954.

(j) Any security inspector who fails to qualify on three (3) consecutive semiannual qualification periods, with the same firearms, shall lose security inspector status.

(k) Any security inspector who is incapacitated shall be disarmed until fit for return to full duty status. In the event the return to duty occurs more than 6 months after the most recent qualification the security inspector shall requalify prior to being armed.

(l) An appropriate DOE record shall be maintained for each security inspector who qualifies or who attempts to qualify. Records shall be retained until 5 years after separation of a protective force officer from security inspector duties, unless a longer retention period is specified by other requirements. A supervisor or the training officer shall be designated in writing as the individual authorized to certify the validity of the scores.

[FR Doc. 91-11188 Filed 5-9-91; 8:45 am]

BILLING CODE 6450-01-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 619

RIN: 3052-AB13

Loan Policies and Operations; Definitions; Lending Authorities, Appraisal Standards, Participations and Lending Limits; Public Hearings

AGENCY: Farm Credit Administration.

ACTION: Notice of public hearings on proposed regulations relating to appraisal standards and lending limits.

SUMMARY: The Farm Credit Administration (FCA) announces forthcoming public hearings on proposed amendments to 12 CFR part 614 relating to lending limits and appraisals. The proposed regulations were published in the **Federal Register** on January 23, 1991, 56 FR 2452. The comment period for the proposed regulations ended on March 25, 1991. The FCA has decided to hold public hearings because of the substantial number of comment letters expressing concern about the potential impact of the lending limits and appraisal requirements of the proposed regulations. The hearings will provide an opportunity for Farm Credit borrowers, institutions and other interested parties to state their views and offer constructive suggestions on issues of concern in the proposed regulations.

DATES: Two public hearings will be held on the appraisal standards and lending limits. The first public hearing will begin at 8:15 a.m. on June 24 and 25, 1991, in Denver, Colorado. The second public hearing will begin at 8:15 a.m. on June 27 and 28, 1991, in Atlanta, Georgia. Requests to appear and present testimony for one of the public hearings must be submitted by May 20, 1991.

ADDRESSES: The hearings will be held at the Stapleton Plaza Hotel, 3333 Quebec Street, Denver, Colorado 80207 ((303) 321-3500/1-800-950-6070). The second hearing will be held at the Georgia International Convention and Trade Center, 1902 Sullivan Road, P.O. Box F,

College Park, Georgia 30337 ((404) 997-3566). Submit requests to appear and present testimony for the specified public hearing in writing (in triplicate) to Dennis Carpenter, Senior Credit Specialist, Farm Credit Administration, McLean, VA 22102-5090.

FOR FURTHER INFORMATION CONTACT: Dennis Carpenter, Senior Credit Specialist, Policy and Risk Analysis Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4489, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: Public hearings will be held by the Farm Credit Administration Board on proposed amendments to its regulations relating to appraisal standards and lending limits for Farm Credit System (FCS) lending institutions. The amendments were published for comment as proposed regulations on November 3, 1988, 53 FR 44438. The proposed regulations were reproposed for comment on January 23, 1991, 56 FR 2452. For the purposes of this notice, these reproposed regulations will be referred to as "proposed regulations."

The proposed regulations would prescribe minimum appraisal standards and appraiser qualifications for all appraisals used to support the credit decisions of FCS institutions engaged in lending or leasing. The proposed regulations would require the board of directors of each institution to adopt policies and standards governing appraisals of real, personal and intangible property and qualifications of appraisers that are consistent with both the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Foundation and with the requirements of the regulation. The proposed regulation would be similar to appraisal regulations that have been adopted by other Federal financial institution regulatory agencies under the Financial Institutions Recovery, Reform and Enforcement Act of 1989, Public Law 101-73.

The proposed regulations would also prescribe a limit on extensions of credit to a single borrower of 20 percent of capital for all FCS direct lender institutions, except banks for cooperatives, provide for exceptions to the lending limitation, and provide rules for the attribution and aggregation of loans to separate but related borrowers for the purpose of making "single borrower" determinations.

A number of comment letters received by the FCA related to the rules of aggregation and attribution set forth in the proposed regulation in compliance with lending limits. Some of these letters reflect a misunderstanding of the intended application of the proposed regulations. To assure that testimony at the hearings is useful and productive, FCA makes the following clarifications regarding the correct applications of the proposed rules:

1. Under § 614.4358(a)(1) of the proposed regulation, a loan guaranteed by a subject borrower would be aggregated with the loans outstanding to that subject borrower. However, loans outstanding to a subject borrower would not be attributed to the borrower whose loan is guaranteed (name borrower) as a result of the subject borrower's guarantee. For example, if cooperative A (subject borrower) has a $50 million loan and A guarantees a $25 million loan made to cooperative B (named borrower), for the purpose of determining compliance with the lending limits, the proposed regulations would consider the lending institution as having made a $75 million loan to A and a $25 million loan to B. The lending limit is then applied separately to each borrower. If the lending limit is $75 million, the lending institution may not make any additional loans to A, unless the loans are participated to other lenders. Loans aggregating up to an additional $50 million may still be extended by the lending institution to B.

2. Under § 614.4359 of the proposed regulation, a loan or commitment that is within the legal lending limits when made, becomes nonconforming if a reduction in capital causes the loan or commitment to exceed the new lending limit. Since the loan or commitment was legal at the time it was made, the institution has not violated the lending limit regulation. Therefore, the nonconforming loan or commitment is not an illegal loan and does not have to be removed from the institution's collateral base. However, loans or commitments that if fully funded would exceed the lending limit on the day the loan or commitment is made, would violate the regulation and would be subject to the provisions of § 615.5090 and possible enforcement actions.

The FCA believes that these clarifications will alleviate some of the concern expressed in comments on the proposed regulations and will be of assistance to those presenting testimony in the public hearings.

In order to effectively address statements contained in some of the comment letters, the FCA requests comments on the following topics:

1. Number and dollar volume of loans that would exceed lending limits if proposed lending limits and associated aggregation and attribution rules were to be adopted.

2. Differences, if any, between the loan operations of banks for cooperatives and commercial banks that make large commercial loans that would warrant different treatment.

3. Alternatives to the lending limits, if any, that may be equally effective in controlling risk concentrations in institutions in which a few large customers constitute a majority of the outstanding loan volume.

4. An appropriate method of defining "control" in a cooperative structure.

In addition to comments on the preceding topics, the FCA invites testimony on all issues relating to appraisal and lending limit requirements under the proposed regulations. However, the FCA requests that testimony be confined to those requirements and their application to FCS institutions. Formal presentation at the hearings will be restricted to 10 minutes per person.

The first public hearing will be held in Denver, Colorado, beginning at 8:15 a.m. on June 24 and 25, 1991.

The second public hearing will be held in Atlanta, Georgia, beginning at 8:15 a.m. on June 27 and 28, 1991. Both hearings will address appraisal standards and lending limits requirements under the proposed regulations.

A person wishing to present testimony at a hearing must submit a written request that his or her name be placed on the calendar by May 20, 1991. The request should state the name, address and telephone number of the person wishing to testify and the general nature of his or her testimony. Requests will be honored in order of receipt. Persons will be notified by the FCA of acceptance of their requests and of the date and approximate time they are scheduled to testify. Written statements or detailed summaries of the text of testimony to be presented must be submitted to the FCA by June 10, 1991. A person who fails to make a timely submission of testimony will lose his or her place on the hearing schedule to the next person requesting to testify. In the event that more people wish to testify than time permits, the FCA will accept their written statements for the record.

The FCA will accept written comments on testimony presented at the public hearings. The comment period will end on July 31, 1991. The comments, as well as all documents and testimony received by the FCA as part of the public hearing process, will be available for public inspection at the FCA's offices in McLean, Virginia.

Dated: May 7, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-11195 Filed 5-9-91; 8:45 am]

BILLING CODE 6705-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Companies; Common Control for Debenture Leverage Eligibility

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 215(a)(1) of Public Law 101-574 forbids SBA to guarantee the debentures of any Licensee if, as a result thereof, the aggregate outstanding amount of SBA-guaranteed debentures issued by such Licensee and any other Licensee or Licensees under common control therewith would exceed $35 million. This proposed rule would notify the public of this limitation, and would amend the definition of "Control" to set forth the circumstances under which SBA would consider two or more Licensees to be under common control.

DATES: Comments will be accepted until July 9, 1991.

ADDRESSES: Written comments should be sent to Bernard Kulik, Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Investment Division, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Joseph L. Newell, Director, Office of Investment, Telephone (202) 205-6510.

SUPPLEMENTARY INFORMATION: The statutory language that imposes a cap of $35 million on the aggregate amount of SBA-guaranteed debenture leverage that any two or more "commonly controlled" Licensees may have outstanding at any time refers to "debentures guaranteed and outstanding under this title", meaning title III of the Small Business Investment Act, as amended. Since title III includes all the provisions of the Act pertaining to Small Business Investment Companies, the cap applies without regard to whether one or more Licensees in a group of "commonly controlled" Licensees is licensed under section 301(d) of the Act (an SSBIC), or under section 301(c) (an SBIC). However, the cap applies, as does this proposed regulation, only to SBA-guaranteed debentures, and therefore does not affect the eligibility of an SSBIC to sell its preferred securities to SBA, even if such SSBIC is under common control with other Licensees whose aggregate outstanding SBA-guaranteed debenture leverage equals or exceeds $35 million.

SBA does not believe that Congress intended the words "commonly controlled" to mean only "commonly owned", since there are many different methods of control other than mere ownership of record. Rather, SBA believes that the cap was imposed in order to accomplish two objectives: To limit the dollar amount of SBA-guaranteed debenture leverage available to a single group (resulting from ownership, investment, management or some other form of control); and to limit the dollar amount for which SBA would be at risk as a result of the business judgment of a similar single group. Consequently, the intention of this proposed regulation is that two or more Licensees will be deemed to be "commonly controlled" if there is an affiliate relationship between or among them, which could be based upon ownership of stock or partnership capital of the Licensees, or upon management by affiliated persons or entities, or other methods, even if there is no affiliation between or among the owners of the Licensees. A determination that two or more Licensees are "commonly controlled" is not precluded solely because of the absence of any affiliation between or among their respective owners, or any interlock of their respective officers and/or directors, or general partners or Control Persons. Licensees can be "commonly controlled" under the terms of the proposed rule if day-to-day management is contracted out to a single entity, or to two or more affiliated entities.

Section 215(a)(2) of Public Law 101-574 states that the above-described statutory change will become effective July 1, 1991, which will also be the effective date of any final rule based on this proposal. SBA is aware of at least two groups of Licensees that presently have outstanding SBA-guaranteed debentures in excess of $35 million. SBA does not believe that Congress intended to accelerate the maturity of any outstanding SBA-guaranteed debentures in excess of $35 million.

For many years it has been SBA's practice to allow Licensees with maturing SBA-guaranteed debentures to refinance such maturing debt with new ("roll-over") debentures, unless there were credit or regulatory considerations to the contrary. In reliance on SBA's practice, Licensees continued to extend long-term Financing to Small Concerns with scheduled or anticipated maturities subsequent to the maturity of the Licensee's own SBA-guaranteed debentures.

An abrupt change in SBA's long-established practice with respect to the refinancing of maturing debentures would have extremely serious effects, not only upon those Licensees that have reasonably relied upon SBA's practice, but also upon Small Concerns seeking Financing from Licensees affected by Public Law 101-574 and by SBA's implementing regulation. The Licensee's would be unable to pay their maturing SBA-guaranteed debt, and Small Concerns would receive no assistance from Licensees obliged to build up cash reserves in order to repay maturing debentures that can no longer be rolled over.

There is no indication that Congress desired any such consequences, either to the small business investment company industry, or to small business generally. Accordingly, this proposed rule would allow any Licensee that would otherwise be ineligible to obtain SBA's guaranty of its debentures, to receive such guaranty for the first refinancing of debentures outstanding on July 1, 1991 and maturing on or before July 1, 1998. After July 1, 1998 SBA will no longer guaranty debentures that refinance maturing debentures if such guaranty would thereby cause the outstanding aggregate amount of SBA-guaranteed debenture leverage issued by a group of which the debtor Licensee is a member to exceed $35 million. SBA considers a seven-year period sufficient warning to Licensees that may be affected.

Nothing in this proposed regulation will exempt any Licensee from eventual and complete compliance; SBA intends that after July, 1008, no group of Licensees under common control will have more than $35 million in outstanding SBA-guaranteed debenture leverage. Any excess debenture leverage outstanding before July, 2008 will represent any debentures issued to refinance outstanding debentures that matured on or before July 1, 1998. On or after July 1, 1991 Licensees, including companies already licensed on that date, that might otherwise have been able to obtain SBA's guaranty for debentures evidencing new leverage will be denied such guaranty if SBA has already guaranteed $35 million or more of outstanding debentures issued by other Licensees under common control with such Licensee.

Compliance With Executive Orders 12291 and 12612, and the Regulatory Flexibility and Paperwork Reduction Acts

Executive Order 12291. SBA has determined that this proposed regulation, taken as a whole, will constitute a major rule for purposes of Executive Order 12291, because it is likely to have an annual impact on the national economy of $100 million or more. One group of Licensees under common management has (as of July, 1990) outstanding SBA-guaranteed debentures in an aggregate amount in excess of $86 million; this group might have been eligible to borrow as much as $94.5 million more than SBA's guarantee, but for the limitation, imposed by stature and to be imposed by this proposed regulation, upon the aggregate debenture leverage eligibility of two or more Licensees that are commonly controlled. Another such group of Licensees has (as of July, 1990) outstanding SBA-guaranteed debentures in an aggregate amount of $31 million; and this second group might have been eligible to borrow as much as $13 million more with SBA's guarantee.

Regulatory Flexibility Act. For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* this regulation may have a significant economic impact on a substantial number of small entities. Pursuant to Executive Order 12291 and 5 U.S.C. 603, SBA offers the following regulatory flexibility and impact analysis.

1. This action is proposed in compliance with a statutory directive to SBA, set forth in an amendment to section 303(b)(1) of the Small Business Investment Act, 15 U.S.C. 683(b)(1).

2. The legal basis for this proposed regulation is section 308(c) of the Small Business Investment Act, 15 U.S.C. 667(c) and section 215(a) of Public Law 101-574.

3. This proposed regulation would apply to all currently operating Licensees, including all SSBICs.

4. The potential cost of this proposed regulation cannot be quantified or even estimated.

5. There are no federal rules which duplicate, overlap or conflict with this proposed regulation.

Executive Order 12612. SBA certifies that this proposed regulation would have no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12162.

Paperwork Reduction Act. For purposes of the Paperwork Reduction Act, 44 U.S.C., ch. 35 we hereby certify that this regulation, if adopted, will not impose any new recordkeeping requirement.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth above, part 107 of title 13, Code of Federal Regulations is proposed to be amended as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 is revised to read as follows:

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 681 *et seq.*, as amended, Pub. L. 100-590 and Pub. L. 101-162; 15 U.S.C. 687(c); 15 U.S.C. 683, as amended by Pub. L. 101-162 and Pub. L. 101-574; 15 U.S.C. 687d; 15 U.S.C. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Pub. L. 100-590.

2. Section 107.3 is amended by revising the definition of "Control" to read as follows:

§ 107.3 Definition of terms.[2]

* * * * *

Control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Licensee or a Small Concern, whether through the ownership of voting securities, by contract, or otherwise. Two or more Licensees shall be considered to be under common Control if they are affiliates of each other by reason of common ownership or common officers, directors, or general partners; or if they are managed or advised either by a common independent investment advisor or managerial contractor, or by two or more such contractors that are affiliates of each other, or otherwise. The term "affiliate" is defined in § 121.401 of this title.

* * * * *

3. Section 107.201 is amended by revising paragraph (b)(1) to read as follows:

§ 107.201 Funds to licensee.

* * * * *

(b) *SBA Guaranty.* (1) Subject to the restriction set forth in this paragraph (b)(1), SBA may in its discretion agree to guaranty a Licensee's debentures unconditionally, irrespective of the validity, regularity or enforceability of such debentures or any other circumstances which might constitute a legal or equitable discharge or defense of a guarantor and, pursuant to its guaranty, to make timely payments of principal and interest, irrespective of any default by the issuing Licensee or acceleration of the maturity thereof by SBA. Except for the purpose of the effecting the first refinancing of such Licensee's SBA-guaranteed debentures that were outstanding on July 1, 1991 and maturing on or before July 1, 1998, SBA will in no other event guaranty the debentures of any Licensee, regardless of that Licensee's eligibility, if the aggregate amount of outstanding SBA-guaranteed debentures issued by that Licensee and all other Licensees under common Control therewith would thereby exceed $35,000,000.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 19, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-10998 Filed 5-9-91; 8:45 am]

BILLING CODE 8025-01-M

[2] Terms defined in this section are capitalized hereafter.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-952-86]

RIN 1545-AM20

Allocation and Apportionment of Interest Expense; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to allocation and apportionment of interest expense.

DATES: The public hearing will be held on Friday, June 21, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Friday, June 7, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (INTL-952-86), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 864(e) of the Internal Revenue Code of 1986. The proposed regulations appeared in the **Federal Register** for Tuesday, March 12, 1991 (56 FR 10397).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, June 7, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-11210 Filed 5-9-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 2, and 3

[Docket No. 910246-1046]

RIN 0651-AA43

Changes in Patent and Trademark Assignment Practice

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Patent and Trademark Office (Office) proposes amendments to the rules of practice regarding assignments in patent and trademark cases to improve and clarify the rules, to codify changes in practice and to consolidate the rules. The Office proposes to combine the assignment rules currently in parts 1 and 2 into a new part 3 directed to assignments.

DATES: Written comments must be received on or before July 9, 1991 to ensure consideration. A public hearing will be conducted in Two Crystal Park, Suite 912, at 2121 Crystal Drive, Arlington, Virginia, beginning at 9 a.m. on July 17, 1991. Requests to present oral comments should be received on or before July 10, 1991.

ADDRESSES: Address written comments to the Office of the Deputy Assistant Commissioner for Patents, Commissioner of Patents and Trademarks, Box DAC, Washington, DC 20231, marked to the attention of Jeffrey V. Nase. Written comments will be available for public inspection in suite 913, on the 9th floor of Two Crystal Park, located at 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jeffrey V. Nase by telephone at (703) 557-4282 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box DAC, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The Office is proposing to amend the rules of practice in patent and trademark cases to revise, simplify, remove or clarify existing assignment rules or to codify certain practices which are currently in effect. Changes are proposed for rules relating to the documents that will be recorded; the requirements for recording a document; the effect of recording; new cover sheet requirements; the appointment of domestic representatives; and prosecution by assignees and issuance to assignees. While the present rules do not require a cover sheet to accompany each document submitted for recording, typically a cover letter is submitted to ensure proper processing of the document.

The Office has suggested and encouraged the public to use a cover letter, containing specific information concerning the document being submitted, with each document submitted for recording; see "Helpful Hints", 1114 Official Gazette 77 (May 29, 1990). The public has adopted the suggested procedure to such an extent that most documents now submitted for recordation are accompanied by a cover letter which contains the suggested data. Documents submitted for recording with cover sheets containing the specific information needed for recordation have enabled the Office to greatly improve the quality and efficiency of the recording process. To better ensure that the correct data is captured in recordation and recorded promptly, the Office is proposing to make a cover sheet mandatory. The proposed cover sheet will contain all the information necessary for the Assignment Branch to properly and promptly process the document.

Specific Rules Proposed To Be Deleted or Added

The existing rules of practice in Parts 1 and 2 of title 37 of the Code of Federal Regulations which are proposed to be deleted are §§ 1.32, 1.331, 1.332, 1.333, 1.334, 2.185, 2.186 and 2.187. These rules are proposed to be deleted in their entirety and rewritten and renumbered under a proposed new part 3. Table 1 is provided to assist readers in correlating present rules with the proposed rules.

TABLE 1

Present rule	Proposed rule
1.32	3.71 and 3.73.
1.331(a)	3.11.
1.331(b)	3.26.
1.331(c)	3.21.
1.332	3.51.
1.333	3.56.
1.334	3.81.
2.185(a)	3.11.
2.185(a)(1)	3.31.
2.185(a)(2)	3.26.
2.185(a)(3)	3.41.
2.185(a)(4)	3.61.
2.185(b)	3.31(b).
2.185(c)	3.51.
2.186	3.71 and 3.73.
2.187	3.85.

Consideration was given to moving § 1.12 (Assignment records open to public inspection.) to proposed new part 3. However, since this section primarily relates to records maintained by the Office and procedures for accessing those records, a tentative decision has been made to retain this section under the general heading "Records and Files" of the Patent and Trademark Office. Comments are requested on whether § 1.12 should be retained in part 1, or moved to proposed part 3.

Discussion of Specific Sections Proposed To Be Changed or Added

Section 1.12(a) is proposed to be revised to reflect the fact that all assignment records related to pre-1955 trademark records and pre-1957 patent records were transferred to the National Archives and Records Administration (NARA) during 1990. All assignments

recorded on or after January 1, 1955, for trademarks and May 1, 1957, for patents continue to be maintained by the Office. The pre-1955/1957 records have been transferred to NARA to allow for greater accessibility to the public, improvement of file integrity for the older records, and preservation of these materials. The pre-1955/1957 assignment cards, digest books, and libers were stored in four locations: The Assignment Search Room (ASR) at the Office, the Federal Records Center, the National Archives in downtown Washington, and the National Archives location in Alexandria. Storage of information in these various locations made searching of old assignment records difficult. The materials located at the Federal Records Center could be ordered from the ASR. However, many times it took months to receive the materials.

All assignment records from 1837 to December 31, 1954, for trademarks and from 1837 to April 30, 1957, for patents are maintained and are open for public inspection in the National Archives Research Room located at the Washington National Records Center Building, 4205 Suitland Road, Suitland, Maryland 20746. Assignments recorded before 1837 are maintained at the National Archives and Records Administration, 841 South Pickett Street, Alexandria, Virginia 22304.

All requests for abstracts of title continue to be provided by the Office upon request and payment of fees set forth in §§ 1.19 and 2.6. Requests for copies and certified copies of the pre-1955 records for trademarks and pre-1957 records for patents should be directed to NARA since those records are not maintained by the Office. Since these records are maintained by NARA, it becomes more expeditious to request copies directly from NARA, rather than the Office, which would then have to route the requests to NARA. Payment of the fees required by NARA should accompany all requests for copies.

Another proposed change is to make clear that separate assignment records are kept for patents and trademarks, and to indicate that an extra charge will be imposed by the Office on requests for copies of recorded assignments if the correct reel and frame number are not identified.

Sections 1.17 and 1.46 are proposed to be amended to make reference to proposed § 3.81, which would replace § 1.334, and delete reference to § 1.334. The amount of the fee for recording a document would not be affected by this proposed rule change.

Section 1.104(e) is proposed to be amended to make reference to proposed part 3, which would replace § 1.331, and delete reference to § 1.331.

Section 3.1 is proposed to be added to set out definitions of terms used in proposed part 3. Terms which are defined include "application," "assignment," "document," "Office" (meaning Patent and Trademark Office), "recorded document," and "registration." Definitions are provided to make clear the intended meanings of the terms used in proposed part 3. These definitions are intended to be applicable only to proposed part 3. For example, the term "application" is defined, for the purpose of proposed part 3, to mean either an application for patent or an application to register a trademark, unless otherwise indicated.

Section 3.11 is proposed to replace and modify the practice set forth in §§ 1.331(a) and 2.185(a), which specify the documents the Office will record. This proposed section specifies that assignments of patents and registrations will be recorded, as well as other documents which affect title to applications, registrations and patents. Proposed § 3.11 would require that a completed cover sheet as specified in proposed §§ 3.28 and 3.31 be submitted with the document to be recorded.

Section 3.16 is proposed to be added to incorporate the limitation set out in 15 U.S.C. 1060 proscribing the assignment of an intent-to-use trademark application prior to the filing of a statement of use, except as a part of the sale of an on-going business. Because the proposed amendments to part 3 are intended to address all rules relating to assignments, it is appropriate to refer to the statutory requirements of an assignment of an intent-to-use trademark application.

Section 3.21 is proposed to replace and modify the practice of § 1.331(c). Proposed § 3.21 sets forth requirements for the recording of assignments of patents or patent applications. An assignment relating to a patent must identify the patent by number. The name of the inventor, the issue date and title of the invention as stated in the patent may also be given in the assignment to provide additional information on the patent being assigned. An assignment relating to a national patent application must identify the national patent application by application number (consisting of the series code and the serial number, e.g., 07/123,456) or serial number and filing date. An assignment relating to an international patent application which designates the United States of America must identify the international application number (e.g., PCT/US90/01234). The name of the inventor, date of filing and title or the invention as stated in the patent application may also be given in the assignment. If an assignment is executed concurrently with, or subsequent to, the execution of the patent application, but before the patent application is filed, it must identify the patent application by its date of execution, name of each inventor, and title of the invention so that there can be no mistake as to the patent application intended. Assignments submitted for recording that do not identify the patent or patent application as required by this section will not be recorded, but will be returned to the correspondence address which would be required to be provided on the cover sheet by proposed § 3.31(e).

Section 3.24 is proposed as a new section to set forth formal document requirements aimed at facilitating and expediting the recording process. This section proposes that documents submitted for recording be legible, using only one side of each page. The paper used should be bond weight paper preferably no larger than 8½ × 14 inches (21.6 × 33.1 cm.), and with a one-inch (2.5 cm.) margin on all sides. Documents submitted in this form are camera-ready and can be recorded expeditiously with little additional handling required. Documents submitted that fail to meet the legibility and only-one-side-of-the-paper requirements of this proposed section will be returned as set forth in proposed § 3.51.

Section 3.26 is proposed to replace and modify the practice of §§ 1.331(b) and 2.185(a)(2). Proposed § 3.26 provides that the Office will accept and record non-English documents provided they are accompanied by a verified English translation signed by the translator. Documents submitted that fail to meet the requirements of this proposed section will be return as set forth in proposed § 3.51.

Section 3.27 is proposed as a new section to set forth how documents submitted for recording should be addressed to the Office. To ensure prompt and proper processing, documents and their cover sheets should be addressed to the Commissioner of Patents and Trademarks, Box Assignments, Washington, DC 20231, unless they are filed together with new applications or with a petition under § 3.81(b). Petitions under § 3.81(b) should be addressed to the Commissioner of Patents and Trademarks, Box DAC, Washington, DC 20231. New applications and other petitions should be addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

Section 3.28 is proposed as a new section to set forth a new requirement aimed at facilitating and expediting the recording process. This section would require that all requests to record a document in the Office be accompanied by the document to be recorded and at least one cover sheet referring either to the patent applications and patents or to the trademark applications and registrations against which the document is to be recorded. Only one set of documents and cover sheets to be recorded should be filed. If a document to be recorded includes interests in, or transactions involving, both patents and trademarks, separate patent and trademark cover sheets must be submitted. If a document to be recorded is not accompanied by a completed cover sheet, the document and any incomplete cover sheet will be returned to the correspondence address for proper completion of the cover sheet and resubmission of the cover sheet and document. While the present rules do not require a cover sheet to accompany each document submitted for recording, typically a cover letter is submitted to ensure proper processing of the document. The Office is proposing to make a cover sheet mandatory in order to better ensure prompt and proper processing of all documents submitted for recording. The proposed cover sheet will contain all the information necessary for the Office to process the document.

Section 3.31 is proposed as a new section to set forth the formal requirements of the new cover sheet. This section proposes that each patent or trademark cover sheet must contain (1) the name of the party conveying the interest; (2) the name and address of the party receiving the interest; (3) a brief description of the interest conveyed or transaction to be recorded (e.g., assignment, license, change of name, merger, security agreement, etc.); (4) each application number, patent number or registration number against which the document is to be recorded, or an indication that the document is filed together with a patent application; (5) the name and address of the party to whom correspondence concerning the request to record the document should be mailed; (6) the number of applications, patents or registrations identified in the cover sheet and the total fee; (7) the date the document was executed; (8) an indication that the assignee of a trademark application or registration who is not domiciled in the United States has designated a domestic representative; and (9) the signature of the party submitting the document and verification of the correctness of information contained on the cover sheet. The verification must be in oath or declaration form unless (1) the submitted documents pertain only to patents and patent applications and the cover sheet is signed by a registered practitioner, or (2) the submitted documents pertain only to trademark applications and registrations and the cover sheet is signed by an attorney as defined in § 10.1(c). Sample cover sheets for patent documents and for trademark documents are shown in Appendices A and B.

Section 3.34 is proposed as a new section to set forth a procedure to correct errors in a recorded cover sheet. This section proposes that if a recorded cover sheet contains an error that is apparent when the cover sheet is compared with the recorded document, the error will be corrected only if a corrected cover sheet is filed for recordation. The corrected cover sheet must be accompanied by the originally-recorded document or a copy of the originally-recorded document and by a new assignment recording fee in the appropriate amount.

Section 3.41 is proposed to replace and consolidate practice under §§ 1.331(a) and 2.185(a)(3) regarding recording fees. Proposed § 3.41 would require that all requests to record documents be accompanied by the appropriate fee. A fee is charged for each application, patent and registration identified in the cover sheet. The recording fee for patents and patent applications is specified in § 1.21(h). The recording fee for registrations and trademark applications is specified in § 2.6(q).

Section 3.51 is proposed to replace and modify the practice of §§ 1.332 and 2.185(c). Proposed § 3.51 would set the date of recording of a document as the date the document meeting the requirements for recording set forth in this Part is filed in the Office. A document which does not comply with the identification requirements of § 3.21 will not be recorded. Other documents not meeting the requirements for recording, for example, a document submitted without a completed cover sheet, without the required fee, or without any required translation will be returned for correction to the sender where a return address is available. The returned papers would be accompanied by a letter which would indicate that if the returned papers are corrected and resubmitted to the Office within the time specified in the letter, the Office would consider the original date of filing of the papers as the date of recording of the papers. Applicants could use the certificate procedure under either § 1.8 or § 1.10 for resubmissions of returned papers if they desired to have the benefit of the date of deposit in the United States Postal Service. If the returned papers were not corrected and resubmitted within the specified period, the date of filing of the corrected papers would be considered to be the date of recording of the papers. Extensions of time would not be available to extend the specified period to resubmit the returned papers.

Section 3.54 is proposed as a new section to set forth the effect of recording a document. This proposed section would set forth that the recording of a document is not a determination by the Office of the validity of the document or the effect that document has on the title to an application, a patent, or a registration. The Office will determine, when necessary, what effect a document has, including whether a party has the authority to take an action in a matter pending before the Office. Examples of when the Office will need to determine whether a party has the authority to take an action in a matter pending before the Office include: (1) Prosecution by the assignee as in proposed § 3.71; (2) consent of an assignee to the filing of a reissue application as provided in § 1.172; and (3) execution of a disclaimer under § 1.321 by an assignee.

Section 3.56 is proposed to replace and modify the practice of § 1.333. Proposed § 3.56 provides that an assignment, which at the time of its execution is conditional on a given act or event, will be treated by the Office as an absolute assignment. This section serves as notification as to how a conditional assignment will be treated by the Office in any proceeding requiring a determination of the owner of an application, patent or registration. Since the Office will not determine whether a condition has been fulfilled, the Office will treat the submission of such an assignment for recordation as signifying that the act or event has occurred.

Section 3.61 is proposed to replace and modify the practice of § 2.185(a)(4). Proposed § 3.61 sets forth that an assignee of a trademark application or registration not domiciled in the United States must designate a domestic representative in writing to the Office. Assignees of patent applications or patents may designate domestic representatives if the assignee is not residing in the United States. 35 U.S.C. 293. The designation would be required

to state the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the application, patent or registration or rights thereunder.

Section 3.71 is proposed to replace and modify the practice of §§ 1.32 and 2.186. Proposed § 3.71 sets forth that the assignee of record of the entire right, title and interest in an application for patent is entitled to conduct the prosecution of the patent application to the exclusion of the named inventor. Similarly, the assignee of record of the entire right, title and interest in an application for registration is entitled to conduct the prosecution of the trademark application to the exclusion of the applicant.

Section 3.73 is proposed as a new section to set forth the procedure by which an assignee can establish the right to take action in an application, patent or registration. The inventor is presumed to be the original owner of a patent application and any patent that may issue therefrom, unless there is an assignment. The original applicant is presumed to be the original owner of a trademark application and any registration that may issue therefrom, unless there is an assignment. Any action before the Office with respect to an assigned application, patent, or registration may be taken by the assignee of the entire right, title, and interest, provided ownership is established to the satisfaction of the Commissioner. The assignee may establish ownership by submitting to the Office documentary evidence of a chain of title from the original owner to the assignee or by specifying (e.g., reel and frame number, etc.) where such evidence is recorded in the office. Additionally, a statement signed by the party seeking to take action in a matter pending before the Office or its attorney or agent of record must also be submitted stating the evidence has been reviewed and certifying that, to the best of the party's, attorney's, or agent's knowledge and belief, title is in the party seeking to take the action. Documents submitted to establish ownership may be required to be recorded in the Office as a condition to permitting the requesting party to take action in a matter pending before the Office.

Section 3.81 is proposed to replace and modify the practice of § 1.334. Proposed § 3.81 would set forth the procedure for issuance of a patent to an assignee. If an assignment of the entire right, title, and interest is recorded before the issue fee is paid for a patent application, the patent may issue in the name of the assignee. If the assignee holds an undivided part interest, the patent may issue jointly to the inventor and the assignee. At the time the issue fee is paid, the name of the assignee must be provided if the patent is to issue solely or jointly to that assignee. If the assignment is submitted for recording after the date of payment of the issue fee, but prior to issuance of the patent, the assignee may petition that the patent issue to the assignee. Any such petition must be accompanied by the fee set forth in § 1.17(i)(1).

Section 3.85 is proposed to replace and modify the practice of § 2.187. Proposed § 3.85 would set forth the procedure for issuance of a registration to an assignee. The certificate of registration may be issued to the assignee of the applicant, or in a new name of the applicant, provided that the party files a written request in the trademark application record by the time the application is being prepared for issuance of the certificate of registration, and an appropriate document is recorded in the Office. If the assignment or name change document has not been recorded in the Office, then the written request must state that the document has been filed for recordation. The address of the assignee must be made of record in the trademark application file.

Other Considerations

The proposed rule changes are in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these proposed rule changes will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of these proposed changes is to require that a cover sheet accompany each document submitted for recording. The rule change includes no additional or increased fees. Substantive rights to use trademarks and patents are not adversely affected.

The Office has determined that these proposed rule changes are not a major rule under Executive Order 12991. The annual effect on the economy will be less than $100 million. Because most of the proposed changes reduce procedural burdens, there will be no major increase in costs or prices for consumers; individual industries; Federal, state or local government agencies; or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These proposed rule changes contain a collection-of-information requirement subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The proposed rule changes add a requirement for a cover sheet to be submitted with each document to be recorded that will expedite the recording process and improve quality. The public reporting burden for this requirement is estimated to be one-half hour per filing, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding the burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to the Commissioner of Patents and Trademarks, Attention: Office of Management and Organization, Washington, DC 20231; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Paperwork Reduction Projects 0651–0009 and 0651–0011.

The Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

37 CFR Part 3

Administrative practice and procedure, Inventions and patents, Trademarks, Assignments.

For the reasons set out in the preamble, it is proposed to amend 37 CFR parts 1, 2, and 3 as follows, wherein removals are indicated by brackets ([ ]) and additions by arrows (> <):

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.12 paragraphs (a) and (d) are proposed to be revised to read as follows:

§ 1.12 Assignment records open to public inspection.

(a) >(1) Separate assignment records are maintained in the Patent and Trademark Office for patents and trademarks.< The assignment records, relating to original or reissue patents, including digests and indexes>, for assignments recorded on or after May 1, 1957<, and assignment records relating to pending or abandoned trademark applications and to trademark registrations >recorded on or after January 1, 1955<, are open to public inspection >at the Patent and Trademark Office<, and copies of >those assignment records< [any instruments recorded] may be obtained upon request and payment of the fee set forth in § 1.19 [(a)(3)] >and 2.6 of this chapter.

(2) All records of assignments of patents recorded before May 1, 1957, and all records of trademark assignments recorded before January 1, 1955, are maintained by the National Archives and Records Administration (NARA). The records are open to public inspection. Certified and uncertified copies of those assignment records are provided by NARA upon request and payment of the fees required by NARA<.

* * * * *

(d) An order for a copy of an assignment >or other document should identify the reel and frame number where the assignment or document is recorded. If a document is identified without specifying its correct real and frame< [should give the identification of the record. If identified only by the name of the patentee and number of the patent, or in the case of a trademark registration by the name of the registrant and number of the registration, or by name of the applicant and serial number or international application number of the application], an extra charge as set forth in § 1.21(f) will be made for the time consumed in making a search for such assignment.

3. Section 1.17 is proposed to be amended by revising paragraph (i)(1) to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(i)(1) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph..... $120.00

§ 1.12—for access to an assignment record.
§ 1.14—for access to an application.
§ 1.53—to accord a filing date.
§ 1.55—for entry of late priority papers.
§ 1.60—to accord a filing date.
§ 1.62—to accord a filing date.
§ 1.103—to suspend action in application.
§ 1.177—for divisional reissues to issue separately.
§ 1.312—for amendment after payment of issue fee.
§ 1.313—to withdraw an application from issue.
§ 1.314—to defer issuance of a patent.
[§ 1.334—for patent to issue to assignee, assignment recorded late.]
§ 1.666(b)—for access to interference settlement agreement.
>§ 3.81—for patent to issue to assignee, assignment submitted after payment of the issue fee.<

* * * * *

§ 1.32 [Reserved]

4. Section 1.32 is proposed to be removed and reserved.

5. Section 1.46 is proposed to be revised to read as follows:

§ 1.46 Assigned inventions and patents.

In case the whole or a part interest in the invention or in the patent to be issued is assigned, the application must still be made or authorized to be made, and an oath or declaration signed, by the inventor or one of the persons mentioned in §§ 1.42, 1.43, or § 1.47. However, the patent may be issued to the assignee or jointly to the inventor and the assignee as provided in § [1.334] >3.81<.

6. Section 1.104 is proposed to be amended by revising paragraph (e) to read as follows:

§ 1.104 Nature of examination; examiner's action.

* * * * *

(e) Co-pending applications will be considered by the examiner to be owned by, or subject to an obligation of assignment to, the same person if:

(1) The application files refer to assignments recorded in the Patent and Trademark Office in accordance with [§ 1.331] >Part 3 of this chapter< which convey the entire rights in the applications to the same person or organization; or

(2) Copies of unrecorded assignments which convey the entire rights in the applications to the same person or organization are filed in each of the applications; or

(3) An affidavit or declaration by the common owner is filed which states that there is common ownership and states facts which explain why the affiant or declarant believes there is common ownership; or

(4) Other evidence is submitted which establishes common ownership of the applications.

In circumstances where the common owner is a corporation or other organization, an affidavit or declaration may be signed by an official of the corporation or organization empowered to act on behalf of the corporation or organization.

* * * * *

7. The heading prior to § 1.331 is proposed to be revised to read as follows:

[Assignments and Recording] >Arbitration Awards<

§ 1.331 [Reserved]

8. Section 1.331 is proposed to be removed and reserved.

§ 1.332 [Reserved]

9. Section 1.332 is proposed to be removed and reserved.

§ 1.333 [Reserved]

10. Section 1.333 is proposed to be removed and reserved.

§ 1.334 [Reserved]

11. Section 1.334 is proposed to be removed and reserved.

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

12. The authority citation for 37 CFR part 2 would continue to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

13. The heading prior to § 2.185 is proposed to be removed.

[Assignment of Marks]

§ 2.185 [Reserved]

14. Section 2.185 is proposed to be removed and reserved.

§ 2.186 [Reserved]

15. Section 2.186 is proposed to be removed and reserved.

§ 2.187 [Reserved]

16. Section 2.187 is proposed to be removed and reserved.

17. Part 3 is proposed to be added to read as follows:

PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE

Sec.
3.1 Definitions.

Documents Eligible for Recording

3.11 Documents which will be recorded.
3.16 Assignability of trademark prior to filing of use statement.

Requirements for Recording

3.21 Identification of patent or patent application.
3.24 Formal requirements for document and cover sheet.
3.26 English language requirement.
3.27 Mailing address for submitting documents to be recorded.
3.28 Requests for recording.

Cover Sheet Requirements

3.31 Cover sheet content.
3.34 Correction of cover sheet errors.

Fees

3.41 Recording fees.

Date and Effect of Recording

3.51 Recording date.
3.54 Effect of recording.
3.56 Conditional assignments.

Domestic Representative

3.61 Domestic representative.

Prosecution by Assignee

3.71 Prosecution by assignee.
3.73 Establishing right of assignee to prosecute.

Issuance to Assignee

3.81 Issue of patent to assignee.
3.85 Issue of registration to assignee.

Authority: 15 U.S.C. 1123; 35 U.S.C. 6.

§ 3.1 Definitions.

For purposes of this part, the following definitions shall apply:

Application means an application for patent or an application to register a trademark unless otherwise indicated.

Assignment means a transfer by a party of all or part of its right, title and interest in a patent or patent application, or a transfer of its entire right, title and interest in a trademark application or registration.

Document means a document which a party requests to be recorded in the Office pursuant to § 3.11 and which affects some interest in an application, patent, or registration.

Office means the Patent and Trademark Office.

Recorded document means a document which has been recorded in the Office pursuant to § 3.11.

Registration means a trademark registration issued by the Office.

Documents Eligible for Recording

§ 3.11 Documents which will be recorded.

Assignments of applications, patents, and registrations, accompanied by completed cover sheets as specified in §§ 3.28 and 3.31, will be recorded in the Office. Other documents, accompanied by completed cover sheets as specified in §§ 3.28 and 3.31, affecting title to applications, patents, or registrations, will be recorded as provided in this part or at the discretion of the Commissioner.

§ 3.16 Assignability of trademark prior to filing of use statement.

No application to register a mark under 15 U.S.C. 1051(b) is assignable prior to the filing of the verified statement of use under 15 U.S.C. 1051(d) except to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing.

Requirements for Recording

§ 3.21 Identification of patent or patent application.

An assignment relating to a patent must identify the patent by the patent number. An assignment relating to a national patent application must identify the national patent application by the application number (consisting of the series code and the serial number, e.g., 07/123,456) or the serial number and filing date. An assignment relating to an international patent application which designates the United States of America must identify the international application by the international application number (e.g., PCT/US90/01234). If an assignment is executed concurrently with, or subsequent to, the execution of the patent application, but before the patent application is filed, it must identify the patent application by its date of execution, name of each inventor, and title of the invention so that there can be no mistake as to the patent application intended.

§ 3.24 Formal requirements for document and cover sheet.

The document and cover sheet must be legible. Only one side of each page shall be used. The paper used should be bond weight paper, preferably no larger than 8½ × 14 inches (21.6 × 33.1 cm.), and with a one-inch (2.5 cm.) margin on all sides.

§ 3.26 English language requirement.

The Office will accept and record non-English language documents only if accompanied by a verified English translation signed by the individual making the translation.

§ 3.27 Mailing address for submitting documents to be recorded.

Documents and cover sheets to be recorded should be addressed to the Commissioner of Patents and Trademarks, Box Assignments, Washington, DC 20231, unless they are filed together with new applications or with a petition under § 3.81(b).

§ 3.28 Requests for recording.

All requests to record a document in the Office must be accompanied by the document to be recorded and at least one cover sheet as specified in § 3.31 referring either to each patent application and patent, or to each trademark application and registration, against which the document is to be recorded. If a document to be recorded includes interests in, or transactions involving, both patents and trademarks, separate patent and trademark cover sheets must be submitted. Only one set of documents and cover sheets to be recorded should be filed. If a document to be recorded is not accompanied by a completed cover sheet, the document and any incomplete cover sheet will be returned pursuant to § 3.51 for proper completion of a cover sheet and resubmission of the document and a completed cover sheet.

Cover Sheet Requirements

§ 3.31 Cover sheet content.

Each patent or trademark cover sheet required by § 3.28 must contain:

(a) The name of the party conveying the interest;

(b) The name and address of the party receiving the interest;

(c) A description of the interest conveyed or transaction to be recorded;

(d) Each application number, patent number or registration number against which the document is to be recorded, or an indication that the document is filed together with a patent application;

(e) The name and address of the party to whom correspondence concerning the request to record the document should be mailed;

(f) The number of applications, patents or registrations identified in the cover sheet and the total fee;

(g) The date the document was executed;

(h) An indication that the assignee of a trademark application or registration who is not domiciled in the United States has designated a domestic representative (see § 3.61); and

(i) The signature of the party submitting the document and verification of the correctness of information contained on the cover

sheet. The verification must be in oath or declaration form unless:

(1) The submitted patent cover sheet is signed by a registered practitioner, or

(2) The submitted trademark cover sheet is signed by an attorney as defined in § 10.1(c) of this chapter.

A cover sheet may not refer to both patents and trademarks.

§ 3.34 Correction of cover sheet errors.

An error in a cover sheet recorded pursuant to § 3.11 will be corrected only if:

(a) The error is apparent when the cover sheet is compared with the recorded document to which it pertains and

(b) A corrected cover sheet is filed for recordation.

The corrected cover sheet must be accompanied by the originally-recorded document or a copy of the originally-recorded document and by an assignment recording fee as set forth in § 1.21(h) of this chapter for patents and § 2.6(q) of this chapter for trademarks.

Fees

§ 3.41 Recording fees.

All requests to record documents must be accompanied by the appropriate fee. A fee is required for each application, patent and registration against which the document is recorded as identified in the cover sheet. The recording fee is set in § 1.21(h) of this chapter for patents and in § 2.6(q) of this chapter for trademarks.

Date and Effect of Recording

§ 3.51 Recording date.

The date of recording of a document is the date the document meeting the requirements for recording set forth in this Part is filed in the Office. A document which does not comply with the identification requirements of § 3.21 will not be recorded. Documents not meeting the other requirements for recording, for example, a document submitted without a completed cover sheet or without the required fee, will be returned for correction to the sender where a correspondence address is available. The returned papers will be accompanied by a letter which will indicate that if the returned papers are corrected and resubmitted to the Office within the time specified in the letter, the Office will consider the original date of filing of the papers as the date of recording of the document. The certification procedure under either § 1.8 or § 1.10 of this chapter may be used for resubmissions of returned papers to have the benefit of the date of deposit in the United States Postal Service. If the returned papers are not corrected and resubmitted within the specified period, the date of filing of the corrected papers will be considered to be the date of recording of the document. The specified period to resubmit the returned papers will not be extended.

§ 3.54 Effect of recording.

The recording of a document pursuant to § 3.11 is not a determination by the Office of the validity of the document or the effect that document has on the title to an application, a patent, or a registration. When necessary, the Office will determine what effect a document has, including whether a party has the authority to take an action in a matter pending before the Office.

§ 3.56 Conditional assignments.

Assignments which are made conditional on the performance of certain acts or events, such as the payment of money or other condition subsequent, if recorded in the Office, are regarded as absolute assignments for Office purposes until cancelled with the written consent of all parties or by the decree of a court of competent jurisdiction. The Office does not determine whether such conditions have been fulfilled.

Domestic Representative

§ 3.61 Domestic representative.

If the assignee of a trademark application or registration is not domiciled in the United States, the assignee must designate, in writing to the Office, a domestic representative. An assignee of a patent application or patent may designate a domestic representative if the assignee is not residing in the United States. The designation shall state the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the application, patent or registration or rights thereunder.

Prosecution by Assignee

§ 3.71 Prosecution by assignee.

The assignee of record of the entire right, title and interest in an application for patent is entitled to conduct the prosecution of the patent application to the exclusion of the named inventor or previous assignee. The assignee of record of the entire right, title and interest in a trademark application or registration is entitled to conduct the prosecution of the trademark application or registration to the exclusion of the original applicant or previous assignee.

§ 3.73 Establishing right of assignee to prosecute.

(a) The inventor is presumed to be the owner of a patent application, and any patent that may issue therefrom, unless there is an assignment. The original applicant is presumed to be the owner of a trademark application unless there is an assignment.

(b) Any action before the Office with respect to an assigned application, patent, or registration may be taken by the assignee of the entire right, title, and interest provided ownership is established to the satisfaction of the Commissioner. Ownership may be established by submitting to the Office documentary evidence of a chain of title from the original owner to the assignee or by specifying (e.g., reel and frame number, etc.) where such evidence is recorded in the Office When a party holding ownership of an application through assignment(s) seeks to take action in a matter pending before the Office, a statement, signed by the party or its attorney or agent of record, must also be submitted specifying the documents placing ownership in the party, stating the evidence has been reviewed and certifying that, to the best of the party's, attorney's, or agent's knowledge and belief, title is in the party seeking to take the action. Documents submitted to establish ownership may be required to be recorded as a condition to permitting the requesting party to take action in a matter pending before the Office.

Issuance To Assignee

§ 3.81 Issue of patent to assignee.

(a) For a patent application, if an assignment of the entire right, title, and interest is recorded before the issue fee is paid, the patent may issue in the name of the assignee. If the assignee holds an undivided part interest, the patent may issue jointly to the inventor and the assignee. At the time the issue fee is paid, the name of the assignee must be provided if the patent is to issue solely or jointly to that assignee.

(b) If the assignment is submitted for recording after the date of payment of the issue fee, but prior to issuance of the patent, the assignee may petition that the patent issue to the assignee. Any such petition must be accompanied by the fee set forth in § 1.17(i)(1) of this chapter.

§ 3.85 Issue of registration to assignee.

The certificate of registration may be issued to the assignee of the applicant, or in a new name of the applicant, provided that the party files a written request in the trademark application by

the time the application is being prepared for issuance of the certificate of registration, and the appropriate document is recorded in the Office. If the assignment or name change document has not been recorded in the Office, then the written request must state that the document has been filed for recordation. The address of the assignee must be made of record in the application file.

Dated: April 25, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

Note: Appendices A and B are published for informational purposes only and will not be codified in the Code of Federal Regulations.

BILLING CODE 3510-16-M

Appendix A to Part 3

PATENTS ONLY

To the Honorable Commissioner of Patents and Trademarks:
Please record the attached original document or copy thereof.

PATENTS ONLY

1. Name of Party(ies) conveying an interest:

2. Name and Address of Party(ies) receiving an interest:

Name:_____
Internal Address:_____
Street Address:_____
City:_____
State:_____ Zip:_____

3. Description of the interest conveyed:

☐ Assignment ☐ Change of Name ☐ Other _____
☐ Security Agreement ☐ Merger

4. Application number (s) or patent number (s). Additional sheet attached? ☐ Yes ☐ No
If this document is being filed together with a new application, the execution date of the application is:

_____
Date

A. Patent Application No.(s)

B. Patent No. (s)

5. Name and address of party to whom correspondence concerning document should be mailed:

Name:_____
Internal Address:_____
Street Address:_____
City:_____
State:_____ Zip:_____

6. Number of applications and patents involved:

7. Amount of fee enclosed or authorized to be charged:

8. Deposit account number (Attach duplicate copy of this form if paying by deposit account):

DO NOT USE THIS SPACE

9. Date of execution of attached document _____
10. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on:

_____
Date

Signature

Name of Person Signing

Appendix B to Part 3

TRADEMARKS ONLY

To the Honorable Commissioner of Patents and Trademarks:
Please record the attached original document or copy thereof.

TRADEMARKS ONLY

1. Name of Party(ies) conveying an interest:

Entity:
☐ Individual (s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☐ Corporation-State_____
☐ Other_____

2. Name and Address of Party(ies) receiving an interest:

Name:_____
Internal Address:_____
Street Address:_____
City:_____
State:_____ Zip:_____

Entity:
☐ Individual (s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☐ Corporation-State_____
☐ Other_____
Citizenship_____

If not domiciled in the United States, a domestic representative designation is attached:
☐ Yes
☐ No (The attached document must not be an assignment)

3. Interest Conveyed:
☐ Assignment ☐ Change of Name
☐ Security Agreement ☐ Merger
☐ Other_____

4. Application number (s) or registration number (s). Additional sheet attached? ☐ Yes ☐ No

A. Trademark Application No.(s)

B. Trademark Registration No. (s)

5. Name and address of party to whom correspondence concerning document should be mailed:

Name:_____
Internal Address:_____
Street Address:_____
City:_____
State:_____ Zip:_____

6. Number of applications and registrations involved:

7. Amount of fee enclosed or authorized to be charged:

8. Deposit account number (Attach duplicate copy of this form if paying by deposit account):

DO NOT USE THIS SPACE

9. Date of execution of attached document:_____
10. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on:

_____
Date

_____ _____
Signature Name of Person Signing

[FR Doc. 91-10841 Filed 5-9-91; 8:45 am]
BILLING CODE 3510-16-C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-132, RM-7692]

Radio Broadcasting Service; Neenah-Menasha, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Fox Valley Broadcasting, Inc., requesting the substitution of Channel 232C3 for Channel 232A at Neenah-Menasha, Wisconsin, and modification of the license for Station WROE to specify operation on the higher class channel. The coordinates for Channel 232C3 are 44-19-00 and 88-33-00.

DATES: Comments must be filed on or before June 28, 1991, and reply comments on or before July 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Thomas J. Hutton, Dow, Lohnes & Albertson, 1255 Twenty-Third Street, NW., Washington, DC 20237, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-132, adopted April 25, 1991, and released May 7, 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, 1714 21st Street, NW. Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR § 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-11153 Filed 5-9-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-131, RM-7702]

Radio Broadcasting Services; Kings, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Donald Brady proposing the allotment of Channel 246A to Kings, Mississippi, as that community's first FM broadcast service. The coordinates for Channel 246A are 32-24-01 and 90-51-07.

DATES: Comments must be filed on or before June 28, 1991, and reply comments on or before July 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Donald Brady, 5880 Ridgewood Road, Apt. D-40, Jackson, Mississippi 39211 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-131, adopted April 24, 1991, and released May 7, 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, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-11154 Filed 5-9-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

48 CFR Chapter 9

Acquisition Regulation; 8(a) Contracting

AGENCY: Department of Energy (DOE).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to amend the Department of Energy Acquisition Regulation (DEAR) to exempt procurements under the authority of section 8(a) of the Small Business Act from the formal Source Evaluation Board procedures set forth in Section 915.613, Alternate source selection procedures.

DATES: Written comments should be submitted no later than June 10, 1991.

ADDRESSES: Comments should be addressed to the Department of Energy, Procurement Policy Division, Office of Procurement, Assistance and Program Management (PR-121), 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Richard B. Langston, Office of Procurement, Assistance and Program Management (PR-121), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8247.

Laura Fullerton, Office of the Assistant General Counsel for Procurement and Finance (GC-34), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1900.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under Executive Order 12612
E. National Environmental Policy Act
F. Public Hearing
III. Public Comments

I. Background

Under section 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in the position. Accordingly, the DEAR was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR chapter 9.

The Department is proposing to amend the DEAR to specify that competitive acquisitions under the authority of section 8(a) of the Small Business Act are exempt from the Department's formal Source Evaluation Board procedures. This will be accomplished by adding a new section 919.805–2, Procedures, which furnishes background and recognizes the exemption.

II. Procedural Requirements

A. Review Under Executive Order 12291

This Executive order, entitled "Federal Regulation," requires that certain regulations be reviewed by the OMB prior to their promulgation. This proposed rule was submitted to the Office of Management and Budget for review.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

D. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's proposed rule, when finalized, will revise certain policy and procedural requirements. DOE has determined that none of the revisions will have a direct effect on the institutional interests or traditional functions of the States.

E. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 *et seq.*) (1976), the Council on Environmental Quality Regulations (40 CFR part 1500–1508), or the DOE Guidelines (10 CFR 1021) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

F. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, and 5 U.S.C. 553, the Administrative Procedures Act, the Department does not plan to hold a public hearing on this proposed rule.

III. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DEAR amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the **"ADDRESS"** section of this notice. All comments received will be available for public inspection in the DOE Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

All written comments received (by the date indicated in the **"DATE"** section of this notice) will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule. Any person submitting information which that person believes to be confidential and which may be exempt from public disclosure should submit one complete copy, as well as an additional copy from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. DOE's generally applicable procedures for handling information, which has been submitted in a document and may be exempt from public disclosure, are set forth in 10 CFR 1004.11.

List of Subjects in 48 CFR Ch. 9

Government procurement.

For the reasons set out in the preamble, chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC, on May 7, 1991.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance and Program Management.

1. The authority citation for chapter 9 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. A new subpart 919.8 is added to read as follows:

Subpart 919.8—Contracting With the Small Business Administration (the 8(a) Program)

919.805–2 Procedures.

Acquisitions involving section 8(a) competition are exempt from Department of Energy formal Source Evaluation Board procedures cited in subpart 915.6, Source Selection, but must still comply with source selection procedures set forth in the FAR in accordance with 13 CFR 124.311(f)(1).

[FR Doc. 91–11192 Filed 5–9–91; 8:45 am]
BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. LVM 89-01; Notice 9]

Passenger Automobile Average Fuel Economy Standards; Proposed Decision to Grant Exemption

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

ACTION: Proposed decision to grant exemption from average fuel economy standards and to establish an alternative standard.

SUMMARY: This notice is being issued in response to a petition filed by Dutcher Motors, Inc. (Dutcher) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model years (MY) 1993, 1994, and 1995 passenger automobiles, and that a lower alternative standard be established for the company for each of those years. This notice proposes that the requested exemption be granted and that an alternative standard of 17.0 mpg for each MY be established for Dutcher.

DATES: Comments on this notice must be received on or before June 24, 1991.

ADDRESSES: Comments on this notice must refer to the docket number and notice number of this notice and should be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Kee's telephone number is (202) 366-0846.

SUPPLEMENTARY INFORMATION:

Background

Section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act), provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable average fuel economy standard for passenger automobiles if that standard is more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactures (worldwide) fewer than 10,000 passenger automobiles in the model year for which the exemption is sought (the affected model year) and that manufactured fewer than 10,000 passenger automobiles in the second model year before the affected model year. In determining maximum feasible average fuel economy, the agency is required by section 502(e) of the Act to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

The Act permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) A separate standard may be established for each exempted manufacturer; (2) classes, based on design, size, price, or other factors, may be established for the automobiles of exempted manufactures, with a separate average fuel economy standard applicable to each class; or (3) a single standard may be established for all exempted manufacturers.

In a petition dated December 5, 1990, Dutcher Motors (Dutcher) requested an exemption from the generally applicable fuel economy standards for MYs 1993, 1994, and 1995. In response to a previous petition requesting an alternate standard of 17.0 mpg for MY 1992, the agency has published a notice proposing to exempt Dutcher and set an alternative standard of 17.0 for that year (See 56 FR 3441; January 30, 1991). That company's petition for MYs 1993, 1994, and 1995 indicates that same basic vehicle produced for MY 1992 will continue to be produced in those later years.

Classification of Transitaxi as a Passenger Automobile

Due to differences in the definitions used by this agency under the Cost Savings Act for CAFE purposes and the Environmental Protection Agency under the Clean Air Act for emissions control purposes, the Transitaxi is classified differently by these two agencies. For MYs 1986 through 1988, the Environmental Protection Agency (EPA) classified the Dutcher model as a "light duty truck" for emissions compliance due to the model's derivation from existing truck components (40 CFR 86.02-2). However, for those years, NHTSA concluded that the Transitaxi is a "passenger automobile" for fuel economy purposes. The Transitaxi is a passenger automobile under the definition in 49 CFR 523.4 since it transports not more than 10 individuals and since it does not meet any configurational or usage criteria for light trucks given in 49 CFR 523.5. Dutcher plans no substantial change in the design of the Transitaxi for MYs 1993 through 1995, from the model produced in MYs 1986 through 1988. NHTSA therefore concludes that the Transitaxi to be produced in MYs 1993-1995 is a "passenger automobile" for fuel economy purposes.

Background Information on Dutcher

Dutcher Motors, Inc., a small company located in San Marcos, California, was chartered in 1984 to manufacture a limited quantity of a single model of special purpose vehicles called Transitaxi. Dutcher incorporates unique design features that facilitate use of the vehicle for handicapped and disabled individuals. The Transitaxi is designed to be used in any business providing shared-ride taxi service, demand response dial-a-ride systems, airport-to-hotel shuttles and/or feeder line service to city buses and rail lines.

Dutcher's principal stockholder is Cornelius Dutcher, who resides in San Marcos, California, which is also the location of its present office headquarters and production facility. Dutcher employs approximately eight workers. Dutcher does not control, is not controlled by and is not under common ownership with another manufacturer of passenger automobiles. For MYs 1993-1995, Dutcher intends to use General Motors (GM) engines and other GM parts, but will purchase these components in arms-length transactions from General Motors Corporation. The components will then be installed in the vehicle which will be designed and manufactured by Dutcher. The planned vehicle would have the largest interior volume index of any passenger automobile sold in the United States.

Dutcher has informally notified this agency that as a cost saving measure, it may contract with another small business to do the actual assembly work for the Transitaxi for MYs 1993 through 1995.

The Dutcher model that is the subject of this petition will have GM 3.8 liter, electronically fuel injected, V-6 engines The Environmental Protection Agency (EPA) fuel economy test results for the MY 1989 Dutcher (the most recent model year for which testing was conducted) were a combined value of 16.4 mpg, somewhat higher than the earlier version of the Transitaxi that used a Ford engine. Vehicle specifications for the Transitaxi are as follows:

Maximum width—81.5 inches
Maximum length—196.8 inches
Maximum height—76.5 inches
Curb weight—4200 pounds
Interior volume index—350 cubic feet

Net horsepower—165

Dutcher stated in a September 12, 1989 letter that the 1992 model would be similar to a 1990 prototype, which is 200 pounds lighter than the 1989 version. In light of this weight reduction, NHTSA estimates that Dutcher can achieve a fuel economy of 17.0 mpg for its MY 1992 vehicle. This estimate is derived by using a regression equation based on EPA's 1989 test car list applied to Dutcher's MY 1989 test data but with a reduction of 200 pounds and no other drivetrain changes. As was stated earlier, the Transitaxi model planned for MYs 1993–1995 is the same as the 1992 version.

NHTSA notes that Dutcher's petition states that its average fuel economy will be 16 mpg. The agency assumes that the 16 mpg figure is based on EPA test results for Dutcher's MY 1989 vehicle, and that it does not reflect the fuel economy improvement attributable to the 200 pound weight reduction discussed above.

Areas specifically addressed by the Dutcher petition (including submissions related to petitions for earlier model years) to improve its fuel economy include mix shift, weight reduction, engine improvements, and drive train and transmission improvements.

Methodology Used to Project Maximum Feasible Average Fuel Economy Level for Dutcher

Baseline Fuel Economy

To project the level of fuel economy which will be achieved by Dutcher in MYs 1993–1995, the agency considered whether there were technical or other improvements that would be feasible for these Dutcher vehicles, whether or not the company will actually incorporate such improvements in those vehicles. The agency assessed the technological feasibility and economic practicability of any changes.

NHTSA interprets "technological feasibility" as meaning that technology which would be available to Dutcher for use on its MY 1993 through 1995 automobiles, and which would improve the fuel economy of those automobiles. The areas examined for technologically feasible improvements were weight reduction, aerodynamic improvements, engine improvements, and drive line improvements. Due to Dutcher's limited financial resources, small engineering staff, very low production volume, and assemblage of stock components, the petition will have few opportunities for technological improvements for fuel economy.

"Economic practicability" is interpreted as meaning the financial capability of the manufacturer to improve its average fuel economy by incorporating technologically feasible changes to its MYs 1993–1995 automobiles. In assessing that capability, the agency has always considered market demand since it is an implicit part of the concept of economic practicability. Consumers need not purchase what they do not want.

In accordance with the concerns of economic practicability, NHTSA has considered only those improvements which would be compatible with the basic design concepts of Dutcher automobiles. Hence, design changes that would make the cars unsuitable for transporting the wheelchair bound or other handicapped, and eliminating options usually available on cars, such as air conditioning, automatic transmission, power steering, and power windows, were not examined. Such changes to the basic design of the Dutcher could be economically impracticable since they might well significantly reduce the demand for these automobiles, thereby reducing sales and causing significant economic injury to the low volume manufacturer.

Mix Shift

Since only one vehicle model is planned for MYs 1993–1995, the Dutcher corporate average fuel economy is based on the fuel economy of that one model, the Transitaxi, and cannot be averaged with the fuel economy of any other models.

Weight And Aerodynamic Drag Reduction

Dutcher stated in its petition that considerable engineering effort had gone into weight reduction of their model and special attention has been given to good aerodynamic design. For example, the Transitaxi is designed with a smooth front cowl, flush windows and door handles, and a bottom cover, all of which promote a low drag coefficient. The body is made primarily of fiberglass to reduce the weight of the vehicle. Dutcher states that it is considering using several kinds of low-friction, synthetic lubricants.

Technology for Fuel Economy Improvements

Because of the Dutcher's limited financial resources, small engineering staff, extremely low production volume, and assemblage of stock components, few opportunities for technological improvements for fuel economy exist. Dutcher purchases standard components, or better, for installation in its Transitaxis. Dutcher depends entirely on GM, the supplier of the engine, for technological improvements in fuel efficiency of the engine since the company does not have the financial resources and the staff to do it themselves. The transmission is a four-speed automatic transmission with lockup torque converter clutch, one of the more efficient transmission designs available. The driveshaft utilizes low friction, ball-type, constant-velocity, universal joints. The drivetrain is entirely at the rear of the vehicle. A Buick V–6 engine and 4-speed automatic transmission are mounted in transverse configuration.

Dutcher's dynamometer horsepower setting for the 1989 EPA certification testing, when compared to that of MY 1990 passenger vans and station wagons of smaller frontal area and interior volume, as indicated in the table below, shows that the Transitaxi uses good aerodynamic design equivalent to current industry standards. The agency has compared MY 1989 data for Dutcher versus MY 1990 data for the other vehicles as these are the most current data available to the agency. As earlier stated, except for the fact that the MY 1993–1995 versions will be approximately 200 pounds lighter, the agency anticipates no significant differences between the MY 1989 and MY 1993–1995 Transitaxis.

DYNAMOMETER SETTING COMPARISON

Model	Act. dyno. HP.	Frontal area, square feet	Interior volume index
Dutcher Transitaxi	14.7	37	350
* Ford Aerostar	11.7	31.3	176
* GM Astro	13.8	34.4	202
* Chrysler Caravan/ Voyager	10.2	n/a	213
Mercury Grand Marquis Wagon	12.5	26.6	165
* Chevrolet Lumina APV	9.8	29.4	158
* Ford E-150 Club Wagon	16.7	37.7	238

* These vehicles are classified by EPA as light trucks.

Thus, the only signficiant opportunity for improvment in these components will be the result of any improvments which GM decides for its own purposes to make in the engine and drivetrain it will supply for Dutcher. Dutcher's role will be limited to attempting to modify the drivetrain to meet emissions requirements.

Effect of Other Motor Vehicle Standards

As indicated above, a MY 1989 vehicle is the most recent Dutcher vehicle for which EPA testing was conducted. The fuel economy effects

experienced by that vehicle as a result of Federal safety or emissions standards were reflected in the fuel economy values which the vehicle achieved in that EPA testing. That testing does not, however, reflect changes in government standards which took effect after MY 1989.

In NHTSA's recent light truck (i.e., light trucks and multipurpose passenger vehicles) fuel economy rulemaking, include the one for MYs 1992–94, the agency has discussed the effects of government regulations, both in process and recently completed, that may have an impact on fuel economy. See 55 FR 3609, February 2, 1990; 55 FR 12487, April 4, 1990; 56 FR 13773, April 4, 1991. This analysis is relevant to Dutcher, since, as indicated above, the Transitaxi is considered a light duty truck for purposes of EPA emissions standards, and NHTSA understands that Dutcher classifies the Transitaxi as a multipurpose passenger vehicle for purposes of safety standards.

While there have been some changes in government regulations which could effect fuel economy, e.g., safety standards whose application to light trucks could result in added weight, NHTSA does not know whether the fuel economy of the Dutcher Transitaxi will be affected. For example, the Transitaxi may meet new safety standards without any changes, or any weight increases may be so small as not to affect its fuel economy value. NHTSA has not included any adjustment in Dutcher's fuel economy to account for changed government standards since MY 1989. The agency specifically invites comments concerning whether the fuel economy of the Transitaxi will be affected by such changed standards and, if so, to what extent.

The Need of the Nation to Conserve Energy.

The agency recognizes there is a need to conserve energy, to promote energy security, and to improve balance of payments. However, as discussed elsewhere in this notice, NHTSA has tentatively determined that it will not be technologically feasible or economically practicable for Dutcher to achieve an average fuel economy in each of MYs 1993, 1994, and 1995 above 17.0 mpg. Since Dutcher probably cannot exceed 17 mpg, granting an exemption and setting an alternative standard at that level would not have any effect on fuel consumption and would not affect the need of the Nation to conserve energy.

Proposed Alternative Standard

Based on the foregoing discussion, this agency has tentatively concluded that it would not be technologically feasible and economically practicable for Dutcher to improve the fuel economy of its model year 1993 through 1995 automobiles above an average of 17.0 mpg, the same level proposed for MY 1992. The agency has also concluded that the national effort to conserve energy would not be affected by granting the requested exemption and establishing an alternative standard, and assumes that compliance with other Federal automobile standards would not adversely affect achievable fuel economy. Consequently, the agency tentatively concludes that the maximum feasible average fuel economy for Dutcher in MYs 1993–1995 will be 17.0 mpg. Therefore, the agency proposes to exempt Dutcher from the generally applicable standard of 27.5 mpg and to establish an alternative standard for Dutcher of 17.0 mpg for each of MYs 1993, 1994, and 1995. The proposal to establish a separate standard for Dutcher as opposed to a single standard for all exempted manufacturers or class standards, is consistent with past agency practice.

NHTSA has analyzed this proposal and determined that neither Executive Order 12291 nor the Department of Transportation regulatory policies and procedures apply, because the proposal would not establish a "rule," which term is defined in the Executive Order as "an agency statement of general applicability and future effect." The proposed exemption is not generally applicable, since it would apply only to Dutcher Motors, Inc., as discussed in this notice. If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this proposed action is neither major nor significant. The principal impact of this proposal is that the exempted company would not have to pay civil penalties for failing to meet generally applicable fuel economy standards. Since this proposal sets an alternative standard at the level tentatively determined to be Dutcher's maximum feasible level for the 1993 through 1995 model years, no fuel would be saved by establishing a higher alternative standard. The impacts for the public at large would be minimal.

The agency has also cosidered the environmental implications, of this proposal in accordance with the National Environmental Policy Act and determined that this proposal, if adopted, would not significantly affect the human environment. Regardless of the fuel economy of the exempted vehicles, they must pass the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air would not be affected by the proposed exemption and alternative standard. Further, since the exempted passenger automobiles could not have achieved better fuel economy than is proposed herein, granting the proposed exemption would not affect the amount of fuel available.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted. All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 531

Energy conservation, gasoline, imports, motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR part 531 be amended as follows:

1. The authority citation for part 531 would continue to read as follows:

Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

2. Section 531.5(b) is proposed to be amended by revising paragraph (b)(11), and the introductory text of paragraph (b) would be republished, to read as follows:

§ 531.5 Fuel economy standards.

* * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(11) Dutcher Motors, Inc.

Model year	Average fuel economy standard (miles per gallon)
1986	16.0
1987	16.0
1988	16.0
1992	17.0
1993	17.0
1994	17.0
1995	17.0

* * * * *

Issued on: May 7, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-11177 Filed 5-9-91; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 56, No. 91
Friday, May 10, 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

Whimbleton Timber Sales, Mt. Baker-Snoqualmie National Forest, Skagit and Snohomish Counties, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a site specific proposal to harvest and regenerate timber, construct and reconstruct roads, provide fish and wildlife habitat enhancement, watershed restoration, and enhance recreation within the Whimbleton Project Area. The project area is located within a portion of the Glacier Peak J and I, Roadless Area #6031. The proposals will be in compliance with the Mt. Baker-Snoqualmie National Forest Land and Resource Management Plan (Forest Plan) of June 1990, which provides overall guidance in achieving the desired future condition for the area, including a schedule for proposed activities for the next ten years. The proposed projects are located in the Sauk River drainage on the Darrington Ranger District and are scheduled in the Forest Plan for one fiscal year 1992 timber sale, and two fiscal year 1993 timber sales. The Mt. Baker-Snoqualmie National Forest invites written comments and suggestions on the scope of the analysis.

DATES: Comments concerning the scope of the analysis and should be received in writing by June 17, 1991.

ADDRESSES: Send written comments to Fred Harnisch, District Ranger, Darrington Ranger District, 1405 Emmens St., Darrington, WA 98241.

FOR FURTHER INFORMATION CONTACT: Dan Krutina, Timber Management Assistant, at the above address or (206) 436-1155.

SUPPLEMENTARY INFORMATION: The proposals include: Harvesting timber and constructing/reconstructing roads on three timber sales; watershed restoration; and enhancement of fish and wildlife habitat and recreation opportunities within the project area. Three proposed timber sales are listed in the Timber Program Activity Schedule, Forest Plan, appendix A. The Big Tenas Timber Sale is listed for 1992 and the Huckleberry and Tinhorn Timber Sales are listed for 1993. The Whimbleton project area is approximately 15,000 acres in size, and is located in all or portions of section 1, T.33N., R.10E.; and sections 5-8, 16-23, 25-30, 32-36, T.33N., R.11E., Willamette Meridian.

The environmental analysis of the proposed timber sales in this area have been ongoing for several years as separate analyses. Due to geographic proximity, similarity of issues, and the schedule of proposed timber sales, the environmental analysis for all three timber sales will be considered and documented in one EIS.

This EIS will be tiered to the Final EIS for the Mt. Baker-Snoqualmie National Forest Land and Resource Management Plan (June, 1990). The Forest Plan's direction for the Whimbleton project area is MA 17 (Timber Management Emphasis), MA 1B (Semi-Primitive Nonmotorized Dispersed Recreation), MA 15A (Mountain Goat Habitat), MA 12 (Mature and Old Growth Wildlife Habitat), and MA 14 (Deer and Elk Winter Range). MA 13 (Watershed, Wildlife and Fisheries Emphasis in Riparian Areas) will be mapped as part of the project. Timber harvest may be proposed only in MA 17, MA 14, and MA 13.

The project area includes a portion of the Glacier Peak J and I Roadless Area #6031, which were considered but not selected for wilderness designation in the 1984 Washington State Wilderness Act.

Interested environmental groups, individuals, timber purchasers and government agencies were invited to participate in the previous scoping and analysis of the separate timber sales. These individuals and groups were also invited to an Open House in 1990 to discuss the proposed Whimbleton EIS. A few comments have been received. An informational letter is being sent concurrently to interested people to update them on the analysis and the intent to prepare an EIS, and to invite further involvement. Further scoping meetings may be scheduled if additional issues are raised.

Preliminary issues identified are: impacts on deer, fish, and cavity nesting birds habitat; unstable soils; entry in roadless area; possible reforestation problems; connecting habitat and elevational corridors; long-term management of roads; cumulative effects of timber harvest and water quality; new perspectives in forestry; and Tupso trail development.

A range of alternatives for these projects will be considered. One alternative will consider maximizing timber production opportunities; another alternative will consider using helicopter logging in order to maintain the future option of allocating the area to other non-roaded use. At least one alternative will be designed to minimize fragmentation of large, contiguous blocks of old growth forest in the analysis area. At least one alternative will involve harvest practices that help maintain or enhance the diversity and sustainability of forest ecosystems. Other alternatives will consider various timber sale and road development proposals that address key issues.

The draft environmental impact statement is expected to be completed about January, 1992. Your comments and suggestions are encouraged and should be in writing. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after

completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986), and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The final environmental impact statement is scheduled for completion by July, 1992. In the final EIS, the Forest Service will respond to comments and responses received on the draft EIS. The Forest Service is the lead agency. J. D. MacWilliams, Forest Supervisor, Mt. Baker-Snoqualmie National Forest, is the responsible official and will make a decision regarding this proposal. The decision and reason for the decision will be documented in a Record of Decision. The decision will be subject to Forest Service appeal regulations (36 CFR 217).

Dated: May 2, 1991.

Bernie Weingardt,

Deputy Forest Supervisor.

[FR Doc. 91-11196 Filed 5-9-91; 8:45 am]

BILLING CODE 3410-11-M

Rangeland Resource Planning

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of Agency directive.

SUMMARY: The Forest Service has revised its direction to employees on how to integrate consideration of rangeland resource management into the land and resource management planning process. The direction is contained in chapter 2210 of the Forest Service Manual, Amendment No. 2200-91-4 effective April 24, 1991. The amendment clarifies how allotment management planning is to be integrated with forest planning, emphasizes requirements to ensure consistency of allotment management plans, grazing permits, and other rangeland use authorizations with forest plan direction, and provides guidance on monitoring implementation of rangeland resource management direction contained in the Forest Plan. The direction applies to rangeland resource planning on all National Forest System lands.

ADDRESSES: Single copies of Amendment No. 2200-91-1 are available without charge by writing to the Distribution Section Directives and Regulations Branch, Information Systems Staff (809 RPE), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Edward F. Schlatterer, Range Management Staff, Forest Service, (202) 453-9455.

Dated: May 1, 1991.

David G. Unger,

Associated Deputy Chief.

[FR Doc. 91-11178 Filed 5-9-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-815]

Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that gray portland cement and clinker from Japan was being sold in the United States at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being materially injured by reason of these imports.

Therefore, based on these findings, all unliquidated entries or warehouse withdrawals of gray portland cement and clinker from Japan, made on or after October 31, 1990, the date of publication in the **Federal Register** of the Department's affirmative preliminary determination (55 FR 45831), will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries or warehouse withdrawals made on or after the date of publication of this antidumping duty order in the **Federal Register.**

We are amending the final results of the antidumping duty investigation of gray portland cement and clinker from Japan (56 FR 12156, March 22, 1991) to correct a clerical error in the calculations. The correct cash deposit rate for Onoda Cement Co. Ltd. (Onoda) is 45.29 percent. The correct cash deposit rate for the "All Others" category of producer/exporters is 63.73 percent.

EFFECTIVE DATE: May 10, 1991.

FOR FURTHER INFORMATION CONTACT: V. Irene Darzenta or David C. Smith, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377-0186 or 377-3798, respectively.

Scope of Order

The products covered by this investigation are gray portland cement and clinkler. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material produced when manufacturing cement, has no use other than grinding into finished cement. Microfine cement is specifically excluded from the scope of this order. Gray portland cement is currently classifiable under the harmonized tariff schedule (HTS) item number 2523.29, and clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under item number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage

SUPPLEMENTARY INFORMATION: In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(a)) (the Act), on March 22, 1991, the Department of Commerce (Department) made its final determination that gray portland cement and clinker from Japan is being sold at less than fair value (56 FR 12156). On April 29, 1991, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry. After publication of our final results, Onoda alleged that, for a small number

of ESP sales, the Department had made a ministerial error in the calculation of United States price by deducting the verified freight charge from certain exporters' sales price (ESP) transactions with "picked up" terms of sales which did not incur the freight expense. We agree with Onoda. After correcting the calculations, the final estimated margin percentage for Onoda changes from the 47.79 percent published in the final determination to 45.29 percent. The "All Others" rate changes from the 65.22 percent published in the final determination to 63.73 percent.

Accordingly, pursuant to section 735(e) of the Act, we are correcting the ministerial error in the final determination of sales at less than fair value. The cash deposit rate for Onoda is now 45.29 percent. The cash deposit rate for the "All Others" category is now 63.73 percent. The cash deposit rate for Nihon Cement Co., Ltd. and its affiliates, Myojo Cement Co., Ltd. and Daiichi Cement Co., Ltd. remains unaffected by this amendment to the final determination.

Based on these findings, all unliquidated entries or warehouse withdrawals of gray portland cement and clinker from Japan, made on or after October 31, 1990, will be liable for the possible assessment of antidumping duties.

Further, in accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of gray portland cement and clinker from Japan. These antidumping duties will be assessed on all unliquidated entries of gray portland cement and clinker from Japan entered, or withdrawn from warehouse, for consumption on or after October 31, 1990, the date on which the Department published its preliminary determination notice in the **Federal Register**.

Suspension of Liquidation

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated dumping margin, as shown below.

Manufacturer/producer/exporter	Margin percentage
Onoda Cement Co., Ltd	45.29
Nihon Cement Co., Ltd	84.70
(Myojo Cement Co., Ltd.)	(84.70)
(Daiichi Cement Co., Ltd)	(84.70)
All Others	63.73

This constitutes the antidumping duty order with respect to gray portland cement and clinker from Japan, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Units, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This notice is published pursuant to sections 735(d) and 736(a) of the Act (19 U.S.C. 1673(d), 1673e(a)) and 19 CFR 353.21 and 353.28(c).

Dated: May 6, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-11197 Filed 5-9-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-506]

Oil Country Tubular Goods From Canada; Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by two respondents and petitioners, the Department of Commerce has conducted an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Canada. The review covers two exporters and the period June 1, 1989 through May 31, 1990. As a result of the review, the Department has preliminarily determined that margins exist.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph B. Kaesshaefer, Jr. or Robin Gray, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 21782, June 16, 1986) the antidumping duty order on oil country tubular goods from Canada. On June 29, 1990, two respondents and petitioners requested that we conduct an administrative review for the period June 1, 1989 through May 31, 1990. We published a notice of initiation of the antidumping administrative review on July 25, 1990 (55 FR 30490, July 25, 1990). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided in section 1202 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of OCTG from Canada. This includes API-specification oil country tubular goods and all other pipe with the following characteristics used in OCTG applications: Length of at least 16 feet; outside diameter of standard sizes published in the API or proprietary specifications for oil country tubular goods, with tolerances of plus ⅛ inch for diameters up through 8⅝ inches and plus ¼ inch for diameters greater than 8⅝ inches, minimum wall thickness as identified for a given outer diameter as published in the API or proprietary specifications for oil country tubular goods; and a minimum of 40000 PSI yield strength and a minimum 60000 PSI tensile strength. Additionally, oil country tubular goods with seams includes only pipe using the electric resistance welding technique. Furthermore, imports covered by this review include OCTG with non-standard size wall thickness greater than the minimum identified for a given outer diameter as published in the API or proprietary specifications for OCTG, with surface scabs or slivers, irregularly cut ends, ID or OD weld flash, or open seams; OCTG may be bent, flattened or oval, and may lack certification because the pipe has not been mechanically tested or has failed those tests. Since January 1, 1989, the merchandise is classifiable under HTS item numbers 7304.20, 7305.20, and 7306.20. The HTS item numbers are provided for

convenience and Customs purposes. The written description remains dispositive.

The review covers the shipments of two exporters of oil country tubular goods from Canada to the United States and the period June 1, 1989 through May 31, 1990.

Sales Below Cost Allegation

Christianson Pipe Ltd.: On November 21, 1990, petitioners alleged that based on Christianson Pipe Ltd.'s ("Christianson") sales questionnaire response, Christianson sold OCTG in Canada below the cost of production. On January 30, 1991, the Department requested that petitioners revise the below cost allegation by following the Court of International Trade's ("CIT") direction in distinguishing the cost of production of two differently valued pipe products. In *IPSCO, Inc. and IPSCO Steel, Inc.* v. *United States* ("*IPSCO*"), 714 F. Supp. 1211 (CIT 1989), the CIT held that in determining the costs of producing limited service OCTG and prime OCTG, the Department "must find a reasonable means of allocating the combined cost of production between these two very differently valued products in a manner which takes into account * * * differences in value." *Id.* at 1215. On February 15, 1991, petitioners submitted a revised cost allegation. Based on the revised allegation, the Department determined that there were reasonable grounds to believe or suspect that Christianson's home market sales were priced below the cost of production, and the Department issued a cost of production questionnaire to the producer of Christianson's pipe, Prudential Steel Ltd. ("Prudential"), concerning the non-prime product. The Department requested that Prudential respond in accordance with the CIT's direction, that is, to provide a reasonable means of allocating the cost of manufacture behind the COP of prime and non-prime OCTG. On March 26, 1991, Prudential notified the Department that it would not be responding to the questionnaire.

Prudential Steel Ltd.: On November 21, 1990, petitioners alleged that Prudential sold OCTG in Canada below its cost of production. Petitioners based their allegation on the cost of producing prime merchandise in the United States compared to Prudential's home market sales of non-prime merchandise, which Prudential did not sell to the United States during the period of review. The Department determined that a cost investigation was not warranted since only Prudential's sales of prime pipe would be used as foreign market value.

Sales Below Cost Investigation—Christianson

In its cost of production allegation, petitioners alleged that Christianson had sold its merchandise in the home market at a price below the cost of producing that merchandise. Because Christianson, as an unrelated reseller, did not possess cost of production information, we requested the cost information from the producer, Prudential. We asked Prudential to follow the CIT's direction and provide information concerning their allocation of costs between different grades of pipe. Since Prudential refused to respond to the Department's cost questionnaire, the Department had to rely on best information available to determine the cost of producing the subject merchandise.

Petitioners' revised February 15, 1991 allegation included data for the cost of producing prime casing and tubing consistent with the methodology approved by the CIT. The Department used this cost data as best information available. However, we adjusted one component of the cost data submitted by the petitioners to take into account relevant information submitted by Prudential.

In *IPSCO*, the CIT required that the Department recognize the value difference between products sharing common costs in the allocation of those costs. The relative value of the products is one of the critical factors which determines the proportion of common costs allocated to the individual products. In general, there are several approaches the Department could use to derive a relative value ratio. The ratio could be derived by some method that is independent of the direct control of the firm producing the product under investigation. However, such a measurement is not normally available except in the case of commodity-type products. Where merchandise is fungible, and uniform grading standards are used (such as many agricultural products), market quotes may be used to establish an objective independent measure of relative value. The ratio could also be derived using information on an individual producer's sales of all merchandise which share common costs. This approach should only be used if the Department believes that the prices charged by that producer accurately reflect the products' differing values based on a sufficient volume of sales information. See *IPSCO*, 714 F Supp. at 1215, n.6.

However, in this review, the Department cannot use either of these approaches. There is no information on the record as to independent market quotes for prime and non-prime OCTG. Moreover, while Prudential did submit sales information for the record, the Department does not have the sufficient sales information for Prudential's products sharing common costs to determine whether prices charged accurately reflect differing values, but only sales information pertaining to a portion of Prudential's sales of prime and non-prime OCTG. While petitioner provided sales information in its below cost allegation, its information similarly did not cover a sufficient number of its products which share common costs. Since the most accurate relative value ratio would be based upon sales information for all of a producer's products sharing common costs, the Department found that neither the partial sales information provided by Prudential nor petitioners individually amounted to sufficient information to determine an accurate relative value ratio. Because the parties submitted sales information for different grades, types, and sizes of prime OCTG, the Department has determined that using both parties' sales information would result in more accurate relative value, as that relative value ratio derived from sales information would be based on a greater number of the products sharing common costs. Thus, the Department replaced the relative value ratio for prime and non-prime OCTG provided in petitioners' allegation with the average of the relative value ratios derived from the sales information submitted by both Prudential and petitioners.

Using the average relative value ratio, the Department then compared the cost of producing non-prime OCTG with Christianson's home market sales prices and found 86 percent of the home market sales were made at prices above cost of production. Consequently, we used only those sales made at prices above the cost of production in our determination of foreign market value ("FMV").

United States Price

Christianson: In calculating the United States price, the Department used purchase price as defined in section 772 of the Act. Purchase price was based on the f.o.b. Calgary price to unrelated purchasers as these sales were made prior to importation into the United States. For purchase price sales, where applicable, we made deductions for U.S. duty, U.S. user fees, U.S. brokerage, handling, and inland freight. In accordance with 772(d)(1)(c) of the Act, we added to the United States price the amount of the Federal sales taxes that would have been collected on the

export sale had it been subject to the tax. The British Columbia provincial tax was treated the same as the Federal sales tax.

Prudential: In calculating the United States price, the Department used purchase price as defined in section 772 of the Act. Purchase price was based on the f.o.b. Calgary price to an unrelated purchaser as these sales were made prior to importation into the United States. For purchase price sales, where applicable, we made deductions for U.S. duty, U.S. user fees, U.S. brokerage, and inland freight. Where contemporaneous sales of the identical merchandise were not found, we used sales of similar merchandise less the difference of merchandise adjustment.

Foreign Market Value

Christianson: In calculating the FMV, the Department used home market price as defined in section 773 of the Act since sufficient quantities of such or similar merchandise were sold in the home market to provide reliable basis for comparison. Home market price was based on the f.o.b. Calgary price to unrelated purchasers in the home market. We made adjustments, where appropriate, for inland freight expenses, federal and provincial sales taxes, differences in credit expenses, and differences in merchandise. We did not adjust for commissions because the indirect selling expenses incurred on sales to the United States were not provided. We made a circumstance of sale adjustment to FMV in the amount of the difference in the Federal and provincial tax between the two markets in order to insure a tax-neutral margin. This was done by adding to home market sales the amount of the tax added to U.S. price.

Prudential: In calculating the FMV, the Department used home market price as defined in section 773 of the Act since sufficient quantities of such or similar merchandise were sold in the home market to provide a reliable basis for comparison. Home market price was based on the f.o.b. Calgary price to unrelated purchasers in the home market. We made adjustments, where appropriate, for inland freight expenses, handling expenses, differences in credit expenses, and discounts. We did not adjust for commissions because the indirect selling expenses incurred on sales to the United States were not provided.

Preliminary Results of the Review

As a result of our comparison of the United States Price to foreign market value, we have preliminarily determined that the following margins exist.

Christianson Pipe Ltd	15.93
Prudential Steel Ltd	10.52

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested parties may request a hearing within 10 days of publication.

Any hearing, if requested, will be held 44 days after the date of publication of this preliminary notice or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage 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 Canada entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of this review; for merchandise exported by manufacturers or exporters not covered in this review but covered in the final determination of sales at less than fair value (the original investigation), the cash deposit rate will continue to be the rate published in that final determination; (2) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the original investigation of sales at less than fair value, whichever is the most recent; (3) the cash deposit rate for all other exporters/producers shall be 15.93 percent for shipments of OCTG. This is the highest non-BIA rate for any firms included in this review. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This deposit requirement is effective for all shipments of oil country tubular goods from Canada, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department's regulations.

Dated: May 3, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-11198 Filed 5-9-91, 8:45 am]

BILLING CODE 3510-DS-M

[C-357-002]

Wool From Argentina; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On March 22, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on wool from Argentina for the period January 1, 1989 through December 31, 1989. Because there were no shipments of the subject merchandise to the United States or any program-wide change during the period of review, the cash deposit rate will remain unchanged from the previous review at 6.23 percent *ad valorem.*

EFFECTIVE DATE: May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 12181) the preliminary results of its administrative review of the countervailing duty order on wool from Argentina (48 FR 14423; April 4, 1983). The Department has now completed that review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of wool finer than 44s and not on the skin, from Argentina. During the review period, such merchandise was classifiable under item numbers 5101.11.60, 5101.19.60, 5101.21.40 and 5101.29.40 of the *Harmonized Tariff Schedule* (HTS). The HTS item numbers are provided for convenience and Customers purposes. The written description remains dispositive.

The review covers the period from January 1, 1989 through December 31, 1989.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our review, we determine that there are no known unliquidated entries of the subject merchandise exported to the United States during the period January 1, 1989 through December 31, 1989. Given that there has been no demonstration of any program-wide change, the rate of cash deposit of estimated countervailing duties will remain unchanged at 6.23 percent *ad valorem*.

Therefore, the Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 6.23 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 2, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-11199 Filed 5-9-91; 8:45 am]

BILLING CODE 3510-DS-M

University of Pennsylvania; Disposition of Application for Duty-Free Entry of Scientific Instrument

We have been advised that the entry covered by Docket Number 87-205 (See notice at 52 FR 27039, July 17, 1987) was liquidated on November 7, 1986. We are treating the docket as a withdrawal pursuant to § 301.5(g) of the regulations and have discontinued processing.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-11200 Filed 5-9-91; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Riverside, CA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $230,400 in Federal funds and a minimum of $40,659 in non-Federal contributions for the budget period October 1, 1991 to September 30, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Riverside, California Geographic Service Area.

The I. D. number for this project will be 09-10-91017-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: (Selection Process/ Procedures as required by DAO 203-26, Grants Administration) the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the MBDC program. The application will then be forwarded to the Department for final processing and approval if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50.00 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is June 20, 1991. Applications must be postmarked on or before June 20, 1991.

Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission is: Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 401 West Peachtree Street NW., suite 1930, Atlanta, Georgia 30308-3516, (404) 730-3300.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority

Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105.

May 30, 1991 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Office at (415) 744-3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

Section 319 of Public Law 101-121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and, procedures applicable to Federal assistance awards.

A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Funding Authority for MBDA Awards: Executive Order 11625.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Dated: May 6, 1991.

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 91-11181 Filed 5-9-91; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's (Council) Bottomfish Advisory Subpanel (BAS), will hold a public meeting on May 9, 1991, beginning at 6:30 p.m., at the Western Pacific Regional Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI.

The BAS will develop its recommendations to the Council on alternative management measures for the Main Hawaiian Islands bottomfish fishery and proposed changes in the Northwestern Hawaiian Islands bottomfish limited entry program which have been requested by current permit holders.

For more information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: May 6, 1991.

David S. Crestin,

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

[FR Doc. 91-11139 Filed 5-9-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List, Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: June 10, 1991.

ADDRESSES: Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On March 1, 15 and 22, 1991, the Commmittee for Purchase From the Blind and Other Severely Handicapped published notices (56 FR 8750, 11206 and 12193) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and servcies listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Line, Multi-Loop
1670-01-063-7760

Strap, Fuel Tank
2910-00-740-9419

Clamp, Loop
5340-01-156-3866
5340-01-161-6234

Services

Commissary Shelf Stocking and Custodial
Tinker Air Force Base, Oklahoma

Janitorial/Custodial
U.S. Army Reserve Center Florence, South Carolina

Janitorial/Custodial
U.S. Army Reserve Center Rock Hill, South Carolina

Janitorial/Custodial
U.S. Army Reserve Center York, South Carolina

Janitorial/Custodial
Buildings 108, 120 and 121 Fort Hood, Texas

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91-11182 Filed 5-9-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List, Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 10, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Perforator, Paper
7520-00-139-3942
7520-00-163-2563

Services

Commissary Shelf Stocking and Custodial
Fort Benning, Georgia

Janitorial/Grounds Maintenance
U.S. Army Reserve Center
Independence, Missouri

E. R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 91-1183 Filed 5-9-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List Addition, Correction

In notice document 90-10412, appearing on page 18743 in the issue of Friday, May 4, 1990 the following service is corrected to read:

Janitorial/Custodial Fort Worth Federal Center Fort Worth, Texas

Except for the following:

Warehouse #1—Section A-L
Warehouse #3—Bin Area A-F
Warehouse #8 thru #12—Office and Rest rooms
Warehouse #14—Rest rooms
Warehouse #23
Warehouse #24
Warehouse #50

E. R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 91-11184 Filed 5-9-91; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Base Closure and Realignment Commission

ACTION: Announcement of Public Hearings of the Defense Base Closure and Realignment Commission.

SUMMARY: Open public meetings of the Defense Base Closure and Realignment Commission will be held in Washington, DC in accordance with the following dates and times, with specific meeting locations as shown below, or to be determined and published in the **Federal Register**. Friday, May 10, 9:30 a.m., Longworth House Office Building Room 1100, Independence Ave. at New Jersey Ave., "hearings on land value and the environmental and economic impacts associated with the proposed base closures/realignments;" Friday, May 17, 9:30 a.m., Longworth House Office Building Room 1100, Independence Ave. at New Jersey Ave., "hearings on the General Accounting Office assessment of the DoD process for determining candidate bases for closure/realignment;" Tuesday/Wednesday, May 21-22, 9:30 a.m., location to be determined, "Congressional testimony from federal representatives of communities potentially affected by closures/realignments;" Thursday/Friday, June 6-7, 9:30 a.m., location to be determined, "Commission deliberation hearings on closure realignment candidates;" Thursday/Friday, June 13-14, 9:30 a.m., location to be determined, "Commission deliberation hearings on closure/realignment candidates;" Thursday/Friday, June 20-21, 9:30 a.m., location to be determined, "Commission deliberation hearings on closure/realignment candidates."

As previously published in the **Federal Register**, regional hearings outside the Washington, DC area will be held in accordance with the following schedule:

San Francisco, California: The first regional hearing will be on Monday and Tuesday, May 6th and 7th, 1991, at the California Palace of the Legion of Honor, Florence Gould Theatre, Lincoln Park, 34th & Clement Streets, San Francisco, CA from 9:30 to 4:30 p.m. Testimony is invited on the following facilities: Sacramento Army Depot, CA; Fort Ord CA; Castle AFB, CA; Hunters Point Annex, CA; Moffett Field Naval Air Station, CA; Naval Electronic Systems Engineering Center, Vallejo, CA; Whidby Island Naval Air Station, WA; Sand Point (Puget Sound) Naval Station, WA; and Naval Undersea Warfare Engineering Station, WA.

Los Angeles, California: The second regional hearing will be held on May 8, 1991 at the Los Angeles Museum of Science and Industry, Kinsey Auditorium, 700 State Drive (Harbour Freeway and Exposition Blvd. near Los Angeles Coliseum and University of Southern California), Exposition Park, Los Angeles. Testimony is invited on the following facilities: Naval Weapons Center, China Lake, CA; Pacific Missile Test Center Pt., Mugu, CA; Long Beach Naval Station, CA; Marine Corps Air Station, Tustin, CA; Integrated Combat Systems Test Facility, San Diego, CA; Naval Electronic System Engineering Center, San Diego, CA; Naval Space Systems Activity, Los Angeles, CA; and Naval Ocean System Center Detachment, Kaneohe, Hawaii.

Denver, Colorado: The third regional hearing will be on Monday, May 13, 1991 in Denver, Colorado at the Denver Auditorium, 131 Champa Street (3rd floor auditorium) (enter through glass doors under the bridge), beginning at 9:30 a.m. Testimony is invited on facilities in the following states: Colorado, Arizona, Idaho, New Mexico, and Missouri.

Fort Worth, Texas: The fourth regional hearing will be on Tuesday, May 14, 1991 in Forth Worth, Texas, beginning at 9 a.m. at the Will Rogers Memorial Center, 3400 Crestline Road, in the Central Texas Room. Testimony is invited on facilities in the following states: Texas, Louisiana, and Arkansas.

Jacksonville, Florida: The fifth regional hearing will be on Thursday, May 23, 1991, in Jacksonville, Florida, beginning at 9 a.m. at the Prime F. Osborn Convention Center, 1000 Water Street, Jacksonville, Florida. Testimony is invited on facilities in the following states: Florida, Georgia, Alabama, and South Carolina.

Philadelphia, Pennsylvania: The sixth regional hearing will be on Friday, May 24, 1991, in Philadelphia, Pennsylvania, beginning at 9 a.m. at the Philadelphia Civic Center, Pennsylvania Hall, 34th and Civic Center Blvd. Testimony is invited on facilities in the following

states: Pennsylvania, New Jersey, and Maryland.

Boston, Massachusetts: The seventh regional hearing will be on Tuesday, May 28, 1991, in Boston, Massachusetts, beginning at 10 a.m. at Gardner Auditorium in the State House. Testimony is invited on facilities in the following states: Massachusetts, Maine, Rhode Island, and Connecticut.

Indianapolis, Indiana: The eighth regional hearing will be held on Thursday, May 30, 1991, in Indianapolis, Indiana, beginning at 9 a.m. at the Indianapolis Convention Center, White River Ballroom, 100 South Capital Street. Testimony is invited on facilities in the following states; Indiana, Michigan, Illinois, Ohio, and Kentucky.

Washington, DC: Hearings will be held in Washington, DC on Tuesday and Wednesday, May 21st and 22nd at a time and place to be determined and published in the **Federal Register.** Testimony is invited on facilities in the following states: Virginia, and the District of Columbia.

The Commission will consider all written testimony during its deliberations. All interested individuals and groups are invited to submit their testimony or comments in writing to: Defense Base Closure Commission, 1625 "K" Street, NW., suite 400, Washington, DC 20006. In order to ensure all written comments may be considered, please submit them so as to arrive at the Commission offices by May 30, 1991.

In some instances, less than 15 days notice is being given due to difficulties in confirming appropriate locations in certain metropolitan areas to accommodate large public hearings.

FOR FURTHER INFORMATION: Defense Base Closure and Realignment Commission, Mr. Cary Walker, Director of Communications and Public Affairs, 202-653-0823.

Dated: May 6, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-11149 Filed 5-9-91; 8:45 am]

BILLING CODE 3810-01-M

Meetings; Defense Research and Development Laboratories Consolidation and Conversion Advisory Commission

AGENCY: Department of Defense (DoD) Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of Public Law 92-463, the "Federal Advisory Committee Act," notice is hereby given that the Federal Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories will hold a meeting on May 22nd and 23rd, 1991, in the Washington, DC area. The meeting will convene at noon on the 22nd, and adjourn at 3 p.m. on the 23rd. This session will be closed to the public.

The purpose of this meeting is to discuss technological factors involved in developing recommendations to the Secretary of Defense on consolidating, converting, or realigning various laboratories of the Department of Defense. The entire agenda for the meeting will consist of discussions of the key issues related to future military research and technology development. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Director of Defense Research and Engineering has determined, in writing, that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(c)(1) of title 5, United States Code.

This Notice of the May, 1991 meeting of the Commission is being published late due to the need to accelerate the schedule to meet the reporting dates mandated in section 246 of the National Defense Authorization Act for 1991. Operational necessity constitutes an exceptional circumstance not allowing Notice to be published in the **Federal Register** at least 15 days before the date of this meeting.

FOR FURTHER INFORMATION CONCERNING THIS MEETING, CONTACT: Dr. Michael Heeb, Executive Secretary to the DoD Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories, 5109 Leesburg Pike, suite 317, Falls Church, VA 22041, Phone (703) 756-8969.

Dated: May 6, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-11148 Filed 5-9-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

April 30, 1991.

The USAF Scientific Advisory Board Division Advisory Group (AG) for Aeronautical Systems Division (ASD) will meet on 29-30 May 1991 from 8 a.m. to 5 p.m. at Wright-Patterson AFB, OH.

The purpose of this meeting is to receive classified briefings and hold classified discussions on selected Air Force Programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-11113 Filed 5-9-91; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Electromagnetic Pulse Simulators From the Harry Diamond Laboratories Woodbridge Research Facility, Woodbridge, VA; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Announcement of time and place for public scoping meetings for the Environmental Impact Statement (EIS) on the relocation, upgrading and resumption of operation of certain inactive electromagnetic pulse (EMP) simulators now located at the Harry Diamond Laboratories Woodbridge Research Facility (HDL-WRF), Woodbridge, VA, and the construction and operation of a new EMP simulator, VEMPS II.

BACKGROUND: In an earlier **Federal Register** announcement (Vol. 54; No. 207; page 43847), the Department of Army announced its intent to prepare an EIS on the action described above. The alternatives to be addressed in the EIS will include the following:

a. Cease this type of testing, or

b. Conduct such testing by other means of simulation, or

c. Have other military, Federal departments or contractors conduct such testing, or

d. Relocate and operate those simulators at a number of undetermined, reasonable sites.

Potential relocation sites have since been identified and are located at the following installations: Dugway Proving Ground, White Sands Missile Range, and Yuma Proving Ground. White Sands Missile Range is the preferred installation.

MEETING DATES: The Army will conduct six scoping meetings to aid in identifying the significant issues related to the proposed action. The meetings

will take place at the following places and times, near the specified installations:

White Sands Missile Range (WSMR), New Mexico

Socorro, NM, May 21, 1991, 7 p.m., Macey Center on Olive Lane, at New Mexico Institute of Mining and Technology,

Alamogordo, NM, May 22, 7 p.m., Civic Center, room A–B, 800 1st Street,

Las Cruces, NM, May 23, 7 p.m., Corbett Center Student Union, Dona Ana Room, New Mexico State University.

Yuma Proving Ground (YPG), Arizona:

Yuma, AZ, June 3, 7:30 p.m., Chilton Inn, 300 E. 32nd Street, Quartzsite, AZ, June 4, 7:30 p.m., Senior Citizens' Center, Moon Mountain Road.

Dugway Proving Ground (DPG), Utah:

Tooele, UT, June 5, 7:30 p.m., at the Senior Citizens' Center, 59 E. Vine Street.

SUPPLEMENTARY INFORMATION: These meeting are intended to provide a public forum for interested individuals or groups representatives to present their questions, concerns or other comments relevant to any environmental issues surrounding the proposed action. Particularly solicited is any information that would assist the Army in analyzing any potential environmental consequences of EMP simulator operations at the candidate installations. This includes information on other environmental studies, issues and alternatives which the EIS should consider, major impacts and recommended mitigating measures associated with EMP simulator operations at the alternative sites.

REGISTRATION: Individuals or group representatives are invited to register to speak at the meeting. To allow time for everyone who wishes to speak, the length of each presentation will be limited to ten minutes. On-site registration will be available.

POINT OF CONTACT: Anyone may express their views by writing to the following address: U.S. Army Harry Diamond Laboratories, ATTN: Public Affairs Officer, 2800 Powder Mill Road, Adelphi, Maryland 20783–1197.

To be considered in the draft EIS, comments and suggestions should be postmarked no later than July 6, 1991. For additional information, call (301) 394–2301.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I,L&E).

[FR Doc. 91–11202 Filed 5–9–91; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

[Docket No. 3710-GC]

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed 1992 Flow Improvement Act

LEAD AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a Draft EIS.

SUMMARY: The Corps of Engineers (Corps), in conjunction with other Federal agencies, is considering several water management actions on the lower Snake and Columbia Rivers proposed for implementation in 1992 to assist the instream migration of juvenile and adult anadromous fish. The action under consideration would involve a range of measures intended to augment streamflows in the April-September migration period. These measures include modifying releases from Dworshak, Brownlee, and Grand Coulee Reservoirs; reducing pool elevations for the lower Snake and Columbia River projects; and various other strategies to provide higher river velocities during the salmon migration period. The actions are being considered in response to a need to protect four species of Snake River salmon that have been petitioned for listing as endangered species under the Endangered Species Act. The Corps of Engineers, Walla Walla District (Corps) is the lead agency. The U.S. Department of Energy, Bonneville Power Administration (Bonneville), and the U.S. Department of the Interior, Bureau of Reclamation (Reclamation) are cooperating agencies.

FOR FURTHER INFORMATION CONTACT: Mr. William F. MacDonald, Department of the Army, Walla Walla District, Corps of Engineers, CENPW–PL–ER, Building 603, Walla Walla, Washington 99362–9265, (509) 522–6625.

SUPPLEMENTARY INFORMATION: The proposed action is being considered under the authority of the Endangered Species Act, the Fish and Wildlife Coordination Act, and the authorizing legislation for the respective projects potentially involved in the proposed action. Additional information on the proposed action, alternatives, scoping, and the EIS process is summarized below.

1. Proposed Action

The proposed action is being considered in response to specific requests from the regional "Salmon Summit" to alter the operating regime of Corps reservoirs and other water resources projects during the salmon migration period. The Salmon Summit is a voluntary planning and action process undertaken to demonstrate regional commitment to protect anadromous fish stocks in the Columbia and Snake Rivers. Participants in the process include Congressional staff from Idaho, Montana, Oregon, and Washington; representatives from the four state governments; Federal water and power management agencies (including the Corps); Federal and state fisheries and wildlife agencies; Indian tribes and organizations; fishing, navigation, irrigation and other water user interests; and environmental groups and other interested publics. The proposed action is a part of the action plan for 1992 suggested by many participants of the Salmon Summit.

A preferred alternative for the proposed action has not yet been identified. Actions ultimately proposed for implementation in 1992 may involve some combination of measures involving Dworshak Reservoir on the North Fork Clearwater River in Idaho, Brownlee Reservoir on the Snake River in Idaho; the four Lower Snake River Project reservoirs in Washington; the reservoir at Grand Coulee Dam in Washington, as well as Arrow and Mica Reservoirs upstream; and the four reservoirs on the lower Columbia River in Oregon and Washington.

2. Alternatives

Alternatives being considered for the proposed action include a range of water management measures. The alternatives considered in the EIS will involve one or a combination of the following measures:

a. No action.

b. Dworshak Operations—Expand water budget volume and/or timing, provide summer releases for adult migrants, and/or shift flood control space to Grand Coulee.

c. Brownlee Operations—Modify volumes and phase of releases during water budget period, provide summer releases for adult migrants, and/or shift flood control space to Grand Coulee.

d. Lower Snake River Project Operations—Draw one to four reservoirs (Lower Granite, Little Goose, Lower Monumental, and Ice Harbor) to near minimum operating pool or below for varying periods.

e. Grand Coulee Operations—Accept flood control operations from Dworshak and Brownlee, and/or modify releases to meet lower Columbia target flows.

f. Lower Columbia Projects Operations—Draw one to four

reservoirs (McNary, John Day, the Dallas, and Bonneville) to near minimum operating pool for varying periods.

g. Lower Columbia Flow/Purchase strategy—Establish lower Columbia flow targets that are met through foregoing sales of nonfirm power and/or purchasing power instead of generating during the January-April period, to allow for water storage in Grand Coulee and Arrow Reservoirs.

h. Other Water Management Operations—Could include changes to Non-Treaty Storage Operations.

3. Scoping Process

The Corps and the cooperating agencies invite affected Federal, state, and local agencies, Indian tribes, and other interested organizations and parties to participate in the scoping process for the EIS. Based on preliminary consideration to date, the following have been identified as significant issues requiring analysis in the EIS:

—Travel time and survival changes for downstream migrating anadromous juveniles.
—Disruption of commercial water transportation and associated secondary effects on other transportation modes and on producers.
—Physical impacts on irrigation intakes and resulting disruption of irrigation water supplies.
—Impacts to hydroelectric power and capacity generation and associated environmental and economic effects.
—Water quality effects from increased turbidity, temperature change, elevated dissolved gas levels, and possible release of contaminated sediments.
—Changes in upstream passage, timing, and survival of adult anadromous fish.
—Adverse effects on anadromous juveniles from spillway passage, dissolved gas supersaturation, and concentration of predators.
—Effects on domestic, municipal, and industrial water supplies, including effects of lowered water table.
—Bank stabilization/bank failure and related risks of damage to roads, bridges, and railroads.
—Physical impacts to recreational facilities and loss or displacement of recreational activity.
—Expose and potential damage to cultural resources.
—Erosion and sediment transport.
—Effects on resident fish.
—Loss of benthos and macrophytes and related aquatic effects.
—Effects on wildlife, including geese, furbearers, upland birds, and bald eagles.
—Physical impacts to water resource project facilities, such as debris booms, and navigation guidewalls.

The Corps, Bonneville, and Reclamation, as cooperating agencies, will share responsibility for determining and evaluating impacts within their respective areas of jurisdiction and expertise. The cooperating agencies welcome input to the EIS from other agencies and organizations that have special interest and expertise in key resource areas such as fisheries, water quality, navigation, and irrigation.

Other agencies desiring status as cooperating parties should submit written requests to the Corps.

The normal range of environmental review and consultation in accordance with other environmental statutes, rules, and regulations shall apply to the proposed action.

4. Scoping Meetings

Several scoping meetings for the EIS will be held in the region. Confirmation of dates and specific places for the meetings will be provided in a scoping letter that will be widely distributed throughout the region. Tentatively the meetings will be scheduled for early June 1991.

5. Draft EIS Availability

The draft EIS is tentatively scheduled for release to the public and agencies for review on approximately September 15, 1991.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 91-11326 Filed 5-9-91; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award a Grant to the Atlantic Council of the United States

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.7(b)(2)(i)(B) and (D), it is making a noncompetitive financial assistance award. This award will be made under Grant Number DE-FG01-91IE10955 to the Atlantic Council of the United States (ACUS) to plan and conduct a Plenary Session entitled "U.S.-Japan Energy Dialogue".

SCOPE: The grant will provide $50,000 in funding to ACUS for two Executive Sessions and one Plenary Session. The remaining $188,000 necessary for these three Sessions will be provided through private funding to ACUS. The first Executive Session, in the Fall of 1991, will prepare for the Plenary Session to take place in Japan in the Spring of 1992. The second Executive Session, in the Fall of 1992, will prepare for the next Plenary Session.

The Plenary Session will bring together energy and financial leaders from American and Japanese private sectors to identify and discuss current and prospective policy issues to balance economic growth, energy and environmental issues. Participants will attempt to develop American and Japanese consensus on critical issues which then can be informally committed to policy makers.

ELIGIBILITY: Eligibility for this award is being limited to ACUS because of its previous experience in conducting the Executive and Plenary Sessions. Since 1980 ACUS has maintained an on-going dialogue with contacts in the Japanese private sector in the form of yearly meetings that bring together American and Japanese energy and financial leaders to discuss their viewpoints. DOE knows of no other entity which is conducting or is planning to conduct such an activity.

The term of the grant shall be eighteen months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn.: Gretchen Hukill, PR-322.1, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-11193 Filed 5-9-91; 8:45 am]

BILLING CODE 6450-01-M

Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Nuclear Facility Safety.

Date & Time: Tuesday, May 28, 1991, 4 p.m. to 6 p.m., Tuesday, May 28, 1991, 8 p.m. to 10 p.m., Wednesday, May 29, 1991, 8 a.m. to 12:30 p.m.

Place: Regency Ballroom, Hyatt Regency Oak Brook, 1909 Spring Road, Oak Brook, IL 60521

Contact: Wallace R. Kornack, Executive Director, ACNFS, AC-21, 1000 Independence

Ave., SW., Washington, DC 20585, 202/586-1770

Purpose of the Committee: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tentative Agenda

Tuesday, May 28, 1991

4 p.m. Chairman John F. Ahearne Opens Meeting, Review of Selected Technical Issues
6 p.m. Recess Meeting
8 p.m. Chairman Ahearne Opens Public Comment Session
10 p.m. Public Comment Session Concludes

Wednesday, May 29, 1991

8 a.m. Chairman Ahearne Reopens Meeting, Argonne National Laboratory Technical Issues, Selected Technical Issues, Subcommittee Reports, Committee Business
12:30 p.m. Meeting ends.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on May 7, 1991.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 91-11190 Filed 5-9-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project Nos. 539-000, et al.]

Hydroelectric Applications; Kentucky Utilities Co., et al.; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. Type of Application: Application for New License.

b. Project no.: 539-000.

c. Date filed: July 16, 1973 and supplemented February 7, 1991.

d. Applicant: Kentucky Utilities Co.

e. Name of project: Kentucky River Lock and Dam No. 7 Hydro Project.

f. Location: On the Kentucky River near Harrodsburg, Lexington, and Danville, in Mercer County, Kentucky.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791 (a) - 825(r).

h. Applicant contact: Mr. David Lott Hardy, Alagia, Day, Marshall, Mintmire & Chauvin, 444 South Fifth Street, Box 1179, Louisville, KY 40201, (502) 585-4131.

i. FERC contact: Ed Lee (202) 219-2809.

j. Comment date: June 21, 1991.

k. Description of project: The run-of-river project would utilize the existing U.S. Army Corps of Engineers' Kentucky River Lock and Dam No. 7 and would consist of: (1) An existing reinforced concrete powerhouse housing three 750-kW generating units for a total installed capacity of 2250 kW; (2) an existing 33-kV transmission line; and (3) appurtenant facilities. The Applicant estimates that the average annual generation would be 8200 MWh. Project energy generated would be used within the Applicant's power system. The original license expired August 18, 1976 and the project has been operating on annual license since that time.

Persons responding to this notice are also invited to submit any comments related to the Applicant's alleged anti-trust practices.

1. This notice also consists of the following standard paragraphs: B, C, and D1.

2 a. Type of Application: New License.

b. Project no.: 1651-013.

c. Date filed: November 29, 1990.

d. Applicant: Swift Creek Power Co.

e. Name of project: Swift Creek.

f. Location: In Bridger—Teton National Forest, on Swift Creek, in Lincoln County, Wyoming, Township 32 N Range 118 W.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791 (a) - 825(r).

h. Applicant contact: Mr. E. Farley Eskelson, 699 East South Temple, suite 220, Salt Lake City, UT 84102, (801) 363-6111.

i. FERC contact: Michael Spencer at (202) 219-2846.

j. Comment date: June 28, 1991.

k. Initial license: A license was issued on November 30, 1942, and expires on October 31, 1992.

l. Description of project: The project consists of: (1) A 15-foot-high concrete dam; (2) a 48-inch-diameter, 7,000-foot-long penstock; (2) a powerhouse containing 2 generating units with a combined capacity of 800 kW; (4) a 30-foot-high earthen dam; (5) a 54-inch-diameter, 2,000-foot-long penstock; (6) a powerhouse containing 2 generating units with a combined capacity of 700 kW; (7) a 80-foot-long transmission line from the first powerhouse and a 100-foot-long line from second powerhouse to the Lower Valley Power and Light poles. The average annual generation is 8.0 GWh.

m. Purpose of project: Project power would sold.

n. This notice also consists of the following standard paragraphs: B, C, and D1.

3 a. Type of application: Amended Application to Amendment of License.

b. Project no.: 2389-009.

c. Date filed: December 17, 1990.

d. Applicant: Edwards Manufacturing Company, Inc.

e. Name of project: Edwards Dam.

f. Location: On the Kennebec River in the City of Augusta, Maine.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Anthony W. Buxton, Joseph G. Donahue, Preti, Flaherty, Beliveau & Pachos, 45 Memorial Circle, P.O. Box 1058, Augusta, ME 04332-1058, (207) 623-5167.

i. FERC contact: Robert H. Grieve, (202) 219-2655.

j. Comment date: June 12, 1991.

k. Description of project: The licensee requests authorization to install upgraded fish passage facilities suitable for passage of Atlantic salmon, American shad and alewife. The license does not propose to add the State of Maine as a co-licensee, nor request an extension of its license term as filed for on September 25, 1990.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

4 a. Type of application: Amendment of License.

b. Project no.: 2801-016.

c. Date filed: March 8, 1991.

d. Applicant: Joseph A. Guerrieri.

e. Name of project: Glendale Project.

f. Location: The project is located on Housatonic River in Stockbridge, Berkshire County, Massachusetts.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Joseph A. Guerrieri, 503 Beverly Road, Newark, DE 19711, (302) 368-3466.

i. FERC contact: A.K. Das, (202) 219-2665.

j. Comment date: June 12, 1991.

k. Description of project: The licensee proposes to add superintendent's quarters, railroad unloading area, a bridge and an access road to the existing project features.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

5 a. Type of application: Minor License.

b. Project no.: 10522-001.

c. Date filed: October 12, 1991.

d. Applicant: Franklin Hydro, Inc.

e. Name of project: Whittelsey Dam.

f. Location: On the Salmon River in the Village of Malone in Franklin County, New York.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Mr. Frank O. Christie, 8 East Main St., Malone, NY 12953, (518) 483-1945.

i. FERC contact: Ms. Julie Bernt, (202) 219-2814.

j. Comment date: June 21, 1991.

k. Description of project: The proposed project would consist of: (1) An existing 19-foot-high concrete gravity dam owned by the Village of Malone; (2) an existing impoundment with a surface area of 3.5 acres at elevation 668.4 m.s.l. and a storage capacity of 25 acre-feet; (3) a proposed 645-foot-long, 7-foot-diameter penstock; (4) an existing powerhouse containing a new generating unit with a rated capacity of 420 kW; (5) an existing concrete tailrace; (6) a proposed 60-foot-long transmission line; and (7) appurtenant facilities. The average annual energy generation is estimated to be 1,800 MWh which would be sold to a local utility. The estimated cost for the construction of these facilities is $500,000.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

6 a. Type of application: Major License.

b. Project no.: 11053-000.

c. Date filed: November 21, 1990.

d. Applicant: The City of Hamilton, Ohio.

e. Name of project: Meldahl.

f. Location: On the Ohio River in Bracken County, Kentucky.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. Applicant contact: Mr. E. Leon Daggett, Director of Public Utilities, City of Hamilton Ohio, 20 High Street, Hamilton, OH 45011, (513) 868-5907.

i. FERC contact: Charles T. Raabe (202) 219-2811.

j. Comment date: June 28, 1991.

k. Competing application: Project No. 10395-001, *Date Filed:* July 22, 1988, *Due Date:* July 25, 1990.

l. Description of project: The proposed project would utilize the existing U.S. Army Corps of Engineers Captain Anthony Meldahl Locks and Dam, and would consist of: (1) An intake channel at the left bank; (2) a 312-foot-long and 245-foot-wide concrete power house containing 3—38,000-kW vertical Kaplan-type turbine/generator units; (3) a tailrace channel; (4) a 5-mile-long, 138-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 420,000,000 kWh. Applicant would utilize about 78% of the project power. The remainder of the project power would be sold to other utilities.

m. This notice also consists of the following standard paragraphs: A4, B, C, and D1.

7. a. Type of application: Preliminary Permit.

b. Project no. 11077-000.

c. Date filed: January 22, 1991.

d. Applicant: Alaska Power & Telephone Co.

e. Name of project: Goat Lake Water Power Project.

f. Location: On Goat Lake in the First Judicial District of Alaska, near the town of Skagway. The project would occupy lands within the Tongass National Forest. T27S, R60E, sections 9, 10, 11, 14, and 15.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. Applicant contact:

Robert S. Grimm, President, Alaska Power & Telephone Co., P.O. Box 222, Port Townsend, WA 98368, (206) 385-1733.

Vern J. Neitzer, Vice President, Alaska Power & Telephone Co., P.O. Box 459, Skagway, Alaska 99840.

i. FERC contact: Ms. Deborah Frazier-Stutely (202) 219-2842.

j. Comment date: June 21, 1991.

k. Description of project: The proposed project would consist of: (1) The existing 200 acre Goat Lake reservoir with a storage capacity of 5,000 acre-feet at normal surface elevation of 2,915 feet; (2) a screened intake; (3) a 30-inch-diameter steel siphon; (4) a valve house containing a vacuum pump and valve; (5) a 24-inch-diameter, 6,200-foot-long penstock; (6) a powerhouse containing two generating units with a combined installed capacity of 6,000 kW, producing approximately 35,040 MWH of energy annually; (7) a 15-foot-wide tailrace discharging project flows into the Skagway River; (8) an access road; and (9) a 25-kV transmission line to interconnect with the City of Skagway's distribution system.

No new access road will be needed to conduct the studies. The applicant estimates the cost of the studies to be conducted under the preliminary permit at $100,000.

l. Purpose of project: Project power would be used by the applicant to serve its customers.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8 a. Type of application: Preliminary Permit.

b. Project no.: 11093-000.

c. Date filed: February 25, 1991.

d. Applicant: Mr. John C. Simmons.

e. Name of project: Argenta Falls Hydro Project.

f. Location: On Lake Fork of Gunnison River, in Hinsdale County, Colorado. T43N, R4W, in section 15.

g. Filed pursuant to: Federal Power Act, 16 USC 791(a)—825(r).

h. Applicant contact: Mr. John C. Simmons, P. Box 248, Lake City, Colorado 81235, (303) 944-2791.

i. FERC contact: Mr. Surender M. Yepuri, (202) 219-2847.

j. Comment date: June 24, 1991.

k. Description of project: The proposed project would consist of: (1) An existing natural rock diversion channel at elevation 8,910 feet (msl); (2) an existing headgate; (3) a 200-foot-long flume; (4) an 8-foot by 12-foot by 16-foot surge tank; (5) three 100-foot-long, 48-inch-diameter penstocks; (6) a powerhouse containing two generating units with a total rated capacity of 1.5 MW; (7) a short tailrace returning the discharge into the river; and (8) a 14.4 kV, 300-foot-long transmission line. The applicant estimates an annual output of 3.9 GWh and the cost of the work to be performed under the permit to be $100,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

9 a. Type of application: Preliminary Permit.

b. Project no.: 11100-000.

c. Date filed: March 4, 1991.

d. Applicant: Hammond Hydroelectric Co.

e. Name of project: Hammond.

f. Location: In Challis National Forest, on Challis and Bear Creeks in Custer County, Idaho. Township 14 N Range 18 E. Sections 5, 6, 7, 12, and 13.

g. Filed pursuant to: Federal Power Act 16 USC 791(a)—825(r).

h. Applicant contact: Mr. Jack S. Hammond, P.O. Box 460, Troy, ID 83871-0460, (208) 835-8443.

i. FERC contact: Michael Spencer at (202) 219-2846.

j. Comment date: June 24, 1991.

k. Description of project: The proposed project would consist of: (1) 4-foot-high diversion dams on Challis and James Creeks; (2) a 13,000-foot-long, 42-inch-diameter pipeline from the diversion on Challis Creek to the confluence; (3) a 6,000-foot-long, 36-inch-diameter pipeline from the diversion on

James Creek to the confluence; (4) a 3,400-foot-long, 30-inch-diameter steel penstock from the confluence to the powerhouse; (5) a powerhouse containing a generating unit with a capacity of 1,100 kW with an estimated average annual generation of 5.0 GWh; and (5) a 5.5-mile-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $20,000.

l. Purpose of project: Project power would sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. Type of application: Preliminary Permit.

b. Project no.: 11101-000.

c. Date filed: March 4, 1991.

d. Applicant: LS, Inc.

e. Name of project: Prairie Dalles Power Project.

f. Location: On the Prairie River, near Merrill, Lincoln County, Wisconsin.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Mr. Ellis R. Langjohr, President, LS, Inc., 107 East Moonlight Avenue, Wausau, WI 54401, (715) 359-9049.

i. FERC contact: Mary C. Golato (202) 219-2804.

j. Comment date: June 21, 1991.

k. Description of project: The proposed project would consist of the following facilities; (1) An existing rubblestone masonry structure 400 feet long and 61 feet high; (2) an existing reservoir having a normal storage capacity of 1,627 acre-feet, a normal surface area of 122 acres, and a surface elevation of 1,425 feet mean sea level; (3) a rehabilitated penstock 6 feet in diameter; (4) a proposed powerhouse containing one turbine-generator unit having a total installed capacity of 800 kilowatts; (5) a proposed transmission line running about 7.8 mile long; and (6) appurtenant facilities. The dam is owned by Lincoln County. The applicant estimates that the average annual generation would be 4,000,000 kilowatthours. The cost of the studies under permit would be about $27,000.

l. This notice also consists of the following standard paragraphs: A3, A5, A7, A9, A10, B, and C.

11 a. Type of application: Preliminary Permit.

b. Project no.: 11109-000.

c. Date filed: March 18, 1991.

d. Applicant: North American Hydro, Inc.

e. Name of project: Delhi Milldam Hydro Project.

f. Location: On the Maquoketa River near Delhi, in Delaware County, Iowa.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Mr. Loyal Gake, North American, Hydro, Inc., P.O. Box 167, Neshkoro, WI 54960, (414) 293-4628.

i. FERC contact: Ed Lee (tag) (202) 219-2809.

j. Comment date: June 13, 1991.

k. Description of project: The proposed project would consist of: (1) An existing earth filled dam approximately 58.5 feet high and 700 feet long; (2) an existing 50-acre reservoir with a maximum storage of 880 acre-feet at pool elevation 896 feet MSL; (3) a powerhouse containing two 650-kW generating units for a total installed capacity of 1,300 kW; (4) a proposed 1.5-kV or equivalent transmission line; and (5) appurtenant facilities. The applicant estimates that the average annual generation would be 3,260 MWh. The cost of the work to be performed under the permit by the applicant would be $30,000. The existing dam and structures are owned by the Lake Delhi Recreation Association, R.R.2, Delhi, Iowa 52223.

l. Purpose of project: The applicant anticipates that the power generated will be sold to a nearby utility company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12 a. Type of application: Preliminary Permit.

b. Project no.: 11111-000.

c. Date filed: March 22, 1991.

d. Applicant: A.L.L. Natural Resources.

e. Name of project: Crocker Burbank Mill Dam #6 Project.

f. Location: On the North Nashua River in Worcester County, Masachusetts.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact person: Mr. Paul V. Nolan, Energy Services & Development, Inc., 6219 N. 19th Street, Arlington, VA 22205, 703 534-5509.

i. FERC contact: Michael Dees, (202) 219-2807.

j. Comment date: June 20, 1991.

k. Description of project: The proposed project would consist of: (1) Rehabilitation of an existing dam 200 feet long and 20 feet high; (2) a 4-acre reservoir; (3) a powerhouse to contain 100 kW of installed capacity; (4) a new 13.8-kV transmission line 100 feet long; and (5) appurtenant facilities. The applicant estimates the average annual energy production to be 570 MWh and the cost of the work to be performed under the preliminary permit to be $12,000. The project energy would be sold to Fitchburg Gas and Electric. The dam is owned by Leo Collet.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

13 a. Type of application: Preliminary Permit.

b. Project no.: 11119-000.

c. Date filed: April 4, 1991.

d. Applicant: Rattlesnake Hill Development.

e. Name of project: Rattlesnake Hill Pumped Storage Project.

f. Location: On an unnamed quarry and the Merriamack River, near Concord, Merrimack County, New Hampshire.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Rattlesnake Hill Development, Victor A. Engel, 145 Abbott Road, Concord, NH 03303, (603) 225-3068.

i. FERC contact: Mary C. Golato (tag) (202) 219-2804.

j. Comment date: June 25, 1991.

k. Description of project: The proposed project would consist of: (1) An existing abandoned rock quarry with a proposed earthern and concrete berm; (2) a reservoir with an approximate surface area of 1 acre, a storage capacity of 90 acre-feet, and a proposed maximum surface elevation of 575 feet U.S.G.S. datum; (3) a proposed 400-foot-long, 6-foot-diameter tunnel connected to a 1,700-foot-long, 6-foot-diameter penstock; (4) a proposed powerhouse containing one turbine/generator unit with a maximum installed capacity of 5,000 kilowatts; (5) a proposed 600-foot-long tailrace; (6) a proposed 1,000-foot-long transmission line; and (7) appurtenant facilities. The owner of the quarry is the John Swenson Granite Co., Inc. The applicant expects the project would have an average annual generation of 7,000,000 kilowatt hours. The cost of the studies for the permit would be about $40,000.00. The applicant states that due to availability of boring from wells and roads constructed in or adjacement to the upper reservoir and tunnel sites, no subsurface explanation will be required, and no disturbance of land, water, or habitat will occur.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

14 a. Type of application: Preliminary Permit.

b. Project no.: 11121-000.

c. Date filed: April 9, 1991.

d. Applicant: Idaho Power Co.

e. Name of project: Shoshone II.

f. Location: On lands administered by the Bureau of Land Management, on the

Snake River, in Jerome and Twin Falls County, Idaho. Township 9 S Range 17 E Section 36.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Mr. Lee Sherline, Leighton and Sherline, 1010 Massachusetts Avenue NW., suite 101, Washington DC 20001, (202) 898-1122.

i. FERC contact: Michael Spencer at (202) 219-2846.

j. Comment date: June 24, 1991.

k. Description of project: The proposed project would utilize the existing Idaho Power Company's Shoshone Falls dam and would consist of: (1) A concrete intake structure just upstream of the dam; (2) the north side alternative would have a 650-foot-long penstock; the south side alternative would have a 1,200-foot-long penstock; (3) the powerhouse for either alternative would contain generating units with a capacity of 92 MW with an estimated average annual generation of 198 GWh; and (4) the north side alternative would have a 400-foot-long transmission line; the south side alternative would have a 1,000-foot-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $1,500,000.

l. Purpose of project: Project power would be used by the applicant.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

15 a. Type of application: Preliminary Permit.

b. Project no.: 11122-000.

c. Date filed: April 9, 1991.

d. Applicant: Idaho Power Co.

e. Name of project: Upper Salmon C.

f. Location: On the Snake River, in Twin Falls County Idaho. Township 7 S Range 18 E Section 34.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Mr. Lee Sherline, Leighton and Sherline, 1010 Massachusetts Avenue NW., suite 101, Washington DC 20001, (202) 898-1122.

i. FERC contact: Michael Spencer at (202) 219-2846.

j. Comment date: June 24, 1991.

k. Description of project: The proposed project would utilize the existing Idaho Power Company's Upper Salmon Falls dam and would consist of: (1) A 6,900-foot-long, 18-foot-deep power canal; (2) a 22.5-foot-diameter, 350-foot-long steel penstock; (3) the powerhouse containing generating units with a capacity of 48 MW with an estimated average annual generation of 118 GWh; and (4) as 450-foot-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $1,500,000.

l. Purpose of project: Project power would be used by the applicant.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

16 a. Type of application: Preliminary Permit.

b. Project no.: 11123-000.

c. Date filed: April 9, 1991.

d. Applicant: Idaho Power Co.

e. Name of project: Oxbow Bypass.

f. Location: On the Snake River, in Baker County, Oregon. Township 7 S Range 48 E Section 20.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Mr. Lee Sherline, Leighton and Sherline, 1010 Massachusetts Avenue NW., suite 101, Washington DC 20001, (202) 898-1122.

i. FERC contact: Michael Spencer at (202) 219-2846.

j. Comment date: June 24, 1991.

k. Description of project: The proposed project would utilize the existing Idaho Power Company's Oxbow dam and would consist of: (1) A 60-inch-diameter, 275-foot-long steel penstock; (2) a 42-inch-diameter, 50-foot-long penstock; and (3) a powerhouse containing generating units with a capacity of 845 kW with an estimated average annual generation of 7.1 GWh. No new transmission lines would be needed.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $500,000.

l. Purpose of project: Project power would be used by the applicant.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

17 a. Type of application: Preliminary Permit.

b. Project no.: 11127-000.

c. Date filed: April 9, 1991.

d. Applicant: Portland General Electric Co.

e. Name of project: Cot Creek.

f. Location: In Mount Hood National Forest, on Cot Creek, in Clackamas County, Oregon. Township 6 S Range 6 E Section 4, and 33.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Mr. Gary W. Hackett, Portland General Electric Co., 121 SW Salmon Street, Portland, OR 97204, (503) 464-8005

i. FERC contact: Michael Spencer at (202) 219-2846.

j. Comment date: June 24, 1991.

k. Description of project: The proposed project would consist of: (1) A 10-foot-high dam; (2) a 10-inch-diameter, 9,000-foot-long penstock; (3) a powerhouse containing generating units with a capacity 1,200 kW with an estimated average annual generation of 3.5 GWh; and (4) a 3/4-mile-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $200,000.

l. Purpose of project: Project power would be used by the applicant.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

18 a. Type of application: Transfer of License.

b. Project no.: 2180-005.

c. Date filed: April 3, 1991.

d. Applicant: Packaging Corporation of America.

e. Name of project: Grandmother Falls Project.

f. Location: On the Wisconsin River in Lincoln County, Wisconsin.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Packaging Corporation of America, 1603 Orrington Avenue, Evanston, IL 60204, (708) 492-4401.

i. FERC contact: Mary C. Golato (202) 219-2804.

j. Comment date: June 15, 1991.

k. Description of project: Packaging Corporation of America proposes to transfer its license for the Grandmother Falls Project No. 2180 to PCA Hydro, Inc. Packaging Corporation of America and PCA Hydro, Inc. are subsidiaries of Tenneco, Inc., its parent company. The purpose of the transfer is to restructure the internal organization of Tenneco in order to facilitate its operation and maintenance.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

19 a. Type of application: Surrender of License.

b. Project no.: 8761-012.

c. Date filed: April 8, 1991.

d. Applicant: G.W. Hydro, Inc.

e. Name of project: Oologah.

f. Location: On the Verdigris River in Rodgers County, Oklahoma.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant contact: David C. Wheelock, 5750 Balcones Drive, suite 210, Austin, TX 78731, (512) 452-6498.

i. FERC contact: Charles T. Raabe (tag) (202) 219-2811.

j. Comment date: June 14, 1991.

k. Description of project: The proposed project would have utilized the existing U.S. Army Corps of Engineers' Oologah Dam and Reservoir and would have consisted of: (1) A 17.5-foot-diameter steel penstock approximately 420 feet long, installed in the northern outlet works conduit; (2) a reinforced concrete powerhouse 92 feet long and 63 feet wide housing two turbine-generators of 8.75 MW capacity each; (3) the 4.16-kV generator leads and the 700-foot-long, 4.16-kV underground cable; (4) the three-phase, 20/25–MVA, 4.16/138-kV stepup transformer and the one-mile-long, 138-kV overhead transmission line; and (5) appurtenant facilities.

The licensee has determined that the construction and operation of the project is no longer economically feasible. Therefore, licensee has requested that its license be terminated. The license was issued June 29, 1988, and would have expired May 31, 2038. The licensee has not commenced construction of the project.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particula application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) A preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATON", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable , and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027 (810 1st), at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Public Law No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. § 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses

should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 6, 1991, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11135 Filed 5-9-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-146-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 3, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on May 1, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the tariff sheets:

Proposed To Be Effective June 1, 1991

First Revised Sheet No. 600A
Original Sheet No. 694
Original Sheet No. 695
Original Sheet No. 696
Original Sheet No. 697
Original Sheet No. 698
Original Sheet No. 699
Original Sheet No. 700
Sheet Nos. 701-799

Algonquin states that it is making the instant filing for the purposes of incorporating into its FERC Gas Tariff terms and conditions permitting Algonquin to track Account No. 858, Transmission and Compression by Others ("T&C") Costs as they are incurred for the purposes of securing system supply. Algonquin states that the intent of this filing is to remove the strong economic barriers which today prohibit Algonquin from purchasing its system supply on the spot market. Algonquin states that it could significantly reduce its cost of purchased gas if a T&C Tracker were in place, thus keeping Algonquin's sales services competitive and benefiting its customers, all as more fully set forth in Algonquin's instant filing.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11127 Filed 5-9-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-145-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 3, 1991.

Take notice that Florida Gas Transmission Company (FGT) on May 1, 1991, tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, with the proposed effective date of June 1, 1991:

First Revised Sheet No. 102
First Revised Sheet No. 248
Original Sheet No. 248A

FGT states that the purpose of this filing is to revise FGT's requirements for a valid request for firm sales and/or firm transportation service, and for being placed on FGT's Firm Service Log. FGT further states that the proposed changes will promote accurate requests for capacity, will provide FGT with the information necessary to allocate scare firm capacity on the FGT system as it becomes available and also will enable FGT to accurately plan future system expansions.

FGT requests waiver of any and all Commission rules, regulations and orders that may be necessary so as to permit the tariff sheets described above to become effective June 1, 1991.

FGT states that a copy of the filing was mailed to all holders of FGT's FERC Gas Tariff, Second Revised Volume No. 1 and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11128 Filed 5-9-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-144-000]

Great Lakes Gas Transmission Limited Partnership Proposed Changes in FERC Gas Tariff

May 3, 1991.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on May 1, 1991, pursuant to § 154.63(a)(1) of the Regulations of the Federal Energy Regulatory Commission ("Commission") tendered for filing the following tariff sheets to its FERC Gas Tariff proposed to be effective June 1, 1991:

First Revised Volume No. 1

First Revised Thirty-Ninth Revised Sheet No. 57(i)

Original Volume No. 2

Fifth Revised Sheet No. 50
First Revised Twenty-Fifth Revised Sheet No. 53
Fifth Revised Sheet No. 53-A
Eleventh Revised Sheet No. 53-B
Sixth Revised Sheet No. 53-F
Third Revised Sheet No. 53-G
Third Revised Sheet No. 53-H

Great Lakes advises that the primary purpose of this filing is to enable Great Lakes' transportation customer, TransCanada PipeLines Limited ("TransCanada"), to provide the company use gas needed by Great Lakes to transport TransCanada's gas volumes. The tariff sheets referenced above reflect the changes necessary to implement this change in Rate Schedule T-4 of First Revised Volume No. 1 and Original Volume No. 2 of Great Lakes' FERC Gas Tariff.

Great Lakes further states that TransCanada has agreed that, effective June 1, 1991, it will provide that company use gas to Great Lakes, which is needed to transport volumes. Concurrent with the effectiveness of this change, TransCanada would no longer be subject to Great Lakes' PGA tariff provisions.

Great Lakes indicates that there are two major reasons for the proposed change. First, since customers in Great Lakes' open access program (implemented on November 1, 1990, pursuant to the Commission Order issued on September 13, 1990, in Docket No. CP89-2198-000), directly provide their company use gas, conversion of Great Lakes' traditional customers to a similar arrangement provides administrative convenience and uniformity. Second, it is critical to Great Lakes' planning to timely determine if it will need to purchase company use gas in the future. Gas purchase contracts, under which Great Lakes purchases most of its company use gas requirements from TransCanada terminate on November 1, 1991.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before May 10, 1991.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not service to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11129 Filed 5-9-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA91-1-34-001 and RP91-105-001]

Florida Gas Transmission Co.; Compliance Filing

May 3, 1991.

Take notice that on April 30, 1991, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheet:

Revised Alternate Fifteenth Revised Sheet No. 8

Tariff Revisions and Compliance

FGT states that by Commission Order in the above-referenced dockets, the Commission granted FGT a one-time waiver of the surcharge requirements of § 154.305(e) and permitted FGT to postpone the recovery of the commodity deferred balance until FGT's next Annual PGA filing. The Commission further directed FGT to refile the tariff sheet to remove the commodity surcharge. Accordingly, FGT has submitted the above-referenced tariff sheet. The effect of this change is a .238¢/therm decrease in the jurisdictional resale rates from those set forth in the Annual PGA filing.

FGT further states that the Commission directed FGT to submit workpapers supporting the one-time exchange adjustment. This one-time exchange adjustment resulted from FGT's change in methodology from unit-of-purchases to unit-of-sales and was necessary to reflect the July 31, 1990 exchange imbalance in FGT's Account 191.

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 rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 10, 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11124 Filed 5-9-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER91-150-000, ER91-150-001 and EL91-29-000]

Southern Company Services, Inc.; Initiation of Proceeding and Refund Effective Date

May 6, 1991.

Take notice that on May 2, 1991, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL91-29-000 under section 206 of the Federal Power Act, as amended by the Regulatory Fairness Act of 1988.

The refund effective date shall be 60 days after publication of this notice in the **Federal Register**.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11126 Filed 5-9-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-147-000]

Transcontinental Gas Pipe Line Corp. Tariff Filing

May 3, 1991.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on May 1, 1991 certain revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff, which tariff sheets are listed in appendix A attached thereto. The proposed effective date of the revised tariff sheets is June 1, 1991.

Transco is proposing, pursuant to sections 35 and 37 of the General Terms and Conditions of its Volume No. 1 tariff, the partial recovery (*i.e.*, recovery of all amounts except those to be absorbed by Transco) from Settling Customers in Docket No. RP88-68 *et al.*, of approximately $57.8 million of Litigant Producer Settlement Payments (LPSP). Pursuant to section 33 of the General Terms and Conditions of Transco's Volume No. 1 tariff, Transco has also calculated Commodity LPSP Charges applicable to Sun Refining and Marketing Company, the only non-settling party in Docket Nos. RP88-68 *et al.*, based on approximately $84.7 million of LPSP payments. The LPSP costs reflected in the instant filing are proposed to be recovered over a two-year amortization period June 1, 1991 through May 31, 1993.

Transco states that copies of the instant filing were mailed to its customers, State Commissions and other interested parties. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before

May 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11130 Filed 5-9-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

National Petroleum Council Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council (NPC)

Date and Time: Wedensday, June 5, 1991, at 9:00 AM

Place: The Madison Hotel, Dolley Madison Ballroom, 15th & M Streets, NW., Washington, DC

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda:

—Call to order by Lodwrick M. Cook, Chairman, National Petroleum Council.
—Remarks by the Honorable James D. Watkins, Secretary of Energy.
—Consideration of a report of the NPC Committee on Refining, Kenneth T. Derr, Chairman.
—Progress Report of the NPC Committee on Natural Gas, Frank H. Richardson, Chairman.
—Administrative matters.
—Discussion of any other business properly brought before the National Petroleum Council.
—Public comment (10-minute rule).
—Adjournment.

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, room, IE-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 7, 1991.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 91-11191 Filed 5-9-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3955-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 22, 1991 Through April 26, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. DS-NPS-K61001-AZ Rating 2

Grand Canyon National Park, North Rim Visitor Facilities, Development, Implementation, Coconino County, AZ.

Summary: EPA rated this document as Category 2—Insufficient Information, and requested more information regarding the project's purpose and need and the scope of alternatives analyzed to meet them. EPA asked for more information the project's potential air quality impacts and consistency with the 1976 Grand Canyon Master Plan.

Final EISs

ERP No. F-AFS-K03019-CA

M-70 Pipeline Replacement and System Optimization Project, Construction, Operation and Abandonment, Right-of-Way Grant, Special Use Permit and COE Permits, Angeles and Los Pardres National Forests, Los Angeles and Kern Counties, CA.

Summary: Review of this final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F-COE-E30034-NC

West Onslow Beach and New River Inlet Beach (Topsail Beach), Erosion Control and Hurricane Wave Protection Plan, Implementation, Pender and Onslow Counties, NC.

Summary: EPA continues to have some reservations about the long-term consequences of the proposal to dredge sand onto this section of eroding shoreline. EPA's concerns focus on certain of the underlying assumptions made about this specific project as well as some generic facets of beach nourishment per se.

ERP No. FS-COE-B35011-00

Western Long Island Sound (WLIS III) Dredged Material Disposal Site, Designation, CT and NY.

Summary: EPA believes that the proposed WLIS dredged material disposal site is environmentally acceptable and supports its designation. EPA will continue to coordinate with the Corps regarding on-going programmatic issues related to dredged material disposal, as part of EPA's regional ocean disposal program.

Dated: May 7, 1991.

Anne Norton Miller,

Director, FALD, Office of Federal Activities.

[FR Doc. 91-11172 Filed 5-9-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3955-6]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed April 29, 1991 Through May 03, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910134, Draft EIS, AFS, MT, East Boulder Mine Project, Platinum and Palladium Mining, Construction and Operation, Plan of Operations Approval and COE section 404 Permit, Gallatin National Forest, Sweet Grass County, MT, Due: June 24, 1991, Contact: Leonard L. Lucero (406) 587-6701.

EIS No. 910135, Final EIS, AFS, MT, Lolo National Forest, Noxious Weed Management Plan, Implementation, Missoula, Mineral, Sanders, Granite, Powell, Lewis and Clark, Flathead, Ravalli and Lake Counties, MT, Due: June 10, 1991, Contact: Jerry Covault (406) 329-3727.

EIS No. 910136, Draft EIS, AFS, UT, Deep Creek and Snow Bench Timber Sales, Approval and Implementation, Thousand Lake Mountain, Fishlake National Forest, Loa Ranger District,

Wayne County, UT, Due: July 01, 1991, Contact: Gray O'Laing (801) 836-2811.

EIS No. 910137, Final EIS, UMT, GA, North Atlanta Corridor Transit Improvements; Medical Center Station to North Springs, Funding, Fulton and Dekalb Counties, GA, Due: June 10, 1991, Contact: Alex McNeil (404) 347-7875.

EIS No. 910138, Draft EIS, FAA, MA, Worcester Municipal Airport Parallel Taxiway Construction to Runway 11-29; Plan Approval Funding and COE section 404 Permit, Worcester County, MA, Due: July 01, 1991, Contact: John Silva (617) 273-7060.

EIS No. 910139, Draft EIS, USN, CT, Thames River Navigation Channel Dredging Project, Mouth of the River to Pier 33 at the Naval Submarine Base, Implementation and COE section 404 Permit, Groton and New London, New London County, CT, Due: June 24, 1991, Contact: LCDR R. P. Bucholz (215) 897-6262.

EIS No. 910140, Final EIS, FHW, CA, I-5 Widening and Interchange Improvements; I-5 at Genesee Avenue, I-805 at Mira Mesa Boulevard and I-5 at Del Mar Heights Road, Funding, section 404 and Bridge Permits, City and County of San Diego, CA, Due: June 10, 1991, Contact: Leonard Brown (916) 551-1307.

EIS No. 910141, Final EIS, AFS, UT, Tippets Valley Timber Harvest Project, Timber Sale and Road Construction, Implementation, Dixie National Forest, Cedar City Ranger District, Iron County, UT, Due: June 10, 1991, Contact: Ronald S. Wilson (801) 865-3200.

EIS No. 910142, Second Final SUPPLE, COE, OR, Elk Creek Lake Project, Construction and Operation, Implementation, Updated and Additional Information, Jackson County, OR, Due: June 10, 1991, Contact: David Kurkiski (503) 326-6094.

EIS No. 910143, Second Draft SUPPLE, NOA, AK, Groundfish Fishery of the Bering Sea and Aleutian Islands, Fishery Management Plant, Amendment 18/23 Inshore/Offshore Allocation Alternative Approval and Implementation, AK, Due: June 24, 1991, Contact: Steven Pennoyer (907) 586-7221.

Amended Notices

EIS No. 910122, Draft EIS, NPS, MD, Antietam National Battlefield General Management Plan, Implementation, Washington County, MD, Due: June 30, 1991, Contact: Jacob J. Hoogland (202) 343-5214.

Published FR 04-26-91—Incorrect preparing agency.

Dated: May 7, 1991.

Anne Norton Miller,

Director, FALD, Office of Federal Activities.

[FR Doc. 91-11171 Filed 5-9-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3955-9]

Proposed Modification To Stipulation of Settlement; Sacramento Federal Implementation Plan for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed modification of settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed modification to a stipulation of settlement in litigation instituted against the Environmental Protection Agency ("EPA") regarding the fact that EPA has not promulgated a final rule establishing a Federal Implementation Plan (FIP) to attain the National Ambient Air Quality Standards for ozone in the Sacramento, California nonattainment area. *Environmental Council of Sacramento, et al.* v. *EPA, et al*, E.D. Cal. No. CIVS-87-0420 EJG.

The parties to the litigation originally entered into a stipulation of settlement that was approved by the court on June 26, 1989. Under that agreement, EPA is to propose a FIP by June 26, 1991, and take final action by February 26, 1992. The parties have now agreed to modify that settlement to provide additional time for EPA to promulgate the FIP in order to enable EPA to make use of air quality modeling data currently being developed by the state and local air planning agencies. The modification extends the deadlines for both proposal and final action by one additional year.

For a period of thirty [30] days following the date of publication of this notice, the Agency will receive written comments relating to the proposed modification of the stipulation of settlement. EPA or the Department of Justice may withhold or withdraw consent to the proposed modification if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the proposed modification are available from Sara Schneeberg, Air and Radiation Division (LE-132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; (202) 382-7723. Written comments should be sent to Sara Schneeberg at the above address and must be submitted on or before June 10, 1991.

Dated: May 5, 1991.

E. Donald Elliott,

Assistant Administrator and General Counsel.

[FR Doc. 91-11290 Filed 5-9-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Travel Reimbursement Authority: Report

AGENCY: Federal Communications Commission.

ACTION: Publishing of report on travel reimbursement authority.

SUMMARY: In Public Law 101-396, the Congress authorized the Federal Communications Commission to accept reimbursement from non-government organizations for travel of employees of the Commission. The Federal Communications Commission must keep records of such travel by each event and prepare a report of all reimbursements allowed and provide copies of each report to the Senate Committee on Appropriations, House Committee on Appropriations, Senate Committee on Commerce, Science and Transportation, and the House Committee on Energy and Commerce.

DATES: This report is for the period January 1, 1991 through March 31, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard Keller, Office of the Managing Director (202) 632-6900.

SUPPLEMENTARY INFORMATION: The report for the period January 1, 1991 through March 31, 1991 is as follows:

Total Number of Sponsored Events	5
Total Number of Sponsoring Organizations	5
Total Number of Different Commissioners/Employees Attending	14
Total Amount of Reimbursement Expected	
Transportation	$7,239.00
Subsistence	6,435.44
Other Expenses	1,318.89
Total	$14,993.33

Individual Event Reports Attached: Amount of Reimbursement Shown May Be Estimated.

Sponsoring Organization: Satellite Broadcasting & Communications,

Association of America; 225 Reinekers Lane, suite 600, Alexandria, VA 22314
Date of the Event: January 21, 1991.
Description of the Event: Satellite Broadcasting & Communication's 1991 Las Vegas Trade Show.
Commissioners Attending: None.
Other Employees Attending: Jonathan D. Levy—Industry Economist, Office of Plans and Policy.
Amount of Reimbursement:

Transportation	$290.00
Subsistence	226.68
Other Expenses	21.50
Total	538.18

Sponsoring Organization: Oklahoma Association of Broadcasters; 6520 N. Western, suite 104, Oklahoma City, OK 73116
Date of the Event: February 8, 1991.
Description of the Event: Oklahoma Association of Broadcaster's Winter Meeting.
Commissioners Attending: Commissioner James H. Quello.
Other Employees Attending: None.
Amount of Reimbursement:

Transportation	$366.00
Subsistence	161.00
Other Expenses	71.98
Total	598.98

Sponsoring Organization: NATPE International, 10100 Santa Monica Blvd., suite 300, Los Angeles, CA 90067
Date of the Event: January 14, 1991.
Description of the Event: NATPE Annual Program Conference.
Commissioners Attending: Commissioner James H. Quello; Commissioner Sherrie P. Marshall.
Other Employees Attending: None.
Amount of Reimbursement:

Transportation	$712.00
Subsistence	497.50
Other Expenses	226.58
Total	1,436.08

Sponsoring Organization: National Cable Television Association, 1724 Massachusetts Avenue, NW., Washington, DC 20036
Date of the Event: March 24–27, 1991.
Description of the Event: NCTA's 40th Annual Convention and Exposition.
Commissioners Attending: Chairman Alfred C., Sikes.
Other Employees Attending: Lauren J. Belvin, Legal Advisor to the Chairman, Linda Townsend Solheim, Director, Office of Legislative Affairs, Thomas P. Stanley, Chief Engineer, Office of Engineering and Technology; Richard M. Firestone, Chief, Common Carrier Bureau, William H. Johnson, Deputy Chief, Mass Media Bureau, Ronald Parver, Chief, Cable Television Branch, Mass Media Bureau.
Amount of Reimbursement:

Transportation	$2,452.00
Subsistence	2,253.26
Other Expenses	487.67
Total	5,192.93

Sponsoring Organization: INTV Association of Independent Television Stations, Inc., 1200 Eighteenth Street, NW., suite 502, Washington, DC 20036
Date of the Event: January 3–5, 1991.
Description of the Event: INTV's 1991 Annual Convention.
Commissioners Attending: Commissioner James H. Quello, Commissioner Sherrie P. Marshall, Commissioner Ervin S. Duggan.
Other Employees Attending: Byron F. Marchant, Legal Advisor to Commissioner Barrett, Peter D. Ross, Legal Advisor to Commissioner Marshall, Lauren J. Belvin, Legal Advisor to the Chairman, Linda Townsend Solheim, Director, Office of Legislative Affairs, Robert M. Pepper, Chief, Office of Plans and Policy.
Amount of Reimbursement:

Transportation	$3,419.00
Subsistence	3,297.00
Other Expenses	511.16
Total	7,227.16

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 91–11150 Filed 5–9–91; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

San Diego Unified Port District/Pasha Properties, Inc., et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200327–002.
Title: San Diego Unified Port District/Pasha Properties, Inc. Terminal Agreement
Parties: San Diego Unified Port District (Port), Pasha Properties, Inc. (Pasha).
Filing Party: Mr. John M. Reardon, Deputy Director, Property Department, Port of San Diego, P.O. Box 488, San Diego, CA 92112.
Synopsis: The Agreement, filed April 29, 1991, provides for Pasha to operate motor vehicle processing activities at the Port's National City Marine Terminal Facility, Motor Vehicle Terminal Berths 24–3 and 24–4 for a 10-year term.

Agreement No.: 224–200027–002.
Title: Jackson County Port Authority/Ryan-Walsh Marine Terminal Agreement.
Parties: Jackson County Port Authority and Board of Supervisors of Jackson County, Mississippi (Port), Ryan-Walsh, Inc.
Filing Party: Mr. Fred S. Sherman, Executive Director, Jackson County Port Authority, 3033 Pascagoula Street, P.O. Box 70, Pascagoula, MS 39568–0070.
Synopsis: The Agreement, filed April 29, 1991, amends the basic agreement to: (1) Extend its term to December 31, 1995; (2) provide the rental terms for the extended term; and (3) provide that the Port's tariff charges not specifically addressed in the basic agreement are for the account of the Port.

By Order of the Federal Maritime Commission.
Dated: May 6, 1991.
Joseph C. Polking,
Secretary.
[FR Doc. 91–11111 Filed 5–9–91; 8:45 am]
BILLING CODE 6730–01–M

Tampa Port Authority/Tampa Bay International Terminals, Inc.; 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 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200510.

Title: Tampa Port Authority/Tampa Bay International Terminals, Inc., Terminal Agreement.

Parties: Tampa Port Authority (Authority), Tampa Bay International Terminals, Inc. (TBIT).

Synopsis: The Agreement, filed April 22, 1991, provides for: The Authority to assess TBIT an incentive wharfage rate of $1.00 per net ton on steel billets and reinforcing bars moving export through the Port of Tampa, subject to a minimum annual volume of 15,000 net tons. The Agreement is effective through April 16, 1992.

By Order of the Federal Maritime Commission.

Dated: May 6, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-11133 Filed 5-9-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Allan A. Armbruster, Jr., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have 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 the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 that notice or to the offices of the Board of Governors. Comments must be received not later than May 31, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Allan A. Armbruster, Jr., Cozad, Nebraska, and Allan A. Armbruster, Jr., trustee for BJA Irrevocable Trust III; to acquire an additional 0.45 percent (totalling 16.97 percent) of the voting shares of Midwest Banco Corporation, Cozad, Nebraska, and thereby indirectly acquire First Bank and Trust Company, Cozad, Nebraska; Bank of Wilber, Wilber, Nebraska; and First State Bank, Enders, Nebraska.

2. Oren L. Benton, Aurora, Colorado; to acquire an additional 75.01 percent (totalling 100 percent) of the voting shares of TecNational Bank, Denver, Colorado.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Lacy J. Harber, Denison, Texas; to acquire 94.87 percent of the voting shares of North American Bancshares, Sherman, Texas, and thereby indirectly acquire American Bank and Trust, Denison, Texas, and American Bank of Sherman, N.A., Sherman, Texas.

Board of Governors of the Federal Reserve System, May 6, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11141 Filed 5-9-91; 8:45 am]

BILLING CODE 6210-01-F

Banco de Santander, S.A. de Credito; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these 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 May 31, 1991.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Banco de Santander, S.A. de Credito, Santander, Spain; to acquire up to 24.1 percent of the voting shares of First Fidelity Bancorporation, Lawrenceville, New Jersey; First Fidelity, Incorporated, Newark, New Jersey; and Fidelcor, Inc., Rosemont, Pennsylvania, and thereby indirectly acquire First Fidelity Bank, N.A., New Jersey, Newark, New Jersey; Fidelity Bank, National Association, Malvern, Pennsylvania; First Fidelity Bank, N.A., North Jersey, Totowa, New Jersey; First Fidelity Bank, N.A., South Jersey, Burlington TWP, New Jersey; Merchants Bank, N.A., Allentown, Pennsylvania; Morris Savings Bank, Morristown, New Jersey; Fidelity Bank Delaware, New Castle, Delaware; and Merchants Bank, North, Wilkes-Barre, Pennsylvania.

In connection with this application, Applicant also proposes to acquire First Fidelity Community Development

Corporation, Trenton, New Jersey, and thereby engage in activities designed to assist local and governmental groups in the economic revitalization, rehabilitation and development of both commercial and residental areas located in low and moderate income areas in the States of New Jersey and Pennsylvania pursuant to § 225.25(b)(6); Waller House Corporation, Philadelphia, Pennsylvania, and thereby engage in activities designed to assist in community development activities pursuant to § 225.25(b)(6); First Fidelity Capital Corporation, Newark, New Jersey, and thereby engage in extensions of consumer and commercial direct loans, lines of credit, letters of credit and other like indebtedness pursuant to § 225.25(b)(1), and lease financing transactions, personal and real property lease transactions, ownership, acquisition, sale and disposition of leases and lease finance documents and the underlying leased property prusuant to § 225.25(b)(5); Broad and Lombardy Associates, Inc., Newark, New Jersey, and thereby engage in acting as insurance agent or broker for credit life and health insurance in conjunction with credit transactions; acting as an insursance agent or broker for the sale of credit-related property and casualty insurance protecting real and personal property which serves as collateral for a credit transaction and liability coverage as part of a package on home, automobile and business policies, and acting as an insurance agent or broker for insurance for affiliates pursuant to § 225.25(b)(8); First Fidelity Trust, N.A., Florida, Boca Raton, Florida, and thereby engage in performing and carrying on any one or more of the functions or activities that may be performed or carried on by a national trust company in a manner authorized by applicable federal and state law pursuant to § 225.25(b)(3); First Fidelity Brokers, Inc., Newark, New Jersey, and thereby engage in retail securities brokerage services in New Jersey, New York, Florida, and Pennsylvania pursuant to § 225.25(b)(15); First Fidelity Trust Company, New York, New York, and thereby engage in performing functions or activities of a fiduciary, agency, or custodial nature in a manner authorized by federal and state laws except that it does not and will not, without the prior approval of the Board: accept deposits other than deposits that are generated from trust funds not currently invested and that are properly secured to the extent required by law and deposits representing funds received for a special use in its capacity as managing agent or custodian for an owner of, or investor in, real property, securities, or personal property or for such owner or investor in, real property, securities, or personal property or for such owner or investor as agent or custodian of funds held for investor as agent or custodian of funds held for investment or as escrow agent, or for an issuer of, capacities as paying agent, dividend disbursing agent, or securities clearing agent (which deposits are not and will not be employed by or for the account of the customer in the manner of a general purpose checking account or interest-bearing account); or make loans or investments other than call loans to securities dealers and the purchase of money market instruments such as certificates of deposit, commercial paper, government and municipal securities and bankers acceptances (which loans investments will not be used as a method of channeling funds to any of its nonbanking affiliates) pursuant to § 225.25(b)(3); Fidelcor Business Credit Corporation, New York, New York, and thereby engage in originating and servicing loans and other extensions of credit, commercial finance, factoring, general lending operations, data processing, participation of loans to affiliates of First Fidelity, with occasional participations to others pursuant to §§ 225.25(b)(1) and (b)(7); Fidelcor Business Credit Corporation of California, Inc., Los Angeles, California, and thereby engage in originating and servicing loans and other extensions of credit, commercial finance, factoring, general lending operations, data processing, participation of loans to affiliates of First Fidelity, with occasional participations to others, in California pursuant to §§ 225.25(b)(1) and (b)(7); Fidelcor Life Insurance Company, Phoenix, Arizona, reinsursance of credit life, disability and health insurance written by an outside insurance carrier in connection with loans extended by Fidelity Bank, N.A., and its affiliates pursuant to § 225.25(b)(8)(i); and Fidelcor Trading Inc., Philadelphia, Pennsylvania, and thereby engage in executing and clearing options in foreign currency pursuant to Board order dated March 19, 1984.

Board of Governors of the Federal Reserve System, May 6, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11142 Filed 5-9-91; 8:45 am]

BILLING CODE 6210-01-F

Marquette National Corporation; 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 May 31, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Marquette National Corporation, Chicago, Illinois; to engage *de novo* through its subsidiary, Churchview Limited Partnership, Chicago, Illinois, in investing, as a limited partner, in a low income housing project for elderly residents pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Chicago, Illinois.

Board of Governors of the Federal Reserve System, May 6, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11143 Filed 5-9-91; 8:45 am]

BILLING CODE 6210-01-F

Society Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than May 31, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Society Corporation, Cleveland, Ohio; through its subsidiary Green Machine Network Corporation, North Olmsted, Ohio, to engage in providing data processing services nationwide pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota, and Norwest Insurance, Inc., Minneapolis, Minnesota; through their subsidiary National Security Insurance Underwriters of Litchfield, Litchfield, Minnesota, to engage in general insurance agency business including the sale of life, accident and health, property, and casualty insurance products pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 6, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11144 Filed 5-9-91; 8:45 am]

BILLING CODE 6210-01-F

Synovus Financial Corporation, 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 May 31, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Synovus Financial Corporation, Columbus, Georgia; and TB&C Bancshares, Inc., Columbus, Georgia; to acquire 100 percent of the voting shares of Athens Federal Savings Bank, Athens, Georgia.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Emprise Financial Corporation, Wichita, Kansas; and thereby indirectly acquire Emprise Bank, N.A., Hays, Kansas.

Board of Governors of the Federal Reserve System, May 6, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11145 Filed 5-9-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91E-0136]

Determination of Regulatory Review Period for Purposes of Patent Extension; Altace™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Altace™ 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, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, 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 Altace™ (ramipril), which is indicated for the treatment of hypertension. It may be used alone or in combination with thiazide diuretics. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Altace™ (U.S. Patent No. 4,587,258) from Hoechst-Roussel Pharmaceuticals, Inc., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated April 15, 1991, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the approval of the active ingredient, ramipril, represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Altace™ is 2,551 days. Of this time, 1,738 days occurred during the testing phase of the regulatory review period, while 813 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective: February 5, 1984. The applicant claims January 27, 1984, as the date the investigational new drug (IND) application for Altace™ became effective. However, FDA records indicate that the IND became effective on February 5, 1984.

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 7, 1988. The applicant claims November 2, 1988, as the date the new drug application (NDA) for Altace™ (NDA 19-901) was initially submitted. However, FDA records indicate that the application was received on November 7, 1988.

3. The date the application was approved: January 28, 1991. FDA has verified the applicant's claim that NDA 19-901 was approved on January 28, 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 632 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 9, 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 November 6, 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: May 3, 1991.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 91-11140 Filed 5-9-91; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Final Review Criteria for Grants for Nurse Anesthetist Education Programs

The Health Resources and Services Administration (HRSA) announces the final review criteria for fiscal year 1991 for Grants for Nurse Anesthetist Education Programs.

Section 831(a) of the Public Health Service Act authorizes grants to public or private nonprofit institutions to cover the costs of:

1. Traineeships for licensed registered nurses to become nurse anesthetists; and

2. Projects to develop and operate programs for the education of nurse anesthetists.

This announcement addresses grants for projects to develop and operate programs for the education of nurse anesthetists.

To be eligible for a grant, an applicant must be a public or private nonprofit institution accredited by an entity or entities designated by the Secretary of Education and must meet such requirements as the Secretary shall by regulation prescribe.

For purposes of this program eligible projects will be limited to proposals for developing and operating new programs. This is in keeping with the intent of Congress that additional nurse anesthetist education programs be created (Senate Report 101-516, p. 55). An application may be submitted for a project at any stage of program development beginning with the planning period but prior to the graduation of a class. Projects which include a planning period must, before the end of the first year of the project, complete the Capability Review required to achieve Preaccreditation Status from the Council on Accreditation of Nurse Anesthesia Educational Programs (AANA Council). Projects for Nurse Anesthetist Programs which have achieved Preaccreditation status from the AANA Council must have students enrolled or accepted for enrollment, to be eligible. Projects for progams which have graduated a class or will be graduating a class before a grant can be awarded are not eligible.

The period of Federal support should not exceed three years.

National Health Objectives for the Year 2000

The PHS is encouraging applicants to submit proposals that address achievement of Healthy People 2000: National Health Promotion and Disease

Prevention Objectives, (a recent Departmental report), as applicable. In developing your application for this program, please consider the 22 priority areas set forth in the report. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-0001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Training and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between Public Health Service supported education programs and service programs which provide comprehensive primary care services to the underserved.

Final Review Criteria

Proposed review criteria were published in the **Federal Register** on February 28, 1991 (56 FR 8354) for public comment. No comments were received during the 30-day comment period. The review criteria will be retained as proposed.

The HRSA will review applications taking into consideration the following criteria:

1. The national or special local need which the particular project proposes to serve with special emphasis on meeting shortages in underserved areas.
2. The potential effectiveness and impact of the proposed project including its potential contribution to nursing.
3. The administrative and managerial capability of the applicant to carry out the proposed project.
4. The appropriateness of the plan, including the timetable, for carrying out the activities of the proposed project and achieving and measuring the project's stated objectives.
5. The capability of the applicant to carry out the proposed project.
6. The reasonableness of the budget for the proposed project, including the justification of the grant funds requested.
7. The potential of the project to continue on a self-sustaining basis after the period of grant support.

This program is listed at 93.916 in the Catalog of Federal Domestic Assistance and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: May 6, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-11118 Filed 5-9-91; 8:45 am]

BILLING CODE 4160-15-M

Health Resources and Services Administration Public Health Service

Pre-application Technical Assistance Meeting

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Health Resources and Services Administration (HRSA) is conducting a pre-application technical assistance meeting concerning the funding available under section 340A of the Public Health Service Act (PHS), of the newly authorized Health Services to Residents of Public Housing Program which was enacted under Public Law 101-527. Grants under this program will be awarded to public or nonprofit private entities to provide health care services, health screening, health counseling and education to residents of public housing developments. Preference will be given to applicants receiving funds under the Health Care for the Homeless Program (section 340 of the PHS Act), community health centers program (section 330 of the PHS Act) or certified Resident Management Corporations (section 20 of the U.S. Housing Act of 1937).

PURPOSE: The purpose of this meeting is to provide technical assistance and an overview of the requirements of the program to those interested in applying for funding to provide health care services to residents in public housing.

Anyone interested in receiving additional information or attending the meeting should contact Mr. James Gray or Ms. Tracy McClintock, Division of Special Populations Program Development, room 7A-22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-2512.

The meeting will be held as follows:

DATE AND TIME: May 29, 1991, 8:30 a.m. to 5 p.m.

PLACE: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.

Dated: May 6, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-11216 Filed 5-9-91; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, April 26, 1991.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. HIV/AIDS Dental Reimbursement Program—New—Dental Schools will apply for reimbursement of documented uncompensated costs of oral health care for HIV infected persons. The Information will be used to determine eligibility and amount of reimbursement under this program. Respondents: Nonprofit institutions; Number of Respondents: 150; Number of Responses per Respondent: 1; Average Burden per Response: 2.5 hours; Estimated Annual Burden: 375 hours.

2. Loan Repayment Program for Service on Faculties of Certain Health Professions Schools Application.—New—Health professionals applying to Loan Repayment Program for Service on Faculties on Certain Health Professions Schools provide information needed to determine eligibility. Applicants provide information that identifies they are a disadvantaged health professions graduate, have a contract to serve as full-time faculty, and have creditable loans. Respondents: Individuals or households, businesses or other for-profit;

	No. of respondents	No. of hours per response	No. of responses per respondent
FLRP Application	100	1 hr	1
Lenders Confirmation of Loan	62	.05 hrs	1

Note: Estimated Annual Burden)—131 hours.

3. 1991 Annual Census of State and County Mental Hospital Inpatient Services—New—This voluntary data collection will provide NIMH, the States, and researchers with statistics on the changes in the utilization of State and county mental hospitals, by different age-sex diagnosis subgroups. These data are needed to measure variability in service utilization patterns and to understand deinstitutionalization practices in the United States and each State. Respondents: State or local governments; Number of Respondents: 94; Number of Responses per Respondent: 1; Average Burden per Response: 2.0 hours; Estimated Annual Burden: 188 hours.

4. Loans for Disadvantaged Students and Scholarships for Disadvantaged Students—New—Health professions schools applying to participate in the Loans for Disadvantaged Students (LDS) and/or Scholarships for Disadvantaged Students (SDS) programs provide information on the application about the schools' programs and the race/ethnicity of full-time students and minority faculty. This information is needed to determine program eligibility. Respondents: Non-profit institutions; Number of Respondents: 500; Number of Responses per Respondent: 1; Average Burden Per Response: 5 hours; Estimated Annual Burden: 2500 hours.

5. 1992 National Home and Hospice Care Survey Pretest—New—This pretest is to evaluate questionnaires, response rates and methodology for the 1992 National Home and Hospices Care Survey (NHHCS). The NHHCS will provide estimate of the characteristics of people being served by hospices home health agencies. The data will provide information on the size and composition of the population using these services. Respondents: Businesses or other for-profit; Federal agencies or employees, non-profit institutions; small businesses or organizations; Number of Respondents: 1300; Number of Responses per Respondent: 1; Average Burden per Response; 0.25 hours; Estimated Annual Burden: 325 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address:

Human Resources and Housing Branch, New Executive Office Building, Room 3002, Washington, DC 20503.

Dated: May 3, 1991.

James M. Friedman,

Director, Office of Health Planning and Evaluation.

[FR Doc. 91-10949 Filed 5-9-91; 8:45 am]

BILLING CODE 4160-17-M

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, April 26, 1991.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. Childhood Lead Poisoning Program Quarterly Report—New—CDC awards grants to state and community health agencies as the principal delivery points for childhood lead screening and related medical and environmental management activities. In order to properly manage recipient activities, CDC requests quarterly reports from the recipients. Respondents: State or local governments. Number of Respondents: 13; Number of Responses per Respondent: 4; Average Burden per Response: 2 hours; Estimated Annual Burden: 104 hours.

2. Investigational Use of New Animal Drugs—0910-0117—An investigational new animal drug application is required to permit the use of unapproved new animal drugs. A drug is not approved until these investigations are completed and the safety and effectiveness data obtained. Respondents: Businesses or other for-profit; and small businesses or organizations.

	Number of respondents	Number of hours per response	Number of responses per respondent
Reporting 21 CFR 511.1(b)(4)-(6)	174	42.5 hrs	21.7
Recordkeeping 21 CFR 511.1 (a)(3), (b)(3), (b)(7)(ii) and (b)(8)(i)	174	24.3 hrs	1.0

Note: Estimated Annual Burden—164,708 hours.

3. Health Education Assistance Loan (HEAL) Program Regulations—42 CFR Part 60—0915-0108—The notification, reporting and recordkeeping requirements insure that the lenders, holders and schools participating in the HEAL Program follow sound management procedures in the administration of Federally-insured student loans. Respondents: Individuals or households, businesses or other for-profit; nonprofit institutions.

	No. of respondents	No. of hours per response	No. of responses per respondent
Reporting	483	2.32 hrs	1.99
Notification	37,683	.27 hrs	11.0
Recordkeeping	483	.19 hrs	737.43

Note: Estimated Annual Burden—178,290 hours.

4. Scholarships for the Undergraduate Education of Professional Nurses (SUEPN)—New—Schools use the application to apply for funding under the SUEPN program. Information is required about the race/ethnicity of students to determine whether an applicant school meets the Federal Program requirements for giving

preference to disadvantaged individuals in awarding financial assistance. Respondents: Nonprofit institutions; Number of Responses: 190; Number of Responses per Respondent: 1; Average Burden Per Response: .5 hours; Estimated Annual Burden: 95 hours.

5. Factors Associated with Premature Births: Missouri Followback Survey—0925-0315—More accurate information is needed to better understand why some women deliver very low birth weight infants or suffer fetal deaths. This Survey will collect population-based data which can be used to examine this major public health problem in order to design future intervention strategies to reduce infant mortality. Respondents: Individuals or households; State or local governments; small businesses or organizations.

	No. of respondents	No. of hours per response	Responses per respondent
Mother	1,250	0.8 hrs	1.2
Physician	2,144	0.5 hrs	1.0

Note: Estimated Annual Burden—2,272.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address:

Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Date: April 29, 1991.

James M. Friedman,

Director, Office of Health Planning and Evaluation.

[FR Doc. 91-10583 Filed 5-9-91; 8:45 am]

BILLING CODE 4160-17-M

Advisory Committee on the Food and Drug Administration; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the Advisory Committee on the Food and Drug Administration (FDA) will hold a meeting on Wednesday, May 15, 1991 from 8 a.m. to 11 a.m. The meeting is open to the public and will be held in the Auditorium of the Hubert H. Humphrey Building located at 200 Independence Avenue, SW., Washington, DC 20201.

The purpose of this meeting is to discuss the final recommendations of the Committee and present the Committee's Final Report to the Department of Health and Human Services.

Notice of this meeting is being published less than fifteen days in advance to meet the demands of the drafting process and the schedule of Secretary Sullivan, who intends to attend this meeting to receive the Final Report on behalf of the Department of Health and Human Services.

FOR FURTHER INFORMATION CONTACT: Carol Cooke, Advisory Committee on the Food and Drug Administration, Department of Health and Human Services, room 740-G Humphrey Building, 200 Independence Avenue, SW., Washington DC 20201. Telephone number (202) 245-7305.

Dated: May 7, 1991.

Eric M. Katz,

Executive Director, Advisory Committee on the FDA.

[FR Doc. 91-11217 Filed 5-9-91; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-25]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: May 10, 1991.

ADDRESSES: For further information, contact James Forsberg, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: May 3, 1991.

Paul Roitman Bardack,

Deputy Assistant, Secretary for Economic Development.

[FR Doc. 91-11091 Filed 5-9-91; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-030-01-2120-11-H809; G1-215]

Closure of Public Lands; Oregon

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following order closes public lands within the National Historic Oregon Trail Interpretive Center Project boundary in WM, T. 8S., R. 41E., section 31 and WM, T. 9S., R. 41E., Sections 5 & 6.

The purpose of this order is to close the lands in the project boundary for the duration of construction of the center. Use of these lands could pose a safety hazard to members of the public and workers at the site. Under the authority of 43 CFR 8364.1, the above described public lands are closed to public use and access through the completion of construction.

Persons exempt from this order include emergency service personnel, law enforcement personnel, and employees of the Bureau of Land Management performing official duties, contractors and sub-contractors working at the site, mining claim holders, and persons acting under specific

authorizations granted by the Bureau of Land Management.

This closure shall remain in effect until further notice.

EFFECTIVE DATE: May 15, 1991.

FOR FURTHER INFORMATION CONTACT: Jack Albright, BLM Baker Resource Area, P.O. Box 987, Baker City, Oregon 97814, 503-523-6391.

Jack D. Albright,

Area Manager.

[FR Doc. 91-11115 Filed 5-9-91; 8:45 am]

BILLING CODE 4310-33-M

[CA-060-01-4130-15]

Intent to Prepare an EIS for the Proposed Fort Cady Project

AGENCY: Bureau of Land Management Interior.

ACTION: Notice of intent.

SUMMARY: The Barstow Resource Area, Bureau of Land Management, California Desert District, in coordination with the County of San Bernardino, will prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for a mining operation proposed by Fort Cady Minerals Corporation (FCMC). This document will meet the requirements of both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).

The applicant, FCMC, proposes to construct and operate an in-situ solution borate mine and processing plant on their leased mining claims, in addition to lands belonging to the State of California, and lands leased from Southern California Edison Company and the Southern Pacific Land Company. The proposed Fort Cady Project is located approximately 38 miles east-southeast of Barstow, California near Pisgah Crater. The proposed mine and processing facilities would ultimately affect approximately 945 acres.

The EIS/EIR will assess the impacts of in-situ solution mining, construction and operation of the mine, processing plant, and solar evaporation ponds, construction and maintenance of access roads and rail spur, development of a water well system, and reclamation of disturbed lands.

In addition, the EIS/EIR will consider alternative technologies and alternate siting of components, including access roads and rail spur, solar evaporation ponds, processing facilities, and water wells.

The EIS/EIR will consider the following general issues: water resources (specifically, the potential for reduction in quantity of ground water, potential for contamination, or other changes to quality of ground and surface water and the potential for alteration of flood flows), wildlife resources, botanical resources, cultural resources, geologic hazards (including the potential for seismic activity due to changes in the geologic substructure), soils, changes to existing and potential land uses and transportation, visual resources, air quality, hazardous and solid waste (specifically, the potential for chemical and hazardous substance spills or discharges), socioeconomic and public safety issues, and cumulative impacts.

PUBLIC PARTICIPATION: Three public scoping meetings will be conducted prior to preparation of the EIS/EIR in order to receive public comments, concerns, and interests which will be addressed in the document.

Date, Time, and Location:

May 30, 1991—7 p.m.: Newberry Springs Community Building, 30884 Newberry Road, Newberry Springs, California 92365.

May 31, 1991—7 p.m.: Barstow Station Inn, 1505 East Main Street, Barstow, California 92311.

June 1, 1991—1 p.m.: San Bernardino County Government Center, Board Hearing Chambers, 385 N. Arrowhead Avenue, San Bernardino, California.

FOR FURTHER INFORMATION CONTACT: Michael E. Ford, Project Lead, Bureau of Land Management, Barstow Resource Area, 150 Coolwater Lane, Barstow, California 92311 (619) 256-3591.

Dated: May 3, 1991.

Daryl Albiston,

Acting Area Manager.

[FR Doc. 91-11116 Filed 5-9-91; 8:45 am]

BILLING CODE 4310-40-M

[CA-060-01-4410-04-ADVB]

Meeting of the California Desert District Grazing Advisory Board

SUMMARY: Notice is hereby given, in accordance with Public Laws 92-463 and 94-579, that the California Desert District Grazing Advisory Board to the Bureau of Land Management, U.S. Department of the Interior, will meet Tuesday, May 14, 1991, from 9:00 a.m. to 4:30 p.m., in the California Desert Information Center, 831 Barstow Road, in Barstow, California.

The agenda for the meeting will include:

—Range management perspectives by Resource Area;

—Grazing management in riparian areas;

—Development of rangeland improvements;

—Review status of allotment management plans;

—Field review of sheep grazing operations;

—Update on sheep and cattle Section 7 consultation packages.

The meeting is open to the public, with time allotted for public comment after each agenda subject has been presented. Written comments are also accepted at the time of the meeting and will be incorporated into the minutes. During the afternoon portion of the meeting, Board members will participate in a field trip south of Barstow to view and discuss sheep grazing practices.

Summary minutes of the meeting will be maintained in the California Desert District Office, 6221 Box Springs Boulevard, Riverside, California 92507, and will be available for public inspection during regular business hours—8:00 a.m. to 4:30 p.m. (PDT)—within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, California Desert District Office, Larry Morgan, 6221 Box Springs Boulevard, Riverside, California 92507, (714) 653-1359.

Dated: May 1, 1991.

Gerald E. Hillier,

District Manager.

[FR Doc. 91-11297 Filed 5-9-91; 8:45 am]

BILLING CODE 4310-40-M

[NV-930-91-4212-11; N-42002]

Termination of Recreation and Public Purpose Classification and Order Providing for Opening of Land; Nevada

April 8, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification termination and opening order.

SUMMARY: This notice terminates recreation and public purpose classification N-42002 in its entirety. The land will be opened to the public land laws generally, including the mining laws.

EFFECTIVE DATE: Termination is effective with the publication of this document. The land will be open to entry at 10 a.m. on June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, (702) 785-6526.

SUPPLEMENTARY INFORMATION: Pursuant to the Recreation and Public Purposes Act (43 U.S.C. 869 et seq.), recreation

and public purpose classification N-42002 is hereby terminated in its entirety:

Mount Diablo Meridian, Nevada

T. 14 N., R. 27 E.,
Sec. 28, N½.

The area described contains 320.00 acres in Lyon County.

The classification was accomplished pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended, in response to an application by the State of Nevada for a prison honor camp. The land was leased to the State in January 1987 and the lease was relinquished in December 1987. The classification no longer serves a needed purpose and is hereby terminated. At 10 a.m. on June 10, 1991 the land will be open to the operation of the public land laws, subject to valid existing rights, existing classification and withdrawals, pending lawsuits, and requirements of applicable law. All valid applications received prior to or at 10 a.m. on June 10, 1991 will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

At 10 a.m. on June 10, 1991, the land will also be open to the operation of the mining laws. Appropriation of land under the general mining law prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no right against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts. The land remains open to the mineral leasing and material sale laws.

Alan J. Dunton,

Acting Deputy State Director, Operations.

[FR Doc. 91-11156 Filed 5-9-91; 8:45 am]

BILLING CODE 4310-HC-M

[WAOR 47035; OR-130-01-4212-11; GP1-214]

Realty Action: Lease of Public Lands for Recreation and Public Purposes Benton County, WA

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described lands have been examined and found suitable for classification for lease or conveyance to the Benton County Fire District No. 4 under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Benton County will use the land for a fire station and training facility.

Willamette Meridian

T. 9 N., R. 28 E.,
Sec. 8, Lots 175 & 176;
Containing 5.00 acres more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights for street and utility purposes granted to the City of West Richland under Right-of-Way OR 34586W.

Detailed information concerning this action is available for review at the Spokane District Office, East 4217 Main Avenue, Spokane, Washington, 99202.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease or classification of the lands to the District Manager, Spokane District Office, East 4217 Main Avenue, Spokane, Washington, 99202. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Date of Issue May 2, 1991.

Joseph K. Buesing,

District Manager.

[FR Doc. 91-11117 Filed 5-9-91; 8:45 am]

BILLING CODE 4310-33-M

[NV-930-91-4214-11; Nev-044346]

Proposed Continuation of Withdrawal, Nevada; Correction

April 5, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction.

SUMMARY: This action will correct three errors in the **Federal Register** notice published as Document 91-3021 on February 8, 1991, on page 5233.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, 702-785-6526.

SUPPLEMENTARY INFORMATION: The notice of proposed continuation published in the **Federal Register** on February 8, 1991, pages 5233 and 5234, as Document 91-3021 contains an error in the existing legal description and in addition one legal description and the resultant acreage were inadvertently omitted: The corrections are: 1. Third column, the third and last legal description under T. 45 N., R. 56 E., Sec. 32 should read, "N½NW¼NE¼SE¼." 2. Third column, at the end of all the legal descriptions, add the following: T. 36 N., R. 61 E., sec. 4, SE¼SE¼. 3. Third column, fifth line from the bottom, the acreage figure should read 830.00.

Alan J. Dunton,

Acting Deputy State Director, Operations.

[FR Doc. 91-11155 Filed 5-9-91; 8:45 am]

BILLING CODE 4310-HC-M

INTERNATIONAL BOUNDARY AND WATER COMMISSION

International Agreement for a Proposed Restricted Use Zone in the Rio Grande Boundary Segment at Brownsville, Texas and Matamoros, Tamaulipas; Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of finding of no significant impact.

SUMMARY: Based on a Supplementary Environmental Assessment, the U.S. Section finds that the proposed action that the United States Government enter into an agreement with the Government of Mexico through the International Boundary and Water Commission (Commission) to establish a Restricted Use Zone in a 10.2-mile (16.4-kilometer) segment of the Rio Grande at Brownsville, Texas and Matamoros, Tamaulipas, pursuant to the 1970

Boundary Treaty between the United States and Mexico, is not a major federal action that would have a significant adverse effect on the quality of the human environment. Therefore, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the U.S. Section's Operational Procedures for Implementing section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46 FR 44083); the U.S. Section hereby gives notice that an environmental impact statement will not be prepared for the proposed project.

FOR FURTHER INFORMATION CONTACT: Mr. M.R. Ybarra, U.S. Section Secretary, International Boundary and Water Commission, United States and Mexico, U.S. Section, 4171 North Mesa Street, C-310, El Paso, Texas 79902-1422. Telephone: (915) 534-6698.

SUPPLEMENTARY INFORMATION:

Proposed Action

The proposed action is for the United States Government to enter into an international agreement with the Government of Mexico through a Minute of the Commission establishing a Restricted Use Zone, measured perpendicular to the flow of the river, in a 10.2-mile (16.4-kilometer) segment of the Rio Grande defined in the upper reach as not less than 164 feet (50.0 meters) on either side of the centerline of the Rio Grande between River Mile 55.2 (88.8 kilometer) and River Mile 52.7 (84.8 kilometer), a transition length between River Mile 52.7 (84.8 kilometer) and River Mile 52.5 (84.5 kilometer) that progressively expands to 2,300 feet (701 meters), and not less than 2,300 feet (701 meters) between River Mile 52.5 (84.5 kilometer) and River Mile 45.0 (72.4 kilometer).

Alternatives Considered

Three alternatives were considered:

The Proposed Action, as described above, is the U.S. Section's Preferred Alternative. If the proposed zone is adopted by the two countries, the Governments of the United States and Mexico would meet their obligation under Article IV, paragraph B (1) of the 1970 Boundary Treaty to prohibit the construction of works in their respective territories which, in the judgment of the Commission, may cause deflection or obstruction of the normal flow or flood flows of the river. In the absence of this Commission's designated Restricted Use Zone, the Commission, on behalf of the U.S. and Mexico, is limited to prohibiting activities along lands adjacent to the main channel of the Rio Grande in both countries.

The No Action Alternative (Present River Levees with Possible Obstructions) is a continuance of the status quo through current practices and decisions. A no action alternative would be contrary to the provision in Article IV B (1) of the 1970 Boundary Treaty that requires the Commission to recommend to the two Governments a distance within which the two Governments would prohibit construction of works that in the judgment of the Commission may cause deflection or obstruction of the normal and flood flows of the boundary rivers. Moreover, there would not exist an acceptable, jointly developed technical basis that both Governments would apply when the Commission makes its judgment under Article IV B (1) of the 1970 Boundary Treaty.

The 1985 Proposed Action with Mexico Alternative creates a restricted use zone for the reach from Brownsville-Matamoros downstream to the mouth of the river at the Gulf of Mexico. Under this alternative, the width is 328 feet (100 meters), or a distance on either side of the river of not less than 49 feet (15 meters) landward of the high bank of the river. Under this alternative levees in either country could be built close to the river permitting proponents in each country to reclaim approximately two-thirds more of the floodplain than under the Proposed Action. However construction of levees so close to the river in one country would result in considerable adverse impacts in the other country, impacts which the 1970 Boundary Treaty seeks to avoid. Among impacts, the structural safety of the Gateway Bridge could be endangered.

Supplemental Environmental Assessment

The United States Section, International Boundary and Water Commission (U.S. Section), in October 1985, completed an environmental assessment (EA) and finding of no significant impact to recommend the establishment of a Restricted Use Zone for the remaining boundary river segments of the Colorado River and Rio Grande, including a segment at Brownsville-Matamoros much smaller than that in the Proposed Action. A Final Supplemental Environmental Assessment (FESA) was prepared on April 1991 as an addition to the "Final Environmental Assessment to Join with the Mexican Section, International Boundary and Water Commission, in Concluding a Minute on Recommendations for Implementation of Article IV, paragraph B (1) of the 1970 Boundary Treaty" (Final EA), dated October, 1985.

Findings of the Supplemental Environmental Assessment

The Final Supplemental Environmental Assessment finds that:

1. The Proposed Action is for the United States to enter into an international agremeent to establish a Restricted Use Zone in the Brownsville-Matamoros area. Construction and floodplain management controls such as vegetative mowing are not part of the Proposed Action.

2. The Proposed Action places future proposed works under bilateral control against river flow obstructions and deflections for a greater area than that placed under such control in the Restricted Use Zone distances proposed in the Final EA of 1985. Without such control, problems arising from movement of the boundary river location could result in separation of tracts of land from one country to the other an occurrence which the 1970 Treaty seeks to prevent.

3. The bilateral designation of Restricted Use Zones is required by the 1970 Boundary Treaty, and the Governments of the United States and Mexico expect the IBWC to complete negotiations for this segment of the river within the earliest time possible. Failure to conclude the Restricted Use Zone agreement with Mexico would lead to a breach in U.S./Mexico relations, when the Government of Mexico is legitimately seeking to place a levee within the Mexican floodplain to protect urban developments that are not now protected. If the United States declines to establish a Restricted Use Zone, such an omission would be perceived as an act of bad faith by the U.S.

4. The Proposed Action will permit the U.S. Section to provide to entities and authorities in the United States a description of floodplain lands where works proposed would be subject to an IBWC determination that they may deflect or obstruct the river's normal or flood flows.

5. The U.S. Section of the IBWC will require all proponents of works in this restricted use zone to complete environmental studies in accordance with the National Environment Policy Act of 1969 (NEPA) and the other laws and regulations pertaining to protection of the environment, including but not limited to the Endangered Species Act of 1973; National Historic Preservation Act, as amended; Archaeological and Historic Preservation Act; Archaeological Resources Protection

Act; Clean Water Act; Executive Order 11988; and Executive Order 11990.

6. The U.S. Section of the IBWC will advise all proponents of works in this restricted use zone to consult with the U.S. Army Corps of Engineers for applicability of requirements of that agency regarding activities along the river.

7. The Proposed Action would not impede the formal consultations process under section 7 of the Endangered Species Act with the United States Fish and Wildlife Service or the preparation of an environmental impact statement regarding its vegetative management practices on the Lower Rio Grande Flood Control Project.

8. The Proposed Action will not affect archeological or historical properties listed or eligible for listing on the National Register of Historic Places as determined in the Final EA dated October, 1985.

9. The Proposed Action for a Restricted Use Zone would not impede consideration of environmental impacts that may result from the existing Final EA dated October, 1985.

Based on the above, the Proposed Action does not constitute a major federal action that will cause a significant local or regional impact on the environment but merely seeks to give the Commission control over an expanded land base within which to make judgments purusant to the 1970 Boundary Treaty.

On the basis of the final supplemental enviornmental assessment, the U.S. Section has determined that an environmental impact statement is not required for the United States Government to enter into an agreement with the Government of Mexico to establish a Restricted Use Zone within a 10.2-mile reach, described hereinabove, and hereby provides a notice of a finding of no significant impact.

An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within thirty (30) days of the date of this notice.

The Finding of No Significant Impact (FONSI) and Final Supplemental Environmental Assessment (FSEA) have been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI and FSEA are available to fill single copy requests at the above address.

Dated: April 30, 1991.

Suzette Zaboroski,

Staff Counsel.

[FR Doc. 91-11157 Filed 5-9-91; 8:45 a.m.]

BILLING CODE 4710-03-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Judicial Conference Advisory Committee on Civil Rules; Meeting

AGENCY: Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: There will be a three-day meeting of the Advisory Committee on Civil Rules. The meeting will be open to public observation, and will commence each day at 8:30 a.m.

DATES: May 22-24, 1991.

ADDRESSES: Administrative Office of the United States Courts, 811 Vermont Avenue, NW., room 638, Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: Joseph F. Spaniol, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544, telephone (202) 633-6021.

Dated: May 3, 1991.

Peter G. McCabe,

Assistant Director, Office of Judges Program.

[FR Doc. 91-11220 Filed 5-9-91; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 20, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 20, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 29th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustments Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Alumax Mill Products (Wkrs)	Hawesville, KY	04/29/91	04/11/91	25,729	Alumium.
American Nickeloid Co (Wkrs)	Walnutport, PA	04/29/91	04/22/91	25,730	Prefinished raw materials.
Amp., Inc (Wkrs)	Weyers Cave, VA	04/29/91	04/18/91	25,731	Connector rotary table.
Arrow Shirt Co. (ACTWU)	Buchanan, GA	04/29/91	04/19/91	25,732	Shirts.
Atron/High Q (Wkrs)	Pellston, MI	04/29/91	04/10/91	25,733	Wire Harnesses.
Bayou Steel Corp (USWA)	LaPlace, LA	04/29/91	04/17/91	25,734	Steel.
C & D Sportswear Inc. (ACTWU)	Scranton, PA	04/29/91	04/19/91	25,735	Sportscoats.
C.M.S. Gilbreth Packaging Systems (Wkrs)	Kingston, Pa	04/29/91	04/13/91	25,736	Packing Machines.
Cable Electric Product (IBEW)	Providence, RI	04/29/91	04/08/91	25,737	Nite Lites.
Camp Hosiery, Inc. (Wkrs)	Lenoir City, TN	04/29/91	04/16/91	25,738	Hosiery.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Chapperal Coal Corp. (Wkrs)	Pikeville, KY	04/29/91	04/15/91	25,739	Coal.
Chromalloy Turbine Airfoils Div. (IUE)	Harrisburg, PA	04/29/91	04/15/91	25,740	Blades & Vanes.
Columbia Footwear Corp (UFCW)	Hazleton, PA	04/29/91	04/19/91	25,741	Casual footwear & sneakers.
Conlee Drilling Fluids (Wkrs)	Clyde, TX	04/29/91	04/18/91	25,742	Oil & Gas.
DST Systems, Inc. (Wkrs)	Abilene, TX	04/29/91	04/16/91	25,743	Oil well service.
Gadsden Sportswear (ILGWU)	E Gadsden, AL	04/29/91	04/09/91	25,744	Apparel.
General Safety Corp (Wkrs)	St. Clair Shores, MI	04/29/91	04/17/91	25,745	Auto safety belts.
INMAC Corp., Datacom Div (Wkrs)	San Jose, CA	04/29/91	04/19/91	25,746	Communication devices.
Lone Rock Timber/Sun Studs (Wkrs)	Roseburg, OR	04/29/91	04/15/91	25,747	Veneer.
Lori Lock Corp (Wkrs)	Southington, CT	04/29/91	04/16/91	25,748	Security locks.
Manhattan Industries (Wkrs)	Glen Rock, NJ	04/29/91	04/11/91	25,749	Shirts.
Marceau Sports (Wkrs)	Chaska, MN	04/29/91	04/11/91	25,750	Sweaters.
Maxwell Coffee, Div./Phil. Morris (UFCW)	Hoboken, NJ	04/29/91	04/16/91	25,751	Coffee.
Meisel-Peskin Co., Inc. (UFCW)	Brooklyn, NY	04/29/91	04/12/91	25,752	Fur.
North Country Glove (Wkrs)	Johnstown, NY	04/29/91	04/12/91	25,753	Ski Mittens.
S.D. Warren Div. of Scott Paper Co. (Wkrs)	Westbrook, ME	04/29/91	04/16/91	25,754	Paper.
Shelgo Inc. (Wkrs)	New York, NY	04/29/91	04/11/91	25,755	Shirts.
Supreme Processors (UFCW)	Newark, NJ	04/29/91	04/12/91	25,756	Furs.
Tootal American (Wkrs)	Old Fort, NC	04/29/91	04/16/91	25,757	Thread, zipers, needles etc.
U.S. Elect. Motors-Cedarburg Div. (Wkrs)	Cedarburg, WI	04/29/91	04/15/91	25,758	Electrical Motors.
Unibar Drilling Fluids, Inc. (Wkrs)	Denver, CO	04/29/91	04/12/91	25,759	Oil & Gas.
Union City Body Co., Inc. (UAW)	Union City, IN	04/29/91	04/19/91	25,760	Aluminum & Steel.
Wash. Apparel Grp., (Dee Cee) (Wkrs)	Franklin, KY	04/29/91	04/09/91	25,761	Men & Women's Apparel.
Wash. Apparel Grp., (Dee Cee) (Wkrs)	McMinnville, TN	04/29/91	04/09/91	25,762	Men & Women's Apparel.
Wash. Apparel Grp., (Dee Cee) (Wkrs)	Glasgow, KY	04/29/91	04/09/91	25,763	Men & Women's Apparel.
Wash. Apparel Grp., (Dee Cee) (Wkrs)	Cave City, KY	04/29/91	04/09/91	25,764	Men & Women's Apparel.
Youngland Industries (Wkrs)	New York, NY	04/29/91	03/19/91	25,765	Children's Apparel.

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of April 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,445; Vaagen Brothers Lumber Co., Ione, WA

TA-W-25,453; Champion Spark Plug Co., Toledo, OH

TA-W-25,454; Champion Spark Plug Co., Detroit, MI

TA-W-25,317; G. Heileman Brewing Co., Inc., Frankenmuth, MI

TA-W-25,366; Hollander Home Fashions Corp., Newark, NJ

TA-W-25,458; Eagle Bus Manufacturing, Brownsville, TX

TA-W-25,315; Energy Fuels Nuclear, Inc., Freedonia, AZ

TA-W-25,485; Wolf Bros., New York, NY

TA-W-25,432; Radel Leather Co., A/K/A Seton Co., Newark, NJ

TA-W-25,469; MHP Machines, Inc., Buffalo, NY

TA-W-25,410; Airwick Industries, Carlstadt, NJ

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25,218; ARA Automotive Group, Grand Prairie, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,451; Callaway Safety Equipment Co., Inc., Kalkaska, MI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,362; General Dynamics, Fort Worth, TX

U.S. imports of military aircraft are negligible in the relevant time periods.

TA-W-25,449; Artistic Weaving Co., Clinton, NC

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,498; International Marine Industries, Inc., Guilford, CT

U.S. imports of radar apparatus for marine use declined in January through September 1990 compared to the same period of 1989.

TA-W-25,450; Bethany Mfg, Garland, TX

U.S. imports of oil and gas field machinery are negligible during period under investigation.

TA-W-25,479; Sanymetal Products, Inc., Cleveland, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,468; Mathies Coal Co., Finleyville, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,478; Samuel Blue AKA Etal Co., New York, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,516; Thomas & Betts Corp., Bridgewater, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,411; Arco Oil & Gas Co., Natural Gas Plant, Seminole, OK

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,467; The Lee Aparel Co., Wet Processing Dept., Plant #18, Lebanon, MO

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,415; Cyprus Tonopah Mining, Tonopah, NV

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,481; Tecumseh Products Co., Somerset, KY

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,420; Estey Co., Trenton Falls, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,421; Fisher Price, Inc., Brownsville, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,457; E.I. Du Pont Nemours & Co., Inc., Jonesboro, AR

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,477; Robvon Backing Ring Co., Avenel, NJ

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-25,473; Nederlander & Sons, Chehalis, WA

A certification was issued covering all workers separated on or after February 14, 1990.

TA-W-25,409; Airfoil Textron, Inc., Elwood, IN

A certification was issued covering all workers separated on or after February 5, 1990.

TA-W-25,484; W-I Forest Products, L.P. Sandpoint, ID

A certification was issued covering all workers separated on or after February 15, 1990.

TA-W-25,401; Style-A-Fashion, Paterson, NJ

A certification was issued covering all workers separated on or after January 31, 1990.

TA-W-25,305; Westminister Knit, Westminister, MD

A certification was issued covering all workers separated on or after December 28, 1989 and before April 1, 1991.

TA-W-25,480; Sherman Lumber Co., Sherman Station, ME

A certification was issued covering all workers separated on or after February 11, 1990.

TA-W-25,448; Albert Nipon Div., Philadelphia, PA

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-25,462; Hart & Cooley, Inc., Holland, MI

A certification was issued covering all workers separated on or after February 1, 1990 and before April 15, 1991.

TA-W-25,433; RPI, Inc., Lewiston, MI

A certification was issued covering all workers separated on or after February 8, 1990.

TA-W-25,581; Shelby Williams Industries, Inc., Morristown, TN

A certification was issued covering all workers separated on or after March 4, 1990.

TA-W-25,452; Megastar Apparel, Central Sportswear, Norlina, NC

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,500; Megastar Apparel, Kenbridge Sportswear, Kenbridge, VA

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,508; Megastar Apparel, Distribution Center, Chester, SC

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,558; Megastar Apparel Co., Albermarle, NC

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,559; Megastar Apparel Group, Headquartered in Paramus, NJ

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,561 & 25,562; Megastar Apparel, Carolina Sportswear, Warrenton, NC & Megastar Apparel Creedmoor Sportswear, Creedmoor, NC

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,563 & 25,563A; Megastar Apparel, H & H Manufacturing, Statham, GA & Megastar Apparel, Swainsboro Sportswear, Swainsboro, GA

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,564; Megastar Apparel, LaCrosse Sportswear, Lacrosse, VA

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,565; Megastar Apparel, Lexington Sportswear, Lexington, SC

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,566; Megastar Apparel, Louisburg Sportswear, Louisburg, NC

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,568; Megastar Apparel, Ace Sweater Mill, Union, SC

A certification was issued covering all workers separated on or after February 1, 1990.

I hereby certify that the aforementioned determinations were issued during the month of April, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, during normal business hours or will be mailed to persons to write to the above address.

Dated: May 3, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-11174 Filed 5-9-91; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes

of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

District of Columbia: DC91-1 (Feb. 22, 1991). p. 79, pp. 80-81, 84-87
Georgia: GA91-30 (Feb. 22, 1991). p. 283, p. 284
Maryland: DC91-1 (Feb. 22, 1991). p. 79, pp. 80-81, 84-87
Massachusetts: MA91-3 (Feb. 22, 1991). p. 453, p. 454
Mississippi:
MS91-23 (Feb. 22, 1991)..... p. 587, pp. 588-589
MI91-24 (Feb. 22, 1991)..... p. 591, pp. 592-593
MI91-25 (Feb. 22, 1991)..... p. 595, pp. 596-597
New York:
NY91-13 (Feb. 22, 1991)..... p. 901, pp. 902-905
NY91-19 (Feb. 22, 1991)..... p. 943
Pennsylvania: PA91-21 (Feb. 22, 1991). p. 1107, pp. 1108-1110
Tennessee: TN91-17 (Feb. 22, 1991). p. 1229, p. 1230
Virginia: DC91-1 (Feb. 22, 1991). p. 79, pp. 80-81, 84-87

Volume II

Iowa: IA91-5 (Feb. 22, 1991). p. 41, pp. 43, 45
Indiana:
IN91-1 (Feb. 22, 1991)..... p. 243, pp. 244, 246-248
IN91-2 (Feb. 22, 1991)..... p. 259, pp. 260-265, 269
Kansas: KS91-9 (Feb. 22, 1991). p. 381, p. 382
Michigan: MI91-2 (Feb. 22, 1991). p.461, pp. 462-465, 470
Kansas:
MO91-2 (Feb. 22, 1991)..... p. 673, pp. 674-683
MO91-9 (Feb. 22, 1991)..... p. 721, pp. 722-728
Missouri:
MO91-2 (Feb. 22, 1991)..... p. 673, pp. 674-683
MO91-9 (Feb. 22, 1991)..... p. 721, pp. 722-728
Ohio: OH91-2 (Feb. 22, 1991). p. 821, pp. 822-824, 826, 827, 830, 835
Texas:
TX91-21 (Feb. 22, 1991)..... p. 1071, p. 1072
TX91-43 (Feb. 22, 1991)..... p. 1137, p. 1138
Wisconsin:
WI91-1 (Feb. 22, 1991)..... p. 1197, p. 1198
WI91-2 (Feb. 22, 1991)..... p. 1201, p. 1202
WI91-6 (Feb. 22, 1991)..... p. 1217, p. 1218
WI91-7 (Feb. 22, 1991)..... p. 1221, p. 1222
WI91-10 (Feb. 22, 1991)..... p. 1247, p. 1249
WI91-11 (Feb. 22, 1991)..... p. 1259, p. 1260
WI91-12 (Feb. 22, 1991)..... p. 1263, p. 1264
WI91-13 (Feb. 22, 1991)..... p. 1267, p. 1268
WI91-14 (Feb. 22, 1991)..... p. 1271, p. 1272

Volume III:

Nevada: NV91-1 (Feb. 22, 1991). p. 299, pp. 300-302
Washington:
WA91-1 (Feb. 22, 1991)..... p. 451, pp. 453-454
WA91-2 (Feb. 22, 1991)..... p. 477, p. 479
WA91-3 (Feb. 22, 1991)..... p. 487, p. 488
WA91-8 (Feb. 22, 1991)..... p. 507, pp. 508-509, 346-347

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 3rd day of May 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-10947 Filed 5-9-91; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Choreographers' Fellowships Section) to the National Council on the Arts will be held on June 3-4 and 6, 1991 from 9 a.m.-8:30 p.m., June 5 from 9 a.m.-9 p.m. and June 7 from 9 a.m.-6 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 7 from 3 p.m.-6 p.m. The topic will be policy discussion.

The remaining portions of this meeting on June 3-4 and 6 from 9 a.m.-8:30 p.m., June 5 from 9 a.m.-9 p.m. and June 7 from 9 a.m.-3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: April 29, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-11161 Filed 5-9-91; 8:45 am]

BILLING CODE 7537-01-M

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Choreographers' Fellowships Prescreening Section) to the National Council on the Arts will be held on May 30-31, 1991 from 9 a.m.-8 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: April 29, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-11162 Filed 5-9-91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Undergraduate Course and Curriculum Development Program; Announcement and Guidelines

Closing Dates: September 16, 1991 and June 15, 1992.

This printed information contains the essence of the announcement for this program, and is not a full copy of the actual brochure containing the guidelines for submission. Before submitting a proposal, obtain a printed copy of the guidelines by writing or calling the publications office of NSF.

This program in Undergraduate Course and Curriculum Development is part of NSF's overall plan to strengthen undergraduate science, engineering, and mathematics education throughout the United States. The program is managed by the Division of Undergraduate Science, Engineering and Mathematics Education (USEME). The Foundation will consider proposals for support in all fields supported by the Foundation. The amount of support is dependent on the availability of funds.

Inquiries

Questions about this program may be directed to the NSF staff by contacting: Undergraduate Course and Curriculum Development Program, Division of Undergraduate Science, Engineering and Mathematics Education, room 639, National Science Foundation, 1800 'G' Street, NW., Washington, DC 20550, Telephone: (202) 357-7051, Electronic mail: Bitnet: undergradansf, Internet: undergradansf.gov, TDD: (202) 357-7492.

Proposals must be received by the Proposal Processing Unit, room 223, National Science Foundation, 1800 G St. NW., Washington, DC 20550, postmarked no later than September 16, 1991 or June 15, 1992.

For information on electronic proposal submission contact the NSF Office of Information Systems at (202) 357-5902.

Leadership Projects in Science and the Humanities

The National Science Foundation's Division of Undergraduate Science, Engineering, and Mathematics Education (USEME), the National Endowment for the Humanities' (NEH) Division of Education Programs, and the Department of Education's Fund for the Improvement of Post-Secondary Education (FIPSE), have established joint procedures to consider proposals for the development of undergraduate courses and curricula that link meaningfully the study of science and the humanities. Proposed projects should have potential for leadership and replication at the national level. Prospective project directors for educational institutions should contact program officers at any one of the sponsoring agencies at the numbers provided below. Formal proposals must be preceded by a brief description of the plan to a program officer. NSF/USEME: (202) 357-7051; NEH/ED: (202) 786-0380; ED/FIPSE: (202) 708-5750.

I. Introduction

Undergraduate education in the sciences and mathematics is fundamental in the preparation of our Nation's future scientists, engineers, mathematicians, and teachers, and

provides literacy essential for all citizens. In recognition of this critical role, the National Science Foundation announces the continuation of a program to support the development of improved and innovative introductory-level undergraduate courses and curricula in the sciences, engineering, and mathematics.

The goals of the program are:

• to encourage course and curriculum development to meet the Nation's need for

—high-quality scientists, engineers, and mathematicians,

—dedicated and able teachers of pre-college and college science and mathematics, and

—scientifically and technically literate citizens, and

• to inspire faculty to devote creative energy to educational activities that address the needs of their students and the Nation, and that enhance the faculty's professional and scholarly interests.

II. Program Description

A. Purpose

There is a need to revitalize the content, conduct, and quality of undergraduate education in the sciences, engineering, and mathematics, enhance interest in these disciplines among students entering our colleges and universities, increase the participation of underrepresented groups, and encourage the most capable students to prepare themselves for teaching at the college and pre-college level.

These challenges require new and innovative approaches to all aspects of the undergraduate learning experience, but especially to introductory-level curricula, courses, and laboratories. These courses are crucial in promoting the interest and enthusiasm of students with career aspirations in the sciences, mathematics, and engineering, including teaching, as well as educating students with non-scientific career objectives.

Proposals are therefore invited for introductory-level courses, curricula, and laboratories that aim to provide a sound foundation for all undergraduates to be responsible, scientifically literate citizens, prepared for careers in the sciences, engineering, and mathematics, and for subsequent learning in general. Of special concern are the large enrollment courses, which frequently involve the participation of teaching assistants.

All projects are expected to disseminate the knowledge gained and materials produced to an audience beyond the proposer's institution.

B. Scope of the Program

Types of courses and curricula. The emphasis of the program is on introductory-level courses, curricula, and laboratories—those that enroll primarily first- and second-year college students.

The program will seek to support creative, innovative approaches and projects. Of particular interest are projects designed to produce major changes and significant improvement in undergraduate science, mathematics, and engineering education beyond the recipient institution. Proposals may focus on an individual course or on the development of a comprehensive curriculum.

Proposals targeting individual courses or laboratories might explore, for example, the effectiveness of new field experiences and laboratory exercises that actively engage students and are designed to promote critical thinking, problem solving skills, and creativity; the utility of new instructional materials, information technologies and delivery systems; the value of providing more opportunities for students to communicate orally and in writing; and the impact of collaborative learning, student teaching, learning communities, and other innovations that aim to improve pedagogy in courses with large and small enrollments; the role of graduate and/or advanced undergraduate students as teaching assistants.

Proposals concerned with developing a comprehensive curriculum for first- and second-year students should include components that address the spectrum of students' interests (see *Target Audience* below). Because of budget limitations, at this time the program can only support proposals that are concerned with the design, development, and planning phase for large-scale curricular changes. Support for the implementation phase of such large-scale changes in curriculum may be provided by NSF in the future.

Although the kinds of activities described in this announcement are expected to comprise the majority of projects supported through this program, proposals that address other mechanisms for improving undergraduate education will be considered. Proposals for workshops, studies, or pilot projects, for example, are appropriate.

Target Audience. The target audience is undergraduates enrolled in introductory-level courses. This includes:

• Science, mathematics or engineering majors—to improve the education for undergraduates majoring in NSF-supported disciplines, as well as students majoring in other technical fields,

• Future teachers—to improve the education of undergraduates preparing for careers in teaching science and mathematics at the pre-college or college level,

• Non-science majors—to improve the scientific and technical literacy of undergraduates with major interest in fields other than science, mathematics, and engineering.

The Foundation encourages proposals to strengthen the undergraduate education and increase the participation of women, underrepresented minorities, and persons with disabilities, particularly if the projects represent models for increasing the numbers who choose careers in mathematics, science and engineering. Underrepresented minorities refers to: Blacks, American Indians, Hispanics, Alaskan Natives, and Native Pacific Islanders.

Eligible Fields/Disciplines. Proposals may be submitted for support in all fields supported by the Foundation.

Because all undergraduate students need to be prepared for the scientific and technological environment of the future, multidisciplinary and interdisciplinary proposals are encouraged, especially those that improve the scientific literacy of all students.

Specifically excluded is education in clinical fields such as medicine, nursing, clinical psychology, and physical education, social work, home economics, business, the arts, and the humanities. However, those interested in developing innovative courses and curricula that link the study of science and the humanities should refer to Leadership Projects in Science and the Humanities, described on the inside front cover of this announcement. In addition, education in scientific, mathematical, or engineering concepts that is part of a technical, professional or pre-professional program may be appropriate. The degree to which such projects will be competitive will depend upon the quality and currency of the basic science or engineeing to be taught. Support for curriculum development in standard one or two-year calculus sequences is not provided under this program (see section VI, Other Programs).

Eligible Institutions, Departments, and Individuals. Proposals are invited from two-year colleges, four-year colleges, universities, professional societies, consortia of institutions, and other education-related organizations in

the U.S. and its territories. Proposals from a formal consortium should be submitted by the consortium; proposals from an informal consortium should be submitted by one of the member schools.

Each principal investigator may submit only one proposal per closing date, but PIs from several science, mathematics, and engineering departments in an eligible institution may participate in the competition.

Project size. The funds available to support new proposals for this program in FY 91 were $9.5 million. The number and size of awards for FY 92 will depend on the quality of the proposals received and the availability of funds for this program. Projects may request support for up to five years.

III. Preparation and Submission of Proposals

A. General Information

Proposals submitted in response to this program announcement should be prepared in accordance with the NSF brochure, Grants for Research and Education in Science and Engineering (GRESE) (NSF 90–77, rev. 8/90), except as modified or elaborated by this announcement. Single copies of this brochure are available at no cost from the NSF Forms and Publications Unit, telephone (202) 357–7861, or via e-mail (Bitnet: pubs@nsf or Internet: pubs@nsf.gov). This publication is also available (without forms) on STIS, NSF's new online publishing system (see flyer NSF 91–10).

More comprehensive information is contained in the NSF Grant Policy Manual, (July 1989, NSF 88–47) available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The Grant Policy Manual ordinarily is not needed to prepare a proposal.

In the event that the submitting organization has never been the recipient of an NSF award, it is recommended that appropriate administrative officials become familiar with the NSF policies and procedures contained in the NSF Grant Policy Manual, Revised. If a proposal from such an institution is recommended for an award, the NSF Division of Grants and Contracts will request certain organizational, management, and financial information. These requirements are described in chapter III of the Manual.

B. Proposal Preparation

The proposal should contain the following information, assembled in the order indicated. All forms identified below are provided in the back of this announcement. A lengthy proposal is not encouraged; include only material essential for the review.

A complete proposal consists of the following parts:

1. Cover Sheet (NSF Form 1207).
2. Table of Contents.
3. Project Data and Summary Form.
4. Results from Previous NSF Support.
5. Project Description/Narrative.
6. Bibliography.
7. Biographical Sketch.
8. Budget (Form 1030).
9. Current and Pending Support (NSF Form 1239).
10. Appendices.

1. Cover sheet. (NSF Form 1207)

The first page of the proposal should be the cover sheet prepared in the form found in the appendix of this announcement. It is important that the cover sheet be completed with the full information requested. Most of the items are self-explanatory.

Note that if funds for this project are being requested from another Federal agency or another NSF program, this must be indicated in the upper right-hand section of the cover sheet. If they are not being requested at the time the proposal is submitted, but are requested subsequently, a letter so stating should be sent at that time to the USEME office, identifying the proposal by its NSF number.

The Title of the Proposed Project is one of several items used to direct the proposal to appropriate reviewers and to announce and advertise to the general public and scientific community the nature of the projects supported with NSF funds. It should therefore consist of informative key words that indicate, for example, the discipline (physics, chemistry, etc.), the target audience, and the nature of the problem and/or innovative solution.

2. Table of contents.

3. Project data and summary form.

Refer to the instructions on page following form. The information on this form is also used to direct the proposal to appropriate reviewers and to announce and advertise the nature of the projects that NSF supports. The summary should therefore include a clear, concise description of the problem or question being addressed, the specific goals, and objectives of the proposed project, the target audience, and the project's potential impact and significance.

4. Results from prior NSF support.

If the prospective principal investigator or co-principal investigator(s) received support from NSF grants pertaining to Undergraduate Education in the last five years, describe the earlier project and its outcomes in sufficient detail to permit a reviewer to reach an informed conclusion regarding the value of the results achieved. Include the NSF award number, amount, and period of support, the title of the project, a summary of the results of the completed work (not to exceed 3 double-spaced pages), and a list of publications and/or formal presentations that acknowledged the NSF award (do not submit copies with the proposal).

5. Project Description/Narrative. This section should not exceed 15 single-spaced pages (6 lines per inch) or 30 double-spaced pages (3 lines per inch). Use 1 inch margins, and a type size of 12 point or greater. Reviewers will not be responsible for reading additional narrative pages or smaller type.

The narrative presents most of the information that determines whether or not a grant will be awarded. A proposal should be written to respond to criteria that will be used by reviewers in judging the merit of the proposal. (See Evaluation and Review Criteria.) The narrative should include the following:

- *Problem or question:* Describe clearly and concisely the relevant problem or question that currently exists in the course or curriculum, or in the wider context of undergraduate education.
- *Goals and specific objectives:* Describe the goals and objectives of the current proposal, clearly indicating the novel and innovative aspects of the project.
- *Potential impact and significance:* Discuss the ways in which the course and/or curriculum would be improved by this project, and why the outcomes will be of interest and use to a wider community of educators. Both the scientific and pedagogical aspects of the proposed project will be weighed to assess the project's anticipated impact on science, mathematics or engineering education.
- *Procedure and Methods:* This section should reveal the experience and capability of the principal investigator(s), the time table and plan for executing the project, and the facilities available for realizing the project's objectives, and enable a group of colleagues to judge the suitability of the planned change for the intended audience in the academic setting described.

—Provide an historical perspective of the problem, its significance, and what others have done to address the same or similar questions. Make reference to the relevant literature so as to demonstrate the principal

investigator's knowledge of the discipline and curricular issues.

—Describe how the course or curriculum will recognize and build on the background, preparation and pre-college experience of first- and second year college students.

—Describe specific lessons, experiments, student projects, course work, or new modes of instruction that will be developed, and the teaching methods to be employed.

—Describe plans to integrate the proposed innovations and their expected consequences into the institution's academic programs for majors, for students in other scientific or technical fields, and for students not majoring in the sciences, mathematics or engineering. Include information about the proposing institution(s) and the department, the students currently served, the student clientele for whom the project is being proposed, and the appropriate role and involvement of teaching assistants, and the curriculum that the proposed course or courses will be part of.

—Include justification of the major elements fo the budget. Any equipment requested must be justified for the instructional plan proposed.

• *Anticipated results of project activities.* Describe the type of knowledge that may be gained and the materials that may be produced (e.g., texts, scholarly publications, monographs, software, etc.).

• *Assessment and evaluation.* Describe the criteria that will be used to assess the quality and impact of the project, and how the information will be gathered and analyzed to evaluate the program's effectiveness. The breadth of the evaluation plan should be appropriate to the size and complexity of the project proposed.

• *Dissemination of results.* Describe plans to communicate the results of the project to other educators in the scientific, mathematical, and engineering community, both during and after the project.

6. Bibliography.

References to literature cited in the narrative.

7. Biographical sketches. Provide no more than a two-page biographical sketch for each person listed as Senior Personnel on the Summary Proposal Budget Form (Form 1030). In accordance with Importance Notice No. 107 (9/89), biographical sketches, in addition to data on educational background and career, must now include the following information, if applicable.

—A list of up to five publications most relevant to the work proposed and up to five other significant publications. Patents, copyrights, or software systems developed may be substituted for publications. These publications may overlap the continuing requirement for a list of all publications resulting from and citing prior NSF support. A complete list of publications for the past five years is no longer required. Only the list of up to ten will be used in merit review.

—A list of the names of graduate students with whom the PI has had an association as thesis advisor, and of postdoctoral scholars sponsored by the PI over the past five years, with a summary of the total numbers of graduate students advised and postdoctoral scholars sponsored.

—To avoid potential conflicts of interest in merit review, a list of scientists with whom the investigator has had a long-term association and/or with whom he/she has collaborated on a project or a book, article, report or paper within the last 48 months; and the investigator's own graduate and postdoctoral advisors.

For senior personnel included in line A.5 of the Summary Proposal Budget Form (Form 1030), provide a list of their names, titles, departments, and institutional affiliations.

8. Budget. NSF anticipates that the majority of the costs for the project activities will be for personnel time and personnel-related costs, including modest amounts of materials, supplies, equipment, computing services, etc. It is expected that the institutions will have the majority of computing facilities, equipment, and physical environment to achieve the goals of the project, and therefore NSF does not anticipate providing major equipment and facilities support. For multi-year projects the results of the project are expected to be integrated into the academic programs of the institutions within the period of the award, and therefore it is expected that the budgets will reflect the assumption of responsibility by the participating institution(s) as the educational innovations are fully implemented.

Eligible Costs. In developing the budget, include only items that represent new design and development costs. NSF funds may not be used to support expenditures that would have been undertaken in the absence of an award, such as the costs for normal teaching activities and normal curriculum development.

Cost Sharing. Institutional commitments are expected. Commitments may be in the form of funds, equipment, personnel time, etc., and they may be provided from the institution(s), industry, and/or other non-Federal sources.

Equipment costs must be matched by non-Federal funds equal to or greater than the funds requested from NSF.

Forms and Documentation. Use NSF Form 1030 for each annual budget and for the cumulative budget for all years of the project. Separate budget explanation pages should be attached (see "Budget Explanation Pages" on the reverse of Form 1030) and they should provide: (1) detail supporting the funds requested from NSF on Form 1030, and (2) a summary of the expenditures for the project as a whole—that is, for the combined total of requested NSF funds and institutional commitments.

9. Current and pending support (NSF Form 1239).

All current and pending externally-funded support to the principal investigator and co-principal investigators (if any), including this proposed project, must be listed on the form provided. This information is needed to assure that the project leaders will have time to carry out the project and that there is not duplication of support.

10. Appendices.

Facilities and Equipment. If appropriate, include a description of no more than two pages of the relevant and related facilities, plans for purchase of and justification for major items of equipment.

Letters of Commitment. As appropriate, official letters only, that verify specific institutional and other resource commitments.

Other Appendices. Other appendices provided should be relevant and concise.

C. Submission

Materials required:

1. Twelve (12) copies of the proposal.

2. One (1) copy of the NSF Form 1225 attached to the copy of the proposal bearing original signatures. Do not include the form within the body of the proposal, since this would compromise the confidentially of the information. While providing the information requested is voluntary, SUBMITTING THIS FORM IS REQUIRED by NSF. Omission of this form will cause delay in processing the proposal.

3. Current and Pending Support Form (1239).

4. One (1) copy of a Disclosure of Lobbying Activities form (in GRESE) for proposals requesting more than $100,000 from NSF.

5. Two (2) sets of the following extra forms, with each set of forms stapled as a unit.

a. One copy of the Cover Sheet.

b. One copy of the Project Data and Summary Form.

c. One copy of the Budget, including explanation pages.

6. DO NOT send video tapes, computer diskettes, slides, books, etc.

These materials should be submitted to: Proposal Processing Unit, room 223, Attn: Undergraduate Course and Curriculum Development, National Science Foundation, 1800 G St. NW., Washington, DC 20550.

Check List:

_____1. Cover Sheet: Principal investigator's signature on one copy; Authorized Organizational Representative's signature on same copy.

_____2. Form 1225 (Information about Principal Investigator and Co-Principal Investigator(s). Submit only one copy, attached to signature copy. Submission of the form is required.

_____3. Disclosure of Lobbying Activities Form.

_____4. Current and Pending Support Form 1239.

_____5. Project Summary Form.

_____6. Budget (summary page and page for each year; check arithmetic for accuracy).

_____7. Narrative (does not exceed 15 single- or 30 double-spaced pages).

_____8. Correct number of complete copies of proposal and of extra forms. Submit in a single package.

_____9. Submit proposal so that it is postmarked no later than September 16, 1991 for consideration under the first closing date or June 15, 1992 for the second date.

The Principal Investigator and Co-Principal Investigators must have submitted NSF Form 98A, Final Report, for all completed NSF-funded projects.

IV. Evaluation and Review Criteria

Proposals will be evaluated by mail and/or panel review, according to the criteria outlined in *Grants for Research and Education in Science and Engineering* (NSF 90–77). These criteria address the:

- Capability of the principal investigator(s) and the adequacy of the institutional resources to carry out the proposed work;
- Intrinsic merit of the ideas contained in the proposed project;
- Utility or relevance of the proposed project to the needs of the proposing community;
- Expected impact of the proposed project on the national infrastructure of science, mathematics, and engineering;

More specifically, reviewers will seek to determine answers to the following questions.

A. Capability of People and Institution

To what extent:

(1) Is the proposal supported by the involvement of capable faculty (and where appropriate, teaching assistants), adequate facilities and resources, and an institutional and departmental commitment?

(2) Does the proposal show an awareness of current pedagogical issues, the extent of the problems, what others have done, and adequately acknowledge relevant literature in the field?

B. Merit of the Ideas

To what extent:

(1) Does the project address a major challenge facing U.S. undergraduate education at the introductory level, not only to individuals at the submitting institution, but also nationally?

(2) Are the goals and objectives, and the plans and procedures for achieving them, innovative, well-developed, worthwhile, and realistic?

(3) Are the plans for assessing progress and evaluating the results of the project adequate?

C. Utility to the Proposing Community

To what extent:

(1) Does the proposal design take into consideration the background, preparation, and experience of the target audience?

(2) Is the proposed course or curriculum integrated into the academic program of the proposing institution(s)?

D. Impact on National Infrastructure

To what extent:

(1) Are the anticipated results of significance, with potential for impact on a broad, national audience?

(2) Are plans for dissemination and communication of results appropriate and adequate?

(3) Does the proposal effectively address one or more of the following:

—The need to assure the highest quality education for those students pursuing careers in science, engineering and mathematics;

—The need to increase the participation of qualified women, minorities, and persons with disabilities in science, engineering, and mathematics;

—The need to prepare pre-college teachers of science and mathematics; and/or

—The need to provide a foundation for scientific and technological literacy?

V. Announcement and Administration of Awards

Announcement of Awards. The evaluation and processing of proposals will require approximately six months. Awards are expected to be made in the spring of 1992 and the winter of 1993. Decisions will be announced individually through written notices to the institution and to the principal investigator. Before such notice is dispatched, the Foundation can give no information concerning the probability that any particular proposal will be supported or declined. Proposers are strongly urged to refrain from making premature inquiries. Decisions will be announced as soon as they are made, not simultaneously. Thus, it is normal for some proposers to receive a decision earlier than others. The number of awards will depend on the quality of the proposals received and the availability of funds for this program.

Administration of Grant. Grants awarded as a result of this announcement will be administered in accordance with the terms and conditions of NSF GC–1 (10/88) or FDP–11 (10/90), "Grant General Conditions." Copies of these documents are available at no cost from the NSF Forms and Publications Unit, telephone (202) 357–7861, or via e-mail (Bitnet: pubs@nsf or Internet: pubs@nsf.gov). More comprehensive information is contained in the *NSF Grant Policy Manual (July 1989)* for sale through the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

Responsibility for results. The Foundation strongly encourages publication of the results of the projects it funds. The awardee, however, is wholly responsible for the conduct of the project and for preparation of the results for publication. The Foundation does not assume responsibility for project results or their interpretation.

Final Report. Within 90 days after the expiration of a grant, the principal investigator is required to submit a Final Project Report (NSF Form 98A), including the part IV Summary. Applicants should review this form prior to proposal submission so that appropriate tracking mechanisms are included in the proposal plan to ensure that complete information will be available at the conclusion of the project. Final expenditure information is supplied by the grantees through the Federal Cash Transactions Report (SF 272), normally submitted by the grantee's financial officer. Annual reports of progress are required of

grantees, in accordance with Article 16 of NSF GC-1 (10/88), *Grant General Conditions*.

Change in Principal investigator. If a principal investigator leaves a project before its completion, the grantee institution is expected to explain the circumstances in a letter to the program officer named in the grant letter, and to nominate a suitable replacement. This letter should include the nominee's qualifications, curriculum vitae, and statement of current and pending support, and must be signed both by the nominee and by an official authorized to act for the institution in such matters. The appointment of a new PI is not effective until confirmed by the NSF.

VI. Other Related Undergraduate Programs

The Undergraduate Course and Curriculum Program is part of the National Science Foundation's evolving long range plan to add programs to support (1) Better undergraduate laboratory instruction, especially large-enrollment, introductory laboratories, (2) a better understanding of U.S. undergraduate science, engineering and mathematics education, and of teaching and learning processes, (3) improvement in the ways science, engineering and mathematics are taught at the introductory level to help assure the scientific and technological literacy of all students, and (4) an experimental, broad-based program to develop undergraduate courses and curricula.

The Program is an extension of the National Science Foundation's effort to encourage curriculum development, which began in 1988 with programs in calculus and engineering. It complements several other current NSF programs, such as those directed toward improving laboratory experience through instrumentation, providing research experiences for undergraduates, assisting faculty to enhance their discipline capability and teaching skills, and encouraging the development of alliances that will increase the quality and quantity of underrepresented minorities in the sciences and engineering.

Proposers interested in major, comprehensive engineering projects should consult the *Engineering Education Coalitions* initiative (NSF 89-107), and those interested in curriculum development projects in calculus and related courses, such as the differential equations and linear algebra courses that are typically included in the two-year calculus sequence, should consult the *Undergraduate Curriculum Development in Mathematics: Calculus* (NSF 89-82). The goal of the *Instrumentation and Laboratory Improvement Program* (ILI) is to improve the quality of the undergraduate curriculum by supporting projects to develop new or improved instrument-based undergraduate laboratory and/or field courses (NSF 90-101). The *Undergraduate Faculty Enhancement Program* (UFE) offers grants to support seminars, short courses, workshops, or similar activities for groups of undergraduate faculty from outside the grantee institution to learn about new techniques and new developments in their fields (NSF 90-112).

VII. Selected Bibliography

The following selected publications on undergraduate science, engineering and mathematics education and related issues are available at no cost from Forms and Publications Unit, room 232, National Science Foundation, Washington, DC 20550, by telephone (202) 357-7668, or e-mail (Bitnet: pubs@nsf or Internet: pubs@note.nsf.gov).

(1) *Undergraduate Science, Mathematics and Engineering Education*/National Science Foundation, National Science Board Task Committee on Undergraduate Science and Engineering Education, H.A. Neal, Chair—[Washington, DC]:National Science Foundation, 1986-1987. NSF Pub. No. NSB 86-100.

(2) *Report on the National Science Foundation Disciplinary Workshops on Undergraduate Education*: Recommendations of the disciplinary taskforces concerning issues in U.S. undergraduate education in the Sciences, Mathematics and Engineering/ Division of Undergraduate Science, Engineering, and Mathematics Education, Directorate of Science and Engineering Education—[Washington, DC]:National Science Foundation, 1989. NSF Pub. No. NSF 89-3.

(3) *Report on the National Science Foundation Workshop on Science, Engineering and Mathematics Education in Two-Year Colleges*/R.E. Parilla, Chair, Oct. 31-Nov. 1, 1988, Washington, DC—[Washington, DC]: Division of Undergraduate Science, Engineering, and Mathematics Education, Directorate of Science and Engineering Education, National Science Foundation, 1989. NSF Pub. No. 89-50.

(4) Wineke, W.R. and Certain, P. *The Freshman Year in Science and Engineering: Old Problems, New Perspectives for Research Universities.* A report of a conference sponsored by The Alliance for Undergraduate Education with support from the National Science Foundation. [University Park, PA]: The Alliance for Undergraduate Education, 1990.

(5) *An Exploration of the Nature and Quality of Undergraduate Education in Science, Mathematics and Engineering.* A Report of the National Advisory Group of Sigma XI, The Scientific Research Society, sponsored by the National Science Foundation and the Johnson Foundation. Workshop held at Wingspread, Racine, WI., Jan. 23-26, 1989—[New Haven, CT]: Sigma Xi, 1989.

(6) *Entry-level Undergraduate Courses in Science, Mathematics and Engineering: An Investment in Human Resources.* An initiative of Sigma Xi, The Scientific Research Society, Committee on Science, Mathematics and Engineering Education, supported by the National Science Foundation and The Johnson Foundation. Workshop held at Wingspread, Racine, WI, June 21-24, 1990—[Research Triangle Park, NC]: Sigma Xi, 1990.

(7) *Career Access Opportunities in Science and Technology for women, minorities and persons with disabilities: Program announcement and guidelines.* Directorate for Education and Human Resources, National Science Foundation—[Washington, DC]: National Science Foundation, 1990. NSF Pub. No. 90-126.

(8) *Research Experiences for Undergraduates: Program announcement.* National Science Foundation—[Washington, DC]:National Science Foundation, 1990. NSF Pub. No. 90-79.

(9) *Alliances for Minority Participation: Program announcement and guidelines.*/ National Science Foundation—[Washington, DC]:National Science Foundation, 1990. NSF Pub. No. 90-44.

This printed information contains the essence of the announcement for this program, and is not a full copy of the actual brochure containing the guidelines for submission. Before submitting a proposal, obtain a printed copy of the guidelines by writing or calling the publications office of NSF.

Dated: May 3, 1991.

Herbert Levitan,

Program Director.

[FR Doc. 91-11146 Filed 5-9-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Application for Licenses to Export Nuclear Material

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application",

please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the applications for licenses to export nuclear grade graphite as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning these applications follows.

NRC EXPORT LICENSE APPLICATIONS

Name of applicant, Date of Appl., Date Received, Application number	Description of items to be exported	Country of destination
Penngraph, Inc., 04/24/91, 04/26/91, XMAT0357	35,000.0 kgs of Bulk Nuclear Grade Graphite for use as Electrode Material for Electrical Discharge Machining.	France.
Penngraph, Inc., 04/24/91, 04/26/91, XMAT0358	35,000.0 kgs of Bulk Nuclear Grade Graphite for use as Electrode Material for Electrical Discharge Machining.	Italy.
Penngraph, Inc., 04/24/91, 04/26/91, XMAT0359	35,000.0 kgs of Bulk Nuclear Grade Graphite for use as Electrode Material for Electrical Discharge Machining.	Sweden.

Dated this 3rd day of May 1991 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Assistant Director for Exports, Security, and Safety Cooperation, International Programs, Office of Governmental and Public Affairs.

[FR Doc. 91-11214 Filed 5-9-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 31st meeting on May 22 and 23, 1991, room p-110, 7920 Norfolk Avenue, Bethesda, MD, 8:30 a.m. until 5 p.m. each day. The entire meeting will be open to the public.

The purpose of the meeting will be to review and discuss the following topics:

A. Briefing by and discussion with representatives of the State of South Carolina regarding the implementation of their agreement state program.

B. Respond to the Staff Requirements Memorandum concerning the need for revision to 10 CFR part 61 as it relates to low-level waste form leachability and groundwater protection requirements.

C. The Committee may continue discussions which address dealing with uncertainties in implementing the EPA High-Level Waste Standards.

D. Discuss information obtained by members from attendance at the Second Annual International High-Level Radioactive Waste Management Conference and a field trip to Lunar Craters.

E. Briefing and discussion on a digital data set prepared for the Yucca Mountain site.

F. The Committee will hear a presentation by a representative of the DOE Office of Civilian Radioactive Waste Management on research being conducted in support of DOE's HLW repository characterization program.

G. The Committee will be briefed on Working Draft #3 of the Environmental Protection Agency's 40 CFR part 191, High-Level Waste Repository Standards if available.

H. The Committee will hear a report from its Working Group Chairman on a recent meeting concerning integration of geophysics into the site characterization of a high-level waste repository.

I. The Committee will discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. The members will also discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492-4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492-4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: May 6, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91-11215 Filed 5-9-91; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Nuclear Waste Technical Review Board's (the Board) authority under section 5051 of Public Law 100-203 of the Nuclear Waste Policy Amendments Act of 1987 (NWPAA), the Board's Panel on Transportation & Systems will hold a public hearing on August 15, 1991, in Denver, Colorado. The purpose of the

hearing will be to help panel members gain a better understanding of the public's views on transportation issues currently under study by the Board as part of its review of the Department of Energy's (DOE) program to site and develop a permanent repository for the disposal of spent nuclear fuel and high-level radioactive waste. The DOE currently is characterizing a potential site at Yucca Mountain, Nevada.

This is the third in a series of hearings being conducted by the Panel on Transportation & Systems in recognition of the potential impacts that transporting spent fuel could have should the site at Yucca Mountain, Nevada, be found suitable for a high-level radioactive waste repository. The first hearing was held on August 17, 1990, in Amargosa Valley, Nevada. The second hearing was held on November 19, 1990, in Reno, Nevada. Future hearings may be held in other locations around the country.

This notice announces the date and location of the third hearing, provides procedures for participating in the hearing, and lists some of the issues that participants may want to address in their remarks before the panel.

Members of the public are welcome to make their views known by: (1) Preparing written testimony in advance of the hearing and presenting it formally before the panel, (2) speaking briefly on a walk-in basis before the panel, or (3) submitting a written statement for the record. Those wishing to speak before the panel should be prepared to answer questions. A transcript of the hearing will be made.

Requests to testify formally should be made in writing to Ms. Paula N. Alford, Director of External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473. Requests to testify must be received no later than close of business on July 26, 1991.

Requests to speak briefly before the panel on a walk-in basis will be accepted on the day of the hearing. Persons wanting to make a brief statement before the panel are asked to appear at the Registry Hotel, 3203 Quebec Street, Denver, Colorado 80207; (303) 321–3333, on the day of the hearing to sign up for a five-minute time slot on a first-come, first-served basis. Time will be set aside during the late morning and late afternoon hours to hear from those wishing to provide walk-in testimony.

In lieu of appearing before the panel, interested parties may also submit written comments until November 30, 1991. Original statements should be submitted to: Chair, Panel on Transportation & Systems, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209.

DATES: The date and time of the hearing are: Thursday, August 15, 1991, from 9 a.m.–5 p.m.

ADDRESSES: The hearing will be held at the Grand Ballroom I, The Registry Hotel, 3203 Quebec Street, Denver, Colorado 80207; (303) 321–3333.

FOR FURTHER INFORMATION CONTACT: Ms. Paula N. Alford, Director of External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473.

SUPPLEMENTARY INFORMATION:

Purpose

The Nuclear Waste Technical Review Board (the Board) was established by the Nuclear Waste Policy Amendments Act of 1987 (Pub. L. 100–203) to evaluate the technical and scientific validity of activities undertaken by the DOE in its civilian nuclear waste disposal program. The waste to be disposed of consists primarily of commercial spent fuel with some defense high-level waste. While the Board's charge is broad, the act specifically directs the Board to evaluate activities relating to repository siting and the packaging and transport of high-level radioactive waste or spent nuclear fuel.

The Board created the Panel on Transportation & Systems to facilitate the evaluation of transportation issues relating to spent nuclear fuel and high-level radioactive waste. As part of its study of safety issues, the panel is holding several public hearings in various locations around the country. The Board wants to remain apprised of the public's views and concerns on issues related to transporting and disposing of spent fuel.

Presentation Procedures

Requests to testify should be made in writing by July 26, 1991, to Ms. Paula N. Alford, Director of External Affairs, NWTRB, 1100 Wilson Boulevard, suite 910, Arlington, Virginia, 22209. The written request should specify the following:

1. Name of the person testifying.
2. Title, if any.
3. Name of organization, if any.
4. Telephone number.
5. Length of time requested for formal presentation (time limit will be determined once all requests have been received).

If the contact person is different from the person testifying, please provide his or her name, title (if any), organization name (if any), and telephone number.

Persons testifying are asked to provide 10 copies of their testimony and any accompanying slides or other documentation by close of business on August 9, 1991, to the NWTRB, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209. Persons testifying also are asked to bring 50 copies to the hearing.

The Panel on Transportation & Systems will reserve time in addition to the scheduled presentations to hear the views of interested persons scheduled on a first-come, first-served basis. Presenters in this part of the hearing do not need to notify the panel in advance of their plans to attend, but they will be required to sign up the day of the hearing at The Registry Hotel, 3203 Quebec Street, Denver, Colorado 80207; (303) 321–3333.

To accommodate those wishing to make presentations and to allow for questions from panel members, a time limit will be placed on schedule and walk-in presentations. The amount of time permitted for each presentation will depend on the number of requests the panel receives. Those testifying will be notified of time constraints following receipt of their written requests. Walk-in presenters will be advised of their time constraints when they sign up. All participants should be prepared to answer questions from the panel. A transcript of the hearing will be made.

Issues

To date, panel members and other members of the Board have met with representatives of the Department of Energy (DOE) and the Nuclear Regulatory Commission (NRC) to discuss safety and risk assessment issues associated with the transportation of spent nuclear fuel and high-level radioactive waste. In its first two reports, the Board made a number of recommendations to the DOE on the following transportation issues: System safety, human factors engineering, risk assessment and management, and minimizing the handling of spent fuel. These issues were selected in part because of their importance in the early stages of transportation system planning. Consequently, the Panel on Transportation & Systems encourages comments from parties particularly interested in the following areas.

- System Safety is a management approach that involves applying safety engineering and management techniques to the design of transportation system hardware, software, and operations: The central question is, in what ways and to what extent should the DOE dedicate its

management resources to such transportation safety activities?

• Human Factors Engineering involves applying what we know about human psychological, physiological, and physical limitations to the design and operation of industrial systems to optimize system safety and operability: The central question is, how can human error be reduced in the design, fabrication, maintenance, and operation of a transport system?

• Minimizing the Handling of Spent Fuel would reduce routine exposure and opportunities for accidents. The central question is, what are feasible innovative technologies and system management strategies?

• Risk Assessment and Management involves the development and use of analytical methods to estimate the probability and severity of safety hazards that may be encountered in spent fuel transportation and to methodically foresee and develop measures to prevent their occurrence: The central question is, how can the existing risk assessment tools be improved; are the needs of the users—including state, tribal, and local government planners—being considered sufficiently?

In addition to these early safety management and planning issues, the panel invites comments on safety considerations that will become increasingly important as the system for transporting spent nuclear fuel and high-level radioactive waste becomes more clearly defined and established. Safety issues that will grow in importance include:

• Transportation Cask Integrity: The question is, can transportation containers be designed and constructed to prevent the release of radioactive material under normal and accident conditions? If so, how can public confidence in transportation safety be enhanced?

• Transportation Operations: One of the main questions is, are current routing criteria adequate? If so, how can inspection and enforcement measures be improved?

• Emergency Preparedness: The central question is, what contingency plans need to be in place in communities located along routes used to transport spent nuclear fuel and high-level waste?

Dated: May 7, 1991.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 91-11147 Filed 5-9-91; 8:45 am]

BILLING CODE 6820-AM-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance of Form RI 25-14

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request to extend an information collection from the public. Form RI 25-14, Self-Certification of Full-Time School Attendance, is used to survey survivor annuitants who are between the ages of 18 and 22 to determine if they meet the requirements of section 8341(a)(4)(C), and section 8441(4)(C), title 5, U.S. Code, to receive benefits as a student.

Approximately 14,000 Self-Certifications of Full-Time School Attendance forms are completed annually; each requires approximately 12 minutes to complete, for a total public burden of 2,800 hours.

For copies of this proposal, contact C. Ronald Trueworthy, on (703) 908-8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., CHP 500, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ronald Rabbu, (202) 606-0623.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91-11137 Filed 5-9-91; 8:45 am]

BILLING CODE 6325-01-M

PEACE CORPS

Agency Information Collection Activities Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of submission of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. chapter 35), the Peace Corps has submitted to the Office of Management and Budget, a request to approve the use of the National Agency Check Questionnaire for Peace Corps Volunteer Background Investigation through March 31, 1993. Section 22 of the Peace Corps Act (22 U.S.C. 2501 et seq.) mandates that "all persons employed or assigned to duties under the Act shall be investigated to insure that employment or assignment is consistent with national interest in accordance with standards and procedures established by the President."

For information about the collection:

Agency Address: Peace Corps, 1990 K Street, NW., Washington, DC 20526.

Title: National Agency Check Questionnaire for Peace Corps Volunteer Background Investigation.

Request: Approval of use.

Frequency of Collection: Recurring—voluntary.

General Description of Respondents: Individuals who have applied for Peace Corps service and have been nominated to a specific program.

Estimated Number of Respondents: 10,000.

Estimated Hours of Respondents to Complete Form: 2,500.

Respondent's Obligation to Reply: Voluntary.

Comments: Telephone comments on this proposal should be directed to Marshall Mills, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. Mr. Mills may be called at (202) 395-7304. A copy of the form may be obtained from Christopher Kent, Office of Placement, Peace Corps, 1990 K Street NW., room 9202, Washington, DC 20526. Mr. Kent may be called at (202) 606-3994. This is not a request to which 44 U.S.C 3504(h) applies. This notice is issued in Washington, DC on May 1, 1991.

Collins Reynolds,

Associate Director for Management.

[FR Doc. 91-11165 Filed 5-9-91; 8:45 am]

BILLING CODE 6051-01-M

Agency Information Collection Activities Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of submission of public use form review request to the office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. chapter 35), the Peace Corps has submitted to the Office of Management and Budget, a request to extend the use of the Peace

Corps Applicant Questionnaire through March 1, 1994. The Questionnaire is completed by applicants for Peace Corps service who live outside the United States or Puerto Rico. The Questionnaire requests information regarding the applicant's motivation, commitment, social sensitivity, and adaptability for Peace Corps service. Peace Corps uses the information to evaluate an applicant's qualifications and suitability for international service. The information is provided voluntarily, and is protected by the Privacy Act of 1974. The information contained in the Questionnaire is available only to Peace Corps employees with specifically assigned duties requiring them to work with applicant records daily, and to other Peace Corps employees having the need for such records in the performance of their official duties. Information about the form:

Agency Address: U.S. Peace Corps, 1990 K Street, NW., Washington, DC 20526

Title: Peace Corps Applicant Questionnaire.

Request: Extension of expiration date.

Frequency of Collection: On occasion.

General Description of Respondent: Individuals who apply for Peace Corps service living outside the U.S.

Estimated Number of Respondents: 30 annually.

Estimated Hours for Respondents to Furnish Information: Sixty (60) minutes each.

Respondents' Obligation to Reply: Voluntary.

Comments: Comments on this form request should be directed to Marshall Mills, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

A copy of the form may be obtained from Paul Kealey, Chief of Field Operations, Office of Recruitment, U.S. Peace Corps, 1990 K Street, NW., room 9340, Washington, DC 20526. Mr. Kealey may be called at 202/606-3780. This is not a request to which 44 U.S.C. 3504(h) applies. This notice is issued in Washington, DC on May 1, 1991.

Dated: April 4, 1991.

Collins Reynolds,

Associate Director for Management.

[FR Doc. 91-11166 Filed 5-9-91; 8:45 am]

BILLING CODE 6051-01-M

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With Respect to Railroad Retirement Accounts; Public Meeting

Notice is hereby given in accordance with Public Law 92-463 that the Actuarial Advisory Committee will hold a meeting on May 10, 1991, at the office of the Chief Actuary of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, on the conduct of the 18th Actuarial Valuation of the Railroad Retirement System. The agenda for this meeting will include a discussion of the results and presentation of the 18th Actuarial Valuation. The text and tables which constitute the Valuation will have been prepared in draft form for review by the Committee. It is expected that this will be the last meeting of the Committee before publication of the Valuation.

The meeting will be open to the public. Persons wishing to submit written statements or make oral presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

Dated: May 3, 1991.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91-11123 Filed 5-9-91; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-18133 812-7110]

National Home Life Assurance Company of New York, *et al.*

May 6, 1991.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: National Home Life Assurance Company of New York ("National Home"), National Home Life Assurance Company of New York Separate Account B (the "Separate Account") and the Vanguard Variable Insurance Fund (the "Fund").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of the Separate Account of a mortality and expense risk charge imposed under certain deferred variable annuity contracts called the Vanguard Variable Annuity Plan Contract (the "Contracts").

FILING DATE: The application was filed on April 11, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on May 31, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commisison. 450 Fifth Street, NW, Washington, DC 20549. Applicants, c/o Michael Berenson, Esq., Jorden Schulte & Burchette, 1025 Thomas Jefferson Street, NW, suite 400 East, Washignton DC 20007 .

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, at (202) 272-3046 or Barry D. Miller, Senior Attorney, at (202) 272-3012, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. National Home is a stock life insurance company incorporated under the laws of the State of New York.

2. The Separate Account is registered with the commission as a unit investment trust under the 1940 Act. The Separate Account currently has four subaccounts, each of which invests solely in a corresponding portfolio of the Fund, an open-end diversified investment company.

3. The Fund is a member of the Vanguard Group of Investment Companies ("The Vanguard Group"). The Fund and the other funds in The Vanguard Group obtain at cost virtually all of their corporate management, administrative, shareholder accounting and distribution services through their jointly owned subsidiary, the Vanguard Group, Inc. ("Vanguard"). In Investment Company Act Release No. 11645 (February 25, 1981) ("Release 11645"), the Commission granted the exemptive relief necessary to implement this arrangement.

4. For the cost of administering and maintaining the contracts there is an annual charge of $25 per Contract plus a

charge, assessed daily, equal to an annual rate of .10% of the net asset value of the Separate Account. These charges are guaranteed not to increase for the life of the Contracts and represent reimbursement for only the actual administrative costs expected to be incurred over the life of the Contracts.

Pursuant to the terms of a participation agreement among Vanguard, the Fund and National Home, Vanguard has assumed responsibility for performing National Home's administrative duties under the Contracts and has agreed to assume the expenses of administration. In exchange for its assumption of these duties and expenses, Vanguard will receive the payments discussed in the preceding paragraph which will not exceed the actual costs Vanguard will incur in performing these administrative duties. In the event that Vanguard's administrative duties under the agreement are terminated, the responsibilities assumed by Vanguard would revert to National Home.

5. There is no sales load imposed in connection with sales of Contracts. Vanguard, through its wholly owned subsidiary Vanguard Marketing Corporation, will be the sole distributor of the Contracts and will bear all expenses related to the distribution of such Contracts. As a member of The Vanguard Group, the Fund will participate in the payment of the distribution expenses of The Vanguard Group on the same basis as other Funds in The Vanguard Group. Pursuant to the Vanguard Modified Formula which is described in the application and in Release 11645, the Fund currently imposes a charge of approximately .04% annually, which will never exceed .20%, to cover its share of the costs of distributing the Vanguard Group of Investment Companies. No part of this fee will be paid to National Home nor will National Home receive any other payments from either Vanguard or the Fund. Also, no payments will be made to Vanguard by National Home in connection with distribution of the Contracts. Other than the fixed annuitization fee described in the application, Vanguard will not receive any payments from National Home.

6. Applicants state that, as a member of The Vanguard Group, the Fund and Contract owners will receive the same benefits received by the other funds in the group. Those benefits are summarized in the application and were discussed in Release No. 11645. Also, according to Applicants, the distribution process with respect to the Contracts is analytically virtually identical to that for which relief was granted in Release No. 11645. Vanguard will be the sole distributor of the Contracts. Sales of the Contracts will result in the sale of Fund shares and Vanguard will receive fees from the Fund for performing distribution services. As is the case with the other funds in The Vanguard Group, these distribution services will be performed internally at cost. Neither the Fund nor Vanguard will pay any external entity for these services. Therefore, Applicants believe that the relief afforded in Release No. 11645 is available in connection with the Fund's payment of distribution fees to Vanguard.

7. The Contracts provide for a mortality and expense risk charge which will be deducted on a daily basis at rates whose annual equivalents and approximate allocation between mortality and expense risks are as follows:

Assets	(In Percent)		
	Mortality	Expense	Total
First $500	.270	.180	.450
Next 250	.245	.155	.400
Next 250	.235	.140	.375
Next 250	.220	.130	.350
Next 250	.210	.115	.325
Over 1,500	.200	.100	.300

This charge is assessed daily and compensates National Home for the mortality and expense risks it assumes under the Contracts. National Home guarantees that this charge will never increase.

8. The mortality risk assumed by National Home arises from its obligations to continue to make Annuity Payments under the Contracts determined in accordance with the guaranteed annuity tables and other provisions of the Contracts, regardless of how long each annuitant lives and regardless of how long all payees as a group live. National Home also assumes a mortality risk as a result of its guarantee of a minimum payment in the event the Annuitant dies prior to the Annuity Date. In addition, National Home assumes a risk that the charges for the administrative expenses may be insufficient to cover the actual cost incurred by National Home for providing Contract administrative services which it is ultimately responsible for, although initially, Vanguard has assumed responsibility for providing those services. If the charge is insufficient to cover the actual cost of the mortality and expense risk, the loss will fall on National Home. Conversely, if the charge proves more than sufficient, the excess will be added to the surplus of National Home. Any surplus resulting to National Home from the mortality and expense charge can be used by National Home, at its discretion, for any business purpose.

9. National Home and the Separate Account represent that they have reviewed publicly available information regarding the aggregate level of the mortality and expense risk charges under comparable variable annuity contracts currently being offered in the insurance industry taking into consideration such factors as current charge levels, the manner in which they are imposed, the presence of charge level or annuity rate guarantees and the markets in which the Contracts will be offered. Based upon the foregoing, National Home and the Separate Account further represent that the mortality and expense risk charge under the Contracts is within the range of industry practice for comparable contracts. National Home and the Separate Account represent that they will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

10. National Home has concluded that there is a reasonable likelihood that the distribution financing arrangements of the Separate Account will benefit the Separate Account and the Contract owners. National Home will maintain and make available to the Commission on request a memorandum setting forth the basis for this representation. National Home and the Separate Account further represent that the Separate Account will only invest in underlying funds which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of any fund, formulate and approve any plan under rule 12b-1 of the 1940 Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11186 Filed 5-9-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35—25307]

Filing Under the Public Utility Holding Company Act of 1935 ("Act")

May 3, 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 and 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 May 28, 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 declartion(s), as filed or as amended, may be granted and/or permitted to become effective.

The Connecticut Light and Power Company (70–7794)

The Connecticut Light and Power Comapny ("CL&P"), 107 Selden Street, Berlin, Connecticut 06037–1616, an electric public-utility subsidiary company of Northeast Utilities, a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act.

The application seeks approval of a long-term lease and the acquisition of various utility assets from The Farmington River Power Corporation and its parent, The Stanley Works ("Stanley"). The aggregate consideration to be paid by CL&P for the property leased and purchased will be $7.5 million. The allocation of this sum between the purchased and leased assets is subject to agreement by the parties and the Connecticut Department of Public Utility Control ("CDPUC"). The parties have proposed to the CDPUC that $6.5 million be allocated to rent for the initial term of the lease of the Rainbow Dam facility ("Dam") in Windsor, Connecticut and $1 million to the purchase of other property. The other property includes: The 22 mile long Rainbow Transmission Line between the Dam and New Britain, Connecticut; the Burritt Street substation in New Britain; part of the Black Rock Line; approximately nine acres of land about a mile downstream from the Dam; associated rights of way; water and flood rights; the right to use certain electric distribution facilities in New Britain; and, miscellaneous other property.

The lease of the Dam is for 30 years with CL&P's option to extend it for up to six additional ten year terms. Payment will be $6.5 million at closing for the initial period and $250,000 per year (adjusted for inflation) thereafter for any extensions.

In conjunction with this transaction, Stanley will execute a power purchase agreement to become a full requirements retail electric customer of CL&P for a period of at least 15 years. CL&P estimates the aggregate benefits of this transaction to ratepayers, over the course of the initial 30 year lease term, to be approximately $12 million.

Central and South West Corporation, et al. (70–7849)

Central and South West Corporation ("CSW"), a registered holding company, CSW Energy, Inc. ("Energy"), a wholly owned subsidiary company of CSW, CSW Development–I, Inc. ("Energy Sub"), a wholly owned subsidiary company of Energy all located at 1616 Woodall Rodgers Freeway, P.O. 660164, Dallas, Texas 75202 and ARK/CSW Development Partnership ("Joint Venture"), 23293 South Point Drive, Suite 100, Laguna Hills, California 92653, a general partnership and a subsidiary of Energy Sub have filed an application-declaration under section 6(a), 7, 9(a), 10, 12(b), 13(b) and 13(e) of the Act and rules 43, 45, 50(a)(5), 51, 86, 87, 90, 91 and 95 thereunder.

CSW, Energy, Energy Sub and the Joint Venture propose to create a special purpose limited partnership to be known as Oildale Cogeneration Partners, L.P. ("Partnership"), in order to invest in the Oildale Project ("Project"), a qualifying cogeneration facility, within the meaning of the Public Utility Regulatory Policies Act of 1978 ("PURPA") and 18 CFR 292.602. The Partnership would be organized as a limited partnership under the laws of the State of Delaware and its initial sole general partner ("General Partner") would be either: (1) A special purpose wholly owned subsidiary company of the Joint Venture ("JV Sub"); or (2) a Delaware general partnership between a subsidiary company of Energy ("Energy GP Sub") and a subsidiary company of ARK ("ARK GP Sub") and would hold a 1% interest in the Partnership.

If the General Partner is a corporation, JV Sub, then the JV Sub would be incorporated under the laws of the State of Delaware with an unthorized capital of up to 1,000 shares of common stock without par value, and the Joint Venture directly or indirectly would acquire all of the JV Sub's common stock at a subscription price of $1.00 per share. Alternatively, if the General Partner is a general partnership, then each of Energy GP Sub and ARK GP Sub would hold a one-half general partnership interest in the General Partner.

The initial limited partners of the Partnership will be Energy Sub or a to be-formed wholly owned subsidiary company of Energy Sub ("Energy Sub 2") and ARK or a to-be-formed wholly owned subsidiary company of ARK ("ARK Sub"). Each limited partner would hold a 49.5% interest in the Partnership. Energy Sub 2 would be incorporated under the laws of the State of Delaware with an authorized capital of up to 1,000 shares of common stock without par value and Energy Sub will directly or indirectly acquire all of Energy Sub 2's common stock at a subscription price of $1.00 per share.

It is proposed that Joint Venture acquire the lessee interest and other assets or Catalyst Golden Bear Cogeneration Partnership ("Golden Bear"), a nonassociate California limited partnership, in the Project, pursuant to the terms and conditions in the Purchase Agreement, dated March 21, 1991, between Golden Bear and Joint Venture ("Agreement"). Prior to the closing of the transactions contemplated by the Agreement, Joint Venture will assign all of its rights and obligations under the Agreement to Partnership. At the closing of the transaction comtemplated by the Agreement, the Partnership will acquire from Golden Bear a lease ("Lease") of the Project and will continue to perform the obligations of the lessee thereunder. The Project is currently owned by an owner trust established for the benefit of Saks & Co. ("Lessor"). Pursuant to the Lease, Partnership will pay rent to the Lessor in an amount sufficient to pay the debt service obligations of the Lessor on the financing for the Project. The Partnership will purchase the Project from the Lessor on the second anniversary of the date of the Partnership's acquisition of the lease from Golden Bear, or earlier if Lessor agrees. The price for acquisition of the Project from the Lessor shall be the assumption of the debt of the Lessor by the Partnership on a nonrecourse basis. The leader's recourse for payment shall be to the Project itself and not to the Joint Venture, Partnership, Energy, Energy Sub or any other related entity or their assets.

Partnership proposes to borrow, from banks to be determined, up to an

aggregate principal amount of $31 million ("Loan") to acquire the lessee interest and other assets of Golden Bear. The total facility of $31 million will include: (1) Approximately $18 million to be used for the refinancing of the existing debt of the Project; (2) approximately $7.7 million to upgrade the Project; (3) approximately $4 million to cover the expenses of the acquisition; and (4) approximately $1.3 million for project working capital, spares and tools, accrued interest and start-up costs and to cover obligations of the Project in the event of unforeseen shortfalls in operating cash flow during the first two years of operation.

Loans made by the banks to Partnership will be evidenced by a promissory note ("Note"). It is proposed that the Commission except such financing transaction from the competitive bidding requirements of rule 50 pursuant to subsection (a)(5). CSW, Energy, Energy Sub and Joint Venture assert that competitive bidding is not feasible or adaptable to this transaction in view of the specialization and competitiveness of the existing market for this type of project financing.

Each Note shall be payable as to principal and bear interest from the effective date of such Loan at a rate not to exceed 11% and a term of up to 20 years. The terms of this financing will provide for the first year to be an upgrade/modification period on an interest only basis followed by up to a 20-year term period during which the Loan will be fully repaid using a mortgage type amortization schedule. The Partnership will pay certain bank fees in connection with such financing, including a structuring fee not to exceed 1% of the total credit facility, a facility fee not to exceed ½ of 1% of the total credit facility, a quarterly commitment fee of less than 1% of the amount of any unused loan commitment, and an annual administration fee not to exceed $25,000.

Energy Sub proposes to arrange for a letter of credit to be issued by a third party lender in the amount of $5 million or less (as set out below), and have a maturity of less than ten years or an equity commitment letter or similar document to be issued by Energy Sub or Energy (collectively "Support Agreement"). The fee for the letter of credit will not exceed 1%. Drawings under the letter of credit will be reimbursed by CSW, Energy or Energy Sub together with interest not to exceed 11%. The Support Agreement will be issued for the benefit of the lender of the debt on the Project and will be in the amount of $5 million, which will reduce to $3 million upon completion of the construction of the improvements on the Project. The amount of the Support Agreement will further reduce as deposits are made to a debt service reserve account from revenues of the Project. The Support Agreement will terminate when such deposits are in excess of a predetermined debt service reserve. The Support Agreement will be available for drawing by the Project lender only in the event that cash flow from the Project is not sufficient to pay debt service or operating expenses of the Project. The obligation to pay on the Support Agreement will be undertaken either directly by CSW or Energy Sub. In the event that Energy Sub is primarily obligated on the Support Agreement, then Energy Sub's obligation will be supported either by cash collateral, or by a commitment to provide equity or other assurance by CSW to Energy Sub. Any amounts paid by or for the account of Energy Sub or Energy will be reimbursed by the Partnership out of Project cash flow prior to distributions to partners. Partnership proposes to enter into a construction management agreement with Energy for the purpose of upgrading the assets of the Project.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11187 Filed 5-9-91; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement: Pulp and Paper Facility Proposed by Mead Corporation on the Tennessee River

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent and scoping notice.

SUMMARY: The Tennessee Valley Authority (TVA) is issuing this notice to advise the public that it intends to prepare an Environmental Impact Statement (EIS) for the siting of Mead Corporation's proposed 1,000-ton-per-day (tpd) bleached kraft pulp and paper facility to be located on the Tennessee River at the Smith Bend industrial site on Chickamauga Reservoir in Rhea County, Tennessee. TVA also requests comments on the proposed scope of this EIS. TVA approval of water use facilities and an easement across TVA lands will be required. Cooperating agencies include the U.S. Army Corps of Engineers (USACE) and the U.S. Fish and Wildlife Service (FWS).

DATES: Written comments on the proposed scope of the EIS are requested and must be received by June 10, 1991 to be considered. TVA, USACE, and FWS will hold public scoping meetings on June 7, 1991, at Roane County High School, Kingston, Tennessee, and June 8, 1991, at Rhea County High School, Evensville, Tennessee, starting at 7 p.m. and 9 a.m., respectively. TVA will hold a minimum of one public hearing during the public comment period on the draft EIS. Details of this hearing will be announced in local and regional newspapers when the draft EIS becomes available.

ADDRESSES: Written comments on the proposed scope of the EIS should be sent to M. Paul Schmierbach, Manager of Environmental Quality, Tennessee Valley Authority, 400 West Summit Hill Drive, SPB 2P, Knoxville, Tennessee 37902-1499.

FOR FURTHER INFORMATION CONTACT: For further information on this action, call Dale K. Fowler, Project Manager, Tennessee Valley Authority, 400 West Summit Hill Drive, SPB 2P, Knoxville, Tennessee 37902-1499. Telephone 615/632-6716.

SUPPLEMENTARY INFORMATION: To access the Tennessee River, the Mead Corporation is requesting that TVA sell it an industrial easement over portions of TVA land that adjoin the 2,500-acre Mead-owned Smith Bend site for its proposed 1,000-tpd bleached kraft pulp and paper facility. Smith Bend is located on the right bank of Chickamauga Reservoir (facing downriver) between Tennessee River Mile 522 and 525. Mead is also requesting approval of a proposed intake and effluent piping system and barge terminal under section 26a of the TVA Act. In addition, Mead is requesting approval from USACE, under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act, for the proposed intake and effluent piping systems and barge terminal and any other facilities that could affect established wetlands. The state of Tennessee will also be reviewing potential environmental impacts under its permitting jurisdiction.

Demand for pulp and paper products continues to increase domestically and internationally. The abundance of suitable raw materials, geographic location, climate, infrastructure, labor supply, and other factors combine to make the Tennessee Valley a desirable location for new pulp and paper facilities and other forest industries.

The proposed mill would produce high-quality coated publishing paper and market pulp for domestic and

international markets. This would be a fully integrated mill for processing green wood into finished products for use in the printing industry and pulp for use at other papermills. Initially, approximately half of the 1,000 tons per day of bleached pulp would be used in the papermaking process and the other half would be processed and packaged for market pulp sales. Preliminary estimates for the total cost of the proposed project is in excess of $1 billion.

This mill would employ over 400 people on the mill site and some additional people offsite in support positions. During the anticipated two-to-three-year construction period, a peak of approximately 2,000 construction workers would be required.

Once in full operation, the proposed manufacturing facility would utilize approximately 1.4 million green tons of pulpwood annually, which would be procured from both existing and new sources of public and private supply. Most of the wood would be procured from a radius of approximately 85 miles of the proposed facility. The annual harvest area needed to support this facility would approximate 30,000 acres per year or less than 1/2 of 1 percent of the total 8.7 million acres of forested land within the sourcing area.

The EIS will evaluate the direct and indirect effects of the pending request. This will include the potential direct effects associated with constructing and operating the proposed intake and effluent piping systems and barge facility and use of the TVA property to access these facilities and any disturbances of wetlands. These are the activities over which TVA and USAGE have regulatory authority. In addition, the EIS will evaluate as indirect effects the potential consequences associated with constructing and operating the proposed pulp and paper facility.

In addition to the direct and indirect effects associated with the activities requiring TVA and USAGE approval, there are potential sourcing area effects (i.e., timber harvesting). However, attempting to identify the location of and assessing sourcing area impacts, which involve the future decisions of many private landowners, entails a substantial amount of uncertainty. Neither TVA nor USAGE have any regulatory authority over these private landowners' actions, and authorization from TVA or USAGE is not needed before harvesting can occur. However, TVA, USAGE, and FWS are concerned about such impacts and propose to include in the EIS, to the extent reasonable, information and analysis of possible sourcing area impacts

Comments are requested on preparing an EIS with this proposed scope, as further delineated below.

Alternatives proposed to be evaluated in the EIS include: (1) Approving the request as submitted, (2) approving the request with modifications or conditions to lessen potential environmental impacts, or (3) no action (denying the request). The availability of alternative sites and the siting process used by the applicant will also be discussed.

TVA proposes to assess the following as potential effects associated with the construction and operation of the proposed pulp and papermill facility: (1) Navigation impacts, (2) water quality impacts, (3) air quality impacts, (4) noise impacts, (5) terrestrial and aquatic species impacts (including endangered and threatened species), (6) wetlands, (7) cultural resource impacts, (8) flooding and floodplain impacts, (9) aesthetic impacts, (10) socioeconomic impacts, (11) solid and hazardous waste, and (12) potential impacts associated with truck traffic in the vicinity of the papermill. Any cumulative impacts resulting from the construction and operation of the facility will also be discussed.

Potential sourcing area harvesting effects which TVA proposes to assess include (1) Water quality and potential flooding impacts, (2) terrestrial and aquatic species impacts (including endangered and threatened species), (3) wetlands, (4) aesthetic impacts, (5) solid waste, (6) recreation/tourism, (7) impact on prime farmland, and (8) cultural resource impacts. Other potential cumulative sourcing area effects identified during the scoping process will also be considered for evaluation.

Dated: May 2, 1991.

M. Paul Schmierbach,

Manager, Environmental Quality.

[FR Doc. 91-11114 Filed 5-9-91; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Santa Clara County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescinding notice of intent.

SUMMARY: The FHWA is issuing this notice to adivse the public that a previous notice of intent for a proposed highway project in the cities of Cupertino, Los Altos, Mountain View, and Sunnyvale, California, has been withdrawn.

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812-1915. Telephone: (916) 551-1314.

SUPPLEMENTARY INFORMATION: The FHWA on March 16, 1987, published a notice of intent on page 8126 of the **Federal Register** describing a project proposed by the California Department of Transportation (CALTRANS). The FHWA and CALTRANS have subsequently determined that it is unlikely the project would be financed and constructed within a reasonable time period.

The notice is being published to advise interested parties that this project, involving State Route 85 between Routes 280 and 101, and Routes 101 and 237 in Sunnyvale and Mountain View, has been withdrawn. CALTRANS is considering a more limited project in the area of the Route 101/237 interchange which would improve access between Route 101 and the 6.3 mile section of Route 237 east of Mathilda Avenue currently being widened. A notice of intent for that project will be published later if appropriate. A proposal to construct a new interchange on Route 237 approximately one mile west of Route 101, previously included in the withdrawn project, is being pursued by State and local agencies without FHWA participation.

Comments or questions regarding this notice should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The Regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

Issued on: May 3, 1991.

C. Glenn Clinton,

District Engineer, Sacramento, California.

[FR Doc. 91-11160 Filed 5-9-91; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[FRA Waiver Petition Docket Number RSOR-90-1]

Petition for Relief From the Requirements of Railroad Operating Practices Regulation

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that Metro-North Commuter Railroad Company (MNCR) has petitioned the Federal Railroad Administration (FRA) for permanent relief from the

requirements of § 218.30 of FRA's rules entitled Railroad Operating Practices.

Part 218, Subpart B, Blue Signal Protection of Workmen, requires protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment, whose activities require them to work on, under, or between such equipment and subject them to danger of personal injury posed by any movement of such equipment.

Section 218.30, "Remotely Controlled Switches," states, in part, that:

(a) After the operator of the remotely controlled switch has received the notification required by § 218.27(c), he must line each remotely controlled switch against movement to that track and apply an effective locking device to the lever, button, or other device controlling the switch before he may inform the employee in charge of the workmen that protection has been provided.

The MNCR at Grand Central Terminal in New York, New York, currently complies with required procedures set forth in a prior waiver petition granted by the Federal Railroad Administration. The current system involves the participation of several employees who provide the required safety assurances. This system has served without incident. In the planning to renew the existing signal system at Grand Central Terminal, the participation of the several employees would no longer be necessary. Instead, train movements would be made on interlocking signal indication, not exceeding restricted speed. Track blocking protection is designed into the proposed system.

Therefore, the MNCR proposes the installation of a fully controlled and protected signalled interlocking to include blue signal protection through the provisions of track blocking. Under the proposed plan, the employee requesting the blue signal protection will contact the train dispatcher located in the operational control center directly. The train dispatcher will then initiate the protective provisions which will be reflected at his work station, at track side, and on the controlling locomotive. The train dispatcher will inform the employee that the protection requested is in effect. To cancel blue signal protection for a track, a two-step process must be followed. The process involves the requesting employee, the train dispatcher and logic assurances designed into the system. No other personnel would be involved.

The petitioner requests that this application pursuant to 49 CFR 218.30 be approved. Upon completion of the renewal project, Grand Central Terminal will be a fully controlled and protected signalled interlocking with an integral track blocking assurance feature. The MNCR believes that this proposal is in compliance with the spirit and purpose of the regulation.

Interested persons are invited to participate in this proceeding by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Communications concerning this proceeding should identify the appropriate FRA Waiver Petition Docket Number RSOR-90-1 and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before June 27, 1991 will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC.

Issued in Washington, DC on May 2, 1991.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 91-11134 Filed 5-9-91; 8:45 am]

BILLING CODE 4910-06-M

[FRA Docket Number H-90-2—Notice 2]

Test Program Waiver

In accordance with 49 CFR Section 311.51, notice is hereby given that the Federal Railroad Administration (FRA) has granted a waiver of compliance with the hand brake requirement of 49 CFR part 231, Safety Appliance Standards, to the National Railroad Passenger Corporation (Amtrak) for the purpose of conducting a test program.

The Amtrak test plan and request for a waiver were described in the original notice, FRA Docket Number H-90-2 (see 55 FR 28127, July 9, 1990). Subsequently, this plan was somewhat revised by the petitioner. In both the original test program and the revised test program, Amtrak would operate two Coupler Mate II bogies and three RoadRailer Mark V vehicles behind a passenger train. The test was originally to be conducted in the Northeast Corridor at speeds up to 95 miles per hour. Instead, Amtrak will perform that portion of the test in the Northeast Corridor at a speed not to exceed 100 miles per hour.

Amtrak states that the RoadRailer equipment will consist of two Coupler Mate II trucks or bogies, one at either end of the RoadRailer vehicles. The Coupler Mate II will provide the connection between RoadRailer Mark V vehicles and conventional Amtrak passenger cars and locomotives equipped with standard automatic couplers. The two Coupler Mate II bogies in the test will be equipped with all the safety appliances required by the Safety Appliance Standards, 49 CFR part 231, with the exception of the handbrake described in § 231.1(a). The bogies are provided with an automatic spring biased parking brake which is used in lieu of the conventional type manually operated handbrake, and it is not necessary for a person to mount and dismount the Coupler Mate II bogie to apply or release the parking brake.

The RoadRailer vehicles, by design, cannot be subjected to traditional switching procedures conducted in railroad classification yards. In consideration of the unique handling of the RoadRailer units and the fact that there is no necessity for a person to ride on this special equipment, safety appliances, including hand brakes, have not been required, pursuant to a waiver, on the RoadRailers presently being operated by the Norfolk Southern Corporation. The Coupler Mate II bogie braking capability will be compatible with existing Amtrak passenger car air brake equipment.

Amtrak anticipates that testing will commence on or about June 4, 1991. The rail test will be multiphased, beginning first with yard operations of assembling, disassembling, coupling, and uncoupling of the RoadRailer consist to passenger rail cars and locomotives. Following successful conclusion of these yard tests the RoadRailer consist will be coupled to non-revenue trains and a series of road braking tests conducted at varying speeds. Finally, road tests of both empty and loaded RoadRailers in non-revenue service in the Northeast Corridor, up to 100 miles per hour, will be made to test the stability of the RoadRailer-passenger train consist.

Amtrak's recently submitted revised test program has also been expanded. After completion of the tests in the Northeast Corridor, Amtrak will operate the two Coupler Mate II bogies and three RoadRailer Mark V vehicles behind revenue passenger trains over various railroads throughout the country until the completion of the program, which will be on or about July 18, 1991. During that phase of the testing, the

RoadRailer vehicles will be used to carry mail for the US Postal Service.

Issued in Washington, DC on May 3, 1991.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 91-11132 Filed 5-9-91; 8:45 am]

BILLING CODE 4910-06-M

Petition for Waivers of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from The Union Tank Car Company a request for waivers of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Union Tank Car Company

[Docket Number SA-91-3]

The Union Tank Car Company (UTLX) seeks a waiver of compliance from certain sections of 49 CFR part 231, Railroad Safety Appliance Standards. UTLX is requesting a permanent waiver of the provisions of 49 CFR 231.21(b)(2) and 231.21(j)(2)(vi) requiring that platforms be of a minimum thickness of 1¾ inches. UTLX requests that this requirement be waived and instead requirements similar to those found in § 231.1(c)(4)(iii) be applied. Section 231.1(c)(4)(iii) refers to running boards and requires that they "shall be of material which provides the same degree of safety than wood of 1⅛ inches thickness. When made of material other than wood, the tread surface shall be of anti-skid design and constructed with sufficient open space to permit the elimination of snow and ice from the tread surface, at least 1¾ inches high.

The requirements of title 49, CFR 231.21 refers to "Tank Cars Without Underframes" § 231.21(b) refers to "End Platforms"—(1) Number. Two (2) Dimensions. Minimum width, 10 inches. Minimum thickness, 1¾ inches. Section 231.21(j) refers to "Operating platform, ladder and safety railing"—(1) Number. (vi) Operating platform, minimum width, 7 inches; minimum thickness, 1¾ inches. The Union Tank Car Company advised that typical construction of platforms by them and other manufacturers for tank cars without underframes is to construct a frame of members 2 inches to 3 inches deep with cross support members. A grating meeting the requirements of § 231.1(c)(4)(iii) is secured to the cross supports with bolts or rivets not less than ½-inch diameter.

The interest in this change stems from the basic operations of UTLX, which is the manufacturing, leasing and repairing of railroad cars.

This waiver would permit them to use grating designs of the same style and thickness on tank cars without underframes as used on other types of railroad cars. UTLX claims the option to use a thinner grating on platforms would allow greater flexibility in design and construction but would still maintain or exceed the existing levels of strength and safety.

UTLX contends that the platform thickness requirements for all car types except tank cars without underframes can be met with a component of any thickness so long as it provides the same degree of safety as wood 1⅛ inch thickness. Running boards and end platforms meeting this requirement have been used on other car types for many years and have been considered to be safe.

UTLX further stated that the basic use and function of running boards and platforms are identical. That is, they afford a place for a person to walk, stand, or cross over the car and in some instances may require a person to kneel, sit in order to perform inspection of valves, etc.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number—SA-91-3 and must be submitted in triplicate to the Docket Clerk, Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before June 24, 1991 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on April 29, 1991.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 91-11131 Filed 5-9-91; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 6, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: None.

Type of Review: New Collection.

Title: Taxpayer Service Optimal Level of Service Telephone Survey.

Description: These telephone interviews with the public are being conducted to obtain data on the toll-free telephone system. The data will be used in developing an approach to establish an optimal level of service for the Service's toll-free telephone system.

Respondents: Individuals or households.

Estimated Number of Respondents: 14,000.

Estimated Burden Hours Per Response: 10 minutes.

Frequency of Response: One-time survey.

Estimated Total Reporting Burden: 2,333 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-11163 Filed 5-9-91; 8:45 am]

BILLING CODE 4830-01-M

Internal Revenue Service

[Project No. IRS-91-064]

Proposed Establishment of a Federally Funded Research and Development Center

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of intent.

SUMMARY: The Internal Revenue Service (IRS) announces its intention to sponsor and establish a Federally Funded Research and Development Center (FFRDC) to conduct research and advise IRS officials on technical aspects of Tax Systems Modernization (TSM). TSM is a long-term initiative of major importance involving the modernization and redesign of the tax processing and administrative systems and methods employed by the IRS. The FFRDC will be established under the authority of 48 CFR subpart 35.017 and the Office of Federal Procurement Policy (OFPP) Policy Letter 84-1. This is the first of three announcements under the authority of 48 CFR 5.205(b).

Of paramount importance in fulfilling this requirement will be the absence of actual or potential conflicts of interest (whether personal or oganizational, real or apparent, or financial or non-financial) in recommendations that may be made to IRS officials. The scope of work of the FFRDC will be governed by a Sponsoring Agreement encomposing technology assessment, startegic planning, and acquisition support. These three major areas of support are described below. (1) Technology Assessment—The FFRDC will conduct continuing laboratory research and experimentation to evaluate new and emerging data processing and telecommunications technologies, concepts, and methodologies for potential use in TSM including recommendations on how the technologies, concepts, and methodologies may be timely applied to improving tax processing and taxpayer services. (2) Strategic Planning—The FFRDC will combine technical expertise with knowledge gained from research to provide ongoing advice to IRS officials on strategic plans and designs for TSM. Activities will include the review, critical assessment, verification of, as well as general participation in the development of high level plans, processes, and strategies for the timely delivery of systems that will meet TSM objectives. (3) Acquisition Support—The FFRDC will support and assist the acquisition of TSM components to ensure comformity with architectural standards and designs as well as the achievement of TSM goals and objectives. This will be accomplished through the review and evaluation of, and general participation in, the development of technical requirements and specifications for critical TSM acquisitions. The FFRDC will participate in the development of technical evaluation criteria and, as an observer on technical evaluation panels, in the evaluation of proposals. In addition, the FFRDC will conduct periodic reviews of the effectiveness and efficiency of operational TSM systems. This notice is not a request for competitive proposals, however, expressions of interest and qualification or capability statements from entities interested and capable of fullfilling this requirement in the Washington, DC, metropolitan area will be considered. The qualficiation or capability statements received will be used to select potentially qualified entities, which at a later date may be requested to submit more detailed cost and tecnical proposals.

DATES: Comments on this action, expressions of interest and qualification or capability statements must be received on or before August 8, 1991.

ADDRESSES: Responses to this notice must be mailed to the Internal Revenue Service, A/C Procurement, Office of End User Acquisitions, 1111 Constitution Avenue, NW., room 6418/ICC Building, P:HR:C:E, Washington, DC. 20224.

FOR FURTHER INFORMATION CONTACT: Michelle Faseru, Contracting Officer, (202) 401-4198 or Veonica Fernandez, Contract Specialist, (202) 401-4253.

SUPPLEMENTARY INFORMATION: Upon request, copies of a detailed scope of work for the intended FFRDC will be mailed to any interested party. Requests must be sent to the address stated above and must make reference to "Project no. IRS-91-064".

Dated: May 6, 1991.

Gregory D. Rothwell,

Assistant Commissioner (Procurement).

[FR Doc. 91-11211 Filed 5-9-91; 8:45 am]

BILLING CODE 4830-01-M

[Delegation Order No. 42, Rev. 24]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority; correction.

SUMMARY: This document contains corrections to Delegation Order No. 42, Rev. 24, which was published Friday, April 12, 1991, (56 FR 14973).

FOR FURTHER INFORMATION CONTACT: Theodore J. Cichaski (202) 401-4165 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The delegation order clarifies and extends the authority to execute consent agreements for fixing the period of limitations involving partnerships and S corporations items that have converted to nonpartnership items or nonsubchapter S items due to one o more of the events as described in section 6231(b)(1) (A) through (D) as referred to in section 6229(f).

Need for Correction

As published, the delegation order contains errors which may prove to be misleading and is need of clarification.

Correction of Publication

Accordingly, the publication of the delegation order, which was the subject of FR Doc. 91-8592, is corrected as follows:

1. On page 14973, column 1, under the heading "For Further Information Contact:", line 2, the language "320, 901 D Street SW., Washington, DC," is corrected to read "230, 901 D Street SW., Washington, DC,".

2. On page 14973, column 2, under the heading "Authority To Execute Consents Fixing the Period of Limitations on Assessment or Collection Under Provisions of the 1939, 1954, and 1986 Internal Revenue Codes", number 1, line 4, the language "6229(e); 26 CFR 301.6501(c)-1;26 CFR" is corrected to read "6229(b); 26 CFR 301.6501(c)-1;26 CFR".

3. On page 14973, column 2, under the heading "Authority To Execute Consents Fixing the Period of Limitations on Assessment or Collection Under Provisions of the 1939, 1954, and 1986 Internal Revenue Codes", number 2b, line 7, the language "Assurance Staff, Chief, Classification" is corrected to read "Analysis Staff, Chief, Classification".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-11212 Filed 5-9-91; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INSTITUTE OF PEACE

Jennings Randolph Program for International Peace; Fellowships

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The United States Institute of Peace announces its annual international competition for fellowships to begin in September 1992. The fellowships enable professionals and scholars to undertake original research and education projects that will increase knowledge and spread awareness on the part of the public and policy makers regarding the nature of violent international conflicts and the full range of ways to deal with them peacefully. Fellowships are awarded in three categories: Distinguished Fellow, Peace Fellow, and Peace Scholar. Distinguished and Peace Fellows are principally one-year awards for work to be done at the Institute. Peace Scholars are out-of-residence doctoral students working on their dissertations. In order to be considered in the current competition, Distinguished Fellow nominations and Peace Fellow applications must arrive at the Institute by October 15, 1991. Peace Scholar applications must arrive at the Institute by November 15, 1991.

DATES: See in summary above.

ADDRESSES: United States Institute of Peace; 1550 M Street, NW., suite 700FR; Washington, DC 20005–1708.

FOR FURTHER INFORMATION CONTACT: Barbara Cullicott, Program Administrator, Jennings Randolph Program for International Peace at the address given above; telephone: (202) 457–1700.

Dated: May 3, 1991.

Bernice Carney,

Director of Administration.

[FR Doc. 91–11112 Filed 5–9–91; 8:45 am]

BILLING CODE 3155–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 91
Friday, May 10, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:01 p.m. on Tuesday, May 7, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Recommendations regarding the liquidation of depository institutions' assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,695
American Diversified Savings Bank, Costa Mesa, California

Case No. 47,696
Silverado Banking, Savings and Loan Association, Denver, Colorado

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), Vice Chairman Andrew C. Hove, Jr., and Chairman L. William Seidman that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: May 8, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-11259 Filed 5-8-91; 9:36 am]

BILLING CODE 6714-01-M

federal register

Friday
May 10, 1991

Part II

Environmental Protection Agency

40 CFR Part 70

Operating Permit Program; Proposed Rule; Notice of Opportunity for Public Hearing

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 70

[FRL-3951-6]

RIN 2060-AD16

Operating Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of opportunity for public hearing.

SUMMARY: The EPA is proposing a new part 70 of chapter I of title 40 of the Code of Federal Regulations. This part will contain regulations requiring States to develop, and submit to EPA, programs for issuing operating permits to major stationary sources (including major sources of hazardous air pollutants listed in section 112), sources covered by new source performance standards (NSPS), sources covered by emissions standards for hazardous air pollutants pursuant to section 112, and affected sources under the acid rain program.

Title V of the Clean Air Act (Act) Amendments of 1990, Public Law 101-549, enacted on November 15, 1990, requires EPA to promulgate regulations within 12 months of enactment. Title V establishes timeframes for developing and implementing the State permit programs. Within 3 years of enactment, States must submit proposed permit programs to EPA for approval. Sources subject to the program must submit complete permit applications within 1 year after a State program is approved by EPA or, where the State program is not approved, within 1 year after a program is promulgated by EPA.

Part 70 sources must obtain an operating permit addressing all applicable pollution control obligations under the State implementation plan (SIP) or Federal implementation plan (FIP), the acid rain program, the air toxics program, or other applicable provisions of the Act (e.g., NSPS). Sources must also submit periodic reports to the State and EPA as appropriate concerning the extent of their compliance with permit obligations. The permit and compliance reports will be available to the public, subject to any applicable confidentiality protection procedures similar to those contained in section 114(c). The EPA anticipates that this program will provide more efficient implementation of the Act, including improved enforcement, enhanced State air program resources, and a streamlined process for revising air pollution control requirements.

DATES: Comments on the proposed regulations must be received by July 9, 1991. The EPA is likely to be unable to extend the public comment period due to the strict 12 month deadline in the Act. The EPA will hold four public hearings on June 4-5, June 6, June 24-25 and July 1-2 at the addresses listed below. Requests to present oral testimony must be received on or before May 24, 1991. If possible, comments should be sent in both paper and computerized form. Two paper copies of each set of comments are requested. Comments generated on computer should also be sent on an IBM-compatible, 5¼ inch diskette and clearly labeled. Computer files created with the WordPerfect 5.1 software package should be sent as is. Files created on other software packages should be saved in an "unformatted" mode for easy retrieval into WordPerfect. Comments should refer to specific page numbers whenever possible.

DOCKET: Supporting information used in developing the proposed rules is contained in Docket No. A-90-33. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m. Monday through Friday, at the address listed below. A reasonable fee may be charged for copying.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (LE-131), Attn: Docket No. A-90-33, room M-1500, Waterside Mall, 401 M Street SW., Washington, DC 20460. The public hearings will be held in the Waterside Mall auditorium at the EPA's Headquarters Office in Washington, DC (June 4-5); at the Museum of Science and Industry—West Pavilion Auditorium, 57th Street and Lakeshore Drive, Chicago, Illinois (June 6); in the EPA Regional Office, 75 Hawthorne Street, San Francisco, California (June 24 and 25); in the EPA Regional Office, 1445 Ross Avenue, 12th floor, Dallas, Texas (July 1-2).

FOR FURTHER INFORMATION CONTACT: Michael Trutna at (919) 541-5345. Persons interested in attending the hearing or wishing to present oral testimony should contact Ms. Carol Bradsher in writing at the U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Management Division, Mail Drop 15, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background And Purpose
II. Implementation Principles
III. Proposal Summary
A. Applicability.
B. State Permit Program Submittals and EPA Approval.
C. The EPA Program Oversight.
D. Complete Permit Applications.
E. Permit Content.
F. Permit Issuance and Review.
G. Fee Demonstration.
H. Permit/SIP Relationship.
I. New Source Review/Title V Relationship.
J. Small Businesses.
K. Relationship With Section 112 (Air Toxics).
L. Relationship With Title IV (Acid Rain).
IV. Detailed Discussion of the Key Aspects of the Proposed Regulations
A. Section 70.1—Statement of Program Goals.
B. Section 70.2—Definitions.
C. Section 70.3—Applicability.
D. Section 70.4—State Program Submittals and Transition.
E. Section 70.5—Permit Application.
F. Section 70.6—Permit Content.
G. Section 70.7 and section 70.6(d)—Permit Issuance, Renewal, Reopenings, Operational Flexibility and Revisions.
H. Section 70.8—Permit Review by EPA and Affected States.
I. Section 70.9—Fee Determination and Certification.
J. Section 70.10—Federal Oversight and Sanctions.
K. Section 70.11—Requirements for Enforcement Authority.
V. Additional Topics of Discussion
A. Implementation Agreements Between State Agencies and EPA.
B. Relationship of Permit Programs to SIP's.
C. Implications for Acid Rain Program.
D. Judicial Review.
E. Implications for Section 112.
F. Information Management Support.
G. Relationship of Permit Fees to Section 105 Grants.
H. Integration of National Pollutant Discharge. Elimination System (NPDES) Program Concepts.
VI. Federal Operating Permit Program
A. Purpose.
B. Part 71 Default Program.
C. Acid Rain Program.
D. Maximum Achievable Control Technology (MACT) Extensions.
VII. Administrative Requirements
A. Public Hearing.
B. Docket.
C. Office of Management and Budget (OMB) Review.
D. Regulatory Flexibility Act Compliance.
E. Paperwork Reduction Act.
F. Federalism Implications.

This preamble is organized to meet the needs of readers who want just an overview of the operating permit program and for readers who want a detailed discussion of the concepts and issues behind today's proposal.

The first section provides background on the effort to amend the Act to include an operating permits program, the

purposes of that action, and the expected benefits. The information is useful to anyone seeking any level of information on the operating permits program.

The second section explains the principles EPA has followed while developing the proposed regulations, and the positions on associated issues. The reader should review the preamble and regulations with these principles in mind.

The program summary section (section III.) provides summaries of the major portions of the program. This section of the preamble is similar to an executive summary of a report and allows the reader to obtain general knowledge of the subjects, after which more detailed discussion can be sought in other parts of the preamble.

The detailed discussion of the regulations is in section IV. This section notes the provisions of the regulations, but also provides comprehensive background on the concepts behind the regulations and any issues or controversial aspects to be considered with respect to regulatory requirements. The design of the regulations generally follows the flow of Title V, as does the discussion in section IV.

Section V presents additional topics important to the operating permits program. These areas are not related to specific regulatory requirements proposed here, so a separate section of the preamble is devoted to their detailed coverage. The subjects covered can be found in the preamble outline above.

Another topic warranting separate coverage is the Federal operating permit program that EPA will implement in the event a State fails to submit an acceptable program or fails to adequately enforce an approved program. Other uses for the program will involve acid rain requirements and early emission reductions from hazardous air pollutant sources. This Federal program is discussed in section VI. of this preamble.

The final section (section VII.) contains the administrative requirements accompanying Federal regulatory actions. These include the topics listed in the preamble outline above.

There is some intended redundancy in this preamble; first because there is a separate summary, but second because a number of issues or topics are related to several regulatory requirements or other topics discussed. In the event the reader focuses on only certain topics, this overlap is intended so as not to ignore a specific issue or subject pertinent to a specific area, just because it is covered elsewhere.

The preamble includes many citations (e.g., (70.6)) to refer the reader to more detail or to the origin of certain requirements. These citation sections will not be followed by their origin such as "of this preamble" or "of Title V." Rather, the reader can recognize the origins of the sections by their nature:

A. Sections of the preamble begin with a roman numeral.

B. Sections of title V of the Act are in the 500's.

C. Sections of the proposed regulations range from 70.1 to 70.11.

D. Sections of the Act are referenced by a three-digit number, such as 112 and 408.

E. Sections of existing EPA regulations generally are preceded by 40 CFR.

This preamble makes frequent use of the term "State," usually meaning the State air pollution control agency which would be the permitting authority. The reader should assume that use of "State" may also include reference to a local air pollution agency or certain Indian tribes. These agencies can either be the permitting authority for the area of their jurisdiction or assist the State or EPA in implementing the title V permitting program. In some cases, the term "permitting authority" is used and can refer to both State and local agencies, when the local agency directly issues permits or assists the State in issuing permits. The term may also apply to EPA, where the Agency is the permitting authority of record.

I. Background and Purpose

The new title V of the Act introduces an operating permits program generally modeled after the NPDES program under the Clean Water Act (CWA). Some of the regulations proposed today are also modeled on NPDES regulations in 40 CFR parts 122, 123, and 124. The EPA, therefore, will generally look to the NPDES program precedent when resolving similar issues under the title V permit program. Part 70 sources must obtain an operating permit; States must develop and implement the program; and EPA must issue permit program regulations, review each State's proposed program, and oversee the State's efforts to implement any approved program, including reviewing proposed permits and vetoing improper permits. When a State fails to adopt and implement its own approvable program, EPA must apply sanctions against the State and ultimately also develop and implement a Federal permit program.

The addition of such a permitting program makes the Act more consistent with other environmental statutes, including the CWA and the Resource Conservation and Recovery Act, both of which have permit requirements. While to date there has not been an express Federal requirement that States have an operating permit program for air, a recent comprehensive survey of existing State permit programs indicates that about 40 State programs issue operating permits to at least construction projects. Over half of the existing State operating permit programs address both new and existing sources and require renewal of permits periodically. Many of these programs appear to match closely the intent of title V in that they have the basic components required by title V for issuing permits, collecting fees, providing for public participation, reopening permits, and issuing permits for a fixed term. The part 70 regulations have been designed to minimize the disruption to current State efforts by offering as much flexibility as is provided by the law, while ensuring that existing (and new) State programs will meet the requirements of the Act.

A primary benefit of the title V permit program is that it will in general clarify which requirements apply to a source in a single document and, thus, should enhance compliance with the requirements of the Act. Currently, a source's obligations under the Act, ranging from emissions limits to monitoring, recordkeeping, and reporting requirements, are in many cases scattered among numerous provisions of the SIP or Federal regulations. In addition, regulations are often written to cover broad source categories and, therefore, it may be unclear which, and how, general regulations apply to a source. Similarly, applicable provisions are sometimes not explicit as to reporting requirements (e.g., when to submit periodic compliance reports to EPA or the States). As a result, EPA often has no easy way to establish whether a source is in compliance with regulations under the Act.

The title V permit program will enable the source, States, EPA, and the public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements. Increased source accountability and better enforcement should result. The program will also greatly strengthen EPA's ability to implement the Act and enhance air quality planning and control, in part, by providing the basis for better emission inventories.

Another benefit of the title V permit program is that it provides a ready vehicle for the States to administer significant parts of the substantially revised Federal air toxics program and

the new acid rain program. This enhances EPA's ability to oversee all programs under the Act. Specifically, the Act requires that States use the permit system to administer the air toxics program. In addition, States will be responsible for reviewing and issuing permits to implement the second phase of the acid rain program (with permitting activities beginning in 1996), and will play a significant role in ensuring compliance with the acid rain requirements in 40 CFR parts 72 through 78 (to be promulgated at a later date).

Finally, an important benefit is that the permit program contained in these regulations will ensure that States have resources necessary to develop and administer the program effectively. In particular, the permit fees provisions of title V will require sources to pay their fair share of the costs of developing and implementing the permit program. To the extent the fees are based on emission levels, the fees will create an incentive for sources to reduce emissions.

II. Implementation Principles

The passage of the amendments of 1990 was a major accomplishment in the protection of public health and the environment in the United States. The new Act sets forth ambitious goals which can only be achieved through effective and expeditious implementation by EPA and State and local governments. Today's proposed rulemaking is one of the first of several important actions that EPA will be taking to accomplish its rule development responsibilities under the Act. The EPA believes that the following principles should guide the design and implementation of title V regulations and related programs.

These principles are necessary to preserve the legislative intent underlying the content of title V. The EPA intends that these principles be appropriately incorporated into all aspects of program development and implementation by both States and EPA. In particular, EPA will employ them when it is responsible for developing rules, overseeing State or local agency programs and permits, or issuing permits. The public is urged to frame its comments on today's proposal keeping in mind the extent to which sections of this proposal are consistent with the various implementation principles outlined below.

A. Ensure Environmental Protection

Congress's basic goal in adopting the title V permit program is to achieve improved air quality by establishing a broad-based tool to aid effective implementation of the Act and to enhance the Agency's ability to enforce the Act. The EPA believes it is important that other implementation objectives stated below complement this objective, not undercut the potential of title V for strengthening air quality management efforts across the country.

B. Incorporate Broad-Based Perspective for Rule Development

The EPA continually seeks a better understanding of the key concerns of those most affected by title V in order to have a broad-based perspective during the regulation development process. With this goal, the Agency hopes to make implementation efforts more effective and to minimize the chances for conflict. Today's proposal was developed with the benefit of insight from important affected parties (including State and local governments, major industries, small businesses, and environmental organizations) which were actively involved in the title V legislative process. The EPA is interested in receiving additional input from these and other interested parties during the public comment period.

C. Maintain an Effective Partnership With State and Local Governments

The EPA recognizes that the bulk of the responsibility for implementing title V falls upon State and local governments. Thus, a key principle in developing today's proposed rules has been to build upon existing operating permit programs and to provide the States with regulatory flexibility wherever possible to maintain existing program elements in implementing title V.

D. Minimize Redundancy in SIP's and Permit Programs

The title V permit program is designed to complement SIP's in achieving improved air quality management across the country. Because operating permits will contain more source-specific details than SIP's, EPA intends that source-specific permit changes be implemented wherever possible solely through the procedures in the permit program rather than through the SIP process. In this way, subject sources and governments will experience less burden and delay than would be associated with a multi-step procedure which includes the more cumbersome SIP revision process.

E. Encourage Early State Program Development

The EPA supports early adoption of the program by States in order that the title V framework enable them to implement more quickly other new Act programs. During the transition period, the EPA intends to assist States with their development of timely title V programs and their efforts to obtain interim program approval.

F. Minimize Small Business Concerns

The Act requires certain small businesses to become regulated for the first time via the requirement to obtain a title V operating permit. The EPA will be sensitive to the impact of these regulations on these sources by phasing-in and streamlining the permitting requirements as appropriate. Where possible, EPA intends to promulgate rules which employ cost-effective permitting techniques, such as general permits, to simplify the permit application and issuance process.

G. Promote Pollution Prevention

The EPA encourages permitting authorities to promote cost-effective pollution prevention alternatives where possible in their permitting activities. Permits can, consistent with the law, be used to define creative activities for shifting to inherently cleaner processes, including the maximum use of performance standards, both in meeting requirements for criteria pollutants and the acid rain program, and in meeting otherwise applicable requirements of section 112 of the Act.

H. Facilitate Use of Market-Based Incentives

The operating permit program is intended to be an effective administrative tool for achieving cost-effective improvements in air quality through market-based principles. Title V operating permits will be used to implement the requirements of title IV of the Act. Acid rain permit requirements must not hinder the effective operation of the allowance trading market. In addition, the title V permit program will be used to facilitate the incorporation of market-based incentives, to the extent they are consistent with the Act.

I. Allow Flexibility in State Programs and Source Permits

Except as necessary to ensure national consistency to support the market-based, acid rain allowance trading system, requirements for title V programs are intended to be flexible enough to allow States a reasonable range of options in designing their State programs for EPA approval. Unnecessary regulatory detail will unduly jeopardize approval of different but effective State and local programs. Sources must also be provided flexibility within their permits. Specifically, they should be allowed to

make certain types of changes without having to undergo full permit-modification procedures. This will be especially important to some industries so that their market competitiveness is not jeopardized.

J. Establish Certainty for Permitted Sources

A title V permit should articulate a clear road map of source obligations to inspire confidence in the system. The permit shield provisions should be used by the permitting authority to provide a stable reference point from which to govern the operation of the source until the time of permit renewal, unless there are clear reasons that require an interim reopening of the permit (e.g., to incorporate newly-promulgated standards with near-term compliance dates).

K. Enable Effective and Efficient Information Transfer

The EPA intends that information contained in permits, permit applications, and compliance certification reports (to the extent not protected under laws of confidentiality) be used for several air quality management purposes. The EPA intends to promote consistent data submittals to track progress, consolidate current reporting burdens, and inform affected parties of a source's compliance status relative to its enforceable obligations.

L. Prioritize EPA Oversight on Overall Program Implementation

The EPA takes seriously its new responsibilities for reviewing permits and overseeing State/local program implementation. The Agency understands, however, that State and local governments have administered effective operating permit programs for many years and can be expected to do so in the future without "micro-management" from EPA. Concern has been raised that overuse of EPA's permit veto authority could lead to serious administrative roadblocks for permitting agencies. Within the limitations of its permit review responsibilities as stated in the Act, the Agency intends to place more priority on the oversight of overall program implementation than on the review of noncontroversial, individual permits so long as clean air goals are being achieved.

M. Promote Possibilities for Integrated Permit Programs

The EPA intends that the title V rulemaking provide the basis for opportunities to establish a permit program to consolidate the review of a source's impact with respect to the Clean Air Act and to other environmental media. In particular, the Agency encourages close coordination of the preconstruction and operating permit review programs for air to minimize duplication and delay. Comments are specifically solicited as to how integrated permitting can be promoted and not inhibited by this rulemaking.

N. Promote Simple and Streamlined Regulations

It is EPA's intent to simplify and streamline these regulations to the maximum extent possible. To this end, the Agency solicits comment as to how this proposal might be simplified and/or streamlined.

III. Proposal Summary

A. Applicability

The title V operating permits program requires all part 70 sources to submit permit applications to the appropriate permitting authority within 1 year of the effective date (i.e., date of EPA approval) of the State program. The proposed operating permit program applies to the following sources:

(1) Major sources, defined as follows:

(a) Air toxics sources, as defined in section 112 of the Act, with the potential to emit 10 tons per year (tpy) or more of any hazardous air pollutant, 25 tpy or more of any combination of hazardous air pollutants, or a lesser quantity of a given pollutant if the Administrator so specifies (501(2)(A)).

(b) Sources of air pollutants, as defined in section 302, with the potential to emit 100 tpy or more of any pollutant (501(2)(B)).

(c) Sources subject to the nonattainment area provisions of title I, part D, with the potential to emit pollutants in the following or greater amounts (501(2)(B)):

		TPY
(i)	Ozone (VOC's and NO_x[1])	
	Serious	50
	Transport regions not severe or extreme.	50 (VOC only)
	Severe	25
	Extreme	10
(ii)	Carbon monoxide	
	Serious (where stationary sources contribute significantly).	50
(iii)	Particulate Matter (PM-10)	
	Serious	70

[1] For this purpose, Title I treats volatile organic compounds (VOC) and oxides of nitrogen (NO_x) sources differently. In areas qualifying for an exemption under section 182(f), NO_x sources with the potential to emit less than 100 tpy would not be considered major sources under Part D of Title I. In areas not qualifying for this exemption, No_x sources are subject to the lower thresholds created by section 182(f). In ozone transport regions, a lower threshold of 50 tpy for VOC sources is created by section 184(b). Because section 182(f) does not refer to section 184(b), the lower threshold in ozone transport regions applies to VOC sources, but not to NO_x sources. Whatever its location, any 100 tpy source would be considered a major source under section 302.

(2) Any other source, including an area source, subject to a hazardous air pollutant standard under section 112.

(3) Any source subject to NSPS under section 111.

(4) Affected sources under the acid rain provisions of title IV (501(1)).

(5) Any source required to have a preconstruction review permit pursuant to the requirements of the prevention of significant deterioration (PSD) program under title I, part C or the nonattainment area new source review (NSR) program under title I, part D.

(6) Any other stationary source in a category EPA designates in whole or in part by regulation, after notice and comment.

A major source is defined in terms of all emissions units under common control at the same plant site (i.e., within a contiguous area that are in the same major group industrial classification). Once subject to the part 70 operating permit program for one pollutant, a source must be reviewed for emissions of all pollutants regulated under the Act from all regulated emissions units located at the plant. As a general rule, all emissions of regulated pollutants are also subject to fee assessment. The program (including combinations of partial programs) applies to all geographic areas within each State, regardless of their attainment status, although for purposes of the acid rain permit program requirements, the program applies only within the contiguous 48 States.

The EPA is authorized, consistent with the applicable provisions of the Act, to exempt one or more source categories (in whole or in part) from the requirement to have a permit if the Agency determines that compliance with the part 70 regulations would be "impracticable, infeasible, or unnecessarily burdensome" (section 502(a)). The EPA may not, however, exempt any "major" or "affected" (i.e., acid rain) source from the permitting requirements. States may, if they wish, allow and/or charge fees for federally-exempted sources.

The EPA believes that coverage at the outset of all the sources described above would be both impractical and infeasible. Therefore, to promote an orderly phase-in of the program, EPA is proposing to defer initially from coverage for 5 years from the date of program approval all sources which are

not major. Nonmajor sources in nonattainment areas will receive this deferral only if the permitting authority makes a showing that the State can effectively enforce its SIP obligations on such sources without using federally-enforceable operating permits. The Administrator also reserves the ability to determine on a case-by-case basis future inclusion of nonmajor sources which become subject to new section 112 standards.

Any source whose initial applicability is deferred may opt to obtain a permit prior to the end of the 5-year deferral period. All deferred sources will be required to submit permit applications by the end of the 5-year deferral period, unless they are sources or source categories that receive a continued exemption (i.e., EPA determines that permitting such source categories would be impracticable, infeasible, or unnecessarily burdensome) in a future rulemaking.

B. State Permit Program Submittals and EPA Approval

Title V requires EPA to promulgate regulations establishing the basic elements of a State permit program. State and local pollution control agencies or interstate compacts may implement provisions of title V, as long as all geographic areas within each State are covered by a permit program. (As mentioned, reference to the "State" will include reference to local agencies where appropriate which would allow granting of a partial program for a specific geographic area within a State.) The EPA oversees development of State programs and enforces the obligation to implement a program in each State. Should a State fail to develop a permit program, the EPA must implement a program for that State (501(4), 502(d)(1), and 302(b)).

(1) Minimum Program Requirements

Within 1 year of enactment of the 1990 Amendments (November 14, 1991), EPA must promulgate regulations establishing the minimum elements of a State operating permit program. These regulations must include the following elements:

(a) Requirements for permit applications, including standard application forms and criteria for determining the completeness of applications (502(b)(1)).

(b) Monitoring and reporting requirements (502(b)(2)).

(c) A permit fee system (502(b)(3)).

(d) Provisions for adequate personnel and funding to administer the program (502(b)(4)).

(e) Authority to issue permits and assure that each permitted source complies with applicable requirements under the Act (502(b)(5)(A)).

(f) Authority to terminate, modify, or revoke and reissue permits "for cause."

(g) Authority to enforce permits, permit fee requirements, and the requirement to obtain a permit, including civil penalty authority in a maximum amount of not less than $10,000 per day for each violation, and "appropriate criminal penalties" (502(b)(5)(E)).

(h) Authority to assure that no permit will be issued if EPA timely objects to its issuance (502(b)(5)(F)).

(i) Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete and for processing applications; for public notice, including offering an opportunity for public comment and a hearing; for expeditious review of permit actions, and State court review of the final permit action (502(b)(6)).

(j) Authority and procedures to provide that the permitting authority's failure to act on a permit or renewal application within the deadlines specified in the Act (section 503 and the deadlines for permitting under acid rain provisions in title IV) shall be treated as a final permit action solely to allow judicial review by the applicant or anyone else who participated in the public comment process to compel action on the application (502(b)(7)).

(k) Authority and procedures to make available to the public any permit application, compliance plan for noncomplying sources, permit, emissions or monitoring report, and compliance report or certification, subject to the confidentiality provisions similar to those of section 114(c) of the Act (502(b)(8)); the contents of the permit itself are not entitled to confidentiality protection (503(e)).

(1) Provisions to allow operational flexibility at the permitted facility (502(b)(10)).

(2) State Program Development.

Within 3 years of enactment (2 years after EPA is obligated to issue its permit program regulations), the Governor of each State shall submit to EPA a permit program meeting the requirements of title V. A State may submit its current or proposed program to EPA for approval any time after part 70 rules become final.

The Governor must also submit a legal opinion from the attorney general, attorney for those State air pollution control agencies with independent legal counsel, or the chief legal officer of an interstate agency stating that the laws of the State, locality, or interstate compact provide adequate authority to carry out the program (502(d)(1)). The EPA encourages early action by each State to evaluate the potential of its existing enabling legislation to implement title V and to take additional actions, as needed, to ensure a timely and approvable program submittal.

Several States may need new legislative authority in a number of areas in order to fulfill the requirements of the Act, including (but not limited to): Authority to charge, collect, retain, and expand adequate permit fees, and to collect civil penalties of a maximum amount of at least $10,000 per day per violation. The EPA intends to assist States in identifying and obtaining any required new authorities.

(3) The EPA Review of Program Submittals.

Within 1 year after receiving the State's program, EPA shall approve or disapprove it, in whole or in part. The EPA may approve the program to the extent it meets the requirements of the Act and EPA's permit program regulations.

If EPA disapproves the program, or any part of it, EPA must notify the Governor of any revisions necessary for EPA approval. The State then has 180 days from this notice to revise and resubmit the program (502(d)(1)). When EPA approves a program, EPA must suspend issuance of Federal permits, but may retain jurisdiction over permits still under administrative or judicial review (502(e)).

(4) Interim Program Approvals.

If a program is not fully approvable, EPA may grant interim approval to a permit program, so long as the program "substantially meets" the requirements of title V. Criteria for satisfying the "substantially meets" test are proposed to include: (1) The commitment and capability to collect fees adequate to cover the costs of the State permitting program, (2) the legal authority to assure that affected sources comply with all applicable requirements under the Act, (3) fixed permit terms not to exceed 5 years, (4) the opportunity for public participation in the permit issuance process, (5) the opportunity for EPA to review and object to the issuance of any permit, and (6) the requirement that a proposed permit will not be issued if EPA objects to its issuance.

In the notice of final rulemaking granting interim approval, EPA must specify the changes the State must make

to receive full approval. The EPA may grant interim approval, which may not be renewed, for a period of up to 2 years. During the interim approval period, the State is protected from sanctions for failure to have a program and EPA is not obligated to promulgate a Federal permit program in the State (502 (g) and (d)(2)–(3)). Permits issued under a program with interim approval have full standing with respect to title V and the 1-year time period for source submittal of permit applications begins upon interim approval as does the 3-year time period for processing the initial permit applications discussed in the following section.

(5) State Permit Review.

As noted above (III.B.(4)), sources are required to submit permit applications to the permitting authority within 1 year of program approval, whether full or interim. For title IV (acid rain) sources, however, specific superseding deadlines are provided for the submission of applications for Phase II permit applications, which will not be due to States until January 1, 1996 (408(D)(2)). For the initial round of permit applications, the permitting authority must establish a phased schedule for processing permit applications submitted within the first full year after program approval. This schedule must assure that the permitting authority will act on at least one-third of the permits each year over a period not to exceed 3 years after approval (interim or full) of the program (503(c)). The EPA urges States to encourage early submittals of complete applications.

States are required to issue permits under the acid rain program by December 31, 1997 (408(D)(3)). For most States, this deadline will coincide roughly with the second year of initial permit action. Additionally, expedited review and issuance procedures may be required for permit applications for sources pursuing compliance extensions for early reductions of hazardous air pollutants under section 112(i)(5).

After acting on the initial round of applications, the permitting authority must act on a completed application and issue or deny a permit within 18 months after receiving the complete application. The permitting authority should also establish reasonable procedures to prioritize review of permit applications, especially in the case of applications for new construction or modifications as defined in Title I.

C. The EPA Program Oversight

Federal authority for oversight of State operating permit programs is described in § 70.10. Such oversight activities include situations where a State fails to submit an approvable permit program, or EPA determines that a permitting authority is inadequately administering and enforcing a permit program or an approved permit fee program.

(1) State Failure to Submit A Program

The EPA must apply sanctions to a State where the Governor has not submitted a program within 18 months after the deadline for submittal, or where 18 months have passed since EPA disapproved the program in whole or in part (502(d)(2)(B)). The sanctions are the same as those in Title I: A highway funding cutoff, and a two-to-one offset ratio for new or modified sources (179(b)). The EPA may apply the offset ratio sanction only in areas where the failure to submit or disapproval relates to an air pollutant for which the area is designated nonattainment. One sanction may be applied any time during the 18-month period following the date required for program submittal or program revision (502(d)(2)(A)). The EPA must apply one of these sanctions after the above-referenced periods elapse. If the EPA finds a lack of good faith effort on the part of the State, both sanctions are to apply until the State comes into compliance with the requirements of title V (179(a)(4)). If the State has no approved program 2 years after the date required for submission of the program, EPA must promulgate, administer, and enforce a Federal permit program for the State (502(d)(3)).

If the EPA determines that a State's fee program is not approvable or that a permitting authority is not adequately administering an approved fee program, the EPA will promulgate under part 71 a Federal permit program which the Agency will administer and enforce where the State fails to submit, correct, or implement its program. The Agency has the authority to collect reasonable fees from the permittees to cover the costs of administering the program. Any source that fails to pay fees shall be subject to additional penalties. Fees, penalties, and interest collected by the EPA will be deposited in a special U.S. Treasury fund for permitting activities and held for future appropriation.

(2) State Failure to Implement a Program

Whenever EPA determines that a permitting authority is not adequately administering and enforcing a program, EPA must notify the State (502(i)(1)). If EPA determines that the failure to administer and enforce the program persists 18 months after EPA's notice to the State, EPA must apply the same sanctions in the same manner as required for a failure to submit an approvable program (502(i)(2)). The EPA has the option of imposing any one of the sanctions before the 18-month period has passed (502(i)(1)). If the State has not cured the failure to administer and enforce the program within 18 months after EPA's notice, EPA must promulgate, administer, and enforce a Federal permit program within 2 years after the notice to the state (502 (i) (4)).

D. Complete Permit Applications

Permit Applications Each State program must establish specific criteria to be used in defining a complete permit application. A complete application is one that the permitting authority has determined to contain all the necessary information needed to begin processing the permit application. The permitting authority can determine, however, that the application is not complete if the source fails to provide timely updates to the application that the permitting authority needs to issue the permit within the specified deadlines.

The permitting authority must provide notice to the source when a complete application has been received. In the event that no notice is provided to the source within 30 days after receipt of the application by the permitting authority, the application shall be deemed complete.

A source which files a timely and complete application for a permit or a renewal will not be liable for failure to have a permit if the permitting authority delays in issuing or reissuing the permit, provided the delay in issuing the permit was not due to the applicant's failure to respond in a reasonable and timely manner to written requests from the permitting authority for additional information needed to evaluate the application. This protection also applies to sources requiring NSR permits. They must have filed a complete application for a title V operating permit and have a preconstruction permit before operating the new source or major modification (503(d)). In general, a complete application must be submitted according to the transition schedule approved within the program and in a timely way for subsequent renewals. "Timely" for renewals is proposed to mean 18 months prior to expiration of the permit, unless some other time is approved by the Administrator. Correspondingly shorter times might be appropriate when the fixed term of the permit is for less than 5 years or where the permitting authority is obligated to act on permit renewals in less than 18 months. In no event will EPA approve a time period which is shorter than 6 months before permit expiration.

All complete applications must contain information which identifies a source, its applicable air pollution control requirements, the current compliance status of the source, the source's intended operating regime and emissions levels, and must be certified as to their truth, accuracy, and completeness by a responsible official after making reasonable inquiry. Each permit application must, at a minimum, include a completed standard application form (or forms) and a compliance plan, which describes how a noncomplying source plans to achieve all applicable air quality requirements under the Act. The plan must include a schedule of compliance and a schedule for the source to submit progress reports to the permitting authority no less frequently than every 6 months. All sources must submit a compliance certification report at least once a year. Parts 72 through 78 will contain specific requirements for acid rain affected sources regarding compliance schedules, progress reports, and compliance certifications.

The minimum data elements proposed for inclusion in all standard application forms, as well as the basic requirements for compliance plans for noncomplying sources, are presented in § 70.5 of the regulations. With the exception of certain Federal programs (e.g., acid rain), EPA will not require that any specific form be used by States as long as the minimum data elements are provided to EPA. However, the Agency will encourage the use of certain model forms as a preferred way to meet the requirements of § 70.5.

Additional information may be required from some subject sources. Those located in nonattainment areas under title I, part D of the Act may be required to fulfill the emissions statement requirements for certain sources of VOC's and NO_x. Similarly, sources of hazardous air pollutants subject to section 112 which are attempting to comply with alternative emissions limits will also need to submit additional information.

E. Permit Content

The State regulations required under Title V and proposed in § 70.6 must assure that permits meet all applicable requirements of the Act and include the following:

(1) A fixed term, not to exceed 5 years (502(b)(5)(B)), except that affected sources under title IV must have 5-year fixed terms (408(a)) and solid waste incinerators under section 129(e) must have up to a 12-year fixed term.

(2) Limits and conditions to assure compliance with all applicable requirements under the Act, including requirements of the applicable SIP (504(a)) and title IV.

(3) A schedule of compliance for noncomplying sources, which is defined as a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with applicable requirements under the Act (504(a) and 501(3)).

(4) Inspection, entry, monitoring, compliance certification, recordkeeping, and reporting requirements to assure compliance with the permit terms and conditions, consistent with any monitoring regulations that EPA promulgates under section 504(b) and title V (504(c)). Nothing in this regulation should be read to require continuous emissions monitoring in situations where it is not otherwise prescribed.

(5) A provision describing conditions under which any permit for a major source with a term of 3 or more years must be reopened to incorporate any new standard or regulation promulgated under the Act (502(b)(9)).

(6) Provisions under which the permit can be revised, terminated, modified, or reissued for cause.

(7) Provisions ensuring operational flexibility within a permit so that certain changes can be made within a permitted facility without a permit revision, provided that no "modification" (as defined in title I of the Act) would occur and a notice is provided to the permitting authority at least 7 days in advance where the permit would not allow such changes (502(b)(10)).

(8) A provision that nothing in the permit or compliance plan issued pursuant to title V of the Act shall be construed as affecting allowances (408(b)).

The operational flexibility provision contained in title V must be implemented carefully and fairly so that a source can respond quickly to changing business opportunities while, at the same time, the permitting authority is assured that the source will meet all the applicable requirements of the Act. Before considering EPA's proposed provisions on operational flexibility, however, it should be recognized that the nature of a permit is to allow anything that it does not expressly prohibit. That is, a source may not only do what its permit specifically allows, but also what the permit terms do not specifically prohibit. Thus, when § 502(b)(10) speaks of changes that do not result in exceedances of the emissions allowable under the permit, this means any change that does not violate an express prohibition in the permit is allowed. Several approaches to achieving this flexibility in permits are described in section IV.F.(5). The EPA solicits comments on these and any other suggested approaches.

F. Permit Issuance and Review

Proposed regulations concerning the processes for permit issuance, review, renewal, revision, and reopening are found in § 70.7. Briefly, these include:

(1) Timing of Permit Application, Review, and Issuance

Sources required to have a permit must submit a complete permit application and compliance plan (for noncomplying sources) to the permitting authority within 12 months of the effective date of the State program. The permitting authority may designate a period of less than 12 months for initial submission of applications. Permit applications and compliance plans required under title IV of the Act (acid rain) must be submitted on a schedule different from those required under title V. Phase II sulfur dioxide (SO_2) permit applications and compliance plans must be submitted to the States by January 1, 1996 (408(d)(2)). States must act on these applications by December 31, 1997 (408(d)(3)). These applications and compliance plans will be binding on the source until a permit has been issued. Applications with respect to NO_x under title IV will be due January 1, 1998.

(2) Permit Notification to EPA and Affected States

The permitting authority must provide notice to certain States and EPA of permit applications received and proposed permits. It must submit to EPA the following:

(a) The application for any permit, renewal, or revision, including any compliance plan, or any portion EPA determines it needs to review the application and permit effectively; and

(b) Each permit proposed to EPA and each permit issued as a final permit by the State (505(a)(1)).

In regard to notification of States, the permitting authority is required to notify all affected States of each permit application and each permit submitted for public comment. The authority must also notify each State within 50 miles of the applicant source. The permitting authority must give all such States an opportunity to submit written recommendations for the permit. If the authority refuses to accept those recommendations, it must provide its reasons for refusal in writing (505(a)(2)).

The EPA may waive its own and neighboring States' review of permits for any category of sources, except major

sources, either when approving an individual program, or in a regulation applicable to all programs. The EPA may also waive its own right to review, but maintain the requirement for a State to notify neighboring States (505(d)). During phase II of the acid rain program, the Agency does not intend to waive its own right to review affected sources.

(3) The Agency Review and State Response

The EPA must by law object to any permit that would not be in compliance with the applicable requirements of the Act, including the applicable implementation plan. If EPA objects within 45 days after receiving either the proposed State permit or the notice that the permitting authority has refused to adopt a neighboring State's recommendations for the permit, the permitting authority must respond to EPA in writing. The EPA must provide the permitting authority and permit applicant a statement of reasons for the objection (505(b)(1)).

The permitting authority may not issue the permit with respect to title V if EPA objects, unless it revises the permit to meet EPA's objections. If the authority has already issued the permit, EPA will modify, terminate, or revoke the permit, and the permitting authority must reissue it to meet EPA's objection (505(b)(3)). The permitting authority has 90 days after EPA's objection to revise the permit (unless the permitting authority does so first). If the permitting authority fails to do so, EPA must issue or deny the permit (505(c)).

(4) Judicial Review and Public Petition

An approvable program must provide for judicial review in State court of the permit action whether the review is obtained by the applicant, anyone who participated in the public comment process, or any other person who could obtain judicial review of the action under applicable law (502(b)(6)).

Within 60 days after the expiration of the 45-day EPA review period, any person may petition the Administrator to veto a permit if EPA fails to object. The objections in the petition must have been raised during the comment period on the permit provided by the State issuance process, unless the petitioner shows that it was impracticable to raise the objections at that time. The petition shall not postpone the effectiveness of a permit that has been issued.

The Administrator shall grant or deny a petition within 60 days after it is filed. The EPA must issue an objection if the petitioner demonstrates to the satisfaction of the Administrator that the permit is not in compliance with the Act, including the applicable SIP and title IV requirements. If the Administrator denies the petition, the denial is subject to review in the Federal Court of Appeals under section 307 (505(b)(2)).

Where EPA objects to a permit and the State fails to meet EPA's objection, EPA must then issue or deny the permit. The Federal Court of Appeals may review EPA's final action in issuing or denying the permit under section 307. Title V provides that EPA's objection to a permit is not subject to judicial review until EPA takes final action on the permit (505(c)).

(5) Permit Shield and Reopenings

Section 504(f) of the Act defines the permit shield provision of title V, which enables States and the Administrator to provide sources with greater certainty as to their legal obligations under the Act. This section establishes that the permit may provide that compliance with the permit shall be deemed compliance with all other applicable provisions of the Act, if the applicable requirements of such provisions are included in the permit, or if the permitting authority, in acting on the permit, determines that such other provisions (which shall be referred to in such determinations) are not applicable and if this determination or a concise summary thereof is included in the permit. The EPA encourages States to employ the "permit shield" routinely to help stabilize the permit process and give greater certainty to the regulated community.

The EPA is soliciting comment on the potential scope and effect of the permit shield. It is possible to read the shield provision narrowly, limiting its protection to those requirements the permit explicitly addresses. The EPA believes, however, that the shield provision should be interpreted broadly, thus protecting a source from enforcement of a whole class of Act requirements if the permit addresses any one of those requirements.

Under either interpretation, EPA may limit the scope of the permit shield by rule. While EPA is proposing a broad interpretation of the shield in today's notice, the Agency intends to prohibit use of the shield in cases where the source initiates changes that result in requirements becoming applicable to the source beyond those contained in the permit (until such changes are later incorporated into the permit) or where an applicable requirement is omitted from a permit. In no event can any source seeking to obtain or renew a part 70 permit be shielded from enforcement action that results from violations of any applicable requirements (including orders and consent decrees) that occurred before the permit was issued or from requests for additional information pursuant to section 114 of the Act.

Any approvable program, at a minimum, must require that the permitting authority will revise all permits with terms of 3 or more years to incorporate applicable requirements under the Act that are promulgated after issuance of the permit. Such revisions must be made using the notice and comment procedures for permit issuance, and must be made within 18 months after the promulgation of the new requirement. No revision is required if the effective date of the requirement is after the expiration of the permit term (502(b)(9)). The EPA is proposing to interpret the provision as being applicable to major source permits with a remaining life of 3 or more years.

Approvable programs also must require that the permitting authority may terminate, modify, or revoke permits for cause (502(b)(5)(D)). "Cause," for example, may exist when the permit contains a material mistake made in establishing the emissions standards or limitations, or in other permit requirements. For purposes of acid rain, permit revision procedures will be governed by part 72.

Phase II acid rain permits will need to be reopened to incorporate NO_x provisions, which are not due until 1998. Excess emission offset plans and all allowance allocations and transfers, however, shall be deemed incorporated into each unit's permit, upon recordation or approval by the Administrator, without further permit revision and review.

If EPA finds that cause exists to reopen a permit, EPA must notify the permitting authority and the source. The permitting authority has 90 days after receipt of the notification to forward to EPA a proposed determination of termination, modification, or revocation and reissuance of the permit. The EPA may extend the 90-day period for an additional 90 days if a new application or additional information is necessary. The EPA then may review the proposed determination under the review procedures of permit issuance. If the permitting authority fails to submit a determination or if EPA objects to the determination, EPA may terminate, modify, or revoke and reissue the permit. The EPA must provide notice and "fair and reasonable procedures" when it terminates, modifies, or revokes and reissues a permit (505(e)). The Agency proposes that any permit

reopenings accomplished by the permitting authority will supersede any applicable portion(s) of a permit shield that is in effect.

(6) Permit Revisions

Section 502(b)(6) does not define with precision how permit revisions are to be processed, thus leaving EPA discretion for construing this provision, as explained below. The EPA is today proposing three types of permit revisions that are needed to amend the part 70 permit to accommodate operational changes which do not qualify under the operational flexibility provisions of section 502(b)(10) (IV.F.(5)) as previously discussed. Instead, they trigger the need for revision to permits prior to their renewal.

The first class of permit revisions consists of minor permit amendments. These are changes which go beyond the activities allowed in the original permit that increase the total emissions allowed under the permit (for any regulated pollutant from emissions units addressed by the permit), but do not rise to the level of modifications subject to title I NSR procedures and do not violate any applicable Federal requirements.

Under such a "fast track" process for minor permit amendments, States are free to adopt procedures to allow such changes to take effect automatically after a specified period of time (no less than 7 days), as long as the permitting authority does not object during this period. The second class of permit revisions are administrative permit amendments. These changes are either insignificant ones which adjust details not important to air quality (e.g., change in source name) within part 70 permits or changes which have been already reviewed and processed under new source review procedures approved into the SIP. Changes qualifying as administrative permit amendments can be administratively incorporated into the operating permit by the permitting authority.

The third class of permit revisions is permit modifications. A permit modification is a revision to a part 70 permit that meets the requirements of section 707(d) of this part. A permit modification is subject to the same procedures required for initial permit issuance, including EPA review and the opportunity for public comment and hearing. After receipt of an application for a modified permit, permitting authorities will focus their efforts on review of the specific changes indicated in the application. However, they must also evaluate the application to confirm that it assesses the impacts of such changes on other aspects of the source's operations and assures continued ability to comply with all applicable requirements of the Act.

Sources subject to requirements of the acid rain program must hold allowances to cover their emissions of SO_2. These sources will have conditions in their permits prohibiting emissions exceeding the number of allowances held. Sources holding emissions allowances under the acid rain program may buy, sell, or trade those allowances. Allowance transactions registered by the Administrator will cause automatic amendment of the source's permit as a matter of law, without following either the permit modification or amendment procedures described above. Regulations governing allowance trading will be promulgated at 40 CFR part 73.

(7) Permit Renewal

Each permit is to have a fixed term not to exceed 5 years (except that permits for municipal waste combustors may have terms up to 12 years). Renewal permits are subject to the same requirements as those applying to initial permits, including the requirement for a timely and complete application and compliance plan for noncomplying sources and processing by the permitting authority within 18 months of a complete application.

The source will be able to operate after expiration of the permit only if it has submitted a timely and complete application for a new permit, as mentioned in the previous discussion on complete applications (III.D.). To maintain the protection afforded by having a complete application, the source applicant still must respond in a reasonable fashion upon written request by the permitting authority to provide additional information needed to develop and issue the permit. Should a permit expire before a source submits a complete application, the source's right to operate is terminated unless and until a complete application is filed with the reviewing authority (503(d)), subject to a grace period where only administrative penalties would be applicable. The source is then subject to enforcement action (for operating without a title V permit) for any period of time that it has operated without a renewed permit and without having submitted a complete application. The application shall be deemed to be complete 30 days from the date of its submission to the permitting authority, unless the permitting authority has already determined that the application is not complete. In addition, consistent with the established precedent in the NPDES program under the CWA, EPA is proposing that, except where inconsistent with State law or as provided in part 72 for the acid rain portions of a permit, the conditions of a permit where the fixed term has expired still remain enforceable until they are replaced by those in a reissued permit.

G. Fee Demonstration

A key requirement of State operating permit programs is that States establish an adequate permit fee program. Regulations concerning fee programs and appropriate criteria for determining the adequacy of such programs are set forth in § 70.9.

An approvable permit program must require the fee payer to pay an annual fee (or the equivalent over some other period) sufficient to cover all "reasonable (direct and indirect) costs" required to develop and administer the permit program (502(b)(3)(A)). The EPA proposes to interpret reasonable costs to include the costs of administering most air control program activities which involve sources subject to title V. All fees collected by a permitting authority under title V must be used solely to support the permit program (502(b)(3)(C)(iii)). The EPA is proposing that these fees must cover a broad range of costs, including:

(1) Reviewing and acting upon any application.

(2) Implementing and enforcing the permit, including any permit issued before enactment of title V, but not any court costs or other costs associated with an enforcement action.

(3) Emissions and ambient monitoring, including continuous emissions monitors (CEMS) (where applicable) and inspections.

(4) Preparing generally applicable regulations or guidance.

(5) Modeling analyses and demonstrations.

(6) Preparing inventories and tracking emissions (502(b)(3)7(A)(i)-(vi)).

(7) Permit-related functions performed by air pollution control agencies which do not issue permits directly.

(8) Development and administration of the State small business stationary source technical and environmental compliance assistance program as it applies to part 70 sources.

(9) Information management activities to support and track permit applications, compliance certifications, and related data entry.

The program must presumptively collect a fee amount from all permitted sources equal to at least $25 per ton (1990 baseline) for the actual emissions of each regulated pollutant, with the exception of carbon monoxide (502(b)(3)(B) (i) and (ii)) and with the

further exceptions that the State is not required to count emissions of any pollutant from any one source in excess of 4,000 tpy (502(b)(3)(B)(iii)) or if these emissions are already accounted for within the emissions of another regulated pollutant (although the State is not precluded from doing so). The program need not collect the $25 per ton amount if it can provide a demonstration that a lesser amount will adequately support the direct and indirect costs of the program (502(b)(3)(B)(iv)). Conversely, States are free to use different approaches or charge more than $25 per ton and must do so if additional funds are necessary to cover the costs of the program. In any event, the permitting authority must provide for a periodic accounting of how the collected fees were used to support the program, and how they meet the presumptive minimum described above.

The EPA interprets title V to offer permitting authorities flexibility in setting variable fee amounts for different pollutants or different source categories, as long as the sum of all fees collected is sufficient to meet the reasonable direct and indirect costs required to develop and administer the provisions of title V of the Act, including section 507. The fee amount is to be increased each year according to the Consumer Price Index (CPI) at the time the index is published as defined by section 502(b)(3)(B)(v). In addition, the EPA interprets title V to direct States, at a minimum, to recover costs related to meeting Federal requirements, including the requirements of the applicable State plan that implements the relevant requirements of the Act. Nothing in this section is intended to provide States any additional authority (beyond what is otherwise authorized under State law) to levy fees beyond the amount necessary to offset the program costs of title V.

Section 408(c)(4) of the Act provides that during the years 1995 through 1999, no fee shall be required to be paid under section 502(b)(3) or under section 110(a)(2)(L) with respect to emissions from any unit which is an affected unit during Phase I of the acid rain program. The Agency interprets this provision to mean that EPA may not collect fees from Phase I-affected sources prior to the year 2000, but that States are not precluded from collecting fees from these sources for permitting activities pursuant to other requirements of the Act.

If EPA determines that a State's fee program is not approvable, or that a State is not adequately administering or enforcing an approved fee program, EPA may collect reasonable fees from permittees. Such fees shall be designed solely to cover EPA's costs of administering the Federal permit program (502(b)(3)(C)(i)). Sources failing to pay a fee assessed by EPA must pay a penalty of 50 percent of the fee amount, plus interest (502(b)(3)(C)(ii)). The EPA must deposit federally-collected fees, penalties, and interest in a special Treasury fund, subject to appropriation, to carry out EPA's permitting activities.

H. Permit/SIP Relationship

The SIP remains the basis for demonstrating and ensuring attainment and maintenance of the national ambient air quality standards (NAAQS). The permit program collects and implements the requirements contained in the SIP as applicable to the particular permittee. Since existing SIP's contain all relevant present and past requirements, proper implementation of the permit program will ensure that all SIP provisions applicable to a particular source be defined, clarified, interpreted (as necessary), and collected into a single document. The applicable requirements would include any recent SIP changes, whether as a result of a State or local SIP revision or of a Federal implementation plan (FIP) action by EPA. Where appropriate, EPA intends to promote the implementation of the permit program through the use of model permits for critical source types. Moreover, EPA proposes a broad interpretation of the shield, which requires that States with areas under a SIP call provide permitted sources a shield from compliance with any new SIP requirements in a manner consistent with how the State will meet any outstanding SIP call.

As previously discussed, title V affords reasonable operational flexibility to subject sources. The relationship between title V permits and SIPs is a key factor in determining the extent to which operational flexibility is available to sources, since each permit, in part, must assure compliance with the applicable implementation plan. EPA recognizes that it will take time to complete the transition from a regulatory system where SIPs are the primary tool for implementing and enforcing the Act, to one where operating permits ultimately assume primary responsibility for implementation and enforcement. Elsewhere in today's proposal, the EPA takes comment on ways to ensure a smooth transition to increasingly general, and thus more flexible, SIPs, combined with more detailed permits specifying the enforceable operating limits applicable to subject sources.

Permits issued pursuant to title V are not part of the SIP, but they, like SIP's, are federally-enforceable. Where reliance on tighter conditions found in permits is critical to satisfy an applicable requirement of the Act, the SIP demonstration must recognize the new permit limits in context of ensuring attainment and maintenance of the NAAQS and any other interim requirements to make reasonable further progress. At the option of the State, this might involve the periodic incorporation of these limits into the SIP to ensure their permanence. The EPA will allow, to the extent possible, batch submittals and/or expedited processing procedures for incorporation of these limits into the SIP. This will include the use of the SIP processing reforms announced in 54 FR 2214, January 19, 1989.

Today's proposal also solicits comment on ways to accomplish an upgrade of the SIP demonstration (relative to the results of the permit process) without making the SIP's so detailed as to limit future permit changes at affected sources. One concept proposed for comment would allow, as a substitute for having to incorporate even tighter permit requirement into the SIP, a single broad SIP provision. This provision would reflect the aggregate effect of tighter limits achieved in the permit program, but only to the extent necessary to demonstrate attainment and maintenance of the NAAQS or to meet any other requirement related to Reasonable Further Progress.

I. New Source Review/Title V Relationship

Decisions made under the NSR and/or PSD programs (e.g., best available control technology (BACT)) define applicable SIP requirements for the title V source and, if they are not otherwise changed, can be incorporated without further review into the operating permit for the source. The title V program is not intended to interfere in any way with the expeditious processing of new source permits. The permitting authority is required to have reasonable procedures and resources to assign priority to action on permits for new construction or modification (503(c)).

J. Small Businesses

The EPA has given serious consideration in this rulemaking to minimizing any undue impacts on small businesses. Accordingly, except for acid rain sources, EPA is proposing to defer initially the applicability from the

permitting program of all nonmajor sources which would have been otherwise subject to title V provisions. These sources are believed to be disproportionately small businesses. The proposed exception to this deferral is for sources in nonattainment areas, where permitting of nonmajor sources may be deferred only if the permitting authority makes a showing that such action will not adversely affect the State's ability to meet its SIP obligations under the Act. The EPA would continue the permitting deferral for certain nonmajor sources if permitting them is demonstrated by EPA to be impracticable, infeasible, or unnecessarily burdensome in a future rulemaking.

For those small businesses still required to obtain, or those opting to obtain, a permit, and for other appropriate source categories, EPA is promoting the use of general permits where possible. A general permit is a single permitting document which can cover a category or class of many similar sources. Public notice and an opportunity for a public hearing must be provided by the permitting authority when considering issuance of a general permit (504(d)), but not when the individual sources subsequently submit requests for coverage and are evaluated for a permit reflecting the terms of the general permit. The permit issuance process for eligible sources can thus be greatly simplified which substantially reduces the administrative burden on both sources and the permitting authority.

Section 507 requires States to establish a small business stationary source technical and environmental compliance assistance program. The program must be adopted as part of the SIP consistent with sections 110 and 112. The States must submit the proposed program within 2 years after enactment of title V (507(a)). The State must also establish a Compliance Advisory Panel to monitor implementation of the program (507(e)).

The program must contain the following provisions for small business stationary sources:

(1) Mechanisms for developing information concerning compliance methods and programs to encourage lawful cooperation among such sources.

(2) Mechanisms to assist such sources with pollution prevention and accidental release detection and prevention.

(3) A State ombudsman for such sources to aid in implementation of the Act.

(4) A compliance assistance program to help such sources determine applicable requirements and receive permits.

(5) Mechanisms to assure that such sources receive notice of their rights under the Act.

(6) Mechanisms to assure that such sources are informed of their obligations under the Act, including referrals to qualified auditors.

(7) Procedures to consider requests from such sources to modify work practice or technological compliance methods, or the milestones for implementing such methods. Such requests would be based on the source's technological and financial capability. All such modifications must comply with the Act's requirements, and Federal regulations may only be modified if the regulation provides for the modification (507(a)(1)–(7)).

The EPA must establish a program for small business stationary sources within 9 months after enactment which must (1) assist the States in developing their programs, (2) issue guidance about alternative control technologies and pollution prevention methods, and (3) in States that fail to adopt a program, implement the requirement to assist such sources in determining applicable requirements and receiving permits (507(b)). The EPA must also have a Small Business Ombudsman to monitor implementation of the program (507(d)). Other oversight procedures are contained in title V to ensure the effectiveness of this SIP-based program.

To qualify for assistance from these programs, a source must meet all the following conditions:

(1) Be owned or operated by a person employing 100 or fewer individuals.

(2) Be a small business under the Small Business Act.

(3) Not be a major stationary source.

(4) Not emit 50 tons per year or more of any regulated pollutant.

(5) Emit less than 75 tpy of all regulated pollutants (507(c)(1)).

States may also include a source that is a major stationary source provided that the source does not emit more than 100 tpy of all regulated pollutants combined (507(c)(2)). The EPA or the State may exclude from the program any category of sources that has sufficient technical and financial capabilities to meet the requirements of the Act without the program. The EPA and the State must consult with the Small Business Administration and provide notice and opportunity for comment on such exclusions (507(c)(3)).

The State or EPA may reduce any fee required under the Act for small business stationary sources (507(f)). When developing regulations or control technique guidelines (CTG's) which require CEMS, EPA must consider the appropriateness of requiring CEMS at such sources. This provision does not apply to CEMS under the acid rain provisions of title IV (507(g)). The EPA must also consider the size, type, and technical capabilities of such sources when developing CTG's (507(h)).

K. Relationship with Section 112 (Air Toxics)

The operating permit program will implement existing section 112 standards for subject sources of hazardous air pollutants, as well as future standards to be promulgated under section 112 which describe requirements for the use of MACT, generally available control technology (GACT), and any technology used to reduce unreasonable residual risk. As noted earlier, a major source under section 112 is defined as any stationary source (or group of stationary sources) located in a contiguous area and under common control which has the potential to emit, after controls, 10 tpy or more of any hazardous air pollutant, 25 tpy or more of any combination of these pollutants, or a lesser quantity of a given pollutant if the Administrator so specifies.

Section 112(l) of the Act outlines a program for State implementation of section 112. The EPA proposes that the procedural requirements in section 112(l) to review and approve/disapprove State programs will be met by the promulgation of part 70, specifically as described in section V.E. of the preamble.

The State permit program submittal is required to contain a legal opinion affirming the adequacy of existing legal authority to implement and enforce certain section 112 provisions. Authority is needed to accept delegation of authority to implement and enforce MACT standards; to develop and enforce case-by-case determinations of MACT for new, reconstructed, or modified sources where no applicable emissions limitations have been yet established (112(g)); and to develop and enforce case-by-case determinations of MACT where EPA fails to issue a standard for a major source category or subcategory within 18 months of the scheduled promulgation date (112(j)).

The operating permit program will also be the principal long-term mechanism for implementing alternative emissions limitations for sources which demonstrate that they have achieved reductions of 90 percent or more in emissions of hazardous air pollutants, or reductions of 95 percent or more in emissions of particulate hazardous

pollutants. Existing sources which make sufficient early reductions will receive a 6-year extension from the compliance date for meeting the otherwise applicable standard (2(i)(5)).

L. Relationship With Title IV (Acid Rain)

Title IV mandates a two-phased acid rain control program which will be implemented, as in the case of other Act requirements, through title V operating permits. The requirements of part 70 will apply to the permitting of affected sources under the acid rain program, except as modified in 40 CFR parts 72 through 78, pursuant to title IV (506(b)). Compliance with the acid rain program requirements in parts 72 through 78 will not exempt or exclude the owner or operator of any source subject to those requirements from compliance with any other applicable requirements of the Act (403(f)).

Title IV sets forth certain permitting requirements that supplement the title V requirements addressed by today's proposal. Places where the acid rain permitting program may differ from the title V operating permit program have been highlighted, and some specific statutory requirements under title IV are included in this proposal. Most specific requirements of the acid rain permit program will be established in a separate rulemaking, with final rule promulgation 18 months after enactment. It is contemplated that the acid rain permit program rules will be promulgated at 40 CFR part 72. Other requirements for that program will be promulgated at parts 73 through 78 of 40 CFR. References to those sections are used in this rulemaking where appropriate.

Acid rain-specific permit content requirements must be included in permit applications, compliance plans, and operating permits under both phases of the acid rain program. The permitting process will be different for Phase I and Phase II. Section 408 provides that Phase I of the acid rain program (1995 through the end of 1999) will be implemented entirely through operating permits issued by the EPA. Phase II (beginning in 2000) will be implemented by operating permits issued by the States with federally-approved permit programs, or by the EPA in the event of State defaults. Thus, Phase II permitting will be in accordance with the process established by the rules proposed today, as supplemented by the acid rain-specific content regulations in part 72.

The acid rain permit regulations are anticipated to include a description of the relationship of the acid rain program to other programs incorporated in the permits, necessary definitions, applicability requirements, and necessary permit elements not included in the rule proposed here. These will include: (1) Acid rain-specific requirements for permits and compliance planning, including requirements for affected sources relying on one or more alternative compliance methods authorized by the statute (e.g., extensions, substitutions, reduced utilization, energy conservation or renewable energy, repowering, and options); (2) compliance certification and reporting requirements; (3) requirements for designated representatives for affected sources; and (4) excess emission offset planning and fee requirements.

Whether permits are issued by the State or EPA, acid rain permit application forms must be used, including a provision concerning the binding effect of permit applications, which must (at a minimum) state that the acid rain portion of the permit application and proposed compliance plan, including amendments thereto, submitted for an affected source under the acid rain program shall be binding on the owners and operators, and on the designated representative for the source, and shall be enforceable as a permit for purposes of the acid rain program until a permit is issued by the permitting authority.

All acid rain permits issued to affected sources must prohibit: (1) Annual emissions by affected units in excess of the applicable emissions limitation for NO_x; (2) annual emissions of SO_2 by affected units in excess of the number of allowances to emit SO_2 held by the owner or operator, or the designated representative, for use in that year by each affected unit; (3) any person from holding, using, or transferring any acid rain allowance, except in accordance with regulations at part 73; (4) the use of any allowance prior to the calendar year for which it was allocated; and (5) circumvention of any other provision of parts 72 through 78, or of the permit (403 (f), (g)). Standard terms must similarly be included in permits for acid rain affected sources in order to ensure a nationally consistent program. In order to facilitate such standardization, EPA plans to develop forms at the time of the acid rain rulemaking and to develop support for computer generated permitting.

When developing permit revision procedures, States should be aware that the statute forbids requiring permit revisions as a result of allowance transactions. In accordance with title IV, all acid rain allowance allocations and transfers will, upon being recorded by the Administrator in accordance with section 403 of the Act and part 72, be deemed a part of each unit's acid rain permit requirements, without need for any further permit review and revision. Nothing in a permit shall be construed as affecting allowances. In addition, no permit revision shall be required for increases in emissions that are authorized by allowances held for a unit pursuant to the acid rain program, provided that the emissions increases authorized under the acid rain program do not excuse noncompliance with any other emissions limitation, standard, or requirement under the Act, including under title I for the protection of ambient air quality standards, and that the acid rain requirements of the permit shall be governed by and consistent with the regulations at parts 72 through 78.

No permit or revision to it may be issued that is inconsistent with the requirements of the acid rain program, requirements of the Act, or requirements of parts 72 through 78. Examples of safeguards that will be developed under the part 72 rulemaking which should limit permit revisions include: (1) Permit revisions shall be effective only to the extent they are consistent with parts 72 through 78; and (2) limits on the use of the amendment authority, e.g., changes in the designated representative for purposes of a source's acid rain program requirement, shall be supported by a certification of redesignation in accordance with part 72.

Rules for Federal acid rain permitting during Phase I, and in the event of State defaults during Phase II, will be published at 40 CFR part 72. Acid rain permit content requirements, which must be included in permits issued by States with approved programs, will be promulgated at that time. Public comment is invited at this time regarding the impact of this general permit program rulemaking on the acid rain permit program. Public comment in response to the acid rain rulemaking proposal will, however, only be accepted with regard to the provisions proposed at that time. Comments will not be considered at that time reopening matters addressed by this rulemaking.

IV. Detailed Discussion of the Key Aspects of the Proposed Regulations

This portion of the preamble provides more detail on selected provisions of the proposed regulations. Issues are identified and EPA's proposed positions are discussed. Discussion is also included on the implications of the

regulations and on the way implementation is expected to occur.

A. Section 70.1—Statement of Program Goals

The purpose, benefits, and certain concepts of the regulatory requirements in part 70 are introduced in this section of the regulations. Detailed discussion of some of these concepts appear subsequently in this preamble. The key concepts include: (1) The permitting program generally codifies existing regulatory requirements and does not impose new control requirements; (2) the SIP will continue to be the mechanism for demonstrating attainment and maintenance of the NAAQS; (3) the permits will assure compliance by the source with an applicable requirement of the Act; (4) States may implement a more extensive program consistent with the Act; and (5) EPA must implement a Federal permit program in the event a State fails to satisfactorily implement its program. This program, consequently, may be more limited in scope than the State program.

B. Section 70.2—Definitions

Many definitions of terms in other parts of the Act or EPA regulations are utilized in part 70. In addition, a number of new terms introduced in title V and many terms created in conjunction with developing part 70 are defined by this section. These new definitions include terms necessary to communicate effectively the new regulatory requirements, including "complete application," "part 70 permit," "part 70 source," "permitting authority," and "renewal."

C. Section 70.3—Applicability

(1) Section 70.3(a)—Sources Subject to Permitting

This section describes program coverage and source applicability by defining "part 70 sources." Operating permit programs must cover the types of stationary sources (except where EPA has exempted in whole or in part a source category, subject to certain limitations) previously described in detail (III.A.), which includes major sources. Section 70.3(a) covers the sources included in section 502(a).[2]

Source and Major Source: The EPA wishes to clarify how the definitions of "stationary source" and "major source" will be applied under the operating permit programs and to explain how these concepts will relate to the definitions of stationary source currently in effect in other programs under the Act.

Stationary Source: The EPA has patterned its proposed definition of "stationary source" for the permits program on the definition for "stationary source" contained in title I. The Agency proposes in § 70.2(d) that "stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant.

Major Source: The EPA is taking comment on how to interpret the section 501(2) definition of "major source." Section 501(2) provides, in relevant part, that "the term 'major source' means any stationary source (or any group of stationary sources located within a contiguous area and under common control)" that would be a major source under sections 112 or 302, or part D of title I of the Act. As discussed below, the Agency proposes that "stationary sources" are to be grouped to determine if a major source exists on the basis of the same industrial grouping, or "major group" in the Standard Industrial Classification Manual (SIC code). Accordingly, EPA will require all commonly owned or controlled pollutant emitting activities on contiguous or adjacent properties to obtain an operating permit if they are within the same SIC major group, and assuming the aggregated activities emit enough pollutants to trigger the applicable emissions thresholds provided in the Act.

The EPA believes that aggregating sources by SIC code at the source site to determine whether a source would be major is the approach intended by Congress. The definitions of major sources in part D of title I have language similar to the title V language. For example, section 182(c) states that, for any serious ozone nonattainment area, "the terms 'major source' and 'major stationary source' include (in addition to the sources described in section 302) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 50 tons per year of volatile organic compounds." Although that definition does not explain whether equipment that does not emit VOC's would be excluded from the source if the remaining equipment emitted more than 50 tpy, the House Committee Report explaining the provision sheds light on that issue and on the title V definition. Specifically, the Report states the following:

The definition of "major source" here and elsewhere in the bill uses the term "group of sources located within a contiguous area and under common control." The Committee understands this to mean a group of sources with a common industrial grouping, i.e., the same two-digit SIC code. It is the approach followed today by EPA as a result of the Alabama Power litigation. It avoids the possibility that dissimilar sources, like a power plant and an adjacent coal mine, will be considered as the same "source" because of common ownership.

The legislative history reference therefore suggests that aggregation by SIC code should be done in a manner consistent with established NSR procedures. Accordingly, any equipment used to support the main activity at a site would also be considered as part of the same major source regardless of the 2-digit SIC code for that equipment. For example, an automobile manufacturing plant may consist of a foundry (SIC group 33), a power plant (SIC group 49), and an assembly plant (SIC group 37). Assume that the equipment is situated at the same site, under common ownership, and that the foundry and power plant are used solely to supply the assembly plant. In this example, all three activities would be considered to be part of one major source. However, if less than 50 percent of the output of the foundry was dedicated to the mentioned auto assembly plant, it would be considered as a separate source. If the power plant supported both the foundry and the assembly plant, it would be considered part of the source that consumes the largest percentage of the power generated.

The EPA solicits comment on whether or not to combine sources according to 2-digit SIC code when determining if those stationary sources constitute a major source under the title V permit program.

The Amendments require all major stationary sources to be permitted, even if the Act does not impose other substantive requirements on the facility. For example, in some States there are existing major stationary sources in attainment areas for which there are no applicable emission limits in a SIP. Title

[2] EPA notes that clean-up activities at hazardous waste Superfund sites will not be required to obtain title V permits, just as they currently need not receive CAA new source review permits. The Agency has previously decided that under the Comprehensive Environmental Response, Compensation, and Liability Act, such permitting is not appropriate. See the National Oil and Hazardous Substances Pollution Contingency Plan, 55 FR 8766–57 (March 8, 1990), and 40 CFR 300.5 (definitions of "applicable requirements" and relevant and appropriate requirements). Similarly, facilities that are required to obtain permits for other reasons need not include CERCLA remediation-related information on emissions in their applications; such facilities must, however, include such information on those emissions as is otherwise required, because they are subject to applicable requirements under the Clean Air Act.

V requires such major sources to obtain a permit although, under appropriate circumstances, States may choose to issue general permits to reduce the paperwork burden.

Section 112 requires that EPA publish a list of major and area source categories emitting one or more of the listed hazardous air pollutants before EPA sets standards that may apply to their toxic emissions. Title V requires major sources to obtain a permit, even if a MACT standard has not yet been promulgated and the source is otherwise unregulated under the Act. Even so, the permitting process for many of these sources will be meaningful. Those undergoing construction, modification, or reconstruction will be subject to new substantive controls pursuant to section 112(g). It is unlikely that major sources to which section 112 would be applicable would not be regulated elsewhere under the Act. That is, many of the pollutants regulated under section 112 are also VOC's or particulate matter and are regulated by SIP regulations designed to implement the ozone or PM-10 NAAQS. As discussed more fully in section V.E., title V permits will also be the vehicle that a permitting authority uses to codify emission limits and monitoring requirements proposed by sources to meet the early reduction requirement under section 112(i)(5), which defers application of MACT.

The EPA also solicits comment on whether the Agency should exempt from permitting requirements those sources that are "major" by virtue of the quantity of their emissions of particular pollutants, but whose emissions are not in any way actually regulated by a standard or other requirement under the Act. Arguably, issuing permits for such sources would serve no useful purpose under the Act.

Potential Emissions: In determining whether the amount of emissions from a stationary source will qualify the source as major and subject to part 70, EPA will rely on the concept of "potential to emit" (302(j), relevant sections of part D of title I, and 112(a)(1)). In so doing, EPA will determine potential emissions using the maximum capacity of a source to emit a pollutant, taking into account any federally-enforceable physical or operational limitation on that capacity (including any air pollution control equipment).

Including the federally-enforceable limitations on a source in the definition of potential emissions appears to create a circular definition problem. A source which enforceably restricts its emissions below the threshold for major stationary sources may be able to exempt itself from the permitting requirement, assuming no other provision of the Act captures that source in the program. However, the source seeks to exempt itself from one of the very programs capable of making enforceable the limits that create the exemption, but must first meet all substantive procedures and requirements in the process.

States may address this question using several techniques. They may decide not to include such operational limits in the definition of major stationary source for their operating permitting program, thereby assuring that such sources are permitted. A program might be able to permit such sources using general permits designed to impose capacity limits on a category of sources generically. States may then issue such sources State operating permits, without subjecting them to the federally-approved permit program, and submit those State permits as SIP revisions to make the limits federally enforceable. Alternatively, States may choose to submit their State operating permit programs to the extent that they focus on smaller sources to EPA for approval as a SIP revision. To be approved by EPA, a program must meet the requirements set forth in the requirements EPA articulated in its approval of the definition of "Federal enforceability" in the NSR program (see 54 FR 27274 (June 28, 1989)). This would then create a framework under which federally-enforceable permits could be subsequently issued by the States to limit the potential to emit of borderline sources without a need for case-by-case EPA approval.

The EPA also takes comment on the possibility of allowing such sources the option to submit to the appropriate permitting authority (with a copy to the EPA Regional Office) a commitment containing specific physical or operational conditions that would restrict the source's potential emissions to a level below the applicability thresholds stated in § 70.3(a). It must be signed by a responsible officer of the source with authority to make legally-binding commitments for the source. A commitment of this type must ensure that participating sources conduct adequate monitoring and submit monthly reports describing pollutant emissions to the permitting authority. The permitting authority and EPA could then continually verify the source's compliance with its commitment, and the source would not be required to obtain a part 70 permit.

The commitment must include an agreement that the source would submit a title V permit application within a short time (e.g., 30 days) after it determines that its emissions exceed the appropriate title V applicability threshold for the previous 12-month period. Failure by a source to meet its agreement and submit a title V permit application would make the source subject to appropriate enforcement penalties.

In addition, comment is solicited on: (1) Applicable methods for ensuring the Federal enforceability of such commitments, (2) ways of providing adequate public review and comment on these commitments, and (3) ways that State programs can cover the costs of administering such a program.

(2) Section 70.3(b)—Source Category Exemptions

Section 502(a) authorizes EPA, consistent with applicable provisions of the Act, to exempt one or more source categories, in whole or in part, from the requirement to have a permit. The EPA must determine that compliance with the permitting requirements is infeasible, impracticable, or unnecessarily burdensome on such source categories. The EPA may not exempt any major source from the permit requirements.

The EPA proposes to use the authority available under section 502(a) to defer initially the applicability of the title V program to all sources that would otherwise be subject but are not major or affected sources under the Act. The EPA finds that without this deferral, compliance by all these nonmajor sources with the permitting requirements would be "impracticable" and "infeasible" within the meaning of section 502(a). This finding is grounded in EPA's judgment that the initial years of the program will see EPA and the States significantly burdened by thousands of permit applications for major sources. This is so in part because the Act greatly broadens the definition of major source for title V purposes to include relatively small sources for the nonattainment and the toxics provisions. Nationwide, EPA estimates that over 34,000 sources are included in the definition of major source.

Dealing with these applications, at a time when the regulations are new and untried, is likely to tax Federal and State resources up to or beyond their limits. Limited numbers of qualified staff will be available, and in heavy demand by sources and permitting authorities alike. State and local agencies will be challenged to expand rapidly while maintaining effective management of programs and personnel. This initial wave of permitting will be difficult for permitting authorities. Creating the initial permits will require far more

attention than the subsequent processing in later years of permit renewals and modifications, which will often involve changes to only some aspects of the initial permits, or no changes at all.

Including the thousands of nonmajor sources covered by section 502(a) would greatly increase the workload on EPA and the State, with relatively minor air quality benefits, and at a time when they will be strained beyond capacity. This conclusion is based on EPA's judgment and experience in implementing new programs, most of which have not approached the scale of the permit program. The EPA's understanding of the number of nonmajor sources is preliminary, since the Agency has had little time between enactment and this proposal to study the coverage of the program in detail. Although EPA believes the current showing (as discussed in more detail below) amply supports this proposal (especially in light of the observation from *Alabama Power* that a deferral requires far less justification than an outright exemption, 636 F.2d at 360, n. 86), EPA requests any more detailed information and comments on its conclusion that including all sources in the permitting process during the initial glut of application processing would be impracticable and infeasible.

For several reasons, initially excluding minor sources poses few risks to air quality progress. Nonmajor sources emit less than major sources. Concentrating resources on major sources during the first phase of the program will make efficient use of those resources. Not only will the sources deferred from the program not be significant contributors to pollution impacts, many of them will still be covered by Federal regulations under the Act. Nonmajor sources will be subject to NSPS or existing national emission standards for hazardous air pollutants (NESHAP) regulations that generally already contain many of the same monitoring, recordkeeping, and reporting requirements that would apply to major sources and represent one of the major benefits of the permit program. Therefore, permitting these sources is less urgent than permitting major SIP sources. As stated above, a State with an ozone SIP that relies on emission reductions from nonmajor sources will have to make a special showing to defer such sources from the program. Finally, it would be especially burdensome on small businesses and small governments to force them through this program during the time when the States and EPA are gaining experience in implementing new programs under title V. Small businesses and small governments do not have the same legal and technical resources that are sometimes necessary to handle successfully a new program. Thus, EPA finds that permitting such nonmajor sources during the first 5 years of the program would be unnecessarily burdensome on those sources and impracticable to the States.

The EPA further proposes to end automatically the exemption for these nonmajor sources on or before a date 5 years from the effective date of the permit program in the State (approval of either a part 70 or part 71 program). In deciding which of these categories should continue to be exempted, the EPA will consider the relative administrative burden associated with reviewing the prospective category and whether and to what extent this burden would be acceptable. In determining acceptability, EPA will consider the possibility of using general permits or other alternatives to permitting each source individually. The EPA solicits comment and information concerning which source categories might be especially appropriate for permanent exemptions (notwithstanding the possible use of general permits), such as asbestos demolition and renovation operations under the NESHAP program and woodstoves under the NSPS program. The Agency also asks for comment on any other criteria that should be used to judge the effect of permanently deferring nonmajor sources, including the burden on sources and permitting authorities, and the aggregate effect on air quality of any permanent exemption.

Today's proposal to defer the initial applicability of nonmajor sources is limited in two important respects. First, the initial deferral does not automatically apply to sources which otherwise qualify as a subject source based on emissions of a pollutant for which its area of location is classified as nonattainment. Typically, this will involve ozone nonattainment areas. A permitting authority may exempt nonmajor VOC and NO_x sources from its program in those areas only if the authority submits to EPA an inventory of such sources and demonstrates that the State can assure compliance with its nonattainment area SIP obligations without permitting such sources during the first 5 years of the program. The EPA must approve the deferral for such sources. The EPA also solicits comment on the appropriateness of limiting the scope of the nonattainment exemption demonstration to only the larger of the nonmajor sources (i.e., no demonstration is needed for deferred applicability if nonmajor sources are below a certain size) otherwise subject to title V or only those that would not qualify for general permits.

The deferred applicability of certain sources would not preclude a source from requesting and receiving a part 70 permit. The EPA proposes that States allow into the operating permit program sources wanting to participate. Some companies have business reasons to seek an operating permit. For example, a lender may wish to determine that air emissions from a facility are permitted under the law. As a result, there may be sources that a permitting authority determines does not need a permit for air pollution control purposes, but which have independent business reasons to seek operating permits. In such cases, the Agency also strongly urges the use of general permits (as discussed below) to minimize any undue burden.

Finally, the Administrator reserves the right to restrict the presumption for the deferred applicability of nonmajor sources for any sources subject to a standard under section 112 which is promulgated after the final date of these regulations. The EPA would decide during the rulemaking process for the new section 112 standard how the title V program would apply to those affected sources which are nonmajor.

In connection with the deferral of nonmajor sources from the program for the first 5 years, EPA is soliciting comment on the waiver of EPA authority to review the permits for such sources if States choose to include them in the program. Some States may decide to include some or all nonmajor sources in their permit programs despite EPA's deferral. Section 506(a) authorizes States to adopt additional permitting requirements not inconsistent with the Act. Section 505(d) authorizes EPA to waive the requirement that the permitting authority notify EPA or neighboring States of each permit for nonmajor sources. The EPA could use this authority to reduce the administrative burden on the permitting authority, EPA, and the neighboring States. The EPA invites comments on the advantages and disadvantages of this approach. The proposed regulations do not provide for such a waiver, under the assumption that most States will take advantage of the deferral for nonmajor sources.

In no instance would affected sources under title IV of the Act be eligible for an exemption from the permitting requirements since section 408(a) provides that permits shall be the

vehicle for implementation of the acid rain requirements of the Act. The Agency anticipates that most affected sources under the acid rain program, with the possible exception of voluntary opt-ins or transfer sources, would be considered "major" under some other title of the Act and would not be eligible for exemption from the operating permits program.

(3) Section 70.3(c)—Emissions Units and Part 70 Sources

This section requires that State programs assure in the permitting process that all emissions units at a major source will comply with all applicable Act requirements for their emissions of all pollutants regulated under the Act (504(a)). Including all these emission units in the permit does not mean that permits must impose emission standards or limits on all such units. The permit must impose any "applicable requirements" that are federally enforceable and apply to those emission units. The permit application must identify all units in the major source, however, and the permitting authority's fee program should account for the emissions of regulated pollutants from all such units.

Accordingly, all the activities emitting regulated pollutants at the major source must be addressed in the application for a permit, even though only one emissions unit or subset of units has triggered the title V permitting requirement. Conversely, the title V permit need not contain limits for emission units not otherwise regulated under the Act (e.g., not regulated by the SIP and/or under sections 111–112).

Some States prefer to permit by emissions unit, especially at large sources with many emissions units. As long as the collection of individual emissions unit permits assure that all applicable requirements would be met which would be required under a permit for the whole source, and the State permits the entire source according to the Act's schedule, the State may permit each unit individually, or in groups within a source. Where feasible, the entire facility should be permitted at one time. States are encouraged to permit at least all logical or similar emissions units at the same time.

The determination of whether a source, or group of contiguous, commonly-controlled sources within the same 2-digit SIC code as described earlier, is a major source requiring a permit depends on the magnitude of emissions from the source or set of sources. If a source or group of sources has several emission units which the State does not regulate and subsequently permit, the State's application process must identify them if the regulated and nonregulated emissions of applicable pollutants together would make the source major, and the State's fee schedule must account for the cost involved with surveying the source's nonregulated emissions of regulated pollutants. One way to implement such a program may be to issue each source a permit with sourcewide information and general requirements, and then incorporate more detailed individual emissions unit permits that are issued to cover those units specifically regulated under the Act. If a nonmajor source is required to get a permit solely because it is regulated under an NSPS or a NESHAP, the permit must include only those units covered by the NSPS or NESHAP. For example, consider a saw mill containing an oil-fired boiler subject to an NSPS, an older wood-fired boiler, and various wood-working equipment. If emissions for the source as a whole are not large enough to meet the threshold for a major source, the permit must include only the NSPS boiler.

This section also clarifies which pollutants must be included in the permits of sources subject to title V. As under existing EPA policy developed in the NSR program (45 FR 52676, August 7, 1980), if one or more regulated pollutants emitted by a source triggers the requirement to have an operating permit, the permit must account for all the pollutants regulated under the Act emitted from that source, even if those pollutants do not themselves meet the applicable "major" threshold under the Act. This is appropriate since part 70 permits must assure compliance by the source with each applicable standard, regulation, or requirement under the Act and not just the ones for which the source has major emissions (504(a)). For example, a VOC source in a severe ozone nonattainment area that has the potential to emit 30 tpy VOC is a major stationary source under part D of title I and required to obtain a permit. If that source also has a small process boiler which has the potential to emit only 25 tpy of SO_2 in an SO_2 attainment area, the boiler must also be included in the permit, at least for the purposes of emissions information and fee calculation, even in the unlikely event the SIP imposes no limits on that boiler's operation.

The EPA also wishes to clarify that NO_x emissions, as well as nitrogen dioxide (NO_2) emissions, are included under the definition of "regulated pollutant." The NSPS contains restrictions on NO_x emissions (40 CFR 60.44). The acid rain program also regulates NO_x. Therefore, NO_x emissions are included in the definition of "regulated pollutant" under section 502(b)(3)(B)(ii) (40 CFR 50.11) and in determinations of a source's potential to emit, and fee calculations must account for all NO_x emissions.

(4) Section 70.3(d)—Fugitive Emissions

This section specifies that, once a source is found to be subject to the title V permitting requirements, fugitive emissions at a subject source are to be included in the total emissions of a source for all purposes of permitting, including collection of fees.

The EPA is also proposing to consider fugitive emissions in determining if a source would be major with respect to section 302 for only those source categories that have previously been subjected to the rulemaking required in section 302(j) (45 FR 52676 (August 7, 1980)).

D. Section 70.4—State Program Submittals and Transition

(1) Section 70.4(a)—Date for Submittal

This section of the regulations requires States to submit their operating permit programs to EPA for approval within 3 years of enactment (i.e., by November 14, 1993) (502(d)(1)). This deadline is a fixed date and does not depend on the date EPA promulgates the regulations in this proposal. This section of the regulations also requires a State to revise the existing, approved operating permit program and submit it to EPA for approval within 1 year of any revision to the part 70 permit program requirements that EPA determines would necessitate such a change. Permitting programs that would be implemented within a State, such as by local agencies, would have to be designated by the Governor and submitted within the 3 years after enactment.

(2) Section 70.4(b)—Elements of the Initial Program Submission

There are certain minimum critical elements that need to be included in an acceptable program when it is submitted to EPA for approval. The submittal must include the State-adopted regulations establishing the permit program and the procedures the permitting authority will use to apply the permitting regulatory requirements. The EPA also solicits comment on whether the State statutes that authorize the regulations and provide for judicial review of final permit decisions should also be part of the submittal.

The submittal must include a legal opinion that the permitting authority has

the authority to carry out the program and perform the following tasks. First, the permitting authority must be capable of issuing permits and establishing a fixed term of 5 years for affected sources under the acid rain program, and a fixed term for each permit for all other sources, except certain municipal waste combustors, not to exceed 5 years. Second, permitting authorities must assure that the permit contains each of the emission limits and any other requirements that apply to the source from the SIP and other Act requirements. Specifically, the enabling legal authority must allow the permitting authority to impose and enforce all Federal requirements (including those to be implemented through any applicable FIP). Third, the permitting authority must be able to terminate the permit if necessary or revoke and reopen the permit to modify its content for appropriate reasons (70.7). Fourth, the permitting authority must be able to enforce the requirement to obtain a permit, to enforce the provisions in the permit (70.11), to collect applicable permit fees applied to the source (IV.I.), to collect civil penalties assessed for each source's violation of its permit, and to apply appropriate criminal penalties as a result of permit violations. Fifth, the permitting authority must be able to provide public access to the permit application, the permit itself, the compliance plan, and reports, except that confidential information may be submitted separately and not be made available to the public. Sixth, the permitting authority must agree to comply with program-specific regulations such as those established under Title IV. No permit program will be approved in whole or in part, unless it is adequate to ensure timely and effective implementation of, and compliance by, affected sources with all requirements established under the acid rain program. Program adequacy shall ensure adequate resources to support inspections necessary for ensuring compliance by affected sources with emissions monitoring requirements of part 72 (502(f)). Finally, the permitting authority must also be able to ensure that the source is notified that no Title V permit has been issued if EPA objects to it within the timeframe allowed for EPA review of permits.

The submittal must contain the permit application form or forms to be used, the criteria the State will follow in determining if a source has provided the required information and filled out the application completely, and the procedures the State will use in processing the applications in an expeditious manner. The Agency currently intends to require the use of forms for the acid rain program by States with approved permit programs. Forms can be revised periodically as the State program develops without the need to go through rulemaking every time (i.e., through implementation agreements). The EPA also recommends that the submittal contain certain procedures for insuring compatibility with the national data system; the Aerometric Information and Retrieval System (AIRS). The requirement for completeness criteria is in § 70.5. The procedures for processing applications must be in accordance with the requirements in § 70.7 for permit issuance, renewal, revision, and reopenings.

The submittal must contain a demonstration that the revenue collected under the permit fee program is sufficient to cover the reasonable direct and indirect costs of developing and administering the permit program. The demonstration should include sufficient revenue to fund air pollution control agencies which do not issue permits directly but carry out permit-related activities. The permit fee program is discussed under § 70.9. This demonstration must be accompanied by a statement from the Governor or his designee (e.g., local official in the case of a local agency program) that the program has adequate personnel and funding to implement the program. The statement need not provide certain details such as those related to the number of positions. The statement must describe the air quality program and where the permitting function fits in, details about the personnel who will administer the program, and a cost estimate for developing and administering the program for the years covered in the transition period after the program is approved.

The EPA is also proposing to require as part of the program submittal a commitment that the permitting authority submit to EPA, at least annually, information about enforcement activities relevant to the permit program. This information would include but not be limited to the number of criminal and civil enforcement actions commenced and concluded by the permitting authority, the penalties, fines and sentences obtained in those actions and the number of administrative orders issued. This information is crucial for EPA to be able to fulfill properly its oversight duties regarding whether the program is being properly implemented and enforced.

The EPA is concerned that lapsing of permits or the conditions and terms of permits would cause serious enforcement problems and leave the State and EPA without important monitoring information that sources will be required to submit under the terms of the permit. For example, the particularized and detailed control requirements in the permit would become unenforceable the day the permit expired; States and EPA would be able to enforce only the requirements in the underlying regulations. Thus, if the source had submitted a timely and complete application, it could continue to operate in the event the State failed to act on the application in a timely manner, with possibly no clear control limitations applying to the source.

The EPA is proposing to address this potential problem in several ways. First, under the proposed regulations, sources are required to submit their application for a permit renewal 18 months before expiration of the permit. This is the maximum allowed time period for action on the permit by the permitting authority. This time limit should be reduced correspondingly to reflect permits with terms of less than 5 years or to reflect situations where the permitting authority must issue permit renewals in less than 18 months. In no event can the deadline for renewal applications occur so as to allow less than 6 months for processing. Second, the proposed regulations allow EPA to issue a permit itself if the permitting authority has failed to act on the permit during the time allowed to do so.

Finally, EPA is proposing to require that the State permit program include a requirement under State law that, in the event that a timely and complete application for a permit renewal is submitted to the permitting authority before expiration of the permit term, (1) the permit itself shall not expire until the renewal permit has been issued or denied, or (2) the permit can expire but all its conditions and requirements shall remain in effect until the renewal permit has been issued or denied. The first option within this third approach, which EPA encourages States to adopt, is consistent with the way that Federal permits issued under the Federal Administrative Procedure Act remain in effect if a timely and sufficient application for renewal has been submitted (5 U.S.C., section 558(c)). The EPA is concerned, however, that having the permit itself remain in effect may not be allowed under some State administrative procedure acts. The EPA is therefore proposing to give States the option of adopting, under State law, a

requirement that all terms and conditions of the permit remain in effect after the permit itself lapses if a timely and complete application has been submitted. The substantive effect of choosing one option or the other should be minimal at most. The EPA solicits comment on these and other proposed ways of dealing with the lapsing permit problem.

The EPA believes that a transition plan for processing the first wave of permits is also a necessary part of the State program submittal. This plan should provide a phased schedule for acting on the initial submission of all permit applications during the first year after program approval. The EPA solicits comment on other acceptable strategies for initially processing permits and for keeping the original information current and appropriate for processing.

To meet the title V requirements, the transition plan would need to provide that the initial permit applications be submitted no later than the first year after program approval, and that State action on them be spread out over a period up to 3 years after program approval, with approximately one-third of the applications being acted on in each of the 3 years. The State's transition plan will likely need to require some applications to be filed before EPA's approval of the program so that the State can act on the first third of the applications within the first year after program approval.

When the permitting authority plans their timetable for initial issuance of title V permits, they should be aware that initial SO_2 permits for Phase II acid rain affected sources must be issued by December 31, 1997. Acid rain permit applications for NO_x. are due on January 1, 1998 (408(d)(3)). States should also be aware that EPA proposes to require that any permit application submitted which contains an early reduction demonstration for hazardous air pollutants according to part 63, subpart D regulations must be issued or denied within 9 months of receipt of the complete application. This proposed procedure is discussed further in section V.E.(4) of this preamble. In addition, EPA proposes to require States to submit a timetable for phasing in the reissuance of part 70 permits in the future upon their expiration.

The EPA believes the most important first step in terms of program development is eliminating legislative impediments to meeting operating permit program requirements. New authority may be needed to develop regulations, issue permits to sources (including noncomplying ones), charge fees and retain them in the air agency, collect penalties, hire sufficient levels of personnel, and provide for adequate public participation (including the opportunity for public hearings). Since many State legislatures meet only periodically, the schedule for legislative sessions could be a critical factor in States obtaining the needed authority in the appropriate time period. States need to consider this possible constraint and take whatever action is necessary as early as possible to obtain the needed authority and eliminate any complications that could be caused.

While in the process of developing legislative authority for an operating permit program, the State may also want to consider including legislative authority necessary to implement other titles of the Act. For example, to obtain approval for the acid rain portion of the operating program, State legislative authority must be sufficient to ensure that no permit will be issued that is inconsistent with the requirements of the acid rain program requirements of the Act, of part 70, or of parts 72 through 78 (408(A)). State law or regulation should limit the State's authority to modify acid rain program requirements, and the State authority should ensure adequate inspection resources to ensure compliance with emissions monitoring and compliance program requirements. A certification from the Attorney General or other authorized official that adequate legal authority exists will be needed to support the permit program submission.

Another important aspect of a State operating permit program will be to ensure that the permitting authority is capable of carrying out the program. This will primarily involve hiring and training of personnel, along with support functions, such as larger office space and increased administration capabilities. States will face early program-building demands, the degree depending on the State's current involvement in operating permits. The demand for this infrastructure will increase when a State wishes to submit a program early. Efforts to ensure this capability is one of the first steps a State should make. Grant funds provided for by section 105 of the Act have been provided to support program build-up. These funds are meant to give programs in part the boost needed until permit fee provisions become effective and State permitting efforts become self-sufficient through the permit fee revenues. The EPA solicits comment on other ways to accomplish "ramp up" of State capabilities. These might range from interim program approvals to an initial registration of subject sources coinciding with an early partial fee collection (IV.I.).

In part, section 506 specifies that nothing in title V shall prevent a State from establishing additional permitting requirements as long as they are not inconsistent with the Act. Accordingly, States may wish to include requirements from State control programs in an operating permit that are not required by Federal law. However, EPA does not intend to participate in any permit actions that do not arise from federally-recognized permit requirements. For example, the State may have a program designed to enforce specific ambient concentrations of toxic air emissions which as yet have no counterpart under Federal law. The question becomes whether, and to what extent, those provisions translated into more rigorous emissions limits on the source become federally enforceable (i.e., enforceable under the Act by the United States or citizens) if the State includes them in a permit and EPA does not veto that permit.

The EPA is proposing that only those provisions of a permit identified as being required under the Act or necessary for its implementation will be federally enforceable. Each provision, required or needed under the Act, will have to be clearly marked for EPA to consider it federally enforceable. EPA does not intend to routinely sort out provisions relating to State programs included in operating permits, unless those provisions bear no reasonable relation to the purposes or provisions of the Act. To promote this result further, EPA is proposing to require an explicit statement of the regulatory basis for all title V permit conditions.

The EPA does not believe that Congress intended title V to be a forum for the State to establish any additional requirements that would become federally enforceable. The primary purpose of the title V permitting program is to assure that subject sources comply with all requirements of the Act. State limits related to the requirements of the Act include transactions related to emissions trading or offsets for NSR or to an applicable Federal standard (e.g., those promulgated under sections 111 or 112 of the Act). Additional State limits can clutter the title V permit with conditions that may confuse enforcement activities and limit the operational flexibility of the source. The permitting authority should segregate those permit conditions that are federally enforceable so that EPA oversight can be focused on the most critical concerns in the limited time afforded for EPA's 45 day review.

On the other hand, a State may have an interest in maintaining a permit as a comprehensive statement of the source's air pollution control obligation. The proposed regulations allow a State to do this. If it wants to take this approach, it would be the option of the permitting authority to identify and attach to the part 70 permit those provisions which are to be enforced by the State but not EPA.

Public comment is solicited on how to resolve two additional issues related to this principle. These two issues involve whether, and to what extent, EPA can or should approve, (1) more expansive source coverage than required by title V; and, (2) State provisions which limit the flexibility of source owners or operators to less than that provided for in title V.

The first issue may arise quite frequently, since most existing State and local operating permit programs typically apply more broadly than to just the major sources and others covered by title V. The EPA proposes to approve a broader program containing more sources or source categories than required by EPA if a State submits one, but EPA reserves the right to promulgate a narrower program for EPA implementation should the State default on its implementation obligation. The EPA believes that this proposal is fully consistent with section 116, which permits States to adopt more stringent air pollution requirements than required by the Act. It is also consistent with 506(a), which states that nothing in title V shall prevent a permitting authority "from establishing additional permitting requirements not inconsistent with (the) Act." The EPA may also opt to waive review of some or all of the permits for the additional sources under a more inclusive State program, depending on the degree of administrative burden, or for other reasons (505(d)). Comment is solicited on whether, and to what extent, EPA should approve broader State programs.

The second issue concerns whether State operating permit programs can differ from Act requirements aimed at protecting sources once they meet certain requirements. In other words, may States be "more stringent" than title V by removing some protections that Congress apparently intended to ensure. Examples of these provisions include: (1) Section 502(a) which shields sources from the requirement to have a valid title V operating permit, if they have filed a timely and complete application but have not yet received their permits (i.e., application shield); and (2) section 502(b)(10) which contains the requirement for States to allow sources operational flexibility within permits.

As noted previously, section 116 of the Act authorizes States to be more stringent than EPA rules in their requirements, as long as they relate to control of air pollution. Section 506(a) perhaps may qualify this longstanding authority, however, by stating that nothing in title V shall prevent a permitting authority from establishing additional permitting requirements "Not inconsistent with the Act." Moreover, EPA believes that even section 16 would not allow the Agency to grant complete program approval of a State permit program that does not meet all the requirements of section 502(b), including the requirement in section 502(b)(10) that States allow certain changes within permitted facilities without requiring that the permit be revised.

(3) Sections 70.4 (c), (d), and (e)—Partial Programs, Interim Approval, and EPA Review of Program Submittals

These sections of the regulations describe the type of approvals, other than full approval, that EPA may give a State permit program. These approvals are all subject to a public comment process, and EPA is required to take approval actions (as appropriate) within 1 year of State program submittal. There are three related concepts which EPA is proposing to use for implementing the above position on partial program submittals: Full approval, partial programs, and a whole program in the State.

Full Approval: The EPA will grant full approval only if a program meets all the requirements specified in the part 70 regulations. For full approval, all program elements required by part 70 will have to be met to an acceptable degree, and stronger elements of a program cannot compensate for one or more weak areas.

Partial Program: A partial program is one that does not cover all the sources in a State, because the program is limited geographically to a local program or the program does not cover certain source categories, or both. The EPA, in general, intends to grant full approval to partial programs which are limited in their geographic coverage if they meet all the requirements of part 70. However, States must provide compelling reasons for not taking review responsibility for all subject source types in order for EPA to grant approval for a source category-limited program. In no event does EPA intend to approve as a partial program one which would permit the source for some but not all of the applicable requirements under the Act.

Under section 502(f), for EPA to approve a partial program, minimum requirements must be met, specified in section 502(f), with regard to titles I, III IV, and V. A partial program, at a minimum, must apply and ensure compliance with "this title" (i.e., title V) and each of the following: (1) All requirements established under title IV applicable to 'affected sources.' (2) all requirements established under section 112 applicable to 'major sources,' 'area sources,' and 'new sources.' (3) all requirements of title I (other than section 112) applicable to sources required to have a permit under this title. The EPA thus interprets the language in section 502(f) to mean that a "partial" program is one that is a full program (i.e., standard application, permit fees, public participation, inclusive permit provisions, fixed term, etc.) for those sources or areas to which the program applies.

Whole Program: A whole program is a program that meets the requirements of part 70 and covers all the part 70 sources in the entire State. For the State to avoid sanctions under section 502, the State must have an approved whole program (502(d)(2) and (3)). It is possible for a State under this proposal to obtain approval for a whole program by submitting several fully-approvable partial programs. The combination of these programs must permit all the part 70 sources in the State consistent with part 70. This interpretation of section 502(f) avoids the confusion created when two permitting authorities permit the same source for different Act requirements. In a State relying on a combination of partial programs, EPA will not approve a whole program until it has approved all the partial programs covering all the part 70 sources in the State.

The EPA will act on any partial program as it is submitted, consistent with the 12-month deadline in section 502(d)(1). The EPA will fully approve a partial program if it meets part 70. A State may submit a partial program, but fail to submit a whole program. If EPA approves the partial program or several partial programs within the State, those programs define the permitting authority for the sources they cover. The State remains subject to sanctions, however, for failure to submit a whole program. Ultimately, section 502 provides that EPA will become the permitting authority for those sources not covered by any of the partial programs in the State.

Interim Approvals: Section 502(g) allows the Administrator to grant interim approval by rule to a State

permit program if it "substantially meets" (but not fully) the requirements of title V. Interim approvals automatically expire on a date set by the Administrator not later than 2 years after such approval and may not be renewed. At the time of interim approval, the Administrator shall specify the changes that must be made before the program can receive full approval. The 1 year for permit application submittal and 3 years for permit processing do not start until the program receives full approval.

The EPA sees interim approval as being a good mechanism to allow States to gain early permitting experience while working on the final fully approvable program; to begin acquiring, through fee collection, the necessary resources for developing and implementing a full program; and to expedite the implementation by States of certain Act requirements (e.g., the granting of MACT extensions for early reductions) (V.E.). Interim approvals are appropriate, however, only where the relevant deficiencies are not critical over the 2-year (or less) period of time before a fully approvable program is due. If a program is not sufficient to receive interim approval, EPA will disapprove the program. The EPA's interim approval or disapproval will take place within 1 year of program submittal as indicated by § 70.4(e). Like full or partial approval, interim approval triggers the 12-month requirement for submission of permit applications and a 3-year phase-in for processing the applications (IV.D.(2)).

The EPA believes that the "substantially meets" test allows the Agency considerable discretion in judging where a State program could fail to fully meet title V yet still be adequate to produce viable permits. The EPA believes, as a minimum, the purposes of the permit program could be fulfilled if the following minimum criteria for interim approval are met:

(a) *Adequate fees.* A program must have the capability to collect adequate fees (presumptively $25/ton per regulated pollutant per year (1990 basis)) to fund development of the State's permit review program and its capabilities to implement it.

(b) *Applicable requirements.* The State must have the legal authority to assure that those sources in the interim program will comply with all applicable requirements under the Act. This must include, at a minimum, some type of monitoring and reporting provisions. Otherwise inadequate permits issued could be a damaging legacy over the term of the permits.

(c) *Fixed term.* The program must provide for a fixed permit term that would not exceed 5 years.

(d) *Public participation.* The program must provide for public notice of and an opportunity for public comment and a hearing on draft proposed permits.

(e) *EPA review.* The program must allow EPA an opportunity to review each proposed permit and to object to its issuance.

(f) *Permit issuance.* The program must provide that the proposed permit will not be issued if EPA objects to its issuance. A State might qualify for this by formally agreeing to "reopen for cause" any State-issued permit when EPA would object to it from a title V standpoint after the State had issued the permit pursuant to its existing procedures.

Public comment is solicited on which of those critical program elements that are required for full approval need not be met for interim approval. Any additional criteria beyond the six proposed should represent a deficiency that this approach is consistent with section 502(f). Operating permits are intended to incorporate the provisions in the existing applicable SIP (including those in a FIP) at the time the permit is under review. The EPA will approve permits with certain more stringent provisions than the explicit emissions limitation contained in the SIP, provided that these provisions implement other applicable federal requirements (e.g. tighter limits to achieve emissions offsets or early reductions pursuant to section 112(i)(5) of the Act). The Agency will not require the State to correct SIP deficiencies in permits. As explained in more detail in section V.B., a SIP demonstration must be periodically updated as needed to reflect reliance on any tighter conditions of permits to show attainment and maintenance. As indicated previously, States under one option can expedite the process where this would be accomplished by a SIP revision including several permits in one public notice and through the use of the SIP processing reforms announced in 54 FR 2214 on January 19, 1989.

(4) Section 70.4(f)—State Response to EPA Review of Program

The State must correct the deficiencies in programs EPA disapproves and submit the corrections to EPA within 180 days of the notice by EPA that the program was disapproved, or within another time period specified by the Administrator. For interim approvals, the State must submit corrections to EPA no later than 6 months before the end of the period for which the approval is granted. These provisions apply even though the State may submit a program before the end of the 3-year period provided by title V.

(5) Section 70.4(g)—Effective Date

The State program becomes effective on the date of EPA's full, interim, or partial approval.

(6) Section 70.4(h)—Individual Permit Transition

This section addresses how EPA would implement a permit program, in whole or in part, under a new part 71 in the event a State fails to submit or adequately implement an approvable program. The EPA will issue permits under such circumstances under a permit program as will be promulgated in part 71. Once EPA approves the State program and it is implemented, EPA will cease issuing permits. Any permits under review or issued under the part 71 program will continue under EPA's jurisdiction until they are replaced by permits issued under the approved State program. However, after EPA approves a part 70 program, States can request delegation of authority to maintain and enforce previously issued part 71 permits before their expiration. If such delegation is granted by the Administrator, the State can then collect appropriate fees from those sources consistent with § 70.9.

(7) Section 70.4(i)—Program Revisions

A program must be revised if EPA determines sometime after approval of a State operating permit program that the program inadequately implements the part 70 program. The State will have 180 days, or a longer time period established by EPA, to revise the program and submit the revisions to EPA. The Agency might set a longer time up to 2 years where legislative action is required at the State level to address problems.

E. Section 70.5—Permit Application

(1) General

The procedural elements of an approvable permitting program are essential to its success. The Act provides important direction with respect to how the permitting process should be implemented. This section of the preamble, and the two that follow it, describe EPA's proposed regulations for addressing these activities. Generally, they are described in the order in which they arise in implementing the program: the permit application submitted by the source, the drafting of the permit by the permitting authority, and the procedural aspects for issuing and managing permits.

Title V sets forth explicit requirements regarding the application process. Sections 502(b) (5) and (6) require that State programs have standard application forms, criteria for determining their completeness in a timely fashion, and procedures for processing them. The EPA suggests that States provide procedures for transmittal of permit application data in a manner compatible with the national data system. Section 503(b) requires compliance plans for noncomplying sources to be submitted along with the permit applications. A complete application must be submitted according to the transition schedule approved within the program and in a timely way for subsequent renewals. "Timely" for submittal of renewal applications has been presumptively defined as 18 months prior to the permit expiration date, unless some other time is approved by the Administrator (e.g., situations where the permitting authority is required to issue permits sooner than 18 months or where the fixed term of the permit is less than 5 years). Any complete application must contain information which identifies the source and its emissions, the requirements applicable to it, the compliance status of the source and its intended operating regime, and a certification verifying the truth, accuracy, and completeness of the submitted information. More information may be required later by the permitting authority in writing as needed to complete the development of the part 70 permit. The applicant must respond in a reasonable and timely way to maintain a complete application and the protection that it provides (see additional discussion in IV.E.(5) and IV.G.(1)).

Additional information may be required for other program-specific purposes at a later date (e.g., pursuant to specific substantive program requirements such as for certain sources of VOC's and NO_x subject to the emissions statement requirements for nonattainment areas as stated in part D of title I). Sources of hazardous air pollutants subject to section 12 attempting to comply with alternative emissions limits may also need to submit additional information. In addition, States may require information to enable implementation of their additional program requirements related to the Act.

(2) The Permit Application Form

The EPA recognizes that a great range of factors bear upon what a good application form is and takes an approach which ensures the submittal of the wide-ranging information needed to issue a good permit. On the other hand, EPA recognizes that the amount of information needed can vary greatly depending upon type of source or pollutant and State and local air quality requirements. Moreover, the EPA has a philosophy of minimizing program disruption, to the extent possible. Most States already have application forms, and some of them are very comprehensive. Requiring an inflexible national form would likely be disruptive. The approach to application forms being proposed today recognizes appreciable flexibility for State programs. This flexibility extends to the format of the information submitted, as long as the minimum data elements are collected. In certain instances, however, needs for national consistency for purposes of oversight and good data management should prompt the use of standard units for source parameters. Furthermore, use of the AIRS as a State's data management system for the operating permits program may influence application format. A discussion of this is included in section IV.E.(6).

For these reasons, EPA will not prescribe any one, or few, forms that address all situations.[3] Consequently, EPA is proposing a list of minimum data elements that States must collect with the permit application forms. As long as these data are included in State forms, the forms will be found to satisfy these provisions.

The permit application provisions contained in § 70.5 were developed to balance these competing concerns. The key point is that States have considerable discretion, within a framework that is rigorous with respect to the types of information required, to develop application forms that best meet their particular program needs and policy choices. Some States may meet these requirements through relatively slight revisions of their current application forms.

The following is a brief discussion, organized by regulatory paragraph, of the types of minimal information prescribed by § 70.5:

General company information: The applicant must list appropriate contacts and general background information (e.g., company name, location, responsible official, or designated representative).

Plant description: A description of the plant in terms of the processes and products involved (including identification by SIC code) can provide important perspective to the permitting authority regarding the applicable regulatory requirements.

Emissions related information: Emissions data are of critical importance to permitting. Section 70.5(b)(3) describes the core information needed for permitting. This includes, of course, direct emissions data regarding the pollutant's emitted, and their quantities over appropriate periods, and the points from which these emissions are produced. An adequate description of emissions necessarily entails submission of emissions related information on fuel and raw material use, a detailed description of air pollution control equipment (and citations to the relevant emissions standards), and limitations on source operator. Finally, the calculations on which these data are based must be included to assist the permitting authority in reviewing the application.

There are, in addition, a variety of decisions to be made with respect to how these data are addressed in the application. For example, the inclusion of the list of 189 pollutants, or groups of pollutants, in section 112(b) presents additional issues regarding the reporting of regulated pollutants. The EPA does not propose to mandate submittal of emissions information in the permit application for nonmajor sources of noncriteria pollutants. Many States may, of course, choose to require information about such pollutants, for example, in implementing their air toxics programs.

A description of emissions points is relevant to a variety of requirements (e.g., whether emissions are fugitive or stack), but EPA believes the regulations will allow application forms to reasonably limit the detail of this requirement where such is appropriate. For example, VOC emissions might be produced at many places in a chemical process facility, but an application might describe these adequately without individually describing minor emissions points such as valves and flanges.

A significant issue involves whether the application must include the information needed for ambient impact assessments. This includes stack parameters (e.g., height, diameter, plume temperature) and building height. The

[3] The acid rain program, however, will develop application forms likely to be required for all affected sources nationally. If so, the permitting authority will have to adopt these forms to have an approvable program for acid rain. The Agency believes that national consistency in application requirements is important for equality in the allowance-trading market and to ensure that all affected sources are subject to the same reporting burden. The Agency plans to encourage the use of electronic reporting, and may develop "expert" systems to assist permitting authorities in developing uniform, consistent acid rain permit requirements. These requirements will be promulgated in a subsequent rulemaking.

EPA does not interpret compliance with the NAAQS to be an "applicable requirement" of the Act. Therefore, EPA is not including such information within the minimum data elements for applications unless it is required by an underlying regulation of the Act (e.g., regulations to ensure good engineering stack height consistent with section 123 of the Act). As explained further in section IV.F.(3)(a) below, EPA does not believe that any one permit can enforce the NAAQS, except perhaps in very limited circumstances. The State should be able to assess the cumulative impact of permitted sources on attainment and maintenance of the NAAQS (and increment consumption under the PSD program). To do this, the State may choose to collect emissions data related to the source's ambient impact. However, EPA is not proposing to require States to collect such information.

All applications under current State operating permit programs must require sufficient emissions information to allow a State to write a complete and enforceable permit. Emissions rates must be supplied for averaging periods appropriate to program needs and consistent with all applicable requirements. Depending upon the specific emissions limitation that applies to a source, emissions information may need to be collected on hourly, daily, and annual bases in order to assure compliance with emissions requirements or guarantee that emissions will stay below particular applicability thresholds for other regulatory requirements. The form of the required emissions data can also be influenced by other program needs. For example, all affected units under the acid rain program must install CEMS to monitor their SO_2 and NO_x, and other emissions (412).

Other information may also be needed in the permit application to define: (1) Control requirements, such as requirements that will become effective during the term of a permit, and applicable test methods (70.5(b)(a); and (2) reasonably anticipated alternative operating scenarios (70.5(b)(6).

The EPA recognizes that comprehensive permit applications for some industrial facilities can be quite large. For this reason, EPA proposes that States be granted more discretion with respect to what information is needed and when. For example, the Agency believes that States may want to permit, and therefore, receive several discrete applications from certain large complex sources (e.g., chemical plants) in order to keep the information current and the review process focused.

The preceding discussion outlines the approach to obtaining general information for most regulatory provisions. There are, however, several specific air program functions that might require additional specialized information. Examples include alternative emissions limits with respect to MACT, and acid rain allowance provisions. Even more common program requirements, such as the NSPS and NESHAP, might require certain additional information. It is unlikely that a State will wish to develop a single application form that addresses every possible air regulatory requirement. The EPA suggests that States follow the example of numerous current air programs and take a modular approach to application forms. Under this approach, all sources would complete the same basic application form, containing the information on the source and its emissions, as described in this section. To the extent that specialized regulatory requirements must be met, additional forms appropriate to those programs could be prepared and appended to the basic form.

(3) Testing, Monitoring, and Reporting Procedures, and Compliance Certification

(a) *Test Methods.* To establish initial compliance with each air pollution control requirement, each permit application must presumptively specify a test method. This requirement is contained in § 70.5(b)(4)(ii). A similar requirement also appears in § 70.5(b)(8)(ii). This latter and somewhat redundant requirement that the permit application specify a method for determining initial compliance may be satisfied by § 70.6(c), and merely appears in the regulation again to emphasize that there may be different test methods used for determining compliance (IV.E.(3)(c)).

The test method for establishing initial compliance will be the test method in the underlying regulation. If the underlying regulation is deficient in that it does not contain a test method, the permit application must suggest a test method. This is in accordance with section 504 of the Act which requires that permits assure compliance with the applicable regulation (IV.E.(3)(c)).

(b) *Information Necessary for Implementation and Enforcement.* To implement and enforce air pollution requirements, it is necessary that all permit applications specify the underlying monitoring, recordkeeping, and reporting requirements. This is broadly required by the language in § 70.5(b)(4)(i), and also by the compliance certification requirements under § 70.5(b)(8). Note that section 504 of the Act and § 70.6(a)(3)(ii) require that reporting of any required monitoring be submitted at least semiannually.

(c) *Test Methods, Monitoring, and Reporting for Compliance.* Section 70.5(b)(8)(ii) requires the permit application to state methods to be used for initially determining compliance monitoring and for determining compliance throughout the term of the permit, including a description of the monitoring, recordkeeping, and reporting requirements and test methods to be used. The method used for initially demonstrating compliance must be the test method or work practice specified in the underlying regulations (e.g., the SIP, NSPS, NESHAP, and the acid rain regulations) as discussed in section IV.E.(3)(a) above. If the underlying regulation is silent as to the appropriate test method, the permit, and therefore the permit application (where possible), must still include, and the reviewing authority must select, a test method. The EPA will evaluate any new test methods during its 45-day review period. This review will focus on any relevant information upon which the State relied in demonstrating attainment and maintenance of the NAAQS. In the event that an underlying Federal regulation is later revised to incorporate a specific test method or monitoring/reporting procedure, the permit must be revised to incorporate these requirements upon renewal, unless more than 3 years remains on the term of the permit, in which case the permit must be reopened.

Also, to ensure compliance with all the requirements of the permit throughout its term, the permit, and therefore the permit application, must specify an appropriate method to be used for determining compliance. This "compliance method" may be CEMS, frequent compliance calculations, stack tests, or surrogate monitoring parameters, such as incinerator temperature or scrubber pressure drop. In some cases, the compliance techniques will be the same as the technique used to determine initial compliance. Periodic monitoring of the operation of the source or pollution control device may typically be appropriate, compliance techniques. In the case of a work practice standard, the compliance technique could consist of a record which documents continual application of that work practice. In many cases, the monitoring requirements in the underlying regulation will suffice for assessing compliance. If the regulation is silent

regarding monitoring techniques, the reviewing authority will need to specify one, taking into account cost, availability, reliability and accuracy of the technique, and the averaging time of the ambient standard. Where the underlying standard is unclear, an additional consideration would be consistency of the averaging time of the technique with the applicable ambient air quality standard.

Where surrogate monitoring parameters are used for determining compliance, the permit application should provide an acceptable operating range of monitoring values based on values achievable during a performance test (i.e., during the initial compliance test) or based on best engineering judgment. Operation of the facility outside of these specified monitoring values would be a violation of the permit and any good operating practice requirements, if applicable, such as contained in 40 CFR 60.11(d) for NSPS-affected sources.

Where CEMS or emission calculations are chosen for the compliance method, the resulting data could be used directly to enforce the emission limit. Therefore, recorded CEMS emissions, or VOC emission calculations, for example, in excess of the emission limit would constitute a violation of the emission limit. Of course, CEMS are not appropriate for use with respect to some source categories. For other source categories, CEMS are appropriate or are mandated by the Act (e.g., for acid rain sources). For those cases, States should explore the possibility of requiring compliance calculations. Further, until EPA specifies enhanced monitoring techniques, the choice as to the appropriate compliance technique remains the primary responsibility of the permit reviewing authority. In the case of a work practice, the compliance technique could consist of a record which documents continual application of that work practice.

After a source has demonstrated initial compliance in accordance with the underlying regulations, either the initial or the compliance technique may be used in the periodic (at least annual) compliance certifications. It is, however, necessary that a compliance technique be specified and used to establish whether compliance throughout the reporting period was continuous or intermittent, in accordance with the statutory requirements in titles V and VII for compliance certification (IV.E.(3)(d)).

(d) *Compliance Certifications.* As required by § 70.5(b)(8)(iii), the permit application must contain a schedule for submission of compliance certifications. The Act requires that similar certifications be submitted at least annually. States should require certifications more frequently for sources or source categories with a recent history of compliance problems. The required frequency of certifications should also consider the frequency of any other reporting requirements, such as excess emission reports and the title V requirements in section 504(a) for at least semiannual compliance reporting. Under section 503(b)(1), all sources must monitor and report every 6 months. The State should consider a combined report as opposed to submission of separate reports.

Section 70.5(b)(10) provides that the certification, as well as all other documents required under part 70, must state that "to the best of the signer's knowledge, information and belief formed after reasonable inquiry, the statements and information in the compliance certification are true, accurate and complete." This language is similar to that in rule 11 of the Federal Rules of Civil Procedure, upon which it was modeled. The provision makes clear that the signer must make a reasonable (under the circumstances) inquiry before attesting to the truth, accuracy, and completeness of the information and statements.

(4) Compliance Plans for Noncomplying Sources

In accordance with section 503(b), each permit application for sources that are out of compliance with applicable requirements of the Act must be accompanied by a compliance plan which describes how the source will comply with the applicable requirements of the Act for which it is not in compliance.[4] Submission of these compliance plans is also required for permit renewals and permit modifications, in accordance with § 70.7. Compliance plans must describe the techniques used to achieve compliance.

As required in § 70.5(b)(7), a compliance plan consists of the following elements:

(a) *Description of How Source Will Achieve Compliance.* Sources that are out of compliance at the time of application must describe how they will comply with the underlying Act requirements. The plan must specify the requirement for which the source is not in compliance (as already required by § 70.5(b)(7)(iii) and described in section IV.E.(4)(c)), describe the equipment and/or changes in operation necessary to come into compliance, and include a schedule of compliance (IV.E.(4)(d)). Note that neither the plan nor the permit will alter the source's legal liability for any violation of the SIP or Act.

This requirement in § 70.5(b)(7) should not be confused with the provision of § 70.5(b)(8) that requires the permit application to specify the test methods and monitoring to be used for determining compliance. Rather, the compliance plan specifies the means that will be used to achieve compliance. It should be noted that adoption of compliance plans and the ensuing schedules of compliance do not protect a source from enforcement action or penalty assessment for existing or previous violations of the applicable requirements. While permit applications and compliance plans (for noncomplying sources) for general title V sources will focus on the information necessary to enforce the applicable requirements under the Act, permit applications and compliance plans for sources receiving acid rain permits under title IV of the Act will have to meet independent requirements to be specified in future rulemakings to implement the title IV permit program.

While the Agency is proposing that the general requirement for a compliance plan only apply to noncomplying sources and affected sources under the acid rain program, including sources which are in compliance with applicable requirements, must submit compliance plans with their permit applications detailing how each unit will comply with the acid rain requirements of the Act (408(b)). Requirements for acid rain compliance plans will be set forth at part 72. Depending on the method of compliance chosen, acid rain compliance plans will include, for example, deadlines for obtaining design engineering and construction contracts, and information on the type of technology proposed. In addition, requirements for operation and maintenance of CEMS or alternative monitoring methods for acid rain affected sources will be promulgated at part 75 and will be included in each source's permit.

(b) *A Description of How the Source Will Monitor Compliance With Those Requirements.* All permit applications must describe how the source will

[4] Sources subject to the acid rain program are required to submit compliance plans that show in detail how they intend to meet their title IV requirements. Title IV regulations are likely to supersede the part 70 compliance plan requirements in certain respects. Specifically, they will modify and limit what provisions sources may be required to include in the acid rain portion of their compliance plans. Title IV (section 408(b)) also provides that nothing in it regarding compliance plans or in title V shall be construed as affecting allowances.

monitor compliance. Section 70.5(b)(8)(ii) regarding permit application requirements for compliance certification specifies that each permit application specify the monitoring method to be used.

(c) *A Schedule of Compliance.* Section 70.5(b)(7)(iii) defines "schedule of compliance" as a schedule of remedial measures including an enforceable sequence of actions with milestones, leading to compliance with all applicable requirements of the Act for sources that are not in compliance. This schedule must specify a date by which the source must achieve compliance, and interim milestones for all remedial measures necessary to meet that compliance date. Examples of interim milestones for cases where new equipment is necessary to come into compliance include the award date for the contract to obtain the control device, the date of initiation of onsite construction and/or installation of the device, the date of completion, and the date of testing/calibration. Similar deadlines could be established for installation of monitors. For a work practice standard, interim milestones could pertain to training of personnel. All schedules of compliance must be contained in the permit.

(d) *A Schedule for Submission of Progress Reports, To Be Submitted No Less Frequently Than Every 6 Months.* Within § 70.5(b)(7)(iv) and in accordance with section 503(b), each permittee which is not in compliance with all applicable requirements of the Act is also required to submit progress reports to the permitting authority no less frequently than every 6 months. These reports must describe the source's progress in meeting the requirements of the compliance plan, and the ensuing schedule of compliance. (The required content of the progress report is specified in § 70.6(c)(5)). The compliance plan must set forth the schedule for submission of these reports.

(5) What Is a Complete Permit Application?

A determination by the permitting authority that an application is complete is important to the source. Submittal of a timely and complete application protects the source (except to the extent construction or modification is involved) from enforcement for failure to have an operating permit (503(d)), and begins any prescribed periods for agency action on issuing a permit, including automatic denial in some States. (A more detailed account of the importance of this action can be found in section IV.G.). Furthermore, a complete acid rain permit application and compliance plan is binding on the source and is enforceable until the permit has been issued. The importance of this determination, combined with the fact that it can be difficult to make, has traditionally made the completeness determination the subject of dispute in the issuance of permits. The Act, probably for these reasons, requires that permitting programs contain "criteria for determining in a timely fashion the completeness of applications" (502(b)).

The basis for determining the completeness of an application should be the information contained in the permit application itself. An approved State standard application form or forms should provide for the submittal of all information necessary to process the application and incorporate the applicable regulatory requirements into a permit. However, this determination is also a function of the type of source, the applicable requirements, and SIP or attainment status. Thus, depending on the circumstances, the permitting authority may need more information than that specified on the application form.

The permitting authority should also assure that certain supplemental information is included with the application before ruling that it is complete. The application should be accompanied by the compliance plan, to the extent that one is required, and a certification of whether the source is in compliance. Pursuant to section 503(c), the application must be signed by a responsible official (the designated representative for acid rain affected sources), who shall certify the truth, accuracy, and completeness of the information submitted after reasonable inquiry. In addition, an application should include the calculations upon which the application data are based to facilitate review of the application.

Various procedural disputes could arise from these determinations. For example, while permit review is under way, it sometimes becomes apparent that more information is needed. The State must be able to request it, without being bound by its initial determination. The EPA is proposing that the determination of completeness and the associated protection provided to the source to operate without a permit would remain in effect during this process, assuming an adequate and reasonably timely response by the source. Similarly, EPA is proposing that if a source has submitted a timely application which it, in good faith, believes to be complete, but which is later determined by the permitting authority to be incomplete, the protection would not be lost if the source cured the defect within the expeditious time period specified by the permitting authority.

The regulations being proposed today would require notification to the applicant of the completeness determination. It further states that where this notification is not provided within 30 days of receipt of the application by the permitting authority, the application shall be deemed complete. This date also marks the time from which the permitting authority has a maximum of 18 months to process the permit. Failure by the source to respond in an adequate and timely manner to written requests for additional required information would subject the source to penalties for operating without a title V permit (502(a), 503(d), 40 CFR 70.5(c)).

(6) Data Management

Because considerable information will be necessary to implement the permitting requirements of the Act, data management is important. The EPA is considering changes to the Air Facility Subsystem of its AIRS data management system to meet State and national permitting needs. If such a system were developed, States will be charged with ensuring that AIRS contains the minimum permitting data elements identified by EPA. Separate data bases will be developed for acid rain sources to facilitate the tracking of emissions and allowances and to provide information to the market on compliance choices.

Data management concerns will influence what information States collect and the format in which it is collected. The effect on types of information required in standard application forms should be relatively slight. The information included in the current AIRS system is of the type normally required by a State to write a permit for a source. The influence on format is likely to be more significant. For this system to work efficiently, the data must be presented in units and a format that are readily incorporated into the data system. The EPA is investigating data processing enhancements that would expedite the permitting process generally. Examples include electronic permit application and data submissions.

The EPA solicits comments on the data management aspects of the permit program, particularly the potential use of AIRS for this purpose, and any enhancements the system might need.

F. Section 70.6—Permit Content

Permits issued by the permitting authority must include provisions that assure that the source will meet all of its obligations under the Act. Permits should include, therefore, emission limitations and standards; a schedule of compliance; requirements for conducting monitoring and data analyses and providing emissions statements; provisions for inspection, entry, monitoring and reporting; and a process for public access to these data, consistent with available protection from disclosure pursuant, to section of 114 of the Act. The permit must also provide for periodic progress reports with respect to any applicable compliance plan for noncomplying sources, as well as periodic reports concerning compliance with the permit requirements. The reports must be signed by a responsible official (designated representative for acid rain) who must identify the requirements applicable to the source; verify the truth, accuracy, and completeness of any submitted information; and certify whether the source has complied with them.

(1) Core Permit Elements

A part 70 permit will typically contain certain core elements: An introductory section providing the source's name, address, key contacts, and various standardized conditions; a description of the source and its processes and emissions; a statement of the applicable regulatory requirements, including monitoring, recordkeeping, and reporting; and provisions relevant to their enforcement. The requirements with respect to permit content, located in several parts of title V, are consolidated in § 70.6. This preamble addresses them under the following three topic areas.

(a) *Emission Limitations, Standards, and Other Necessary Conditions.* Section 504(a) states that each permit "shall include enforceable emissions limitations and standards" and "such other conditions as are necessary to assure compliance with the applicable requirements of this Act, including the requirements of the applicable implementation plan." The basis or citation of each of these requirements (e.g., NSPS, PSD) should be included with them. This will reduce confusion as to the origin of any limitation standard, or other condition, and insure that EPA, the source, and the general public agree on the regulatory requirements that apply to the permit. For example, changing a restriction on operating hours might subject the source to the "source obligation" provisions of the PSD program, but this result might not be obvious if the operating permit had included the origin of the limitation.

The regulations also require the permit to identify any difference in form between the emission standard in the permit and the regulation that is the basis for the standard. This will allow EPA and citizen groups to readily identify these types of permits for heightened review. This requirement should not be too burdensome for permitting authorities since these types of permits should be relatively rare.

The EPA notes that section 504(a) of the Act requires that each permit "shall include enforceable emission limitations and standards * * * and such other conditions as are necessary to assure compliance with applicable requirements of this Act." Thus, Congress seemed to contemplate that for some types of applicable requirements, the requirements might not have to be incorporated wholesale into the permit; rather, "conditions" that would assure compliance with those requirements might suffice. While EPA expects that in the ordinary case the requirements would have to be included in the permit, there may be some cases where this would make no sense. For example, new section 112(r) requires certain facilities to prepare and implement a risk management plan to prevent or minimize accidental releases of certain hazardous substances. It would be of little benefit to mandate that the entire plan be incorporated into the permit, requiring revisions to the permit whenever a minor change were made to the plan. The plan is to be submitted to States and local planning entities and is to be made available to the public. The plan would be a public document anyway, and would be enforceable independent of the permit. The EPA, therefore, is considering requiring only that the permit state that the source must have and comply with a section 112(r) plan, and shall make it available to the public under section 114(c).

The EPA solicits comment on what other types of requirements might not be addressed in the permit. If EPA determines it is appropriate to allow permits to include conditions in lieu of certain applicable requirements, the Agency would plan to specifically list such requirements either in the part 70 regulations or in future guidance, whichever is appropriate.

The EPA wishes to stress the importance of good permit writing to the enforceability of a permit. If permit provisions are not clearly written and carefully specified, compliance may well be thwarted, regardless of how well the direct compliance measures already discussed are addressed. Failure to use consistent or appropriate units in emissions limitations or failure to adequately describe the facility or unit to which an emission limitation applies, such that application of the emissions limitation is unclear, can thus be grounds for an EPA objection to the permit. Useful guidance as to what makes a permit enforceable is contained in EPA's September 23, 1987 document entitled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency." That guidance provides a checklist of key areas to consider in assuring enforceability, including applicability, compliance date, specificity of conduct, any incorporation by reference, recordkeeping requirements, and exemptions and exceptions.

Other emissions-related issues include appropriate provisions for startup and shutdown procedures, and scheduled maintenance. A permit might also contain provisions regarding upset conditions.

The determination of what are the "applicable requirements" that must be addressed by the permit is an important matter that is addressed separately in section IV.F.(3).

(b) *Compliance Certifications, Monitoring, and Reporting Requirements.* The provisions of section 504(a)–(c) underscore the emphasis that title V places on demonstrating compliance with all terms of operating permits. Specific elements for noncomplying sources include a schedule of compliance, a requirement that the permittee submit the results of any required monitoring no less often than every 6 months, and "such other measures as are necessary to assure compliance" with all applicable requirements under the Act (504(a)). In addition, each permit shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions (504(c)).

Certifications of compliance are required by both title V and title VII (Enforcement). Section 504 specifies that each permit must contain compliance certification requirements, and section 703 of title VII further requires submission of compliance certifications for all major stationary sources and other sources as specified by the Administrator. The enforcement agency will evaluate these certifications to determine if further inspection or enforcement activity is warranted. Certifications, as discussed in more

detail below, must include any periods of noncompliance, reasons for the noncompliance, how noncompliance was corrected, and how it will be prevented in the future. Certifications are required by the statute to be submitted at least annually, and are required to identify whether compliance has been continuous or intermittent. Certifications and all reports must be signed by a responsible official who shall certify its truth, accuracy and completeness.

The operating permit itself must require periodic certifications of compliance. The minimum content of these certifications is specified in § 70.6(c)(6)(iii), which are, for the most part, self-explanatory. The compliance certification must document not only the current compliance status at the time of preparation of the report, but also whether compliance over the reporting period was continuous or intermittent (i.e., whether there were periods of noncompliance). These compliance certifications place the responsibility to monitor compliance on the source. Also, the certified report should identify periods of missing data and the cause for the missing data.

A compliance certification must be submitted for each emission standard, work practice, or operating restriction. However, it is not necessary to submit separate reports. One report certifying all the contents therein would suffice. As indicated by § 70.6(c)(6), the permit must specify the frequency of the required submittals of the certifications and the method for assessing compliance, and require that all such reports be certified by a responsible official.

If appropriate, requirements for testing of compliance must be contained in the permit itself. Section 70.6(c)(6)(ii) further requires inclusion of a compliance technique. To make the applicable standards enforceable, all permits must specify both an initial compliance testing method, and a method to assess compliance with applicable requirements of the Act. The source must keep records of this required testing and monitoring and periodically report to the permitting authority. Affected sources under the acid rain program will be required to comply with nationally promulgated monitoring and reporting requirements. Performance certifications, quality assurance reports, monitoring, recordkeeping requirements, and electronic reporting options will all be established nationally. These requirements will be promulgated in a subsequent rulemaking at parts 72 through 78, and States must have the authority to incorporate the requirements into their approved programs.

The term "monitoring" refers to many different types of data collection. It could include, but is not limited to, periodic stack sampling, continuous emission or opacity monitoring, ambient air monitoring, or measurements of various parameters of process or control devices (e.g., temperature, pressure drops, voltages). Monitoring, recordkeeping, and reporting provisions are also essential to make standards enforceable. Hence, § 70.6(a)(3) requires these provisions, including the § 503(b)(2) requirement for prompt reporting of deviations from permit conditions.

Section 504(a) of the Act and § 70.6(a)(3) of the proposed regulations require permittees to submit the results of all required monitoring at least every 6 months. These reports must be certified for truth, accuracy, and completeness by a responsible official. The data must be submitted in a format consistent with the underlying standard. For example, if the SIP limitation for a coating facility is 2.9 pounds of VOC per gallon of coating, that is how the information should be presented in the monitoring report. Enforcement personnel should not have to do any calculations or conversions of raw monitoring data to the applicable standard to be able to determine compliance.

(c) *Other Permit Provisions.* The permit should also contain various other provisions, not directly related to emissions requirements or their enforcement, that are important to permit management. For example, permits should specify their expiration dates and procedures for renewal. The permitting authority would also be likely to include requirements that become applicable at a future date. These include such matters as the transition from the Federal Phase I permitting to the State Phase II permitting of sources subject to acid rain requirements. Fee amounts and provisions for their payment must also be included.

(2) *Program Specific Elements*

(a) General. The preceding discussion of core permit elements described the range of items to be contained in an operating permit. In many cases, these will fully satisfy the permitting provisions. It is important to keep in mind, though, that title V permits can be used to support a wide range of air quality management functions. For example, emissions inventory updates will be an important component for VOC nonattainment plans. The permitting program and the nonattainment plan should be developed in coordination with one another. At the discretion of the permitting authority, operating permits could require additional information that could be used in inventory development. The EPA solicits comment on whether, and how, such coordination should occur.

There are procedures for the development of alternative emissions limits under the NESHAP program (V.E.). Additional permitting information is necessary for the early implementation of those standards. Permit conditions must also be structured so as to provide for an orderly transition to Act requirements that are not yet established, such as MACT requirements.

(b) Acid Rain. Notwithstanding section 506(a), no permit shall be issued that is inconsistent with the requirements of the acid rain program, or of parts 72 through 78.

State legislative or regulatory authority should contain this limitation. The Agency plans to rely on its permit oversight authority to ensure national consistency with the acid rain program to allow approval of State permit programs that contain more general provisions, and to facilitate the allowance trading program.

Title IV requires that certain provisions be included in all acid rain permits issued by EPA or the States. Specifically, all permits issued to affected sources under the acid rain program shall prohibit (1) annual emissions by affected units in excess of the applicable emissions limitation for NO_x; (2) annual emissions of SO_2 by affected units in excess of the number of allowances to emit SO_2 held by the owner or operator, or the designated representative, for use in that year by each such affected unit; (3) any person from holding, using, or transferring any acid rain allowance, except in accordance with regulations at part 73; (4) the use of any allowance prior to the calendar year for which it was allocated; and (5) contravention of any other provision of title IV, parts 72 through 78, or of the permit (403 (f), (g)).

(3) Applicable Requirements of the Act and the SIP

Title V requires that operating permits assure compliance with each applicable standard, regulation, or requirement under the Act, including the applicable implementation plan (502(b)(5)(A), 504(a), and 505(b)(1)). Efficient operation of the permit program requires that the

permitting authority and EPA clearly understand and agree on what requirements under the Act apply to a particular source. The EPA expects to oversee the inclusion of the Act's applicable requirements in the operating permits. Where there is a question with the permitting authority over what requirements of the Act or SIP apply to a source, EPA will exercise its authority under section 505(b)(1) to object to permits that fail to assure compliance with the applicable requirements as clarified in the available record. The EPA proposes the following guidance for defining applicable requirements:

(a) NAAQS. The EPA interprets "applicable requirements" of the Act and the SIP to mean limitations, standards, and/or requirements directly applicable to sources. Typically, EPA will enforce the requirement that the States implement the NAAQS through SIP's. For example, title I requires that certain ozone nonattainment areas demonstrate a 3 percent reduction in VOC emissions each year. That is a planning obligation on the State, which the State may implement in any number of ways. For example, it could require a 3 percent reduction from each VOC emitting source in the State, or it could place stringent controls on some categories while not controlling other categories. The EPA is not planning to review VOC limits in individual source permits to determine whether the State is meeting the 3 percent reduction requirement, although EPA in its SIP review may look at the collection of permits the State has issued under title V to determine if the State has met its 3 percent reduction obligation.

In the case of SO_2, lead, or perhaps PM-10, however, a particular source (such as a power plant or smelter) may be located such that whether the SIP will assure attainment or maintenance of the NAAQS will depend entirely on the limits placed on that source. Even in such cases, EPA solicits comment on EPA's proposed position not to require that permits assure attainment and maintenance of the NAAQS. The permit would not be required to assure protection of the NAAQS even in those cases where EPA has issued a notice of SIP deficiency.

The EPA will, therefore, not object to a permit (that otherwise complies with the applicable SIP) on the grounds that the permit does not assure attainment of the NAAQS. Where more than one source substantially contributes to the NAAQS violation, EPA will not use individual permit actions to impose limits on sources beyond those required in a SIP. It is the State's responsibility to decide what limits the SIP should impose on the various sources. While the State may choose to remedy the inadequate SIP using a series of individual permits, EPA's review of individual permits will not be the appropriate forum for reviewing the adequacy of such planning decisions. The EPA must, however, review these planning decisions when the permitting authority, as required by the Act, updates the attainment demonstration or incorporates individual permit limits into the SIP. The EPA emphasizes that, for the preceding case to be grounds for potential objection, the relationship between the single source's emissions and the NAAQS violation must be very direct and clear.

(b) SIP Ambiguity. Some SIP requirements will be vague as to a significant provision (e.g., averaging time, monitoring, and/or reporting requirements), requiring considerable time during the permitting process to make the operating permit enforceable. In such cases, the SIP will be ambiguous when applied to a particular source, and the State must judge how to define the enforceable permit conditions. Where the State's interpretation of a requirement is both inconsistent with the State's demonstration of attainment and maintenance of the NAAQS and undermines the level of emissions reduction EPA anticipated the rule would achieve, EPA will object to the permit. In making this decision, EPA will look to the available record, including the assumptions the State made in the SIP.

The narrative description accompanying the SIP is not directly enforceable on sources, but it is reasonable for EPA to look to the assumptions made in the SIP in deciding how an ambiguous SIP should be applied to a particular source. For example, if the State grants the source an extended averaging time for compliance demonstrations that is inconsistent with the underlying SIP narrative, EPA will object to that permit, unless the SIP is changed to accommodate the longer averaging times. These State interpretations of ambiguous SIP regulations may need to be incorporated into the SIP if they critically affect the NAAQS demonstration. As discussed more extensively in section V.B, EPA believes that this might be accomplished periodically through the SIP revision process. Failure on the part of the State to revise the SIP may result in the issuance of a notice of SIP deficiency by EPA to the State.

The permit requires certain information to make it enforceable. There are situations in which a SIP, standing alone, is an inadequate basis on which to issue an approvable (i.e., enforceable) permit. For example, the SIP may contain gaps as to test methods or averaging times. The operating permit process should, at least temporarily, fill these gaps to the extent required by title V. However, this does not relieve the State of any obligation it might have to revise the applicable SIP in response to an EPA SIP call.

To promote and expedite permit decisions by State review authorities that address SIP ambiguity, EPA believes that the concept of a model permit appears promising. Under this concept, conditions for various source types would be developed by EPA. These conditions would incorporate all relevant standards and requirements in enforceable terms, address any gaps in applicable SIP limit(s), and would agree with the assumptions concerning the SIP control strategy demonstration. Permitting authorities could adjust the conditions of the "model," as necessary, during the permit process. While a model permit would not define the only acceptable means to avoid an EPA veto, it could streamline EPA permit review on aspects that do not differ from the model conditions. The EPA solicits comment on this concept and on how best to develop and implement it.

(c) SIP's and FIP's. When a State fails to submit or implement a SIP, EPA may have to impose a FIP under section 110(c) of the Act. When a FIP applies to an area, operating permits for sources in that area must assure compliance with the FIP measures. Failure of a permitting authority to implement the FIP requirements in its permits will be cause for EPA to find that the State failed to administer the permitting program under section 502(i). The EPA may choose to issue permits for sources subject to the FIP and to collect the permit fees.

Other important concerns arise regarding permit program approval and implementation of an inadequate SIP. These issues are discussed in detail in section V.B.

(d) New Source Review. The requirement under title V that operating permit programs assure compliance with all applicable requirements under the Act includes the requirements imposed in any NSR permit. Any requirements established during the preconstruction review process also apply to the source for purposes of implementing title V. If the source meets the limits in its NSR permit, the title V operating permit would incorporate these limits without

further review. The intent of title V is not to second-guess the results of any State NSR program.

Operating permits may conveniently help States implement their NSR programs. If a source "nets out" of NSR by restricting operations at the facility, it may seek an operating permit revision to make that restriction federally enforceable. If a new source needing offsets finds a facility to provide them, the donor facility's permit may be modified to enforce the offsets.

(e) Tighter or Equivalent Requirements. The determination of whether a permit provision relaxes an applicable requirement is an issue, since section 505(b) subjects to EPA veto permits that are not in compliance with the applicable requirements of the Act, including those of the SIP. To minimize concerns about potential relaxations of SIP requirements, permitting authorities are required to express new limitations in terms consistent with those in the SIP (e.g., averaging times) to facilitate comparison with the existing SIP requirement. Where the SIP allows expressing the permit limitation in terms other than those used in the SIP, the burden of demonstrating equal or greater stringency rests with the State. This demonstration must accompany the draft proposed, proposed, and final versions of any permit.

(f) National Emergencies. There are several provisions in the Act authorizing the President to waive applicable requirements of the Act to meet national emergencies or address the national security interest (110(f) and 112(i)(4)). The EPA does not believe it is reasonable for the title V permit program to restrict the operation of these emergency waiver provisions. For example, where the President has made a finding under section 110(f) that it is necessary to suspend a part of a SIP because of a national energy emergency, requiring all the permits that implement the suspended SIP provisions to go through a time consuming reopening procedure would defeat the urgency of the President's finding. Therefore, EPA will interpret such provisions to allow a waiver not only of the applicable requirement under the Act, but also as it appears in any permit implementing the requirement. Obviously, the waiver of the requirement as it appears in the permit will be coextensive with the waiver of the underlying applicable requirement in the Act, and will only be effective after the underlying requirement has been waived according to the procedural requirements in the Act.

(4) Relationship Between the Permit and the Application

The permit application must provide the information necessary for the permitting authority to process the permit. Much of the application need not be incorporated into the permit, however, even though it was needed for preparing the permit. Key elements of the application (e.g., emission limits, the compliance plan and the schedule of compliance for noncomplying sources, and monitoring methods) are not federally enforceable unless repeated or incorporated into the permit (except in the case of acid rain applications).

Nevertheless, existing State practice typically considers most, if not all, of the permit application to be enforceable. In many States, a permit refers to the entire application, and sometimes incorporates it by reference. This practice makes all the source's assertions in the application enforceable, even if they are not critical to implementation of the permit.

Under title V, this practice is not required. Instead, the draft rule requires the permitting authority to determine which details are necessary for incorporation into a part 70 permit because they assure compliance with applicable requirements. Any provisions of the application incorporated in the permit must be readily available to the public and do not qualify for protection as confidential information.

Public comment is solicited as to what type of information contained in the application should be incorporated into the permit. In addition, EPA solicits comment on whether applications (as well as permits) can cross reference applicable regulations and other requirements instead of repeating them.

Regardless of the balance between the information contained in the application and that contained in the permit, certainly some portion of the application will be referenced by the permit and therefore will be made federally enforceable. Because determining this balance can be difficult, and because it is important to the title V permitting process that a source's air pollution control obligations be clearly defined, the permitting authority should specifically address in the permit the status role of the assertions made in the application.

(5) Operational Flexibility

The operational flexibility provisions in § 70.7(d) of the regulations are discussed in section G(7) of the preamble.

(6) General Permits

Section 70.6(f) reflects section 504(d), which authorizes permitting authorities to issue a "general permit covering numerous similar sources." The EPA anticipates that States will use this authority to reduce the administrative burden of the title V permitting program for both the permitting authority and the permitted sources. General permits may be especially useful in easing the burden of the program on small businesses. Therefore, the Agency wishes to clarify its understanding of how this authority will operate in the context of operating permit programs generally.

(a) Determining Where To Use General Permits. In most instances EPA intends to allow those permitting authorities with approved programs to determine whether to issue general permits, and for what source categories. If, however, a permitting authority determines that a general permit should apply to a category of major sources or a category of affected sources under the acid rain program, the permitting authority must submit the general permit to EPA as a program modification. Prior to issuing the general permit, the permitting authority must determine whether there are source categories for which general permits might be appropriate. Criteria in any such determination are source size and similarity of sources within the category; categories made up of numerous, small, and nearly identical sources, are ideal. Initially, EPA does not anticipate issuing any nationally applicable general permits. In the future, EPA intends to develop model general permits for appropriate categories of sources subject to Federal standards. The permitting authorities may then adopt these models as appropriate to the circumstances in their States. The EPA solicits comment on which categories would be most appropriate for the development of general permits. In particular the EPA solicits comment on the idea that such permits be prepared for woodstoves, gas stations, dry cleaners, and several of the source categories subject to the radionuclide NESHAP to the extent that these sources would not be exempt from review.

Permitting authorities may also choose to develop general permits for categories of numerous, identical emissions units within larger sources. For example, a general permit for degreasers could specify standard operating conditions or maintenance requirements. A general permit for a large manufacturing operation with numerous permitted emissions units could specify the terms of the model permit for the type of degreaser the facility uses, along with the terms specific to that source.

(b) Issuing General Permits. Title V requires that the permitting authority provide notice and an opportunity for a public hearing when issuing a general permit. In contrast to section 502(b)(6), governing issuance of standard permits, section 504(d) does not explicitly require an opportunity for public comment with respect to individual sources when issuing a general permit. Nonetheless, the EPA suggests that permitting authorities provide the public an opportunity to comment on general permits. Otherwise, the interested public may insist on a public hearing, even if only for the satisfaction of submitting a comment. The notice for the general permit must allow the public an opportunity to review the scope of the source category under the permit (but not necessarily a listing of specific source sites that might be covered), the terms and conditions which the permit will impose on that category, and the application process by which individual sources will receive the right to operate under the general permit.

There may be opportunities for States to consolidate the issuance of general permits with the adoption of SIP regulations. Section 110(a) (2) and (3) require that States provide reasonable notice and a public hearing for all revisions to its SIP. A State may determine that a new SIP regulation will apply to a source category for which general permits would be appropriate. The State could use the same notice and hearing for both the SIP rule and the general permit. After the State finalizes the SIP rule and is ready to issue the general permit, it could then submit the general permit to EPA for review under section 505.

Once the permitting authority has afforded opportunity for public input on issuing the general permit, it may permit individual sources under the general permit without additional opportunity for public input. Section 504(d) provides that sources covered by a general permit are not relieved of their obligation to file an application as otherwise required under title V. Therefore, sources covered by a general permit will have to submit an application to the permitting authority, and may be asked to also submit an appropriate permitting fee. Depending on the complexity of the source category under the general permit, such application processes could simply be a brief application (such as a form application) requesting a permit consistent with the general permit, or a more detailed statement establishing that the source qualifies for the permit. The EPA expects that applications for general permits will typically be quite simple, because the sources in each category will be very similar.

Within limits discussed below, it is for the permitting authority to balance the desire for a simple application against the flexibility gained by broadening a source category and introducing variables into the application process. Once the permitting authority accepts the application, it can issue the individual permit by mailing the applicant the appropriate permit. All general permits, and the individual permits issued under them, must conform to all requirements (e.g., they must have monitoring, recordkeeping, and compliance certification provisions of these regulations).

The EPA is also considering an alternative approach for applying general permits to individual sources. Under this alternative, rather than issue individual permits to applicants, the permitting authority might simply construct the general permit so that it applies automatically to any source within the source category covered by the general permit. The individual source must submit an application identifying and describing the source, so that the permitting authority and the public could determine whether the general permit applies to the applicant, but the authority would not need to notify the source through an individualized permit that the general permit applies. Of course, the permitting authority might still notify some applicants that the general permit did not apply to them. Beyond that, a source could opt out of this approach by requesting that the permitting authority issue a specific individual permit for the source.

The main advantage of this approach is that it would reduce the administrative burden associated with requiring the permit authority to issue individual permits to the potentially hundreds or thousands of sources that would be subject to general permits. The main disadvantage is that a citizen or inspector visiting the source would not be able to view, at the source, a permit issued by the State specifically for that equipment. Rather, he would need to rely on the wording of the general permit (residing, perhaps, only in the offices of the permitting authority) to determine whether the general permit indeed applied to the source. Moreover, the public would not be able to challenge the general permit's applicability to a particular source during the permitting process since the permitting authority would not make such an applicability determination as part of that process. The EPA solicits comment on whether it should allow State programs to employ this or other streamlined methods of general permitting in light of their advantages and disadvantages, or whether individual permits need to be issued to each source covered by the terms of a general permit.

(c) Overseeing General Permits. The EPA will treat the issuance of a general permit as it would that of any other permit. Therefore, general permits will be subject to the review process under section 505, including neighboring State and EPA review. The general permit must include clear criteria for determining whether a source qualifies for the permit, the terms and conditions applicable to the source, and an application process for obtaining individual coverage under the general permit. As with regular permits, EPA will use its review opportunity under section 505(b) to determine whether the terms and conditions of the general permit assure compliance with the requirements of the Act applicable to that source category in the relevant State. Unlike regular permits, EPA must make a judgment at this stage in the process whether the general permit and its application process are reasonably structured to permit qualified sources and exclude unqualified sources. There may be cases where EPA must object to a general permit because the permitting authority is applying it to an inappropriate source category or is not asking for the information necessary to apply it accurately to specific sources.

After the permitting authority has issued the general permit, EPA will not engage in any direct review under section 505 of the permitting authority's approval of each source's application to operate under the general permit. The EPA must, however, continue to receive a copy of all final permits issued to individual sources. The Administrator may later determine by audit or inspection that, although a source is operating under a general permit, it does not in fact qualify for the permit.

The EPA then has several courses of action available. If the source has clearly misapplied the criteria for receiving the general permit, EPA may enforce against the source, under section 113, for a failure to meet the qualifying criteria, which must be included as terms of the general permit, as discussed above. The EPA may enforce as well for failure to meet any applicable requirement of the Act. The source may also be liable for filing a false application if it misrepresented its qualifications for the general permit. If the qualifying criteria as they apply to a

particular source are unclear, EPA may use its authority under section 505(e) to terminate the general permit for that source, and require issuance of a regular permit. Finally, if EPA determines that a properly-issued general permit, when applied to its source category, proves to be impracticable or fails to assure compliance with the Act, EPA may revoke or reopen the general permit under section 505(e).

G. Section 70.7 (and Section 70.6(d))—Permit Issuance, Renewal, Reopenings, Operational Flexibility and Revisions

The Act sets forth detailed provisions with regard to the process by which permits are issued. This section of the preamble describes EPA's proposed regulations for permit issuance, renewal, and reopenings, including those requirements regarding essential permit issuance procedures necessary for obtaining approval for a State program. The requirements for permit revisions were discussed in the previous section of this preamble (IV.F.).

(1) The Application Process and State Review

As noted in section IV.E., the submittal of a complete application is a crucial part of the permit-issuance process. States are required to have procedures for both determining the completeness of applications and for expeditiously processing them. Because of the critically important nature of this step, the proposed regulations would require States to promptly notify sources of the results of the completeness determination (40 CFR 70.7(a)(2)).

Pursuant to section 503(d), the timely submittal of a complete application and the continued timely submittal of any additional information creates a legal "shield" from enforcement action if this source is also operating within the terms of a permit. For purposes of permit renewals, "timely" will mean submittal of the application 18 months prior to the expiration date of the permit, unless another time is approved by the Administrator. A correspondingly shorter time would be needed for permits with fixed terms shorter than 5 years, or where the State is required to act on the renewal application in less than 18 months. In no event will the time for submittal be less than 6 months before permit expiration.

It should also be noted that the complete application does not shield the source from compliance with substantive air pollution control requirements. (There is one specialized exception to this rule in the case of applications for acid rain permits. This is discussed in section IV.G.(5)(a) below.)

Despite the protection provided by the "shield" when a timely and complete permit application is filed, EPA believes that it makes no sense to deprive a source of such protection where an application is only slightly overdue. Otherwise, a permitting authority's failure to act on an application during the prescribed review period could shut down a source, even if the application were only a few days late. The EPA proposes to solve this problem by providing in § 70.7(b) that the shield will not be lost because a complete application was submitted less than 3 months late. This proposal is supported by the language in § 503(d), which states that, under most circumstances, if a source has submitted a timely and complete application, "the source's failure to have a permit shall not be a violation of this Act." Nothing in the Act prohibits EPA from exercising its discretion to extend this application shield in other, appropriate circumstances. The proposed regulations make clear, however, that a source remains subject to enforcement action and penalties for failure to submit a timely and complete application for the entire period that the application was late.

The EPA also proposes that the application shield should still apply where a source submits a timely application that the permitting authority determines to be incomplete, regardless of whether there was "good faith" on the part of the source to file the required information. If the source cures any deficiency during the expeditious time period specified by the permitting authority (i.e., a few days), then the application shield can apply from the time when the "good faith" application was submitted.

State programs are required to have procedures for expeditious and efficient processing of permits. Pursuant to § 503(c), the permitting authority shall issue or deny the permit within 18 months of receipt of a complete application. (During the initial phase-in of the program, however, any shorter timetable specified in the transition plan will supersede the 18-month requirement.) The program must provide that failure of the permitting authority to act within this time period shall be treated as a final permit action solely for purposes of judicial review in State court of an action brought to require that action be taken by the permitting authority on the application without additional delay (502(b)(7)). In other words, while the failure to issue a permit can be reviewed judicially, the permit cannot be deemed to be approved or disapproved at that time. One potential difficulty in obtaining program approval arises from provisions for default permit issuances under State law. Some State statutes provide that a permit based upon the submitted application will be automatically issued after the passage of a certain time period if the State permitting authority has failed to act. Such default issuance is inconsistent with the State permit-processing requirements of title V and, obviously, with the requirements for Federal oversight contained in section 505.

Although section 503(d) of the Act makes it clear that existing sources can receive the shield from enforcement action for failure to have a permit, until final action is taken by the review authority on the application, the status of sources subject to preconstruction-review permitting is less clear. One reading of the section is that the application shield is not available to sources subject to NSR permitting under the Act (e.g. PSD), and that those sources must have title V operating permits before commencing operation. The EPA believes that a better reading consistent with the goals of section 503(d), and of title V generally, is one that affords protection equally to existing and to new sources.

There are several reasons which support this proposal. First, sources that have recently undergone the careful scrutiny involved in obtaining a PSD or NSR permit present much less of a relative risk to air quality goals even if they are allowed the benefits of the shield, than would existing sources. Second, title V provides a review process that, while efficient, could cause expense and delay to the initial operation of a source that typically will have excellent air pollution controls. There is nothing in the legislative history that indicates Congress intended such harsh treatment for new or modified sources. A third reason arises from the fact that the subsection specifies only NSR permits *required by the Act*. It would be anomalous to allow the application shield to new sources that have undergone State NSR procedures, which generally address smaller sources and are less rigorous than the NSR mandated by the Act. In view of these factors, EPA believes that section 503(d) should be interpreted as a reemphasis of the important, independent requirements of the Act with respect to NSR permits, rather than a denial of the application shield to these sources.

If EPA adopts the alternative position in its final rulemaking, all sources obtaining NSR permits will also be required to obtain title V operating permits before commencing operation (i.e., it is not sufficient that the source submit a timely and complete application before operating) (503(d)). This has prompted interest in the possibilities for integrating or coordinating these two permitting systems. The EPA is aware that some States currently integrate their processes for issuing construction and operating permits, and wishes to minimize disruption of existing practices. In addition, this practice might address the concern expressed by some industry representatives that early issuance of the operating permit would aid in qualifying for construction loans. The EPA concludes that such program integration would be consistent with title V. States preparing such programs must, however, carefully scrutinize them so as to maintain consistency with the requirements of title V. For example, the term of the operating permit would begin running immediately upon issuance of the integrated permit. Payment of emissions fees, submittal of compliance plan for noncomplying sources and certification, and future permit renewal must also be addressed.

(2) Public Comment

Title V emphasizes the importance of a well established, procedural basis for permit issuance. Public comment is a cornerstone of this, and the following discussion examines the provisions of title V on this subject.

(a) Public Information and Notice. Pursuant to section 502(b)(6), State programs are to have formal procedures for providing public notice of certain permitting actions. Each permitting issuance, renewal and modification must be supported by an official record that is available to the public. The notice should include both substantive information, regarding the source itself, and procedural information, regarding the public's opportunities for participation. The extent of source-specific information required for the notice will vary, depending on the size and type of source and the applicable requirements, but should at least include the source's name and type of facility, size, regulated emissions, and principal regulatory requirements. The procedural information, which can be standardized, should describe the public's opportunity for comment, including the availability of the official record, the duration of the comment period, and the opportunity for a hearing. Notices for hearings should briefly describe the procedure by which the hearing can be requested.

The process for publishing public notices of permitting actions has always been of considerable practical interest to State agencies because extensive publications of notices in newspapers of general circulation can be time consuming and can entail appreciable expense. For this reason, State agencies have generally not used this form of publication, except for certain types of sources or regulations, or where specifically required by Federal law, most notably under the PSD and nonattainment NSR provisions of the Act (40 CFR 51.166(q)). The proposed regulations require that the State provide public notice "by advertisement in the area affected" (70.7(i)(2)). The EPA solicits comment on public notice procedures, including any currently used by State programs, that might be less administratively burdensome than individual newspaper publication, while still meeting the requirements of title V. This issue is of particular importance to this program because of the large number of permits involved and the fact that most permitting actions incorporate SIP limits that have already undergone public review, and should therefore be noncontroversial. Options to be considered include the use of State publications analogous to the **Federal Register** and of bulk processing of notices.

Section 505(a)(1) requires that the permitting authority transmit to the Administrator "a copy of each permit application (and any application for a permit modification or renewal), or such portion thereof, including any compliance plan, as the Administrator may require" as necessary to carry out EPA's responsibilities under the Act, and a "copy of each permit proposed to be issued and issued as a final permit." The potential use of various approaches to streamline or focus the process of State information submittal to EPA has been a topic of considerable interest, given the number of permits and amount of information involved.

Mechanisms for waivers of the EPA notification requirements are discussed in section IV.H. In addition, the notification requirement might be streamlined pursuant to section 505(a)(1)(A), which requires the submittal to EPA of permit applications "or such portion thereof * * * as the Administrator may require" to carry out EPA's responsibilities. The EPA solicits comment as to the extent of this flexibility and how this information submittal process can be streamlined to agree with EPA's responsibilities as guarantor of the permitting process. Examples of such practices might include summary sheets with certifications (instead of comprehensive submittals) for certain routine permitting, or the use of electronic submittals. For acid rain, summary sheets with certifications will not be authorized in lieu of submitting complete applications and draft permits to EPA. The Agency, however, is considering the use of electronic submittals of applications and draft permits for acid rain affected sources to minimize the submission burden.

Section 505(a)(2) also requires the permitting authority to notify all States "whose air quality may be affected and that are contiguous" to the subject State, or that are within 50 miles of the source, of each permit application or proposed permit forwarded to the Administrator. This regulation would require that the same draft proposed permit for which the permitting authority offers public notice and an opportunity for public comment and hearing be provided to those affected States. The permitting authority shall provide an opportunity for those States to submit written recommendations. If those recommendations are not accepted, the permitting authority shall so notify that State and EPA in writing and provide its reasons. This process appears straightforward. Particular administrative details, such as how much of an application should be transmitted, may be appropriately addressed by agreements between the relevant States.

The one area where clarification might be necessary is in the definition of the term "may be affected" in section 505(a)(2)(A). The 50-mile geographic trigger, contained in section 505(a)(2)(B), appears to provide adequate protection for virtually any case and would be relatively simple to administer; compared, for example, to alternatives that attempt to define a significant ambient impact. The EPA solicits comment on whether any other trigger would provide any further safeguard, beyond the 50-mile test, needed to implement the "may be affected" test for certain pollutants.

There has been some interest regarding whether State permitting authorities would be required to publish notice both of proposed State action on the permit (prior to EPA review) and of final permit issuance (following EPA review), or only the latter. The EPA proposes not to require the latter notice

(b) Opportunity for a Hearing. The EPA believes the requirement in title V for an opportunity for a public hearing

can be implemented in an informal manner. It is not requiring States in its proposed rules to provide a full "trial-type" hearing with a verbatim transcript and opportunity for cross-examination. The Agency proposes that a public hearing for purposes of title V be an open meeting for concerned parties to express their concerns. A summary of comments received should be placed in the public record.

The EPA also solicits comment as to the degree of discretion that State agencies should have to condition the opportunity for a hearing upon certain reasonable criteria. These might include the relevance of the issues presented by the requesters, and whether factual issues (in contrast to issues of law) are presented. The granting of a request for a hearing might also be linked to the quality of information provided by the requester to support the request (e.g., whether the request reflects comments of sufficient technical (or, possibly, legal) scope that they would benefit from the exchange of ideas afforded by the public hearing process).

(c) Publicly Available Records. Title V places considerable emphasis upon providing public access to permit information. Section 502(b)(8) requires that the permitting authority make available to the public any permit application, required compliance plan for noncomplying sources, permit, and monitoring or compliance report, subject to the provisions of section 114(c). (The EPA notes that section 114(c) governs information to be provided to EPA, not to a State, and thus the provision does not apply where the State is the permitting authority. The Agency interprets Congress's reference to section 114(c) as authorizing the States to use the same, or substantially similar, confidentiality criteria, otherwise the reference would be meaningless except where EPA is the permitting authority. The EPA solicits comment on this interpretation.)

Section 503(e) requires that each application, compliance plan for noncomplying sources (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this title shall be available to the public. The applicant may separately submit material subject to State procedures which correspond to the section 114(c) confidentiality provisions of the Act. In no event will the contents of a permit be entitled to section 114(c) protection. To the extent the permitting authority chooses to make the application or other supporting material an enforceable part of the permit, these materials would also be publicly available.

(3) State Permit Appeals

The proposed regulations require State operating permit programs to contain appropriate appeals procedures. Many States currently provide an administrative process to consider appeals from permitting decisions, and EPA anticipates that these procedures will continue to be used under the title V permitting program. For those cases in which a State does not offer such an administrative process, the Act still requires the State to provide for judicial review in the State courts. States may require that judicial review only be available to those petitioners who first have gone through the administrative appeals procedure (502(b)(6)). Further discussion of this topic is provided in section V.D. It should be kept in mind that permits cannot be issued with respect to title V until the Federal review is complete. Because of the statutory 18-month period for final action on permit applications, it is expected that State permitting authorities will generally issue final permits at the end of State and Federal review, regardless of any pending appeals of the permitting decision. However, the EPA does recognize that, in some cases, the nature of the appeal might prompt changes to the permit that could significantly affect commitments by the source. In such cases State programs should have the discretion to withhold final action on the permit while the administrative appeal is pending. The permit challenge procedures adopted by the States should limit the effect of permit challenges, as is done in the NPDES program. State authorities should provide that only the portions of a permit specifically challenged may be stayed during the challenge. All other provisions of the permit should remain in effect. The Agency is proposing that permit challenge procedures limiting the effect of challenges be criteria for State program approval.

To ensure the integrity of the various programs implemented through the permit, each permit should also contain a severability clause. This clause should be designed to ensure that challenges to portions of the permit do not affect the applicability of the unchallenged permit requirements. This provision, should further ensure that only those specific requirements being challenged may be stayed pending administrative or judicial review. The Agency is proposing that a severability clause be criteria for permit program approval and expects to veto permits lacking this clause.

(4) Terminate, Modify, or Revoke and Reissue

Section 505(e) provides that if cause exists to terminate, modify, or revoke and reissue a permit under title V, the Administrator shall notify the permitting authority and the source. The permitting authority then has 90 days to forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend this period for an additional 90 days if a new or revised permit application is necessary, or if additional information is needed from the source. The Administrator may review proposed determinations pursuant to the same section 505 criteria used to review any proposed permit issuance.

If the permitting authority fails to submit the required determination, or if EPA objects to it and the permitting authority fails to resolve the objection within 90 days, the Administrator may, pursuant to appropriate administrative procedures, terminate, modify, or revoke and reissue the permit. The criteria for Federal reopening of a permit for cause to terminate, modify, or revoke and reissue are essentially the same as required for State programs. These are discussed in the following preamble section.

(5) Permit Shield and Reopenings

(a) *Shield.* Once a permit is properly issued with respect to title V (i.e., EPA does not object to the permit in its final form and adequate public participation has occurred), it is the comprehensive statement of the source's obligations under the Act. In accordance with section 504(f), the permit, upon issuance, shields the source from enforcement for failure to obtain a permit as set forth in section 502(a).

Section 504(f) states that: "Compliance with a permit issued in accordance with this title shall be deemed compliance with section 502. Except as otherwise provided by the Administrator, by rule, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of this Act that relate to the permittee if (1) the permit includes the applicable requirements of such provisions, or (2) the permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise summary thereof. Nothing in the preceding

sentence shall alter or affect the provisions of section 303, including the authority of the Administrator under that section."

The Act describes a number of situations which are not protected by the permit shield. First, section 504(f), which provides for the shield, precludes the shield from being applied when implementing section 303. Section 303 gives the Administrator emergency powers to respond to pollution that produces imminent and substantial endangerment to the health of persons. Second, section 504(f) gives the Administrator the authority to exempt, by rule, certain situations from the shield. Pursuant to this authority, the Administrator is proposing that a permit shield not afford any protection from liability to a source that is not in compliance with a standard or regulatory requirement of the Act at the time an operating permit is issued. Further, the EPA is proposing that the permit shield would apply to any permit provisions added or modified by any type of permit revision. For a minor permit amendment made under the "fast track" approach, the shield would apply immediately when the revision becomes effective, i.e., when the permitting authority fails to object.

In addition, if any applicable requirements were omitted from the permit during the permit issuance process (i.e., not addressed as opposed to misinterpreted), the source will not be shielded from enforcement of those requirements. Otherwise, emissions subject to omitted regulations, including hazardous air pollutants, could be emitted entirely unrestricted until the permitting authority or EPA reopens the permit. The Administrator is requesting comments on these proposals and any additional recommendations as to other situations which should be exempted from the shield, by rule, under section 504(f). The Agency is also proposing that the permit shield be disallowed with respect to the acid rain portion of the permit consistent with new section 408(h). Section 408(h)(2) modifies the effect of section 504(f), disallowing the permit shield to the extent the acid rain portion of the permit is inconsistent with title IV. Each permit should, therefore, clarify that the shield does not apply to acid rain requirements, notwithstanding any generic shield language.

After a permit has been issued, any permit shield can be preempted by the permitting authority or the EPA only when the permit is reopened for cause. The Act contains several occasions for reopening an issued permit, and they are discussed below in this section.

While use of the shield remains discretionary with the permitting authority, EPA believes that the section 504(f) permit shield provision of the Act brings about certain benefits to a permittee, as well as to the permitting program. Therefore, the Administrator encourages the permitting authority to employ the shield to help stabilize the permit process and to give greater certainty to regulated sources. Because of the shield, unclear provisions or changes in interpretations will not affect a shielded source after a permit has been issued, unless it is later reopened for cause. Uncertain regulatory provisions should therefore be resolved in a public forum during the permit processing stage. On the other hand, in nonattainment areas where the State anticipates new requirements becoming applicable to a permitted facility during the permit term, the permitting authority may choose to limit the scope of the shield for those provisions. Doing so would save the permitting authority and affected sources the inconvenience of reopening a series of permits to allow the State to implement its SIP obligations.

The EPA proposes that the permit shield under § 504(f) remain in effect, to the extent the source is entitled during the term of the expiring permit, until a renewed or modified permit is issued, except where inconsistent with State law or as provided in parts 72 through 78 for the acid rain portions of a permit, provided the source submits a complete application for permit renewal in a timely manner.

The Agency also solicits comment on how comprehensively to interpret the scope of the shield. One approach is to interpret it quite broadly. For example, if all the applicable requirements of § 112 are met in a part 70 permit at the time of permit issuance, and are explicitly identified in the permit as meeting § 112, the source could be shielded by the permitting authority from any future § 112 requirements for the term of the permit. Section 502(b)(9) provides support for this interpretation by calling for the automatic reopening of a major source permit with a term of 3 or more years in order to incorporate applicable new standards and regulations promulgated under the Act after the issuance of a permit. On the other hand, § 504(f) can be read to shield the source only from those requirements (read narrowly) that were the subject of the permit-issuance process and included in the permit. Under this interpretation, the section 502(b)(9) provision for reopenings would be viewed as a requirement to ensure the timely incorporation into the permit of major, new regulatory requirements in order to maintain the permit as the consolidated repository of all applicable Act requirements.

The EPA interprets the shield broadly by distinguishing between the applicable "provisions" of the Act and the applicable "requirements" of the Act. To expand on the example mentioned above, if the permit imposes the specific "requirements" of an applicable MACT standard, or determines that there are no such requirements under § 112, then the source is protected from application of the "provisions" of § 112 for the duration of the permit term.

The regulations as they are now structured follow this broad interpretation of the shield. The proposed shield provision in § 70.6(h) protects a source from new requirements that become applicable after issuance of the permit.

(b) Permit Reopening. After a permit has been issued, any established permit shield under section 504(f) can be preempted by a permit reviewing authority or the EPA where the permit would be reopened for cause. The Act contains several occasions for reopening an issued permit, and provides several instances in title IV where changes to the permit are to be incorporated without reopening.

One occasion for reopening a permit is in section 505(b)(3). It provides that if the EPA objects to a permit, the EPA shall, if a permit has already been issued, either modify, terminate, or revoke such a permit, and the permit reviewing authority may afterwards only issue a revised permit in accordance with § 505(c).

Another occasion for reopening a permit is for cause. Section 502(b)(5)(D) requires that a permitting authority must have adequate authority to terminate, modify, or revoke and reissue permits for cause. Both the permit-reviewing authority and the EPA can require a permit to be reopened for cause. The EPA interprets this to mean a compelling reason to reopen a permit, for example, where a substantial error has been made in permit processing or data submittal whose correction cannot wait until renewal, or where fraud on the part of the source has been found. Reopening of the permit "for cause" would also be appropriate in order to incorporate the NO_x limits for affected sources under the acid rain program. Permit applications for NO_x are not due from affected sources until after the statute requires States to have issued permits for these sources. To include

NO_x limits in these permits prior to reissuance, the permits will need to be reopened. (States should be aware, however, that permit revision procedures for acid rain sources will be affected by part 72 regulations.) Cause should not include trivial matters (i.e., changes in a permit which cause an inconvenience to a source but do not have a significant effect on assuring compliance with Act requirements). The EPA is requesting recommendations for events and situations which provide cause for both the EPA and a permitting authority.

The EPA proposes not to require a permit to be opened for cause until after a permitting authority has had an opportunity to act expeditiously under its own authority to reopen a permit for cause. If EPA notifies the State, pursuant to section 505(e), it will then get 90 days to make the appropriate change. The EPA further proposes that permit reopenings be processed under the permit issuance process, with one important exception: The EPA proposes to require the permitting authority to provide the source 30 days advance notice before reopening and revising a permit for cause when it is reopened pursuant to section 502(b)(9), as discussed below.

Certain changes cause permits to be reopened automatically as defined in § 502(b)(9). The EPA believes that § 502(b)(9) should be read to require that the permitting authority reopen permits for major sources with 3 or more years remaining in the permit's life (rather than reopen all permits with original terms of 3 or more years) to incorporate standards and regulations promulgated under the Act which are promulgated after the issuance of such a permit. The EPA has rejected the alternative interpretation stated in the parenthetical because it would lead to absurd results. For example, a major source permit with a 35-month term, and 34 months remaining until expiration, would not have to be reopened upon promulgation of an applicable standard or regulations; yet a major source permit with a 40-month term, and 19 months remaining until expiration, would. Besides being unreasonable, this would create a strong incentive for States to issue permits with artificially short permit terms, thus creating much additional paperwork with no corresponding environmental benefit. It would also be disruptive of existing State permit programs because many now issue permits with 5-year terms. The EPA therefore believes that the alternative interpretation was not the result intended by Congress.

Revisions must be made as expeditiously as practicable according to § 502(b)(9), but no later than 18 months after the promulgation of such standards and regulations. The 30-days advance notice to affected sources is again proposed as a requirement for the permitting authority.

Finally, certain changes will cause a revision to the permit by operation of law without necessitating any sort of reopening of the permit. For example, all acid rain allowance allocations and transfers shall, upon recordation by EPA, and in accordance with § 403 of the Act and part 73, be deemed a part of each unit's acid rain permit requirements, without any further permit review and revision (403(d)(1)). In addition, excess emission offset plans shall be deemed included into the permit upon approval by the Administrator, but without any further permit review or revision (411(b)).

(6) Permit Renewals

Section 502(a) of the Act states that it is a violation for a source subject to title V to operate without a permit. Furthermore, § 502(b)(5)(B) requires that permits be issued with a fixed term of 5 years for acid rain affected sources and with a fixed term not to exceed 5 years for all other sources, except for solid waste incineration units subject to § 129(e), which can have terms of up to 12 years. The § 502(a) requirement to have a valid permit is qualified in part by § 503(b) which states the source is not in violation of section 502(a) if a complete and timely application for renewal has been filed by the source owner, unless the delay in final action was due to the failure of the applicant to submit any required information requested to process the application. The EPA proposes that a timely submittal must allow sufficient time, before the expiration date of the permit, for the permitting authority to review and reissue the permit. The EPA believes, at a minimum, that this time must include the 45 days for EPA oversight and adequate time for permit processing, including public participation. In some cases, additional time may be necessary to be consistent with other review procedures. Therefore, EPA proposes the timetable for application submittal by the source be included as a condition within the permit and be for a period of 18 months unless a different time period is approved by the Administrator. This time presumptively would be correspondingly reduced in the case of permits with fixed terms of less than 5 years or where the permitting authority is obligated to act on the application in less than 18 months.

Section 502(b) (5)–(7) requires applications for permit renewal and the subsequent permits to be subject to the same requirements as were the initial applications and permits with respect to permit content and processing. This includes allowing up to 18 months to process a complete application. Section 502(b)(5)(C) specifically requires that, upon renewal, all permits incorporate all applicable emission limitations and other requirements of the SIP. The EPA is proposing in § 70.7 to minimize the burden of processing permit renewals by taking advantage of the fact that, in many cases, much of the data and analyses pertinent to the earlier permit is still applicable for the permit renewal. Upon certification by the source owner or operator that no significant change has occurred at the source since the time the existing permit was issued, a permit-renewal application can, at the option of the permitting authority, reference the relevant material submitted in earlier applications as an alternative to resubmitting the material. In addition, the renewal application must contain, in accordance with § 502(b)(9), those items related to new regulatory requirements which have become applicable to the source, any other regulatory requirements which have been determined to apply to the source, any other changes which would ordinarily require or permit modification.

Although referenced material in the renewal application was at one time subject to public comment and EPA review under the permit-renewal process, it is again subject to all the provisions of the permit-review process. Section 505(a) requirements for the transmission and notice of permit applications specially affirm their applicability to renewals as well as those applications processed during the original issuance of the permit.

If the term of a permit expires before a complete application is submitted, the source's right to emit is terminated. The source is subject to enforcement action if it continues to operate even though a complete application is eventually submitted until it receives a new permit. The EPA proposes that the permit shield described in § 504(f), remain in effect with respect to requirements addressed in the permit provided the source submits a complete and timely application for permit renewal. However, the permit shield will be disallowed if requirements are inconsistent with the acid rain title.

Issues arise as to what requirements are enforceable on the source after the

fixed term of its current permit expires and the source owner has not received a new permit. The EPA proposes that expired permit terms should remain enforceable as they are in the NPDES program, except where inconsistent with State law or as provided in part 72 for the acid rain portions of a permit. In addition, any new requirements, from which the source was previously insulated by the permit shield in § 504(f), would apply upon expiration of the permit (IV.G.(5)).

Section 502(b)(9) deals with the need for certain permits to be reopened in the event that applicable standards and regulations are promulgated after the issuance of such permit (70.7). This type of permit revision must be treated as a permit renewal and is subject to all the requirements described today which address permit renewals.

Finally, as permits which were processed in the transition period are reviewed, EPA encourages reviewing authorities to establish new fixed terms (e.g., terms of 3, 4, and 5 years) in these permits that balance the future workload. That is, the reviewing authority should define new schedules for renewal within reissued permits which take advantage of the 5-year timeframe opportunity rather than the 3 years required for transition.

(7) Operational Flexibility and Permit Revisions

(a) *General.* During discussions preceding the proposal of these regulations, many in the regulated community expressed concern over the ability of states to make changes in permits to reflect routine operational changes. Several different aspects of the permit program provide substantial flexibility for industry to make changes in operations without having to obtain prior governmental approval in the form of amendments to the existing terms of their permit.

Sections 70.6(d) and 70.7 of this proposed regulation set forth the framework for operational flexibility and permit revisions. More specifically, they establish minimum procedures for four classes of changes at sources: (1) Changes under the CAA section 502(b)(10) that require no prior revisions to the permit (see § 70.6(d)); (2) changes classified as "minor permit amendments" (see § 70.7(f)); (3) changes classified as "administrative permit amendments" (see § 70.7(e)); and, (4) changes classified as "permit modifications" (see § 70.7(d)). The last three of these are grouped together under the term "permit revisions" (see § 70.2(v)). These changes are discussed below.

(b) *Flexible Source Operation Under CAA section 502(b)(10).* The first, and perhaps the most important, source of flexibility is the general principle, articulated elsewhere in this preamble, that emissions or other practices not specifically prohibited by a permit are allowed if otherwise legal under the SIP and applicable federal or state law (see preamble discussion at section IV.E.5.b). Air permits summarize existing restrictions; a permit change is *not* affirmatively required to authorize every change in practices which are otherwise legal under the SIP or federal law merely because an existing permit does not address the practice. Thus, changes in industrial practices and procedures that do not run afoul of the terms of a permit can be made without seeking any change to the terms of the permit. For example, an industry would be free to alter its production processes in ways that alter its emissions unless some term of the permit (or other provision of the law) prohibits the change. Permits should be drafted with this principle in mind, so that they do not include unnecessary detail or restrictions which might unduly hamper industrial flexibility to change operations at a later date. See discussion of designing flexible permits in section (f) below. The states do, of course, have the ability to devise permit programs that would enable sources to choose between: (1) Making changes that do not violate the permit without including them in their permits; and, (2) including such changes in the permit pursuant to the procedures established by the state. In the latter case, the sources would have the benefit of a permit shield.

If the explicit terms of the permit do prohibit a practice (for example, if a compliance plan for a noncomplying source contains specific provisions regarding how a source plans to comply which it then not wishes to change), the operational flexibility provisions under section 502(b)(10) of the Act (§ 70.6(d)) provide a "fast track" process for changing the terms of the permit without undue delay provided that the changes do not involve an increase in the level of regulated emissions allowable under the permit.[5]

Although section 502(b)(10) avoids having the States and EPA continually repeat the full permit-review process for minor changes in operation, it does not alter a source's obligation to comply with any requirements of the Act that apply to its operations. This conclusion is suggested by the interaction of the "permit shield" provisions in section 504(f) with the "operational flexibility" provisions in section 502(b)(10). The permit shield provides that compliance with a permit is deemed to be in compliance with the requirements of the Act to the extent the permit contains those requirements of the Act or contains a specific finding that a requirement does not apply. To the extent a permit does not address requirements that apply to a change in operations at a facility, those requirements are necessarily outside the scope of the protection provided under the permit shield provision, unless the permit has been revised.

Where the change would not be allowed in the permit but would not exceed allowable emissions under the permit, EPA interprets section 502(b)(10) to require that the source give at least 7 days advance written notice to both the permitting authority and EPA. This notice must contain sufficient information to determine what new requirements of the Act apply (if any) to the changed operations. Of course, the permitting authority must incorporate any new requirements upon renewal. The EPA is therefore taking comment on its proposal to require an update of the permit after notification has occurred, provided that the new version of the permit be made publicly available.

The EPA believes that this proposal gives certainty as to what requirements are applicable to the source and assures the permit is consistent with section 502(b)(10), which specifies how sources may act without the need for a permit revision to incorporate changes not anticipated during permit issuance. In any case, upon renewal, the new conditions would be eligible for protection by the shield.

(c) *Minor Permit Amendment.* There remains a class of changes in facilities that would result in emissions above what is allowed in the permit that do not rise to the level of "modifications" under title I of the Act.[6] For example, a permit

[5] Section 502(b)(10) requires that title V programs "allow changes within a permitted facility * * * without requiring a permit revision, if the changes are not modifications under any provision of title I and if the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions)," provided that there is written notification at least 7 days in advance, unless the permitting authority provides in its regulations a shorter timeframe for emergencies. See the following footnote for what constitutes a "modification" under CAA title I.

[6] Title I of the Act includes several different definitions of "modification" for purposes of different programs. For purposes of the new source performance standards (NSPS), the statutory definition of "modification" is found at 11(a)(4), and EPA's implementing regulations are found at 40 CFR 60.14. For nonattainment new source review (NSR),

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might include emission limitations based on a RACT requirement in a SIP. If the permittee changes operations so as to become subject to a less stringent RACT limit in the SIP, it cannot increase its emissions to levels authorized by the new RACT limit without a change to the permit emission limitation. EPA has extensively considered whether additional provisions might permit increased emissions above permit allowables, as long as such increases would not violate any applicable requirement.

The Clean Air Act provides procedures for changing or revising permits. Section 502(b)(6) requires:

> adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing, and for expeditious review of permits actions, including * * * revisions * * *

With regard to permit changes that are considered "revisions" for purposes of section 502(b)(6), EPA notes that the statute does not mandate specific procedures to be used for making "revisions" to permits. The primary thrust of section 502(b)(6), as EPA reads it, is a pronounced Congressional concern that the procedures used to issue or revise permits should not result in undue delay, as evinced by Congress's use of the terms "streamlined" and "expeditious". Beyond that, section 505 does not clearly prescribe which, if any, types of permit modifications must undergo EPA review.

EPA believes that the statutory language leaves substantial discretion to the states, as permitting authorities, to devise appropriate procedural schemes for making expeditious revisions to permits, including "fast-track" procedures to facilitate operational flexibility. As a matter of policy, EPA believes that states should be encouraged to implement expedited review procedures for changes that result in emission increases above permit allowables, but that are not title I modifications and do not violate any applicable federal requirements, as long as such procedures include a minimum of 7 days' notice. (Today's proposal includes a minimum set of procedures incorporating this 7 day notice requirement; see § 70.7(f)). The notice would go to the permitting authority and the Administrator. After waiting the required 7 days, the source may make the change unless the permitting authority objects to the notice change within the 7 day period.

EPA will review the procedures for revising permits proposed by states in their permit programs in conjunction with EPA's review of the applicable implementation plan. No particular form of procedures for revising permits is required. The basic test is whether a state's procedural system, taken as a whole, can assure that the national ambient air quality standards and other substantive requirements of the Act will be maintained and enforceable. See section 110(a). If the state's procedures can be administered in a way that would provide adequate mechanism for tracking permit revisions (either ex ante or ex post) to ensure that the substantive standards of the Act are met, EPA should ordinarily approve them, rather than speculate that the procedures might be misapplied. If a state subsequently applies its procedure for revising permits in a way that results in violations of air quality standards or other requirements of the Act, EPA has adequate remedies available to it under the Act, see, e.g. section 110(k)(5) (calls to order revisions to SIP found inadequate); section 502(i) (assure adequate permit programs).

EPA solicits comment on what are the appropriate criteria for EPA to use in approving state procedures for revising permits.

(d) *Administrative Permit Amendments.* The second type of permit revision is defined in part 70 as an administrative permit amendment and includes administrative changes such as correction of typographical errors, changes in address, change of ownership, etc. (for a full list, see § 70.2(c)). The EPA proposes that administrative permit amendments can be handled by direct correspondence from the permitting authority to the facility after the appropriate information related to the changes has been supplied by the facility. Administrative permit amendments will address only the items prompting the amendment(s). A copy of the amendments should be supplied to EPA and a copy also placed in the record, which is available to the public in accordance with section 503(e).

The EPA is proposing that the following types of changes can, at the discretion of the permitting authority, be handled as administrative permit amendments and that such changes should be reported to EPA, but no later than the date specified for the at least semi-annual reporting on the source's compliance status. These types of revisions include changes in mailing address, ownership of the source (or part of the source) unless restricted by title IV, contact persons, changes in individuals who have assigned responsibilities, (including the responsibility to sign permit applications), and similar changes as determined by the permitting authority.

The Agency also believes that correction of typographical errors should be accomplished through the administrative permit amendment procedures, rather than the permit modification procedures. In addition, the Agency requests comments on whether the permit amendment procedures are appropriate for requiring more frequent monitoring, and for exempting a unit from permitting requirements where emissions from the unit have terminated, so long as the termination of emissions from that unit does not result in an increase in emissions from any other unit or units. The EPA invites the public to propose other types of changes that should be handled by the administrative permit amendment process and comment on these suggestions.

In addition, EPA is today proposing to treat one other type of change initiated by an existing source as administrative permit amendment and eligible for the mentioned expedited processing. Changes which have been processed under the preconstruction review process which has been approved by EPA into the SIP have already in a source-specific way been subjected to sufficient technical review and adequate

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see sections 171(a)(4), 182(c)(6) and 182(c)(7) of the Act, as well as 40 CFR 51.165(a)(1). Section 51.165(a)(1)(x), in particular, exempts from treatment as a modification (for NSR purposes) a change resulting in a net emissions increase below the following levels: CO—100 tons/year; NOx, SO2 and VOC—40 tons/year; lead—0.6 tons/year. New section 182 of the Act, however, now sets lower *de minimis* levels for various ozone nonattainment classifications. For attainment area new source review (prevention of significant deterioration, or PSD), see section 165(a) and 169(1)(c) of the Act, and 40 CFR 51.166(b). Revised section 112(b)(6) of the Act provides that PSD shall not apply to the toxic air pollutants listed in revised section 112(b)(1). EPA plans to revise the NSR and PSD regulations to reflect these statutory changes. For sources of hazardous air pollutants, see section 112(a)(5) and 112(g)(1)(A), for which EPA has yet to develop implementing regulations.

Some States may have more expansive definitions of "modification" than required under Federal law, which the States use to impose BACT or other new source requirements. The EPA encourages States to examine whether they wish to use the State or the Federal definition of modification to require permitting under title V. The EPA does not interpret title V to require that the definition of "modification" must be identical as a matter of State law for the purposes of both reopening the permit and imposing substantive new source requirements. The State may use the Federal definitions of modification under title I to trigger permitting, while retaining its own definition of modification for imposing new source requirements, which may be informal, such as those described below for permit amendments. For title V permits, however, the State definition at least must be consistent with the definition of modification contained in the federally-approved.

opportunity for public participation. The Administrator believes that to require the permit revision procedure described in section 502(b)(6) to be followed simply to incorporate the results of the NSR program is unnecessary and redundant. Moreover, subjecting sources to another review could subject vast numbers of sources to significant delay and uncertainty without any real environmental benefit. The EPA believes, therefore, that the permitting authority should be allowed to revise the part 70 permit administratively to reflect NSR limits.

EPA also solicits comment on whether the reviewing authority could instead issue a separate permit incorporating both preconstruction review and part 70 requirements for those activities involved in the modification. These requirements would be incorporated into the conditions of the permit of the entire source upon its renewal.

(e) *Permit Modifications.* The third type of permit revision is a "permit modification", which includes any proposed revision to reflect a change at the source that would constitute a modification under any provision of title I of the Act (except as provided in § 70.2(c)(5). See § 70.7(d). For purposes of title V, certain changes in monitoring procedures which could increase emissions would also be included in the definition of permit modification. Such changes are situations where the proposed monitoring technique, in conjunction with permit emission limits, will allow emission measurements to deviate from the actual emission levels allowed in the permit by more than the applicable thresholds that trigger title I modifications. Before a permit modification can be issued, the proposed changes must be reviewed by the permit authority and submitted to the public and EPA for comment in accordance with the procedures proposed in § 70.8. The EPA stresses that only the subject material associated with, or affected by, the modification need be exposed to review and comment.

The Administrator proposes that a permit modification would not affect the expiration date of the permit. Adjusting the fixed term of individual conditions would place the permit renewal schedule on multiple tracks, and would be both confusing and resource intensive. The only parts of a permit that require change are those which relate directly to the material being modified. Of course, a State may choose to issue a new permit, rather than simply modify the existing one. Acid rain permits, however, must be issued for a fixed term of 5 years. In order to promote national consistency in acid rain permitting, the Agency is recommending that, when modifying provisions in a permit for an acid rain-affected source, the permit not be reissued.

(f) *Designing Flexible Permits.* Permits should allow the source reasonable operating flexibility while enforceably imposing the Act's requirements. Operational flexibility is often a concern to manufacturers who must respond quickly to changing economic conditions and market opportunities if they are to remain competitive in the global market place. It is also important to regulators. Processing unnecessary permit modifications for routine changes takes time and provides little environmental benefit. To the extent that permitting authorities can accommodate a source's anticipated emissions, the source will be less likely to have to reopen its permit, and the public will be better apprised of the requirements applicable to the facility over time.

The following examples of industrial operations underscore the need for operational flexibility. Various aspects of automobile plant operation frequently change, not only from one model year to the next but also within the model year. Pharmaceutical batch plants produce small quantities of chemicals to meet consumer demands for new or specialized products. Although the types of chemical feedstocks and corresponding emissions can generally be predicted over the longer run, short-run market demands are often unpredictable and the manufacturer must be able to respond quickly. Leasing of chemical and petroleum storage tanks at ports and pipeline terminals presents another challenge because of the wide range of chemicals handled, often on short notice.

Several State permitting authorities confront these issues now, and many regulatory agencies have found creative ways to give industry flexibility while ensuring that the underlying requirements of the program are still met. These approaches have been recognized by the affected parties as appropriately implementing and making enforceable the requirements of the Act, while providing industry with needed operational flexibility. The EPA is proposing a policy for incorporating flexibility that is consistent with existing State permitting practices.

While EPA believes that operational flexibility is important to the fair and efficient implementation of the permitting program, this practice must be carefully implemented if title V permits are to ensure application of all regulatory requirements and reasonable enforcement of those requirements. Therefore, this relief is necessarily limited in several important ways.

First, it is clear that allowing sources flexibility is a way of meeting the applicable requirements, not of avoiding them. A source cannot be granted a level of flexibility in its title V permit that would allow it to avoid application of applicable requirements of the Act, whether imposed by NSR, NSPS, NESHAP, or through implementation plans.

Second, any limits must be clearly enforceable. Any alternative limits can be issued only to the extent that they are allowed by the underlying applicable requirements.

Third, the degree of flexibility available to the source may vary with circumstances specific to the source or pollutant. For example, if carbon adsorption is used for emissions contro the permit may need to pay special attention to species of VOC's (e.g., some may "break through" the carbon bed, or a different type of carbon bed may be indicated for alcohols).

When developing a flexible permit that accommodates several operating scenarios within the terms of the permit, the permitting authority must assure that the permitted source monitor and record the operating scenario under which the source is operating at all times.

The EPA is evaluating administrative mechanisms that would provide for permit drafting such that a source could, in the course of normal operation, readily change production methods without needing to apply for a modified permit for each change. This exemption from permit revision would not, of course, exempt from permit review any operational changes that cause a source to be newly subject to any requirements of the Act. The permitting authority must ensure that any permit conditions designed to provide operational flexibility must be clearly identified as such to be highlighted for EPA review. Various types of candidate approaches are described below. Public comment is solicited on these and other approaches to implement the requirement to provide operational flexibility.

(i) Permit in the Alternative: The permit can list the pollutants and control requirements for the anticipated operating scenarios. The permit would specify the source's pollution control requirements for each anticipated process or product line to be used. For example, the permit for a chemical batch processing facility can allow for various configurations and operating practices that the facility plans to use,

obviating the need for obtaining additional approval when the changes are made.

(ii) Permit by Classes of Chemical: State programs often provide that groups of chemicals can be treated interchangeably for certain purposes. For example, a State's requirements for VOC emissions from storage facilities may be based on classes of compounds, classified by vapor pressure, rather than single compounds, e.g., the most volatile compounds could be stored only in pressurized tanks, those of intermediate volatility could be stored in floating roof tanks with double seals, while those of lowest volatility could be stored in fixed roof tanks. One State reports that it uses this approach in addressing the needs for operational flexibility in permitting extensive tank farms providing contract storage of chemical and petroleum products at a port and pipeline terminal. The State clearly specifies control requirements based upon five classes of chemicals, allowing the facility complete freedom to store any chemical in any tank with the required, or higher, level of control. This is enforceable because it allows a field inspector to determine compliance unambiguously for any chemical stored in any tank, without burdensome restrictions on the facility's freedom to manage its operations efficiently.

(iii) Permit in Anticipation of the Most Restrictive Case: A State may appropriately allow considerable flexibility if the worst case emissions scenarios are dealt with in the permit, or if the source agrees to specific controls or other limitations, such as those on capacity utilization. For example, a source might be given great flexibility in the type of VOC emitted, if it agreed to provide emissions controls consisting of both carbon adsorption and incineration. Another example reported by a State involves a chemical storage facility that routinely is asked to store any of numerous types of chemicals, often on short notice. The source and State came to an agreement whereby a very wide range of chemicals could be stored, if stored in pressurized tanks and the emissions were flared.

H. Section 70.8—Permit Review by EPA and Affected States

(1) General

Under the permit review process spelled out in section 505(b), the Administrator shall object in writing to the issuance of any permit determined not to be in compliance with the applicable requirements of the Act, including the SIP. To minimize delay, the Act limits EPA's opportunity to object to 45 days after receipt of a proposed permit. To approve a proposed permit, EPA need take no action. A "proposed" permit, for purposes of sections 505 (a)(1) and (b)(1), is one the State submits to EPA after the public notice period and after it considers any public comments. The submittal of the proposed permit must also contain any notice required in section 505(a)(2)(B) describing why the permitting authority failed to accept recommendations on the proposed permit from any affected State (i.e., one whose air quality may be affected and are contiguous to the State in which the emissions originate, or that is within 50 miles of the source). If the State so chooses, the permit will automatically be issued at the end of the 45-day review period, unless EPA has objected to its issuance. The objection must be accompanied by a written statement of the reasons for the objection, and both must be provided to the applicant.

Each permit must contain all provisions required by title V, such as monitoring, reporting, and compliance certification requirements. Failure to include these provisions is a basis for EPA veto. All permits involving SIP-regulated sources must interpret, implement, and apply the SIP in an enforceable manner to the permitted source. For example, if the SIP fails to specify a test method, the permitting authority must specify one in the permit. Failure to properly apply a SIP to the particular permitted source so that it is fully enforceable is a basis for EPA veto.

If EPA does not object, any person may petition the Administrator to do so within 60 days after the expiration of the 45-day review period (505(b)(2)). If petitioned, the Administrator has 60 days to determine whether to grant or deny the petition, and he shall grant the petition if it demonstrates that the permit is not in compliance with the requirements of the Act, including those of the applicable SIP. If he denies a petition, the denial is subject to judicial review under section 307 of the Act. Regulations implementing this process are set forth in § 70.8(d). It should be noted that a petition does not postpone the enforceability of a permit that has been issued.

A timely EPA objection, unless withdrawn, is effectively a veto, for the State permitting authority may not issue the permit as a part 70 permit, unless it is revised to satisfy EPA's objection and resubmitted for approval (505 (b)(3) and (c)). The EPA proposes that, once the Agency approves the revised permit in writing, the permit may be issued. Pursuant to section 505(c), if the permitting authority fails to make the necessary changes and submit the revised permit to EPA within 90 days of the objection, EPA must issue the permit with changes, or deny the permit. This action by EPA would be subject to judicial review (V.D.). While the possible EPA objection to the issuance of a part 7 permit is being resolved, all applicable requirements of the Act still apply, except for the section 502(a) requirement to obtain a part 70 permit (assuming that the source has filed a complete application and any required supplementary material). The EPA intends to use the part 71 process (discussed in section VI) in issuing any permit for which the Agency becomes the permitting authority.

Section 505(b)(1) provides that EPA has a duty to object to a permit when it "contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this Act." The EPA views this duty as a discretionary one, however, since it is predicated on a determination by the Administrator of noncompliance. That determination is discretionary. (cf. Sierra Club v. Train, 557 F.2d 485 (5th Cir. 1977) holding that section 113 enforcement is discretionary despite parallel construction.) In any case, any duty to object is not enforceable by citizen suit. That is clear from the structure of the statute, which provides in section 505(b)(2) a petition process for citizens who wish EPA to veto a permit, and from the legislative history, which shows that the petition process is a replacement for the Senate bill's approach, which would have imposed on the Administrator a nondiscretionary obligation under section 304, to object to unlawful permits. Finally, a citizen suit would not lie under the applicable case law to compel a veto under section 505(b)(1), since no explicit statutory deadline is provided (see cf. Sierra Club v. Thomas, 828 F.2d 783, 791 (D.C. Cir. 1987)).

Even the petition process under section 505(b)(2) leaves the Administrator with an element of discretion. Although the Administrator must grant or deny any petition within 60 days, he must object only "if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable implementation plan." This language plainly puts the burden of showing a violation on the petitioner. It remains discretionary whether the Administrator should object in cases where the record does not clearly disclose failure to comply. The

petitioner must also raise objections "with reasonable specificity" during the comment period before the Date, or to demonstrate to the Administrator in the petition to object that it was impracticable to do so. The EPA believes that Congress did not intend for petitioners to be allowed to create an entirely new record before the Administrator that the State has had no opportunity to address. Accordingly, the Agency believes that the requirement to raise issues "with reasonable specificity" places a burden on the petitioner, absent unusual circumstances, to adduce before the State the evidence that would support a finding of noncompliance with the Act.

(2) Waiver of EPA Review

The statute provides two different mechanisms that allow EPA to waive the notification requirements discussed above. First, at the time of the approval of a State program, EPA may waive the notification requirements for any category of sources (including any class, type, or size within the source category), except that EPA cannot waive the requirement in the case of major sources (505(d)(1)). The Agency will not waive its right of review of permits for acid rain affected sources. Second, EPA may waive the notification requirements on a nationwide basis, through the promulgation of regulations applicable to all permitting programs. The same restriction against waiving the requirements in the case of major sources applies to this option as well (505(d)(2)). When EPA waives the notification requirements by either of these means, the Agency ordinarily will not perform the permit review generally required by section 505(b).

The EPA is not proposing any categories of sources for national waivers from review. Comments are invited, however, with respect both to potential categories for such a waiver and to the appropriate use of waivers at the State level, and on means of implementing them, such as through agreements with the States. Similarly, EPA seeks information on the use of waivers on a State-specific basis and the use of various mechanisms, such as audits and agreements between EPA and the States regarding coordination of activities, to efficiently implement such waivers or to set priorities for EPA review of State permitting (V.A.).

The EPA also solicits comment on the potential use of various review practices for quality-assuring the permitting process and carrying out the Administrator's responsibilities under section 505. Although EPA wishes to minimize administrative burdens, the Agency takes seriously its responsibility for quality assuring permitting, for which it shares enforcement responsibility.

Public comment is also solicited on the legal availability and appropriateness of waivers of notification for particular classes of sources, on a State-specific basis, after approval of a permit program. Section 505(d)(1) provides that the Administrator may waive this requirement "at the time of approval of a permit program under this title." Although this clause could be read as referring only to initial approval of the State program, it seems consistent with good oversight practice and the spirit of title V itself that such waivers could be granted through EPA rulemaking whenever appropriate. Such practice would not be inconsistent with any of the statutory safeguards and, indeed, waivers may be more effectively tailored once a State has established a track record and a working relationship with the EPA Regional Office with respect to permitting various types of sources.

(3) EPA Veto

The general framework for EPA's veto of State operating permits is set forth above. The following are various issues that may arise from the implementation of this process.

(a) *Inadequate information provided by permitting authority.* Although EPA's duty to object to permits that are inconsistent with the requirements of the Act is clear, EPA also believes that it can object to the issuance of a permit where the materials submitted by the State permitting authority to EPA do not provide enough information to allow a meaningful EPA review of whether the proposed permit is in compliance with the requirements of the Act (including the SIP). Although section 505 may not expressly provide for objection to a permit on this ground, EPA believes that not allowing the Agency to object under these circumstances could severely hamper its oversight role. Without adequate information, it will be impossible to determine whether a proposed permit conflicts with the requirements of the Act. Given Congress' clear intention that EPA veto permits conflicting with these requirements, EPA believes that this form of objection is reasonable and necessary (301). Of course, EPA needs to work with States to develop a clear understanding in advance as to the amount and type of information needed to exercise reasonable Federal oversight.

When EPA objects to issuance of a proposed permit because the State has not provided enough information, it will accompany the objection with a statement of what additional information is needed. The State would then be responsible for forwarding the additional information to EPA within 90 days. Once this needed information is supplied to EPA, the Agency's 45-day review period will begin anew. If the additional information is not supplied, EPA will deny the permit or issue it with whatever changes are necessary to ensure compliance with the Act. The EPA solicits comment on this approach to obtaining adequate information and its authority for so implementing it.

(b) *Failure of a State to issue.* The Act requires that a permitting authority issue or deny a permit within 18-months of receipt of a complete application. Further, the State is required to provide the Administrator copies of proposed and final permits to be issued. Where the permitting authority fails to provide these permits to EPA due to failure to issue or deny within the 18-month timeframe, this may be considered grounds for an EPA objection. The EPA would then request a proposed permit from the State with any additional information needed. If the permit is not received within 90 days, the Administrator will issue the permit.

(c) *Streamlining the process through early Federal participation.* Some States have expressed concern that EPA objections could unnecessarily slow some permitting exercises. One implementation approach that might allay this concern could be early EPA participation in the State's permitting action. For example, a State and EPA could agree that, for certain permits or classes of permits, EPA would review draft permit materials submitted to EPA even prior to the State's release of the draft proposed permit for public comment on permit issuance. Alternatively, the Agency could require that summary forms with certifications be filled out to prioritize the need for more extensive EPA involvement. The EPA could indicate, either officially or informally, whether it would object to any aspect of the proposed permit based on the draft and/or summary form. This might prove to be an effective way to enhance State and EPA cooperation on permit issuance. Such procedures might be formally established in implementation agreements between EPA Regional Offices and the States.

(d) *Status of proposed permit if EPA objects.* If EPA objects to a proposed permit, the permit, as proposed, does not get issued. During this period of review

and negotiation, the previously-issued permit and all applicable regulatory requirements continue to apply, except where inconsistent with State law or as provided in part 72 for the acid rain portions of a permit. For acid-rain-affected sources, if the previously-applicable permit has expired, the permit application and compliance plan will be binding on the source until the new permit is issued (408(d)(3)).

(e) *EPA action upon veto.* Pursuant to section 505(c), if the permitting authority fails to submit a revised permit meeting EPA's objection within 90 days of the objection, the Administrator shall issue or deny the permit. The EPA's issuance of permits will be made pursuant to the Federal permitting program to be contained in parts 71 and 124 (VI.). This program will be proposed at the same time that EPA takes final action on today's proposal regarding State programs and will closely parallel the permitting practice required for State programs. Part 71 will contain all necessary provisions for EPA to administer a State program where a State defaults, although EPA may choose to make it effective only for certain areas and/or sources in order to address areas of concern.

(f) *Public petitions regarding decisions not to veto.* Given the brevity of the EPA review period and the complex nature of many permits, there will be occasions in which EPA may not recognize that certain permit provisions do not comply with the requirements of the Act. If this happens, the statute provides an opportunity for citizens to petition EPA to reconsider its decision not to object to issuance of the permit. Within 60 days after expiration of the 45-day EPA review period, any person may petition the Administrator to object. This petition must be in writing, and the petitioner must provide a copy to the State permitting authority and to the permit applicant (505(b)(2)).

The petition must specifically state why the petitioner believes that the permit conflicts with applicable requirements of the Act and cite the particular provisions alleged to be inconsistent. Moreover, section 505(b)(2) provides that "(t)he petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objections arose after such period)." This section of the statute specifically provides that filing of the petition does not postpone the effectiveness of the permit. Thus, the new permit remains in full effect, and the source may operate under its provisions pending EPA's consideration of the petition. Sources should be aware, however, that under these circumstances EPA may object to the permit. Upon such objection, particular provisions of the permit may no longer shield the source from enforcement of certain other requirements of the Act. In other words, the source may become subject to revised or additional requirements. It therefore may be advisable for sources to await the outcome of the petition process before making changes that are consistent with the recently issued, but contested, permit.

The Administrator is required to grant or deny such a petition within 60 days after it is filed. If he grants the petition, he will object to the permit as not being in compliance with the requirements of the Act (505(b)(2)). If the permit has already been issued, "the Administrator shall modify, terminate, or revoke such permit and the permitting authority may thereafter only issue a revised permit in accordance with paragraph (c)" (505(b)(3)). In other words, the permitting authority must follow the same procedure as if EPA's objection had been made during the 45-day review period. In accordance with the proposed policy on reopening permits for cause, EPA is proposing not to require a permit to be modified, terminated, or revoked until the permitting authority has had an opportunity to act expeditiously under its own authority.

In the event that the Administrator denies the petition, the permit remains unaffected, as if no petition had been filed. Denials of petitions will be accompanied with a statement of the reasons for this action.

I. Section 70.9—Fee Determination and Certification

(1) Section 70.9(a)—Fee Requirement

This section establishes the requirement for an owner or operator of a source subject to the requirement to obtain a permit to pay an annual fee sufficient, in aggregate, to fund the permit program. This provision is designed to ensure the permitting authority's ability to perform the necessary air quality permitting and associated management functions entrusted to it. The State is also charged in this provision with assuring that the revenue generated from permit fees be used solely to offset the appropriate costs associated with the permit program.

The Act provides that the State program must ensure that part 70 sources pay fees sufficient to cover "all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this title, including (the small business stationary source technical assistance program) and including the reasonable costs of (certain enumerated activities)." A State fee program must also cover the development and implementation costs of any local agency program (502(b)(3)(A)).

The Act further provides that the fees "shall be utilized solely to cover all reasonable (direct and indirect) costs required to support the permit program" (502(b)(3)(C)(iii)). The EPA wishes to confirm that this restriction applies to State, as well as Federal, collection of fees. Although the restriction is located in section 502(b)(3)(C) (which primarily addresses EPA collection of fees), it references the general fee provisions "under this subsection." The legislative history confirms this interpretation. For example, the report of the Senate Committee on Environment and Public Works provides that fees shall be utilized to support the air pollution control program of the State *permitting authority* (emphasis added) (S. Rep. No. 228, 101st Cong., 1st Sess. 351 (1989)).

If the State program fails to provide an adequate fee schedule, or does not implement its fee program properly, EPA is authorized in section 502(b)(3)(C)(i) to assess an amount appropriate to cover EPA's costs associated with administering an EPA-promulgated permit program. The EPA also solicits comment on whether the Agency may assess fees to cover other costs such as the State costs in developing and administering the permit program. The EPA also solicits comment on whether, additionally, EPA may assess and return to the State, a sum to cover air program costs related to the permit program (e.g., the portion of SIP-development costs related to part 70 sources).

The EPA may undertake the action stated above regardless of whether it or a State agency ultimately issues the permit. Penalties and interest may be collected as appropriate.

(2) Section 70.9(b)—Fee Schedule Adequacy

Section 70.9(b) describes the criteria against which the adequacy of any fee schedule submitted to EPA by a State will be evaluated. Essentially, a fee schedule can be judged to be adequate if it meets one or both of two tests. A fee program is adequate if it results in the collection of revenues sufficient to

recover all the reasonable direct and indirect costs of supporting the development and administration of the permit program, including those itemized in section 502(b)(3)(A). The alternative test for approval focuses on whether the proposed fee program would result in the aggregate collection of fees equal to or greater than an amount of $25 per ton per year (annually adjusted for CPI changes) for each regulated pollutant that the subject sources emit.

The critical issue associated with implementing the first test to be resolved by this rulemaking is defining the scope of program costs that can be recovered through fee collection. The specifically enumerated costs include: (1) Reviewing and acting on permit applications; (2) implementing and enforcing permit terms and conditions (not including court or enforcement-action costs); (3) emissions and ambient monitoring; (4) modeling, analyses, and demonstrations; and (5) preparing inventories and tracking emissions (502(b)(3)(A)(i)–(vi)).

The EPA believes that the statutory provisions make clear that permit fees must recoup direct "permitting" costs, including costs of developing the permit program, reviewing permit applications, holding hearings, issuing new and renewal permits, and conducting inspections and other aspects of permit enforcement (except for enforcement actions or court costs). This includes activities performed by air pollution control agencies which do not issue permits directly and surveillance activities on certain smaller sources to ensure that they are not subject to the Title V permit program. For some sources (e.g., SO_2), these costs will include the costs related to ambient monitoring near the source, as well as source-specific modeling and attainment demonstrations to the extent that the costs are incurred as part of regulating the part 70 sources.

The EPA further believes that indirect permit program costs include the costs arising from permitted sources for SIP development (e.g., for VOC sources, the portion of the costs for areawide monitoring, modeling, development of attainment demonstrations, and development of SIP regulations to be codified into permits that arise from regulation of part 70 sources but not the portion of the additional costs arising from regulation of non-part 70 sources). Indeed, each source, at the option of the permitting authority, could be subjected to a permit process that occurs concurrently with the SIP process and under which the applicable SIP requirements and support analyses would be accomplished with all costs directly borne by the source. However, defining applicable requirements and gathering relevant data can be viewed as more economical than requiring that part 70 sources individually perform these functions to assure that acceptable permits can be issued. In addition, indirect permit program costs include the portion of overhead costs attributable to the above-specified activities, as well as information management activities to support and track permit application, compliance certifications, and related data entry.

Permit fees must also cover the costs to support development of programs under which the permitting authority assumes responsibility for administering regulations under sections 111 or 112, to the extent those costs are related to emissions from sources which may be subject to permitting. Permit fees required by the Act may not be used to recoup costs attributable to mobile or area sources as defined in section 110 (e.g., the costs of inventorying mobile or area sources, and the additional costs incurred as a result of including these sources in performing areawide monitoring, modeling, and attainment demonstrations). Conversely, fee revenues collected from non-part 70 sources cannot be used to offset the costs of a part 70 permit program and thereby reduce fees required to be collected from part 70 sources.

Defining indirect permit program costs to include SIP development costs also makes sense from the standpoint of parity between sources of different types of pollutants. As noted above, permit fees cover the costs associated with monitoring and modeling for an SO_2 source when SO_2 NAAQS violations can be directly linked to that source's emissions and such monitoring and modeling that are part of the permit issuance or revision process. Although ozone NAAQS violations generally result from areawide emissions, not the emissions of a single source, emissions from individual sources contribute to the need for basinwide monitoring, modeling, and attainment demonstrations.

The EPA interprets the legislative history as consistent with EPA's position that permit fees must recoup not only direct permit costs, but also the SIP development costs arising from permitted sources. The Senate bill clearly treated SIP development costs as part of the permit program costs (S. Rep. No. 228, 101st Cong., 1st Sess. 351 (1989)). Senate conferees emphasized that the Conference Agreement required fees to cover a broad range of direct and indirect permit program costs, including "the establishment of air emission standards" (136 Cong. Rec. 516, 941 (daily ed. Oct. 27, 1990) (Chafee-Baucus statement of Senate Managers, S. 1630, the Clean Air Act Amendments of 1990)). The EPA interprets this as a reference to establishing emission standards or limits for permitted sources, which may be done through the SIP and subsequently codified into permits. In addition, the Senate conferees emphasized the primary role of the permit program in implementing the other requirements of the Act, including attainment of the NAAQS (136 Cong. Rec. 516, 938 (daily ed. Oct. 27, 1990) (Statement of Sen. Baucus)). These statements indicate that the indirect costs of the permit program include SIP development costs. Although the Conference Agreement seemed to narrow the requirements of the Senate bill, it appears that the purpose of this was to assure that only permitted source-related costs, not mobile source-related or area source-related costs, were covered by permit fees (136 Cong. Rec. 516, 941 (daily ed. Oct. 27, 1990) (Chafee-Baucus Statement of Managers)).

The statements by the House Committee and House Conference members are less detailed on the scope of permit fees (H. Rep. No. 490, 101st Cong., 2d Sess. 343, 345 (1990); 136 Cong. Rec. E 3,712 (daily ed. Nov. 2, 1990) (Statement of Rep. Dingell)). However, EPA does not read them to be inconsistent with the statements in the Senate. As a result, EPA interprets the legislative history to accord with its view that permit fees must recoup the portion of SIP development costs attributable to stationary sources.

The second option for fee schedule approval comes directly from section 502(b)(3)(B) which provides that "(t)he total amount of fees collected by the permitting authority shall conform to the following requirements * * * The Administrator shall not approve a program as meeting the requirements of this paragraph unless the State demonstrates that" the program will result in a collection, in the aggregate, from sources all subject to the requirement to obtain a permit, of at least $25 per ton of regulated pollutant, not including amounts of regulated pollutant emitted by any source in excess of 4,000 tpy of that regulated pollutant. The Administrator may determine that an amount less than $25 is acceptable if the Administrator "determine(s) that such lower amount adequately reflects the reasonable costs

of the permit program." This latter procedure is addressed in the first option for fee schedule approval discussed above. A regulated pollutant is defined under section 502(b)(3)(B)(ii) to include VOC's, pollutants regulated under section 111 or 112, and each NAAQS pollutant (except for carbon monoxide).

The EPA takes the position that these provisions intended to establish a presumption that a fee program that collected from all subject sources, in the aggregate, the $25 amount on an annual basis would meet the requirements of covering the costs of the permit program. Accordingly, if a State submits a fee program that provides for collection of the $25 amount, EPA will presume that the fee program meets the Act's requirements, and will propose to approve it. However, if public comment, or other information brought to EPA's attention, reasonably suggests that the $25 amount is not adequate to recoup the required costs, then EPA will scrutinize the State's costs to determine whether the $25 amount is adequate.

The EPA believes this position is consistent with the Act because of the very presence of the $25 minimum amount provisions. Congress could have simply required permit fees to recoup permit program costs without specifying a minimum amount. The presence of the $25 minimum amount indicates that Congress presumed that this amount would suffice to recoup the costs. Indeed, several statements by Congressmen found in the legislative history indicate that they viewed the permit fee program as, in general, a $25/ton fee program. (136 Cong. Rec, 52107 (daily ed. March 5, 1990, (statement of Sen. Chafee); 136 Cong. Rec. E3674 (daily ed. Nov. 2, 1990) (statement of Rep. Bilirakis)). The EPA takes comment, however, on whether it should interpret the Act to require a State to show that the fee amount recoups State costs.

To make an acceptable demonstration, several clarifications are needed. The statute is ambiguous as to exactly when a substance becomes a "pollutant regulated under section 111 or 112," as that phrase is used in section 502(b)(3)(B)(ii). For example, for hazardous pollutants, a pollutant listed in the statute under section 112(b) might be considered to become a "regulated pollutant" for purposes of title V at any of the following times: (1) At the time of enactment of the 1990 Act Amendments, (2) when EPA first promulgates a MACT standard for that pollutant, or (3) when a MACT standard for that pollutant first becomes applicable to the permitted source. The term "regulated pollutant" is susceptible to each of these readings, and neither the statute nor the legislative history of the Act Amendments provides guidance as to which of these three possibilities was intended by Congress.

The EPA is proposing to adopt the second of the above options, because it considers a substance to be truly regulated when a standard is first promulgated that addresses that pollutant. The EPA considers the other two options to be viable, however, and therefore solicits comment on whether it should instead adopt either one of them. Similarly, following the second option described above, EPA proposes that a pollutant becomes a "regulated pollutant" when it is first addressed by a section 111 standard, but solicits comment on whether it should be considered regulated for purposes of title V only when the standard becomes applicable to the permitted source.

This same question does not arise for VOC's and the NAAQS pollutants (other than carbon monoxide), because the definition of those terms in section 502(b)(3)(B)(ii) does not include the qualifying term "regulated." Thus, EPA believes that fees must be assessed for emissions of all of these pollutants at the source. The EPA also believes that NO_x, as well as NO_2 (a NAAQS pollutant), is to be considered a regulated pollutant. The NSPS program currently contains standards relating to NO_x emissions (40 CFR 60.44).

The regulations also presume that the State will base a demonstration that it is meeting the cost-per-ton test on the actual emissions of all the part 70 sources in the State. Using actual emissions to set fees in this fashion creates an incentive for sources to reduce actual emissions to reduce their fees. The State, however, must demonstrate that this method supports the program consistently and that the State can accurately determine the fee base. If the permitting authority can address the difficulties of determining its actual emissions fee base and supporting its program, the regulations give the State the flexibility to incorporate such incentives into its fee structure. The proposed definition of actual emissions in § 70.2 would presumptively use emissions actually emitted over the preceding calendar year. Thus, after the initial startup of the program, the permitting authority could rely on actual emissions data developed and reported by the permittees (presumptively required as a permit condition) to define the basis for assessing fees for the next year.

Alternatively, EPA could use the definition of actual emissions used in EPA's NSR regulations. This definition defines actual emissions with reference to emissions during the 2-year period preceding the relevant permitting date, or any 2-year period that falls within 5 years of that date, "upon a satisfactory determination that it is more representative of normal source operation." In the context of the PSD program, EPA is now exploring the option of allowing sources subject to title IV to use any 2-year period falling within the 5-year period preceding the relevant date, without a showing satisfactory to the permitting authority that 2-year period is indeed more representative of the source's normal source operation. The EPA solicits comment on using this alternative, for at least affected sources under title IV, to determine actual emissions for purposes of calculating fees under title V.

The Act and regulations provide that the State can also choose other approaches for determining the total emissions, provided sufficient revenue will be raised to offset the applicable costs of developing and implementing the program. For example, the potential to emit of all part 70 sources might be chosen. Relying on the sources' potential to emit (considering emissions limits or the requirement to use control equipment that are federally enforceable) may allow the State to predict total fee revenue with greater reliability. The State can determine its sources' potential to emit by examining their permits, and that potential will not vary as much a source's actual emissions from year to year. Also, relying on potential emissions creates an incentive for a source to reduce its potential emissions, thereby aiding the State in demonstrating attainment and maintenance of the NAAQS under its SIP.

The EPA also proposes that the calculation of revenue associated with the presumptive $25/ton number may, but is not required to, consider income from any regulated pollutant emissions beyond the 4000 tpy level from any part 70 source. In addition, the Agency proposes that no double counting occur. That is, to the extent that the emissions of a source are regulated for more than one reason (e.g., toxics and VOC) in determining the amount of fee revenue, the permitting authority is not required to include any amount of regulated pollutant that is otherwise regulated and included in the fees owed by the part 70 source.

As mentioned, the $25 per ton figure is to be used relative to the aggregate of all

sources subject to the permitting program. That is, the State may differentiate among source categories and pollutants in assessing the fees, as long as the permitting authority demonstrates that the total fees collected are sufficient to support the permit program or meet the $25-per-ton amount in the aggregate. This ability to differentiate also includes affected sources subject to title IV, notwithstanding section 408(c)(4). This section provides that during the years 1995 through 1999, no fee can be required to be paid under section 502(b)(3) or under section 110(a)(2)(L) with respect to emissions from any unit which is an affected unit under Phase I of the acid rain program. The Agency interprets this provision to mean that EPA may not collect fees from Phase I-affected sources prior to January 1, 2000. States, however, are not precluded by that provision from fee collection at these facilities pursuant to other requirements of the Act.

(3) Section 70.9(c)—Fee Adjustment

In future years after the establishment of a permit fee program, fee schedules may need to be modified due to either inflation or to a substantial increase in program costs. For example, a future NESHAP may be promulgated covering source categories with large numbers of individually small sources in terms of how much of the regulated pollutant is emitted. Monitoring the compliance of these sources may substantially increase the resource demand on the State agency. The Amendments specifically require for recalculation of permit fees each year after enactment, by a percentage that is tied to the CPI. However, the EPA is concerned that the mechanism for modifying permit fees may not be in place. Of main concern is whether the State agency has authority to modify permit fees or, alternately, must the State legislature approve any revision. Accordingly, EPA urges States to provide enabling legislation that gives the agencies sufficient legal authority and flexibility to manage their fee structures. The EPA solicits comments on problems associated with providing State agencies with the authority up front to revise permit fees and on what factors should constrain future increases beyond those needed to account for CPI changes. Specifically, EPA would like information on the way permit fee revisions are currently handled and whether revisions to the permit fees required under this title should be handled in a similar fashion.

(4) Section 70.9(d)—Fee Demonstration

This section requires the State to provide a demonstration that program costs will be covered. A specific demonstration of the adequacy of permit fees in covering program costs would be required in two cases. The first case is where the fee amounts to less than $25 per ton per year. As indicated above, the lesser fee would be approved by EPA only if it can be shown that the revenues collected with this fee adequately support the program. The EPA believes that States seeking to collect less than the $25 amount must persuasively demonstrate that a lesser amount will adequately cover the required costs. To make this demonstration, the States must submit a detailed accounting of the required costs and anticipated fee collections. The EPA believes that the Act's provisions establish a strong presumption in favor of fees at least equivalent to $25/ton, and that States seeking to collect less bear the burden of demonstrating that less is nevertheless adequate.

Section 502(b)(4) requires that State programs must also provide for adequate personnel and funding to administer the permit program. In the past, inadequate resources have often prevented State agencies from completely fulfilling their air quality management responsibilities under the Act. This requirement is designed to overcome that aspect of the resource problem.

(5) Legislative Authority

Appropriate legislative authority must exist for the permitting authority to have the ability to assess and collect fees. Many State agencies already have such authority and require at least a nominal payment for the processing of air permit applications. However, some States do not collect permit fees and will need to obtain from their legislatures the authority for the permit fee program. Further, many States with permit fee programs may need authority to substantially increase their fee structures.

After the appropriate authority has been established, a requirement for program adequacy is the demonstration that the fees collected will be retained to support the permitting program. This should include, where applicable, provisions for providing funding to other air pollution control agencies which perform air permit program activities but do not issue permits directly. In reviewing permit program plans, EPA will be looking for a system which tracks the payment and disposition of fees. It is vital that the permit fees not be diverted for some other use. However, EPA would like to give the States as much flexibility as possible in handling permit fee retention. For example, in some States it may not be possible for the air agency to administer the collection and distribution of the permit fees. In this case, EPA would consider it acceptable for the fees to be paid to a State general fund, rather than directly in the air agency fund, provided all such funds are assured to be returned to the air agency on an annual (or similar period) basis. In any event, EPA believes that periodically (e.g., every 2 to 3 years) a document summarizing the collection and subsequent use of permit fees should be provided to the Agency, as well as to the public.

(6) Transition Problems

State agencies will likely experience some transition problems as they convert to the air quality management program called for in the Act. With respect to the permit fee requirement, EPA would like to accommodate existing programs to the extent possible. Of particular concern are the discontinuities potentially caused in States where the State agency collects permit fees but a local agency carries out most of the permitting responsibilities. The EPA believes that an understanding on fee assessment and collection needs to be reached at the State level before program submission, and that local agencies should be compensated in a manner commensurate with their level of permit activities. The EPA proposes that there does not need to be one uniform State fee structure, particularly where one would unnecessarily disrupt existing programs. Further, EPA feels that consultation with State and local agencies prior to plan submission will help to resolve potential problems. Given these concerns, comments are solicited on how EPA input should be coordinated.

Other types of transition issues relate to the early collection of fees. Section 502(b)(3)(A) requires that "sources subject to the requirement to obtain a permit" pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to *develop and administer* the permit program (emphasis added). The EPA proposes to interpret these provisions to authorize the imposition of fees on sources that State reasonably expects to be permit applicants, and to impose those fees prior to the date the source is required to submit an application. If these permit fees were restricted to the date the

program becomes effective or the sources are required to submit an application, potentially insurmountable transition problems could exist for States trying to build up their capabilities to allow for effective implementation of the program. Given the clear mandate in title V for the timely submittal of State permit programs, EPA believes that States should be allowed reasonable opportunities to collect fees which fund the development of their required part 70 program. One approach might be to collect such fees during an early identification or registration of subject sources. Other reasonable strategies might involve fee payment by sources subject to a State program which has received interim EPA approval. The EPA solicits comment as to what approaches are appropriate for agencies to collect fees prior to program approval.

(7) Small Source Fees

The Act requires the establishment of a technical and environmental compliance program for small businesses. Part of the goal of this program is to alleviate the financial burden placed on small businesses by the new requirements embodied in the Act. The EPA is promoting, and solicits public comment on, establishing a relaxation or waiver in permit fees for small businesses where necessary. This $25 per ton is essentially an accounting technique, not a presumptive fee requirement. The EPA invites comments on other adjustments to the fee schedule for small sources that may be necessary.

J. Section 70.10—Federal Oversight and Sanctions

The EPA periodically will audit State permit programs to ensure that the programs are being administered in accordance with EPA's regulations and the conditions under which they were approved.

As in the case where the State fails to develop and submit an approvable program, where EPA determines that a permitting authority "is not administering and enforcing" a permit program as required, the Agency may (and in some cases, must) apply sanctions against the State (502(i)). Such a determination ordinarily will follow an EPA audit of the program. A consistent pattern or practice of failure by the State to adequately carry out its program, however, may give rise to an EPA determination that the State is not adequately administering and enforcing it, regardless of whether a formal audit has been conducted recently. A dispute over a single permit rarely will give rise to a general finding of failure to carry out the program on the part of the State. Moreover, the statute makes it clear that only EPA may make the determination that a permitting authority is failing to adequately administer or enforce the program.

When EPA makes such a determination, it must notify the permitting authority. For the first 18 months following this notification, EPA may apply any of the sanctions provided in section 179(b), but is not required to do so (502(i)(1)). After 18 months, if the permitting authority has not corrected its program, EPA "shall apply the sanctions under section 179(b) in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a)" (502(i)(2)).

The two sanctions provided for in section 179(b) are (1) a prohibition on the award of Federal highway funds or the approval of any Federal highway project by the Secretary of Transportation, other than for safety or mass transit, and (2) a requirement that sources subject to NSR requirements of section 173 obtain emission offset reductions in a ratio of at least two-to-one. Section 502(i)(3) further provides that EPA shall not apply the section 179(b)(2) sanction (regarding the requirement to obtain two-to-one offsets) in any area for failure to administer and enforce the permit program unless the failure "relates to an air pollutant for which such area has been designated a nonattainment area." The EPA believes that failures to carry out a permitting program rarely will be pollutant-specific failures. If the failure does not relate to only one pollutant, EPA has the authority to apply the section 179(b)(2) offset sanction in any area that is designated nonattainment under section 107 for at least one pollutant.

As discussed above, the Act's legislative history on the operating permits title shows that EPA should take over permitting of sources only as a last resort. The States are far better equipped to issue operating permits. However, section 502(i)(4) requires EPA to step in and take over permitting if a State has not corrected the cited deficiencies in its program within 2 years of the date that EPA determined the permitting authority was not adequately administering or enforcing its program. Thus, EPA shall promulgate, administer and enforce a Federal permitting program for a State 6 months after the date that EPA is required to apply sanctions against the State. Part 71 will contain all necessary provisions for EPA to administer and enforce a Federal permitting program for a State. The EPA shall publish notice in the **Federal Register** that it intends to administer and enforce such programs for a State within 6 months after the date that EPA is required to apply sanctions against the State. Whenever EPA determines that the State has corrected the deficiencies in its program, the Agency will cease administering the Federal permits program and return permitting authority to the State.

K. Section 70.11—Requirements for Enforcement Authority

This section was added to promote greater consistency with the NPDES program and to ensure that the basic framework for effective enforcement of title V would be in place. This section contains specific requirements for enforcement authority consistent with those contained in 40 CFR 123.27, with appropriate adjustments to conform to the Act.

The EPA encourages State and local permitting authorities also to have administrative enforcement authority similar to section 113 of the Act as amended, although it is not required by § 70.11. Having administrative enforcement authority in addition to judicial enforcement authority has many advantages. First, administrative cases generally have lower forum for minor or straightforward violations. Reliance on the judiciary for all enforcement cases also may cause significant delays in pursuing violations considering how overburdened State and Federal judiciaries are. For both these reasons, more violations may be pursued if the permitting authority has administrative enforcement authority.

V. Additional Topics of Discussion

A. Implementation Agreements Between State Agencies and EPA

(1) General

The operating permits program set forth in title V is designed to streamline the regulation of major sources by incorporating all of the various Act requirements to which a source is subject into a single document. The effective implementation of this new program will undoubtedly require a high level of cooperation and coordination between State and/or local air pollution control agencies and EPA. It is important, therefore, that directors of State and local air control agencies establish an implementation agreement with the appropriate EPA Regional Office. Such an agreement would define the manner in which the permits

program is to be administered by the permitting authority and reviewed by the EPA Regional Office.

An implementation agreement should be administrative in nature. It should establish the policies, responsibilities, and procedures to be followed by the two parties in administering title V. It should define the relative program responsibilities and priorities regarding such topics as reporting and data requirements, administrative deadlines, enforcement of permits by the States, and procedures for permit and program review. It should not be used as a substitute for rulemaking (i.e., to make additions or modifications to the permit regulation) or the SIP.

Such an agreement should be developed during the period that the States are developing their title V programs, and it should be submitted along with the State program submittal. Submittal of the agreement at this time is critical because it will require the permitting authority to analyze the administrative aspects of the program in an organized manner and show that such details have been considered before development of program requirements and agreed to before subsequent approval by EPA. Both the permitting authority and EPA will benefit from this in the long run. It is important to note that implementation agreements with State and/or local control agencies will be made publicly available in the EPA docket for this regulatory action but will not be subject to the Federal rulemaking process.

The concept for the implementation agreement stems from the use of a memorandum of agreement (MOA) between State agencies and EPA Regional Offices in the NPDES program under the CWA. The NPDES program provided the basic blueprint for the Title V legislation and has successfully used the MOA concept to enhance program implementation. Experience shows that the MOA has led to better State/Federal communications.

The implementation agreement identified in this section can come in any format and does not have to take the specific form of an MOA. It need only cover the types of issues described in the next section. The EPA solicits comments on the need for a model MOA and its anticipated usefulness.

The benefits associated with an implementation agreement are numerous. First, as previously noted, it will provide for better interagency communications. Second, State and local permitting authorities should gain greater certainty about EPA's oversight activities under the program. Third, an implementation agreement can complement section 105 grant agreements and conditions and can help define how EPA Regional Offices will relate to States. Fourth, the implementation agreement can be used to allow for minor program changes (e.g. changes on a State permit application form) in the future without rulemaking.

(2) Recommended Topics Within Implementation Agreement

The Administrator proposes for comment that a typical implementation agreement may include provisions relating to the following topics:

(a) *Meetings between the permitting authority and EPA.* Both parties agree that either can call meetings to review operating procedures, resolve problems, or otherwise enhance implementation of the permit program.

(b) *Legal authority.* The permitting authority agrees to develop and maintain legal authority and resources for effective program implementation.

(c) *Accounting report.* The permitting authority agrees to provide an accounting report to EPA covering the timeframe specified by the Agency which demonstrates how revenues from permit fees were spent by the agency and how they are used in meeting the designated air agency's maintenance of effort program requirements contained in section 105.

(d) *Required submission of documents.* Both parties agree to identify the kinds of documents and the frequency with which they are to be submitted by one party to the other. Examples include copies of permits the State has decided to revise, revoke, or terminate. The EPA agrees to keep the State agency informed about new regulations, reports, policies, and litigation settlements. State agrees to notify contiguous States and other States within 50 miles of all permit applications.

(e) *Public file.* The permitting authority agrees to maintain an adequate public file (excluding information entitled to protection from disclosure under section 114(c) of the Act) for each permittee. The types of reports to be included in each file are to be specified in the agreement. Public information will be made available to any party upon request for the applicable duplicating fee.

(f) *EPA funding.* The EPA may provide additional section 105 funding support for the State program, particularly during the program transition period, where such funding is necessary and available.

(g) *Technical support and assistance.* The EPA agrees to provide technical support and assistance for interpretation of national regulations, automated transmission of data to EPA, and general technical assistance in processing permits.

(h) *Information management.* State permit information systems should be compatible with the national operating system with regard to a set of minimum standard data elements, as well as standardized program procedures, including timely submittal of required data. These requirements are to be defined in subsequent guidance.

(i) *Priorities for permit processing.* Both parties agree to identify and implement priorities (e.g. sources subject to new source review) for permit processing.

(j) *Enforcement.* The State agrees to maintain a vigorous enforcement program, including the following:

(i) Quarterly reports of compliance information to EPA.

(ii) Annual reports of State enforcement activity.

(iii) An automated compliance monitoring tracking system.

(iv) Timely review of compliance records, monitoring reports, inspection reports, and compliance certifications.

(v) Compatibility with and/or use of AIRS, including information transfer procedures conforming with national requirements to be developed.

(vi) Certification of reports by a responsible official.

(vii) Appropriate enforcement actions taken in a timely manner.

(viii) Timely field inspections in accordance with approved procedures.

(ix) Procedures for receiving and properly considering information submitted by the public about violations.

(k) *Program review.* The EPA will conduct the following activities to ensure that program objectives are met:

(i) Timely review all information submitted by the State agency.

(ii) Meet with State and/or local officials periodically to discuss program implementation.

(iii) Examine files and documents at the State agency for selected facilities to determine that permits are processed, issued, revised, renewed, and enforced in a manner consistent with Federal requirements.

(iv) Review and certify periodically the legal authority upon which the State's program is based and notify EPA of findings.

(v) Hold public hearings on draft proposed permits, as necessary.

(vi) Review the State and/or local agency's public participation policies and procedures as needed.

(vii) Respond promptly to proposed program changes.

(l) *Program Changes.* The permitting authority agrees to take the following actions regarding changes in its permitting program:

(i) Seek and adopt legislation (or other actions) to maintain compliance with the permitting program.

(ii) Notify EPA of any proposed substantial change in the program and transmit the text of any such change.

(iii) Notify the EPA within 10 days of any change to the program and transmit the text of such revisions.

B. Relationship of Permit Programs to SIP's

(1) General

Under the Act, the SIP remains the primary means of assuring attainment and maintenance of the NAAQS. Requirements in the underlying SIP will form the basis for the permit requirements. As previously mentioned, section 504(a) requires each permit issued under title V to include, among other things, "such * * * conditions as are necessary to assure compliance with applicable requirements of this Act, including the requirements of the applicable implementation plan." Section 505 requires that EPA object to any permit that "contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this Act, including the requirements of an applicable implementation plan."

A previous section on applicable requirements (IV.F.) discusses various ways of ensuring that the permit would implement and not relax the applicable SIP requirements. Where SIP requirements are clear, the part 70 permit must adopt these limitations and reestablish them as permit conditions that implement the SIP. Where the SIP requirements are ambiguous or absent, the permit could provide a way of resolving questions as to how the SIP applies and is enforced. Where the SIP is being changed, (e.g., in SIP-call areas) the permit must not unduly insulate the source from the future requirements.

The provisions in section 504(a) indirectly limit the flexibility offered by section 502(b)(10), which requires that State programs allow certain changes within a permitted source without a permit revision so long as, among other things, the "changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions) * * *." Since the permit must reflect the SIP, if the SIP does not authorize changes from unit-specific emissions limits or caps contained in the SIP without a SIP revision, the "operational flexibility" provision cannot be read to authorize such changes absent a SIP revision. (Congress's deletion of the Senate bill provisions authorizing permits to modify SIP's, in conjunction with its addition of the section 504(a) language requiring permits to reflect the SIP, suggest strongly that Congress rejected the view that permits could modify or otherwise override the applicable SIP.)

This limitation on the ability of permits to modify SIP's creates a dilemma for EPA. On one hand, if a SIP sets detailed unit-specific emissions limits that constrain the ability of the source to choose alternatives without submitting them as SIP revisions, then the permit for a source subject to those limits would have to reflect those limits, and each time the source wanted to make a change to its plant that would require a change to those limits, it would first need to obtain a SIP revision and a permit revision. This would essentially add a permit-revision step to an otherwise cumbersome double-step process of obtaining SIP revisions (revision by the State followed by EPA approval of the revision). The resulting regulatory gridlock would be inconsistent with one of the apparent purposes of the permit program; to accomplish air quality management with less reliance on the SIP revision process.

On the other hand, title I of the Act prescribes various minimum requirements that SIP's must meet to ensure attainment and maintenance of the NAAQS. Any effort to introduce into the SIP system enough flexibility to avoid the regulatory gridlock described above will need to respect those title I requirements. Thus, the challenge EPA and the States face in this regard is to explore creative ways of implementing title I so as to meet its requirements for SIP's while minimizing the need for processing SIP revisions to accommodate each and every permit and permit revision.

The starting point for meeting this challenge is section 110(a)(2)(A) which requires that each SIP "include enforceable emission limitations, and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as, schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the Act."

This provision makes the required contents of SIP's hinge on what is "necessary or appropriate" to meet the applicable requirements. Thus, any effort to explore the option of introducing flexibility into SIP's must focus on the other requirements for SIP's in title I and elsewhere in the Act.[7] For example, SIP's for ozone nonattainment areas must include certain requirements concerning reasonably available control technology (RACT) (182(a)(2)(A) and (b)). For all but marginal ozone nonattainment areas, the SIP must be revised to provide for certain prescribed amounts of emissions reduction (182(b)(1) and (c)(2)(B)), as well as emissions reductions necessary to provide for timely attainment of the ozone NAAQS (182(b)(1) and (c)(2)(A)). The SIP's for PM_{10} nonattainment areas also must include both technology-based and attainment-based provisions (189(a) and (b)). Under section 110(k) and (l), EPA has the responsibility for ensuring that each plan meets these requirements.

Resolution of this issue requires a thorough study of the SIP requirements in the Act. The EPA has begun this study and intends to publish later this year a discussion of its findings in the preamble for title I SIP requirements. That notice will discuss how EPA will provide more flexibility in the SIP requirements.

In advance of the title I notice, EPA wants to solicit comments on several ways to resolve this issue. The EPA's approach can be separated into three options. First, EPA will explore efficient ways to implement requirements of the current SIP's through title V permits and seek means to keep unnecessary permit details out of SIP's. This will avoid the need for a SIP change for every change to a title V permit. For example, a permit must sometimes contain details, such as descriptions of source-specific monitoring or reporting elements, on which the SIP is ambiguous. In many cases, requiring a SIP revision as well as a permit change would be unnecessary. In some instances, however, a SIP revision might be necessary to reflect more stringent permit limits imposed to meet, for example, a title I milestone or progress requirement. As mentioned, EPA is taking comment on how the SIP might reflect the effect of tighter permit limits in a way that does not require an excessive number of SIP revisions.

Second, EPA will add more flexibility by developing ways for sources to demonstrate compliance with RACT limits. One way is through the use of protocols defining equivalent means of compliance. Two of these are in use, one for cancoaters (see 45 FR 80824,

[7] Both titles II and V contain some SIP-submittal requirements (See. *e.g.*, sections 211 (M) and 507).

December 8, 1980) and one for automobile and light-truck topcoaters (see report no. EPA-450/3-88-018, December 1988). The EPA intends to develop equivalency protocols for other sources subject to RACT. These protocols, where possible, will provide sources with additional options for meeting RACT limits.

Third, EPA might allow the expanded use of emissions trading and marketable permits to achieve SIP objectives. EPA believes marketable permits could implement a SIP that contained both a source-specific limit and a general rule governing the trading of emissions. This approach would be similar to the allowance trading system EPA expects to adopt under the acid rain provisions and could afford trading opportunities without requiring SIP revisions or permit revisions.

The comparison between the acid rain trading system and a system of trading or marketable permits in ozone nonattainment areas deserves further discussion due to major differences between the two. The acid rain system allows nationwide trading; a nonattainment system would be limited to a metropolitan area, and to smaller areas if the SIP attainment strategy relied on a grid-based model. Compliance in the acid rain system is through CEMS. The absence of in-stack monitors for VOC's may require that compliance be determined through time-consuming recordkeeping calculations. Acid rain sources are of one type: Large utility boilers, which already are highly regulated. Sources of VOC span many source categories and can be very small, down to 10 tons per year, several of which are not familiar with complicated regulatory mechanisms. Trades in the acid rain system are incomplete until recorded by EPA. A system requiring a similar EPA oversight of each trade may be unworkable for VOC's.

The EPA takes comment on how it could structure a trading system for VOC's and NO_x in ozone nonattainment areas. The Agency also takes comment on how to create a system that could effectively track trading of allowances among numerous and disparate VOC and NO_x sources in a large ozone nonattainment area within the need for permit or SIP revision. In particular, the EPA solicits comment on how it should build enforceable conditions into title V permits that maintain compliance with the permitted emission limits regardless of how a source's control measures or its allowance holdings may vary.

The timing of these options is important. Many sources will soon be faced with deadlines requiring compliance with line-by-line RACT limits, and if EPA is to implement one or all of these options, it must consider how these RACT limits could be made to fit with the three options. For instance, the scope of option three could be restricted if RACT limits (with or without equivalence protocols) were applied so as to require the same level of emissions reductions at each affected emissions source. Although EPA already has construed the statute to allow some degree of trading among emissions sources (see 51 FR 43814, December 4, 1986), the third option described above might expand that opportunity further. Thus, delaying that option for several years might restrict sources to the more limited options for purposes of any initial compliance dates. On the other hand, it may be difficult to implement the third option before approved State permit programs are in place.

The EPA solicits comment on all aspects of these options, particularly on whether EPA should adopt some, all, or none of the options outlined above. The EPA also solicits comment on how quickly EPA should move to accept any of the options and on what safeguards are needed to ensure that SIP objectives and title I requirements are met. The EPA also solicits comments on other possible approaches.

The EPA also solicits comment on any practical questions related to putting an allowance trading system in place for VOC's and NO_x. Examples of such questions are: How to reconcile the need for a basinwide trading system with the requirement in certain areas for photochemical dispersion modeling, and whether it is practical for SIP-regulated sources to operate under emissions caps or allowances.

The preceding discussion on the three options applies only to the ozone precursors VOC and NO_x. The EPA does not intend to apply such an approach to permitted stationary sources of SO_2, CO, PM_{10}, or lead. This is because any change that affects quantity or characteristics of emissions of these pollutants at a particular emissions unit can produce a corresponding change in air quality more significant than is the case for VOC or NO_x. Consequently, the permit could not be approved until the SIP has tested such changes for attainment of air quality standards. The preceding discussion also does not alter the Emissions Trading Policy Statement. That policy allows trading for SO_2, CO, PM_{10}, and lead if supported by an air quality modeling demonstration.

For illustration, the remainder of this section discusses one example of when States might issue permits that depart from the SIP without securing advance EPA approval of those permits as case-by-case SIP revisions, namely, the case of permits that establish new, more restrictive requirements on a subject source. For example, some States may include enforceable emission limits in their permit program derived from State an air quality initiative within the SIP to gain needed reductions from the permit program, or to implement an emissions trade proposed by the source. The State will want to rely these new tighter limits established in the permit program in its demonstration of attainment and maintenance of the NAAQS. Clearly, the tighter restrictions within these permits are federally-enforceable and can be relied upon by the SIP demonstration once incorporated into the SIP. Since SIP demonstrations must extend beyond the 5 year maximum fixed life of permits, the SIP itself may ultimately need to contain the new permit limits. That is, the SIP demonstration cannot depend for the longer term on more stringent permit restrictions which could be relaxed to the currently applicable SIP requirement and/or expire at the end of the fixed term identified in the permit (not to exceed 5 years). As explained above, the EPA has proposed that the latter not be allowed to occur. Under that proposal, the State's law would have to provide that the terms of the permit would remain enforceable, even after the fixed term of the permit expires, provided that the source has filed a timely and complete application for permit renewal.

The question then becomes how to incorporate the effect of these permits into the SIP's attainment demonstration without creating even a greater potential for regulatory gridlock similar to that mentioned previously. The EPA believes that the gridlock problem can in significant part be minimized while still addressed by relying upon the SIP revision process. First, the Agency believes that the process for inserting new limits established within permits into the SIP need only occur periodically and not for each permit upon its issuance. The envisioned process would be a relatively straightforward incorporation of the new permit restrictions into the SIP as new applicable requirements (III.H.) that all future versions of the permit must meet. In addition, to the extent possible, EPA would utilize the SIP processing reforms outlined in 54 FR 2214 on January 19, 1989. This process would add only the time needed to accomplish one SIP revision addressing the permits of several sources and thus effectively preserve most of the added air quality management efficiency accomplished through the permit process. In addition,

the State, presumably at the same time, would update its SIP demonstration under title I based on the reductions and/or clarifications it has implemented using title V permits. The EPA solicits comment on this approach for using permits to complement the existing SIP program.

Alternatively, EPA may be able to approve into the relevant SIP's provisions that, in advance of permit issuance, would credit the States for changes that, without further EPA SIP-revision approval, tighten the otherwise applicable source-specific limits in the SIP. If EPA approved such rules into a SIP, permit tightenings would accord with the SIP, and hence would satisfy section 504(a) without the need for EPA to approve each such tightening separately as a SIP revision. (As previously discussed, without such rules, EPA might eventually need to approve each tightening (e.g. an emissions offset) as a SIP revision to the extent that the State relies upon it in demonstrating attainment and maintenance with the applicable NAAQS.) Beyond that, the Agency takes comment on the possibility of approving into the SIP a provision which would ensure an aggregate effect from tightenings accomplished within the permit program, provided that no aspect of the underlying SIP would be relaxed. The provision would necessarily contain tracking requirements to assess the progress achieved, periodic and defined updates of the demonstration to verify results, and other safeguards as needed to guide EPA when to use its veto authority on an individual permit basis. The EPA solicits comment on use of such a generic permits provision.

The EPA solicits comment on these and any other options for streamlining SIP's so as to minimize the need for SIP revisions to accommodate permits and permit revisions.

(2) Other SIP/Permit Concerns

(a) SIP Calls. A State subject to a SIP call will have to coordinate carefully its operating permit program with its obligation to revise the SIP. Section 504(f) states that compliance with a permit issued in accordance with title V, unless limited by EPA rulemaking, may at the discretion of the reviewing authority also represent compliance with other applicable requirements, subject to certain limitations. As discussed previously, at the discretion of the permitting authority, EPA's proposed interpretation would generally protect a source from new requirements during the term of the permit, unless the permit were to be reopened. Permitting authorities issuing operating permits in these areas therefore may choose to shield sources from changes in the SIP during the permit term. This action should be coordinated with the schedule for accomplishing areawide air quality requirements developed by the State or promulgated by EPA into the deficient SIP.

(b) *Consolidated actions.* A State may choose to consolidate actions on permits and SIP's in some situations. In the case described previously, where a new SIP provision is promulgated during the first 2 years of a 5-year permit, the State may choose to process the reopening of the applicable permits along with the SIP revision to meet its obligation under section 502(b)(9). In the less likely case where the State is proposing to relax the SIP, the State may choose to reopen the applicable permits along with the SIP relaxation, specifying that the new relaxed permit limit is effective upon EPA's approval of the relaxation as a SIP revision. In both cases, States may be able to consolidate public participation procedures to save time and administrative resources.

C. Implications for Acid Rain Program

Title IV mandates a two-phased acid rain control program which will be implemented through operating permits. The acid rain title (title IV) sets forth permitting requirements supplemental to the requirements of title V addressed by today's proposal. Where discrepancies exist between requirements under title V and requirements under title IV, the acid rain requirements supersede those of title V (506(b)). Acid rain-specific permit content requirements must be included in operating permits under both phases. The permitting process will be different for Phase I and Phase II. Section 407 provides that Phase I of the acid rain program (1995 through the end of 1999) be implemented entirely through operating permits issued by the Administrator. Phase II (beginning in 2000) will be implemented by operating permits issued by States with federally-approved permit programs, or by EPA in the event a State defaults. Phase II permitting will be, thus, in accordance with the process established by the rules proposed today, as supplemented by acid rain-specific content regulations.

Today's proposal does not address specific supplemental permitting requirements for acid rain, provided for in title IV. Those requirements will be addressed in a separate rulemaking, with final rule promulgation required 18 months after enactment. The acid rain permit regulations will include a description of the relationship of the acid rain program to other programs incorporated in the permits, necessary definitions, applicability requirements, and necessary permit elements not included in the rule proposed today. These will include: (1) Acid rain-specific requirements for permits and compliance planning, including requirements for affected sources relying on one or more alternative compliance methods authorized by the statute (e.g., extensions, substitutions, banking, pooling, purchasing of allowances at sale or auction, energy conservation or renewable energy, repowering, etc.), (2) compliance certification and reporting requirements, (3) requirements for affected source-designated representatives, and (4) excess emission offset planning and fee requirements.

Rules for Federal acid rain permitting during Phase I, and in the event of State defaults during Phase II, will be published at 40 CFR part 71. In addition, acid rain permit content requirements, which must be included in permits issued by States with approved programs, will be proposed at that time, and will be added to (or incorporated in) the part 70 rules proposed here. Public comment is invited at this time regarding the impact of this general permit program rulemaking on the acid rain permit program. Public comment in response to the acid rain rulemaking proposal will, however, only be accepted with regard to the provisions proposed at that time. Comments will not be considered at that time reopening matters addressed by this rulemaking.

D. Judicial Review

The 1990 Act Amendments and the regulations proposed today provide an opportunity for judicial review of State and certain Federal final actions on a proposed permit. Generally, a final State action prior to submitting a proposed permit to EPA is reviewable in State court. An EPA issuance or denial of a permit, or an EPA denial of a petition to object to a permit, would be reviewable in the appropriate Federal court of appeals for the circuit where the State is located.

(1) Review of State Action

Section 502(b)(6) requires that a State operating permit program provide "an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law." This requirement for State program approval is repeated in § 70.4. A State must make a showing, through the submission of copies of State

statutes or regulations, that such an opportunity for judicial review of the final State action on the permit is available in State court. This opportunity will not be available until after the permit has been issued (i.e., after the end of the EPA review period) or after it has been denied by the State (in which case there will not be any EPA review).

State law will govern the effect a petition for judicial review of the State's final action on the proposed permit has on the action. For example, nothing in the Act or the regulations proposed today would prevent a State court from staying the effect of the State action in approving or disapproving the permit. States may also require that petitioners go through State Administrative appeals procedures before they may petition for judicial review in State court.

One of the primary goals behind title V was to have greater certainty for sources and State and Federal enforcement personnel as to what requirements under the Act apply to a particular source. In order to achieve that certainty, the terms of permits should not be subject to challenge in enforcement proceedings. Section 307 clearly establishes this rule for circumstances in which EPA is the implementing authority. With this goal in mind, EPA solicits comment on whether permitting authorities should, as a minimum program element, be required to provide, through rule, legislation, or permit term, a comparable exclusive, time-related route for judicial review of permits. After this judicial review opportunity passes, no one, including the source, could challenge a permit. Permitting authorities would be granted flexibility regarding the length and structure of this review period. Sources would, in any case, specifically be precluded from challenging the requirements and conditions of their permits in State or Federal civil and criminal enforcement actions.

Section 502(b)(6) requires all approvable programs to provide "an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law." Thus, EPA would, through this rule, only add that this mandated State judicial review process would be the exclusive means for challenging a permit.

This would have advantages for the permittee, the permitting authority, and EPA. The advantages for permittees would be the added certainty and stability of their permit gained by having their permit no longer subject to challenge. Enforcement at the State and Federal level would benefit significantly. Currently, many enforcement actions are seriously hindered by disputes with sources over which Act requirements apply. If the permit could not be challenged in enforcement actions, these disputes would no longer arise.

The EPA is particularly interested in comments from potential permitting authorities on whether it is advisable to require States to limit the time for challenging terms of operating permits and what obstacles they would encounter in implementing such a requirement.

EPA also takes comment on the need for specific regulatory requirements in part 70 regarding judicial review of acid rain requirements contained in title V permits. An important principle of the acid rain program, embodied in title IV and in section 506(b), is national consistency. Judicial review in State courts could have a significant impact on the acid rain program because it would result in inconsistent requirements being imposed on acid rain sources depending on the State in which they are located.

To maintain this national consistency, the EPA proposes to require that challenges to acid rain requirements be reviewed in Federal courts only, using Federal administrative and judicial appeals procedures. The basis for this approach is found in section 506(b) of the Act as well as § 70.1(e) of these regulations, which states that the requirements of part 70 shall apply to affected sources under the acid rain program, "except as provided herein or modified in parts 72 through 78 of this chapter." The EPA solicits comment on whether it should adopt this approach.

(2) Review of EPA Action

Also subject to judicial review are EPA's final actions in (1) issuing or denying a permit where, following an EPA objection to a proposed permit, the State fails to submit a revised, acceptable permit, and (2) denying a petition to object to a proposed permit. Where EPA objects to issuance of a proposed permit under section 505(b) because provisions are not in compliance with applicable requirements of the Act, and then must actually issue or deny the permit itself, that latter action is subject to a judicial review under section 307(b) in the appropriate Federal court of appeals. The appropriate court will be the circuit in which the State is located. Section 505(c) expressly States that "no objection (by EPA) shall be subject to judicial review until the Administrator takes final action to issue or deny a permit under this subsection" following the permitting authority's failure to submit a permit revised to meet the objection. Thus, a petition for review of EPA's action may not be filed until that time; if one were filed before then, the court would lack subject matter jurisdiction.

The above-quoted language also makes clear that, where EPA objects to issuance of a permit, and the permitting authority revises the permit to address EPA's comments, EPA's objection is not subject to judicial review. Otherwise, Congress would have specified other circumstances when an EPA objection would be subject to judicial review. Where the State revises the permit, therefore, the finally-issued permit will be subject to judicial review only in State court. Where a petition for review of EPA's issuance or denial of a permit is filed in the Federal court of appeals, the judicial record shall constitute all materials regarding the permit submitted to EPA and any other materials that the Agency relied upon in objecting to the permit forwarded by the State, as well as any materials relied upon in issuing or denying the permit.

Under section 505(b)(2), a person may under certain circumstances petition the Administrator to object to issuance of a permit if the Agency has failed to object to its issuance during the 45 day review period specified in section 505(b)(1). If the Administrator approves the petition, that action is not a final action subject to judicial review. Rather, as described above, only issuance or denial of the permit by EPA would be subject to judicial review.

A final decision by the Administrator to deny the petition is subject to judicial review, however. This opportunity for review is expressly granted by section 505(b)(2). Such review shall be under the conditions specified in section 307(b). A petition for review of the petition denial therefore must be filed within 60 days of the denial, in the Federal court of appeals for the circuit in which the State is located. The record for judicial review of this final decision shall constitute the petition submitted to the Administrator, all materials submitted by the State to EPA for review of the permit, and any other materials relied upon by EPA in denying the petition. When EPA's denial of a petition is challenged in court, the already issued permit, of course, remains in effect. The Agency is proposing to require, as a criterion for approval of the State operating permit program, that each State have a provision in their administrative

procedures act placing a bar on when permits or conditions of permits may be challenged after issuance. This bar would disallow challenges to permit conditions after a specified period of time, such as 30 days. The purpose of the provision is to ensure that permittees do not attempt to escape liability for violations of permit conditions by challenging those conditions after they are in violation or after the State or EPA attempts to take an enforcement action. To provide States with flexibility, the Agency solicits comment on allowing time bars on permit challenges of up to 4 months.

E. Implications For Section 112

Section 112 includes a list of 189 hazardous air pollutants some sources of which will be subject to emissions standards under section 112. The EPA must publish a list of source categories or subcategories of major sources that emit these pollutants within 1 year after enactment. The EPA then must issue MACT standards for each listed source category or subcategory according to a prescribed regulatory schedule. For example, standards for 40 categories must be set within 2 years of enactment. The standards for new sources are to be based on the maximum emissions reductions achieved on the best controlled similar source, while the standards for existing sources must, in general, be at least as stringent as the average of the best controlled 12 percent of the sources in the category. Companies that accomplish early reductions of emissions receive a 6-year compliance extension from meeting the MACT requirements, if they reduce their annual emissions of listed hazardous air pollutants by 90 percent over a given baseline (95 percent for particulate pollutants) subject to certain criteria. All sources subject to section 112 must obtain a permit issued pursuant to a title V permit program.

(1) Applicability

The proposed part 70 program would implement for subject sources existing section 112 standards as well as future section 112 standards requiring the use of MACT, GACT, any technologies to reduce unreasonable residual risk, and any accidental release requirements mandated under section 112(r). In the development of MACT standards, EPA intends to develop model permit conditions as guides to the implementation of these standards through permitting. All major sources as defined in section 112, and any other source subject to standards under section 112 (unless exempted through rulemaking by the Administrator) are subject to the part 70 permit program. "Major source" is defined by section 112 as any stationary source (or group of stationary sources) located within a contiguous area, and under common control, that has the potential to emit, after considering controls, of 10 tpy or more of any hazardous air pollutant (defined initially as a list of 189 which is subject to change), or 25 tpy or more of any combination of these pollutants. The Administrator may also establish a lesser quantity for a major source on the basis of potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

As discussed under § 70.3, the part 70 permitting process applies to all regulated emissions units on the premises of a "major" source. In addition, the part 70 permit process applies to "area" sources (as defined in section 110) which have one or more aspects of its plant site subject to section 112 unless exempted by rulemaking. Once affected by the permitting process, compliance with all applicable requirements of the Act, including those contained in the SIP and section 112, must be assured within each part 70 permit. In addition, where there is no applicable section 112 standard to implement, part 70 permits must still impose any applicable control requirements described in sections 112(g) or 112(j).

(2) Section 112(l) Programs

Section 112(l) outlines a program for State implementation of section 112. A State may develop and submit to the EPA a program for the implementation and enforcement (including a review of enforcement delegations previously granted) of emissions standards and other requirements for air pollutants subject to section 112, including requirements for the prevention and mitigation of accidental releases pursuant to section 112(r). These programs would be similar to the existing programs used by States to enforce existing section 112 standards and the program envisioned by title V. Such a program may provide for partial or complete delegation of the Administrator's authorities and responsibilities to implement and enforce emissions standards (provided they would be no less stringent than those promulgated by EPA) and prevention requirements. The program should clarify the process by which delegation of authority is accomplished and whether it must be repeated for each new standard that is promulgated.

The EPA is required by section 112 (l)(2) to publish guidance within 12 months of enactment which, in part, should aid states in developing their programs. Section 112(l)(5) states that the EPA shall disapprove the State's program under the following circumstances:

(a) The authorities are inadequate to assure compliance by all sources within the State with each applicable standard, regulation, or requirement established by the Administrator under section 112.

(b) Adequate authority does not exist, or adequate resources are not available to implement the program.

(c) The schedule for implementing the program and assuring compliance by affected sources is not sufficiently expeditious.

(d) The program is otherwise not in compliance with the guidance issued by the EPA, or is not likely to satisfy, in whole or in part, the objectives of the Act.

The EPA proposes that the procedural requirements in section 112(l) to review and approve/disapprove State programs will be met by the promulgation of part 70. The requirements for an adequate part 70 submittal (III.B., IV.D.) contain equivalent approval criteria which are substantially the same as those contained in section 112(l)(5). Part 70 also contains several additional and more specific requirements that assure implementation of all Act requirements, including MACT, applicable to subject sources through a permit program. The EPA also believes that State efforts to develop and implement a title V permit program should not be diluted by encouraging the development of separate but similar programs to implement just section 112.

Where section 112(l) identifies additional program requirements (such as those relating to enforcement of MACT or GACT requirements at non-permitted sources or the handling or storing any substance listed pursuant to section 112(r)), States are free to submit these as provisions within their title V permit programs in order to meet section 112(l). Implementation of these provisions would then be a cost appropriate for recovery from the required fee schedule (IV.I.). Accordingly, EPA solicits comment on today's proposal to consolidate section 112(l) programs with Title V permit programs.

(3) Statement of Adequate Legal Authority

The part 70 submittal must contain a legal opinion from the State's Attorney General affirming the adequacy of

existing legal authority to implement and enforce the program. With respect to section 112, the enabling legal authority should be adequate to accept delegation of authority to implement and enforce new MACT standards in a timely way. In the case where a State cannot immediately accept implementation responsibilities upon promulgation of a new MACT standard, then the impact of any delay associated with State implementation should not be significant. Moreover, any part 70 permits issued to affected sources during the time before the State can accept implementation responsibility for a given standard should be issued in a manner which does not interfere with section 112 enforcement. One possibility would be for the State to disallow use of the section 504(f) "permit shield" in such circumstances.

The statement of adequate legal authority must also confirm that the State has the ability to implement sections 112(g) and 112(j). In the case of section 112(g), States acting as the part 70 permitting authority must be able to develop and enforce a case-by-case determination of MACT, after the effective date of the permit program, on new, reconstructed, or modified sources where no applicable emissions limitations have been established by the EPA. These case-by-case MACT determinations must be consistent with EPA guidance due for publication not later than 18 months after the date of enactment.

Section 112(j) requires that in the event EPA fails to issue a standard for a major source category or subcategory within 18 months of the scheduled promulgation date for the standard, a permit must be issued that contains emissions limitations equivalent to the limitation that would have applied had the emissions standard been issued on time. Under section 112(j), the State must have adequate authority after the effective date of the permit program (but not prior to 42 months after the date of enactment) to develop and enforce these case-by-case determinations of MACT.

(4) Alternative Emissions Limitations for Early Reductions

Section 112(i)(5) provides an extension for existing sources to comply with otherwise applicable standards for hazardous air pollutants provided certain criteria concerning early reductions are met. This subsection requires that the Administrator or a State acting pursuant to a title V permit program issue a permit allowing an existing source (for which the owner or operator demonstrates that the source has achieved a reduction of 90 percent or more in emissions of hazardous air pollutants, 95 percent in the case of particulate hazardous pollutants, from the source) to meet an alternative emissions limitation reflecting such reduction in lieu of meeting a standard under section 112(d). This extension would apply for a period of 6 years from the compliance date for the otherwise applicable standard, provided that the reduction occurs before the standard is proposed. The one exception is specified in section 112(i)(5)(B) wherein existing sources that make a federally-enforceable commitment prior to proposal to achieve the reductions, can have until January 1, 1994 to achieve the reduction. The EPA is issuing regulations for determining when reductions are sufficient and verifiable.

Under this guidance, a source owner or operator wishing to qualify for a hazardous air pollutant standard compliance extension under the early reduction program must submit a permit application containing a demonstration that sufficient reductions have been achieved. The permitting authority would evaluate and either approve or deny the early reduction demonstration, normally as part of the permit review and issuance process. In most cases if a source is denied a compliance extension, the source will have to meet the applicable hazardous air pollutant standard within the normal compliance period specified in the standard. A problem would arise when a source which has applied for an extension receives word that the early reduction demonstration has been denied, and the denial comes only a short time before, or even after, the normal compliance deadline of the applicable hazardous air pollutant standard. Under this scenario, the source would not have adequate time to install appropriate controls to meet the standard.

Sources submitting complete permit applications to States may not be issued permits for as long as 3 years after the date of initial State program approval or for 18 months in all other instances. Review times this long can create problems for sources seeking such extensions.

An illustration of the potential problem can be made using the upcoming standard for ethylene oxide sterilizers. The EPA intends to promulgate a hazardous air pollutant standard under section 112(d) by April of 1993 for sterilizing facilities using ethylene oxide. The compliance period for this standard likely will range up to 24 months, with a subsequent final compliance date of April 1995. Under the early reduction program, a sterilizer source will have until December 31, 1993 to achieve reductions and qualify for a compliance extension. The source must submit by December 1, 1993 a permit application demonstrating reductions achieved and must submit any source test data to complete the demonstration by March 31, 1994, which leaves approximately 1 year from the time the source submits a complete permit application to the time the source may potentially have to comply with the applicable hazardous air pollutant standard. Clearly, if the State takes 18 months (until September 30, 1995) to review the application and then denies the compliance extension, the source would already be in violation of the standard.

Therefore, for permit applications involving early reduction demonstrations according to section 112(i)(5) of the Act, it is proposed that the permitting authority be required to issue the permit within 9 months of receipt of a complete application. The EPA proposes a shortened permit review period for this special situation under authority provided in section 301 of the Act. The Agency urges permitting authorities to be sensitive to the need to propose this change in the permit review period to ensure effective implementation of section 112 without placing sources in undue jeopardy of violating a hazardous air pollutant standard. The early reduction provisions in section 112 offer a significant opportunity to achieve rapid improvements in air quality across the country. The Agency takes comment on this proposed position.

The part 70 permit process, where available, is the intended implementation mechanism for granting all qualifying sources the extension for meeting otherwise applicable MACT standards including those referred to in the special case above. Questions arise as to how this process will occur in the time period before the effective date of a part 70 State permit program. In the subsequent discussion of the part 71 program (VI.), the process is outlined for EPA to issue title V permits, including those for MACT extensions.

The EPA believes that actions required of sources before the part 71 regulations can be promulgated (i.e., approximately 18 months after enactment) need not be incorporated into a permit before these regulations are in place. Instead, the Act allows the source to develop a federally-enforceable commitment which would be submitted to the appropriate EPA Regional Offices for review. If accepted and put in force, the federally

enforceable commitment registers the source's intent to participate in the early reduction program. When part 71 regulations become effective, and after the source has achieved the required reductions, the source would submit a complete permit application, including the early reduction demonstration.

The EPA intends to delegate the technical and administrative responsibility where possible for developing enforceable agreements or part 71 permits (as applicable) to States who request such authority prior to the approval of their part 70 programs. The EPA solicits comments on how this approach for accomplishing early implementation of the section 112(i)(5) requirement can be accomplished.

F. Information Management Support

The EPA acknowledges the importance of an integrated information management approach for the development and implementation of programs mandated by the Act Amendments of 1990. As partners in implementing the Act, it is recognized that State and local agencies have data needs that may, in some cases, be quite different from the Agency's. It is the Agency's intent to support an integrated information management approach that acknowledges individual needs and existing infrastructure (including forms), yet enables EPA to address its national responsibilities. Accordingly, the information management activities associated with meeting the Act's requirements must seek to fulfill both national and individual program needs. In addition, they should be guided by a template that promotes compatibility with, if not direct use of AIRS, which is the Agency's principal data system for implementing the Act.

The following will accomplish this:

(1) Standard data elements needed for complete application will be identified to meet basic program needs.

(2) Standard information management procedures for program implementation and administration will be defined.

(3) Use of implementation agreements, supported by appropriate guidance, will be encouraged to identify appropriate information reporting requirements.

Nationally consistent information management is necessary to ensure the effective functioning of the allowance trading market under the acid rain program. In a separate rulemaking, the Agency will propose application requirements and forms to be used by all affected sources under the acid rain program. As a condition of approval of State operating permit programs, permitting authorities will be expected to use these forms.

The Agency solicits comments on how best to implement these objectives for data collection and management.

G. Relationship of Permit Fees to Section 105 Grants

Once fully established, a State's permit fee program should recover a significant portion, though not all, of its air program expenses. Section 105 of the Act continues to require States to contribute a specified percentage and maintain a certain level of overall air program support from year to year. Regardless of the continued stature of the Federal air grant program or the changing sources of State program support, EPA has interpreted the Act (title VIII, section 802) as requiring States to continue to satisfy their maintenance of effort (MOE) provisions. States will, therefore, need to report that portion of their permit fee revenue that will be used to help meet their annual MOE obligation. EPA plans to provide further clarification through its upcoming revision of the air portion of the part 35 regulations governing financial assistance to State and local agencies for continuing environmental programs. The EPA is taking this opportunity to solicit comment on its interpretation of the interrelationship of permit-fees, grants and the MOE requirement.

H. Integration of National Pollutant Discharge Elimination System (NPDES) Program Concepts

One of the principles previously identified for designing and implementing title V programs is to promote, not preclude, reasonable integration of title V permit programs with other permit programs. Accordingly, EPA has evaluated the NPDES regulatory provisions for possible inclusion of relevant concepts within the part 70 regulation. The Agency is proposing to merge the programs where this incorporation would not interface with implementation of other important principles previously identified to preserve the legislative intent underlying the content of title V (II)., such as maintaining, where possible, existing State operating permit programs and allowing reasonable flexibility in their future development and implementation.

There are numerous existing regulations which apply to the NPDES permit program under the CWA which have been reviewed to determine whether they have applicability to the title V operating permit program. Based on the successful implementation of the NPDES program by the Agency and the States, and based on the Agency's future direction toward consolidated permitting programs, many of these regulations have been adapted for air and proposed for incorporation into part 70. Those which have been included pose no great burden on either the permitting authority or the permittee. In fact, in many cases these requirements represent good business practices and will expedite review and implementation of the program and of individual permits. General provisions which are included relate to both program requirements as well as to permit requirements.

Program areas which have been addressed include enforcement authorities required of the permitting authority, compliance and enforcement tracking requirements, program submittal requirements including Attorney Generals' statements requirements, and information transfer requirements. Permit provisions addressed by the regulation include property rights, inspection and entry rights, standard recordkeeping requirements, signatory and reporting requirements.

The NPDES regulations in parts 122–124 also include requirements regarding program approval/disapproval procedures, public review procedures, and EPA oversight requirements. Where appropriate, excerpts from these regulations have been extracted in whole or in part and incorporated into part 70. However, at this time the specific requirements of §§ 124.10 through 124.14 have not been included. The Agency recommends that permitting authorities consider these parts when developing their permit programs; and at this time the Agency is soliciting comments on including requirements regarding public notice, hearings, and comment periods on title V permit actions.

The proposed incorporation of several specific features from the NPDES program adds to the considerable common ground already shared by the two programs as a result of their basic design (i.e., title V was modeled in large part on the structure of the NPDES program). Based on this strong linkage between the air and NPDES programs, the EPA Administrator further proposes that a presumption for issue-resolution of title V implementation concerns be established based on the relevant experience obtained from carrying out the NPDES program. Comment is solicited on the appropriateness of this approach and where it should be limited in its scope.

VI. Federal Operating Permit Program

A. Purpose

This preamble previously discusses the criteria for determining if a State operating permit program meets the requirements of title V and the responsibility of EPA if the State-submitted program is not approvable or if a State does not adequately implement an approved program. The action EPA must take is discussed under sections III.C. and IV.J. In brief, EPA must establish and implement an operating permit program that meets the requirements of title V for a State in either event of the State's not developing or implementing a program. The EPA intends to propose in a subsequent **Federal Register** notice a new part 71 which would set forth the elements of an operating permit program which EPA would implement. Part 124 (containing procedural regulations on the issuance of EPA permits) will be amended to provide similar procedural rules for Federal issuance.

Also to be included in part 71 would be provisions regarding the requirements for EPA issuing permits (1) for Phase I sources of acid rain precursors and (2) for sources of hazardous air pollutants which elect under section 112(i)(5) to demonstrate a 90/95 percent or greater early emissions reduction to receive an extension from MACT standards. Both of these permitting provisions are subsequently discussed in this section. These permitting requirements would fall on the EPA during the period prior to a State submitting and gaining approval for an operating permits program under part 70. The parts 71 and 124 regulations also would serve as the basis for EPA permitting sources on certain Indian lands. Although section 301(d) authorizes EPA to treat Indian tribes as States for certain purposes, including issuing title V permits, EPA has not yet promulgated regulations on this matter. Many tribes probably will not seek to (1) to be treated as a State, or (2) run a title V program. Where the tribe does not permit sources on Indian lands, EPA plans to carry out the permitting itself.

When reviewing the proposed part 70, the public is encouraged to also consider the possible provisions that would be in a part 71 Federal permitting program. The EPA is soliciting comment on the concepts discussed in this preamble section concerning a Federal permitting program. These comments will be considered in developing a subsequent Federal permit program proposal notice.

B. Part 71 Default Program

The part 71 program that EPA would implement if a State defaults on developing or implementing an acceptable title V program must meet the same criteria that a State must meet for approval as part of the part 70 program submittal. These part 71 provisions could, therefore, act as a model for the regulation portion of a State operating permit program.

Under part 70, States are asked to establish certain requirements or procedures within certain constraints, e.g., permit fee structure, standard application form, permit review phase-in, public participation. For a part 71 program, EPA must spell out details of these requirements or procedures just as the State must do in its program submittal. The EPA solicits comments on preliminary thoughts as to the nature of the approaches that EPA would take on these items.

(1) SIP Ambiguity

A basic requirement of title V is that permits are issued such that all applicable requirements of the Act are met. If an approved SIP has ambiguous provisions that are not clear or certain provisions necessary for a control strategy demonstration are missing, EPA does not typically intend to "fix" or revise the SIP in the permit. The permit will generally adopt the provisions of the approved SIP and any changes that are necessary will be achieved through the SIP call mechanism. The EPA will, however, prescribe any clarifications or new requirements as needed to ensure that the applicable requirements are written in enforceable terms. The EPA reserves the right to issue a source-specific FIP (in the event a State fails to correct SIP deficiencies) which would then be implemented in the subsequent permit. Public comment is solicited on this approach.

(2) Complete Application/Data Elements

The EPA will specify the elements of a standard application form and include such a form in an appendix to part 71. Criteria will be provided for filling out the form and specifying what constitutes a complete application. Public comment is solicited on the contents of an application.

(3) Transition/Permit Review Phase-In

The EPA will phase in over a 3-year period the review of initial permit applications submitted under a part 71 program. About one-third of the applications will be reviewed each of the 3 years. Public comment is solicited on the criteria for phase-in. The phase-in approach could be to review the largest, most serious sources first. The EPA does not recommend that the less serious, smaller sources be reviewed first, even though the review staff might obtain some experience before addressing the larger sources. An alternative approach could be to first address sources of hazardous air pollutants that are not necessarily presently regulated specifically for those pollutants. This approach would assist in preparation of better emission inventories. Another approach would be to address sources for which MACT standards have been set and leave to the last those sources for which MACT standards are likely to be set in the near future.

(4) Public Participation/Public Hearings

Public comment is solicited on the appropriateness of procedures for processing part 71 permits similar to those found in 40 CFR part 124. In particular, the Agency solicits comment on reasonable criteria for determining the need for a public hearing and on reasonable procedures for processing actions to reopen existing part 71 permits.

(5) Permit Fees

The EPA is authorized to collect permit fees if a State defaults on its program and EPA must implement part 71. The default fee schedule in part 70 is based on a $25/tpy rate (1990 basis). The EPA would implement this rate on sources under a part 71 program, based on the actual emissions of the subject sources over the preceding calendar year. Public comment is solicited on the appropriateness of this rate and on the possibility (notwithstanding the exemptions for small businesses) of charging higher rates on sources with lower emission rates (i.e., hazardous air pollutant sources of 10 to 25 tpy). These small sources will require permit process resources far in excess of the fees they would pay under a $25/tpy schedule. For these sources, EPA could charge a permit fee to cover reasonable costs for review time and for follow-up compliance activities. The EPA may not, however, collect fees for emission from affected sources under Phase I of the acid rain program (408(c)(4)).

(6) Compliance Plan for Noncomplying Sources/Certification

The permit application of a noncomplying source must be accompanied by a compliance plan and each application must contain a certification that the application contents are true, accurate and complete. The certification must be

signed by a responsible official who is subject to criminal prosecution for false information in an application. All certifications for affected sources under the acid rain program must be signed by the designated representative for that source. Criteria for eligibility as a designated representative will be promulgated in a separate rulemaking. Public comment is solicited on whether the selection of this official must meet similar criteria to that contained in the NPDES program (70.2(bb)). The EPA will include in part 71 the specifics for an approvable compliance plan for noncomplying sources.

(7) Permit Reopenings/Amendments

The EPA would reopen and revise a permit under certain circumstances. New MACT standards or revised SIP requirements on the source would cause an automatic reopening of permits with remaining terms of 3 or more years. The EPA believes that material error or inaccuracies should also represent cause for reopening. The reopened and revised permit would go through the full public participation procedures as if the permit were new or being reissued at the end of its normal lifetime. If a permit needed minor changes, such as some administrative error that did not affect the emissions or compliance, the changes could be made through an administrative amendment with no public participation or other formal procedures. Public comment is solicited on reasons for reopening a permit and on the process of administratively amending a permit.

(8) Operational Flexibility

The EPA intends to provide reasonable flexibility upon request to sources to operate in different modes without reopening and revising the permit. The various operating scenarios or worst case situation would have to be specified in the permit, including the corresponding level of control, after which the source could choose the most appropriate operation configuration at any specific time and be within the permit. The effect of any operational flexibility would have to be demonstrated to assure that all requirements of the Act would be met. In particular, EPA intends to make available the options described previously in the § 70.7 discussion on designing flexible part 70 permits. Public comment is solicited on any restrictions to this possible practice.

(9) Geographic Applicability

If EPA implements a part 71 program, it will be for the part of the State not covered by an acceptable program. If EPA approves a local agency operating permit program, EPA will cease implementation of the part 71 program for that geographic area and the local agency will assume responsibility for issuing operating permits. Previously-issued Federal permits may be formally adopted and enforced by the local agency. If an approved local agency program is already in place when EPA adopts a part 71 program, it will only be for the part of the State not covered by the local program. Public comment is solicited on this approach.

(10) Permit Shield

The EPA has the same option to institute a shield under part 71 as the States have under a part 70 program and would intend to use it wherever it would not be precluded in the part 70 proposal. The permit shield will be disallowed to the extent that it is inconsistent with the acid rain program. Under a part 71 Federal operating permit program, however, sources can still be subjected to State requirements enforced by the State outside the permit. This could also be the case under a State program. The EPA proposes to recognize and to enforce only the conditions of the federally-approved permit and to reopen for cause the permits of sources in SIP call areas as new regulations would otherwise become applicable. Public comment is solicited on the acceptability of EPA's position on this issue.

(11) Noncriteria Limits

The EPA will in general not implement the requirements of an air toxics program for the State under a part 71 program. If sources of hazardous air pollutants were subject to only State rules, EPA would not adopt these in a part 71 permit unless they were also part of a criteria pollutant control strategy. Any MACT standard would, of course, be adopted and a permit could be reopened for a new MACT standard. Public comment is solicited on this approach.

C. Acid Rain Program

In a subsequent **Federal Register** notice, EPA will propose its program for controlling sources of acid rain precursors as required by title IV of the Act. That program will consist of two phases, the first to be implemented by an EPA permitting program and the second to be implemented by State operating permit programs. The specific requirements for which sources will be controlled and to what extent will be covered by the subsequent notice. The discussion herein addresses only the permitting portion of the acid rain program.

The Phase I permitting program would address the 107 largest sources of sulfur and nitrogen oxide compounds beginning 2 years after enactment. This would be before State operating permit programs are required. The EPA would, therefore, need to establish a permit program to address the Phase I sources. This program would be a component of part 71 and would consist of those portions of part 71 appropriate to fulfill the permitting requirements of the acid rain sources, e.g., standard application, public participation, compliance plan for noncomplying sources, and certification.

The acid rain regulations would establish the requirement for operating permits and emission reductions on the Phase I sources and also refer to the applicable sections of part 71, rather than rewriting the same sections. Public comment is solicited on the appropriate portions of part 71 to apply to the acid rain sources in this permitting program. Specifically, comment is solicited on the following:

(1) Permit Content

The permits for Phase I would only address those emissions that contribute to acid rain and would be issued by EPA, rather than the States. Requirements of the Act other than those implementing title IV would not be included in these permits. Phase II of the acid rain program will be implemented by States with approved operating permits programs. The Agency expects that States will include the title IV requirements in the facility's operating permit under the part 70 program which would also address all other requirements of the Act.

(2) Term

The term of all acid rain permits must be 5 years (408.(a)).

(3) Shield

Sources under a Phase I permit will, for Federal purposes, only address title IV and applicable SIP requirements for sulfur or nitrogen oxide emissions. The shield in title V will not apply beyond these requirements and would not apply with respect to title IV-based requirements. States could, however, establish and enforce more stringent requirements on a source.

(4) Permit Fee

Acid rain precursor sources would be required to pay an annual permit fee during Phase II of the acid rain program. No fee requirements would be imposed by EPA for the Phase I acid rain permits.

States may, of course, require permit fees for non-acid permitting prior to commencement of Phase II. Thus, States may impose fee requirements for SO_2 or NO_x if these pollutants are regulated at the source pursuant to provisions of the Act other than Title IV.

D. Maximum Achievable Control Technology (MACT) Extensions

The section 112 program for establishing MACT standards includes provisions for a 6-year extension for MACT application if sources make certain demonstrations with respect to their emissions. To obtain an extension, the source must reduce emissions by 90/95 percent or greater over 1987 emission levels. The mechanism for the early evaluation of a demonstration from a proposed source will be a part 71 permit. Any application for a MACT extension, therefore, would be accompanied by a permit application adopting emission limits at levels indicated in the demonstration so that they would become federally-enforceable (V.E.).

The program to issue permits for MACT extension purposes will be, as for the Phase I acid rain program, a separate portion of part 71 which would refer to appropriate portions of the part 71 program. These permits would only address those hazardous air pollutant emissions associated with the MACT standard, would not have an associated permit fee, would not shield sources from other more stringent State requirements, and would be for a 5-year fixed term. Public comment is solicited on this approach.

VII. Administrative Requirements

A. Public Hearing

One public hearing and two public meetings will be held to discuss the proposed regulations. Persons wishing to make oral presentations at the public hearing should contact EPA at the address given in the **ADDRESSES** section of this preamble. If necessary, oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the public nearing, written statements, and a summary of the public meetings will be available for public inspection and copying during normal working hours at EPA's Air Docket in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket for this regulatory action is A-90-33. The docket is an organized and complete file of all the information submitted to or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials) (307(d)(7)(A)). The docket is available for public inspection at EPA's Air Docket, which is listed under the **ADDRESSES** section of this notice.

C. Office of Management and Budget (OMB) Review

nder Executive Order 12291 (E.O. 12291), EPA must judge whether a regulation is "major," and therefore subject to the requirement "to the extent permitted by law" to prepare a Regulatory Impact Analysis (RIA) in connection with each major rule. Major rules are defined as those likely to result in the following:

(1) An annual cost to the economy of $100 million or more.

(2) A major increase in costs or prices for consumers or individual industries.

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

The total cost of implementing the operating permit programs in all States would incur annualized costs in excess of $100 million. The requirements for these costs are contained in section 502(b)(3) of title V. Although some of these costs represent some baseline costs, due to existing State permitting and not new costs, the Agency has declared these regulations to be major. Accordingly, a Regulatory Impact Analysis has been prepared.

Given the mandate within title V to develop these regulations, the Agency has taken steps to provide for the timely accomplishment of the required objectives. In following the implementation principles previously described in section II., EPA has proposed to allow flexibility in permit design, use general permits to expedite the review process for certain smaller sources, and to phase-in implementation of certain requirements. The Agency has thus lowered the overall societal cost and any adverse economic impact associated with meeting the environmental objectives of title V. In addition, with permit fee revenue collections from subject sources State and local agencies will have the resources to develop and implement an accountable and enforceable operating permit program.

These regulations and the draft RIA were submitted to OMB for review as required by E.O. 12291. Any written comments from OMB to EPA, and any EPA responses to those comments, will be included in Docket A-90-33.

D. Regulatory Flexibility Act Compliance

Under the Regulatory Flexibility Act, whenever an Agency publishes any proposed or final rule in the **Federal Register**, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). That analysis is not necessary, however, if an Agency's Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has established guidelines for determining whether an RFA is required to accompany a rulemaking package. The guidelines state the criteria for determining when the number of affected small entities is "substantial" and whether there is a significant impact. The determination of significant impact for small businesses essentially depends upon compliance costs, production costs, and predicted closures. For small governments, the determination of significant impact depends upon compliance costs, operating costs, and recordkeeping costs.

A regulatory flexibility screening analysis was prepared to examine the potential for significant adverse impacts on small entities associated with specific permitting provisions. This analysis has revealed that without specific mitigation provisions, substantial numbers of small entities may be adversely impacted. Since potential adverse impacts could exist, EPA is proposing to use the concept of general permits and deferred applicability of non-major sources to mitigate any such potential impacts. To the extent any remaining significant adverse impacts are probable, the small business assistance program provisions of title V could provide further relief. Consequently, EPA does not believe that large numbers of small entities will be adversely affected or will experience disproportionate significant impacts. As such, the Agency proposes to certify that this rule, if promulgated, will not have a significant and disproportionate adverse

economic impact on a substantial number of small business entities and thereby does not require an RFA. The EPA, however, solicits any information or data which might affect this proposed certification. The EPA will reexamine this issue any subsequent analysis of information received would also be available in the docket and will be taken into account before promulgation.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An ICR document has been prepared by EPA and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM-223), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-2706.

The average annual burden hours for the collection of information is approximately 92 hours for large sources, 58 hours for small sources, and 32 hours per State/local agency response. The total annual burden is estimated to be around 1.5 million hours.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden by July 9, 1991 to: Chief, Information Policy Branch (PM-223), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

F. Federalism Implications

The proposed part 70 regulations reflect the congressionally-intended requirements in title V of the Act for States to develop operating permit programs. The basic elements required by these regulations are directly from title V, such as standard applications form, public participation, permit content, monitoring and reporting requirements, and compliance plans.

The Work Group that developed these proposed rules received input from State and local air pollution agency representatives concerning the concept of building on existing State and local agency permit programs so as to minimize the disruption, of, and maximizing the utilization of, existing practices.

For these reasons, a federalism assessment has not been prepared. The EPA, however, solicits comment on any perceived discretion it has in designing the program being proposed today and will consider the need for such an assessment based on comments received during the public comment period. Any information indicating the need for a federalism assessment will be available in the docket.

List of subjects in 40 CFR Part 70

Air pollution control, Prevention of significant deterioration, New source review, Fugitive emissions, Particulate matter, Volatile organic compounds, Nitrogen dioxide, Carbon monoxide, Hydrocarbons, Lead, Operating permits.

Dated: April 23, 1991.

F. Henry Hubicht,

Acting Administrator.

The reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended by adding a part 70 as set forth below.

PART 70—STATE OPERATING PERMIT PROGRAMS

Sec.
70.1 Program overview.
70.2 Definitions.
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70.4 State program submittals and transition.
70.5 Permit applications.
70.6 Permit content.
70.7 Permit issuance, renewal, reopenings, operational flexibility and revisions.
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70.9 Fee determination and certification.
70.10 Federal oversight and sanctions.
70.11 Requirements for enforcement authority.

Authority: 42 U.S.C. 7401, et seq.

§ 70.1 Program overview.

(a) The regulations in this part provide for the establishment of comprehensive State air quality permitting systems consistent with the requirements of title V of the Clean Air Act (Act) (42 U.S.C. 7401, *et seq.*). These regulations define the minimum elements required by the Act for operating permit programs and the corresponding standards and procedures by which the Administrator will approve, oversee, and withdraw approval of State operating permit programs. This permitting process is a key element in the implementation of the Act's regulatory requirements to all stationary sources to which it applies.

(b) This permitting program is designed to promote timely and efficient implementation of goals and requirements of the Act. Such a system offers many benefits: A better organized and clearer process for implementing air pollution control requirements, improved information management, more efficient enforcement, greater certainty for sources and the public, reasonable operational flexibility for industry to respond to market-based demands, greater speed in addressing various source-specific actions that previously had to be processed as State implementation plan (SIP) revisions, and increased and more predictable funding for State air pollution permitting programs.

(c) All sources subject to these regulations must obtain a permit to operate that assures compliance by the source with all applicable requirements of the Act. While Title V does not impose substantive new requirements, it does require that fees be imposed on sources and that certain procedural measures be adopted especially with respect to compliance.

(d) Nothing in this part shall prevent a State, or interstate permitting authority, from establishing additional requirements not inconsistent with this Act. No permit, however, can be less stringent than the applicable provisions of the Act, including the applicable implementation plan. In the case of Federal intervention in the permit process, the Administrator reserves the right to implement the State program, in whole or in part, or the standard Federal program contained in part 71 of this chapter (EPA expects to issue part 71 regulations in May, 1992.)

(e) The requirements of this part 70, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to the permitting of affected sources under the acid rain program, except as provided herein or modified in parts 72 through 79 of this chapter, or would otherwise be inconsistent with title IV of the Act (EPA expects to issue regulations in parts 72 through 79 in May, 1992.)

(f) Issuance of State permits under this part may be coordinated with issuance of permits under the Resource Conservation and Recovery Act, the National Pollutant Discharge Elimination System, and section 404 permits, whether issued by the State, the Environmental Protection Agency (EPA), or the Corps of Engineers.

§ 70.2 Definitions.

The following definitions apply to this part 70. Except as specifically provided in this section, terms used in this part retain the meaning accorded them under the applicable requirements of the Act.

(a) *Act* means the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*

(b) *Actual emissions* means the actual rate of emissions in tons per year of any regulated pollutant emitted from a part 70 source over the preceding calendar year or any other period defined by the permitting authority to be consistent with the fee schedule approved pursuant to § 70.9 of this part. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and in-place control equipment, types of materials processed, stored, or combusted during the preceding calendar year.

(c) An *administrative permit amendment* is a permit revision that accomplishes one or more of the following changes:

(1) Corrects typographical errors.

(2) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source.

(3) Requires more frequent monitoring or reporting by the permittee.

(4) Allows for a change in ownership or operational control of a source where the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the permitting authority.

(5) Incorporates into the part 70 permit the requirements from preconstruction review permits or exemptions authorized under an approved new source review program in the applicable implementation plan.

(6) Any other change that the permitting authority determines to be similar to those in § 70.2 (c)(1)–(4).

(d) *Affected source* means a source that includes one or more affected units under title IV of the Act.

(e) *Affected States* are all States:

(1) Whose air quality may be affected and that are contiguous to the State in which a part 70 permit, permit modification or permit renewal is being proposed; or

(2) That are within 50 miles of the permitted source.

(f) *Affected unit* means a *unit* as that term is defined in title IV of the Act, that is subject to the emission reduction requirements or limitations of title IV of the Act.

(g) *Applicable requirements* or an *applicable requirement* of the Act include all of the following as they apply to emissions units in a part 70 source, unless the context of the regulation requires otherwise:

(1) Requirements of the applicable implementation plan approved or promulgated by EPA under title I of the Act that implement the relevant requirements of the Act, including any revisions to that plan, in part 52 of this chapter.

(2) Terms and conditions of any preconstruction permits issued pursuant to title I, part C or D of the Act.

(3) Requirements of any standard and any other requirements promulgated under section 111 of the Act.

(4) Requirements of any standard promulgated for hazardous air pollutants and any other requirements under section 112 of the Act.

(5) Requirements of the acid rain program under title IV of the Act and parts 72 through 79 of this chapter.

(6) Any monitoring, reporting, and certification requirements established pursuant to section 504(b) or section 114(a)(3) of the Act.

(7) Standards and regulations governing solid waste incineration, under section 129 of the Act.

(8) Standards and regulations for consumer and commercial products, under section 183(e) of the Act.

(9) Standards and regulations for tank vessels, under section 183(f) of the Act.

(10) Requirements of the program to control air pollution from Outer Continental Shelf sources, under section 328 of the Act.

(11) Requirements of the program to protect stratospheric ozone, under title VI of the Act.

(h) A *complete application* is one that the permitting authority has determined, consistent with the criteria in § 70.5(c) of this part, to contain all the information needed to begin to process the application. A determination that an application is complete continues in effect, provided that the source submits by the date(s) specified by the permitting authority any additional information reasonably determined by the permitting authority in writing to be necessary for developing and issuing the part 70 permit.

(i) *Designated representative* means a responsible person or official authorized by the owner or operator of an affected unit, in accordance with title IV of the Act and parts 72 through 79 of this chapter, to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to the unit, and the submission of and compliance with permits, permit applications, and compliance plans for the unit. For purposes of acid rain program permit requirements, whenever the term "responsible official" is used in this part, it shall refer to the "designated representative" of the affected source or affected unit, for whom a certificate of designation has been submitted in accordance with part 72 of this chapter.

(j) A *draft proposed permit* is the version of a permit for which the permitting authority offers public notice and an opportunity for public comment and hearing.

(k) *Emissions unit* means any part of a stationary source which emits or has the potential to emit any regulated pollutant. This term is not meant to alter or affect the definition of the term "unit" for purposes of the acid rain program.

(l) The *EPA* or the *Administrator* means the Administrator of the U.S. EPA or his designee.

(m) *Federally-enforceable limitation* means all limitations and requirements enforceable by the Administrator.

(n) A *final permit* is the version of a part 70 permit issued by the permitting authority that has completed all administrative concurrence and procedures at the State and Federal levels.

(o) *Flexible source operation* refers to any change provided for in § 70.6(d).

(p) *Fugitive emissions* are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

(q) A *general permit* is a standardized part 70 permit that may be made applicable to numerous similar sources.

(r) *Major source* means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person or persons under common control) belonging to a single major industrial grouping and that is any of the following:

(1) A major source as defined in section 112 of the Act for the following:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule.

(ii) For radionuclides, such term shall have the meaning specified by the Administrator by rule.

(2) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the

Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers).

(ii) Kraft pulp mills.

(iii) Portland cement plants.

(iv) Primary zinc smelters.

(v) Iron and steel mills.

(vi) Primary aluminum ore reduction plants.

(vii) Primary copper smelters.

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(ix) Hydrofluoric, sulfuric, or nitric acid plants.

(x) Petroleum refineries.

(xi) Lime plants.

(xii) Phosphate rock processing plants.

(xiii) Coke oven batteries.

(xiv) Sulfur recovery plants.

(xv) Carbon black plants (furnace process).

(xvi) Primary lead smelters.

(xvii) Fuel conversion plant.

(xviii) Sintering plants.

(xix) Secondary metal production plants.

(xx) Chemical process plants.

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(xxiii) Taconite ore processing plants.

(xxiv) Glass fiber processing plants.

(xxv) Charcoal production plants.

(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(xxvii) All other stationary source categories regulated under section 111 or 112 of the Act.

(3) A major stationary source as defined in part D of title I of the Act including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tons or more per year of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons or more per year in areas classified as "serious," 25 tons or more per year in areas classified as "severe," and 10 tons or more per year in areas classified as "extreme;" except that the references in this clause to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f) (1) or (2) of the Act, that such source shall not be subject to any requirement otherwise applicable to such source under section 182(f) of the Act.

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tons or more per year of volatile organic compounds.

(iii) For carbon monoxide nonattainment areas (A) That are classified as "serious," and (B) In which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tons or more per year of carbon monoxide.

(iv) For particulate matter (PM_{10}) nonattainment areas classified as "serious," sources with the potential to emit 70 tons or more per year of PM_{10}.

A stationary source or group of stationary sources shall be considered as part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources belong to the same Major Group (i.e., which have all the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0066 and 033–055–00176–0, respectively). Notwithstanding the other provisions of this subsection, the activities of any vessel shall not be considered part of a major source.

(s) A *minor permit amendment* is a revision to a part 70 permit that meets the requirements of § 70.7(f).

(t) A *part 70 permit* is any permit issued, renewed, amended, or revised pursuant to this part.

(u) A *part 70 source* is any source subject to the permitting requirements of this part, as provided in §§ 70.3(a) and 70.3(b) of this part.

(v) A *permit modification* is a revision to a part 70 permit that meets the requirements of § 70.7(d) of this part.

(w) A *permit revision* is any permit modification, administrative permit amendment, or minor permit amendment.

(x) *Permitting authority* means either of the following:

(1) The Administrator, in the case of EPA-implemented programs.

(2) The State air pollution control agency, local agency, other State agency, Indian tribe or other agency authorized by the Administrator to carry out a permit program under this part.

(y) *Potential to emit* means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally-enforceable. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in title IV of the Act.

(z) A *proposed permit* is the version of a permit that the permitting authority forwards to the Administrator for review after closure of the public notice period and after considering any public comments (including those from any affected State).

(aa) *Regulated pollutant* means the following:

(1) Nitrogen oxides or any volatile organic compound.

(2) Any pollutant for which a national ambient air quality standard has been promulgated.

(3) Any pollutant that is addressed by any standard promulgated under section 111 or 112 of the Act.

(bb) *Renewal* is the process by which a permit is reissued at the end of its term.

(cc) *Responsible official* means one of the following:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship, a general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency, either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA).

(dd) The term *State* includes all non-Federal permitting authorities, including local agencies and interstate associations as well as statewide programs. The term "State" also encompasses those Indian tribes that

the Administrator has determined, pursuant to section 301(d) of the Act, to treat as States. "State" shall have its conventional meaning where such meaning is clear from the context. For purposes of the acid rain program, the term "State" shall be limited to authorities within the 48 continuous States and the District of Columbia as provided in section 402(14) of the Act.

(ee) *Stationary source* means any activity or piece of equipment at a building, structure, facility, or installation that emits or may emit any air pollutant.

(ff) *Whole program* means a part 70 permit program, or any combination of partial programs, that meet all the requirements of these regulations and cover all the part 70 sources in the entire State. For the purposes of this definition, State does not include local permitting authorities, but refers only to the entire State, Commonwealth, or Territory.

§ 70.3 Applicability.

(a) *Sources subject to permitting: Part 70 Sources.* A State permitting program under this part must provide for permitting of at least the following sources:

(1) Any major source as defined in § 70.2(q) of this part.

(2) Any source, including an area source, subject to a standard or regulation promulgated under section 111 of the Act.

(3) Any source, including an area source, subject to a standard or regulation promulgated under section 112 of the Act.

(4) Any affected source subject to title IV of the Act and the acid rain program requirements of parts 72 through 79 of this chapter, including any election source as defined in title IV of the Act.

(5) Any source in a source category designated by the Administrator pursuant to this section. These source categories include [reserved].

(b) *Source category exemptions.* A State permitting program under this part may provide for exemptions of source categories from the requirements of this part consistent with the Administrator's designations pursuant to this section.

(1) Except as provided in paragraphs (b)(2) and (4) of this section, all sources listed in paragraph (a) of this section that are not major sources, as defined in § 70.2 of this part (i.e., nonmajor sources) or affected sources under the acid rain program in parts 72 through 79 of this chapter, and for which the State has made and the Administrator has approved the showing described in paragraph (b)(2) of this section, may be exempted from the obligation to obtain a part 70 permit for a period of 5 years from the effective date of the part 70 or part 71 program, as applicable, in the State.

(2) In the case of sources covered in paragraph (a) of this section that are not a major source that emit any pollutant or precursor to a pollutant for which the area in which such sources are located is designated nonattainment, the State shall submit both of the following:

(i) An inventory or quantification of such sources in nonattainment areas which would be exempted from the program.

(ii) A demonstration that the State can assure compliance with the State's nonattainment area applicable implementation plan obligations applicable to such sources without relying on the part 70 permit program for the first 5 years of the program.

(3) In the case of nonmajor sources subject to a standard promulgated under section 112 of the Act after (date of promulgation), the Administrator shall determine whether to exempt any or all applicable sources at the time that the new standard is promulgated.

(4) Any source listed in paragraph (a) of this section exempt from the requirement to obtain a permit under this section may opt to apply for and receive a permit under a program approved pursuant to these regulations.

(5) The following source categories are exempted from the obligation to have a part 70 permit: [reserved]

(c) Emissions units and part 70 sources.

(1) For part 70 sources subject to the part 70 program because they are major sources under § 70.2(q) of this part, the permitting authority shall include in the permit all applicable requirements for all regulated emissions units in the major source.

(2) For any nonmajor part 70 source subject to the part 70 program under paragraphs (a) and (b) of this section, the permitting authority shall include in the permit all requirements of the Act applicable to emissions units which trigger classification as a part 70 source.

(3) The emissions of regulated pollutants from any units not directly subject to applicable requirements must be described for fee purposes, unless the permitting authority pursuant to § 70.9(b)(2)(v) of this part has exempted it from the collection of fees.

(d) *Fugitive emissions.* Fugitive emissions from a part 70 source shall be reviewed and included in the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of "major source" in § 70.2(q)(2) of this part.

§ 70.4 State Program submittals and transition.

(a) *Date for submittal.* Not later than November 15, 1993, the Governor of each State shall submit to the Administrator for approval a proposed whole permit program, under State law or under an interstate compact, meeting the requirements of this part. If this part 70 is subsequently revised such that the Administrator determines that it is necessary to require a change to an approved State program, the required revisions to the program shall be submitted within 12 months of the final changes to this part 70, unless the Administrator authorizes some other time.

(b) *Elements of the initial program submission.* Any State that seeks to administer a program under this part shall submit to the Administrator a formal letter of submittal from the Governor or his designee requesting EPA approval of the program and at least three copies of a program submission. The submission shall contain the following:

(1) A complete program description describing how the State intends to carry out its responsibilities under this part.

(2) The regulations that comprise the program, evidence of their procedurally correct adoption (including any required notice of public comment and any significant comments received), and copies of all applicable State or local statutes and regulations that authorize the part 70 regulations, including those governing State administrative procedures.

(3) A legal opinion from the Attorney General for the State, or the attorney for those State, local, or interstate air pollution control agencies that have independent legal counsel, stating that the laws of the State, locality, or interstate compact provide adequate authority to carry out all aspects of the program. This statement shall include citations to the specific statutes, administrative regulations, and, where appropriate, judicial decisions that demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program. The legal opinion

shall also include a demonstration of adequate legal authority to carry out the requirements of this part, including authority to carry out each of the following:

(i) Issue permits that assure compliance with each applicable standard, regulation, or requirement under the Act by all sources required to have a part 70 permit.

(ii) Incorporate appropriate monitoring, recordkeeping, reporting, and compliance certification requirements into part 70 permits.

(iii) Issue permits for a fixed term of 5 years in the case of permits with acid rain provisions and issue all other permits for a period not to exceed 5 years except for permits issued for solid waste incineration units combusting municipal waste subject to section 129(e) of the Act.

(iv) Issue permits for solid waste incineration units combusting municipal waste subject to section 129(e) of the Act for a period not to exceed 12 years and review such permits no less than every 5 years.

(v) Incorporate into permits emission limitations and all other applicable requirements, conditions, and prohibitions under the Act, including those in an applicable implementation plan.

(vi) Terminate, modify, or revoke and reissue permits for cause.

(vii) Enforce permits, permit fee requirements, and the requirement to obtain a permit, as specified in § 70.11 of this part.

(viii) Make available to the public any permit application, compliance plan, permit, and monitoring and compliance report under section 503(e) of the Act, with the exception of that information entitled to confidential treatment pursuant to section 114(c) of the Act.

(ix) Not issue a permit for the purposes of part 70 if the Administrator timely objects to its issuance pursuant to § 70.8(c) of this part.

(x) Provide an opportunity for judicial review in State court of the final permit by the applicant, any person who participated in the public comment process provided pursuant to § 70.7(i) of this part, and any other person who could obtain judicial review of such actions under State laws.

(xi) Ensure that the acid rain portions of permits for affected sources meet the requirements of parts 72 through 79 of this Chapter.

(xii) Ensure that the authority of the State/local permitting Agency is not used to modify the acid rain program requirements.

(xiii) Issue and enforce general permits if the State seeks to implement the general permit program.

(4) Relevant permitting program documentation not contained in the State regulations, including the following:

(i) Copies of the permit form(s), application form(s), and reporting form(s) the State intends to employ in its program.

(ii) Criteria for monitoring source compliance including inspection strategies and inspector training certification.

(5) A complete description of the State's compliance tracking and enforcement program, unless the State has an agreement with EPA that provides this information.

(6) A showing of adequate authority and procedures to determine within 30 days of receipt whether applications (including renewal applications) are complete, and to take final action on such applications within 18 months. Any failure to take final action in a timely manner shall be treated as a final permit action solely for purposes of obtaining judicial review in a State Court to require that actions be taken by the permitting authority on such application without additional delay.

(7) A demonstration, consistent with § 70.9 of this part, that the permit fees required by the State program are sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the Part 70 permit program.

(8) A statement from the Governor that adequate personnel and funding have been made available to develop and administer the program. This statement shall include the following:

(i) A description in narrative form of the scope, structure, coverage and processes of the State program.

(ii) A description of the organization and structure of the State agency or agencies that will have responsibility for administering the program, including the information specified in this paragraph. (If more than one agency is responsible for administration of a program, each agency must have jurisdiction over a class of activities.)

The responsibilities of each agency must be delineated, their procedures for coordination must be set forth, and an agency may be designated as a "lead agency" to facilitate communications between EPA and the other agencies having program responsibility.

(iii) A description of the State agency staff who will carry out the State program, including the number, occupation, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

(iv) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures.

(v) An estimate of the costs of establishing and implementing the program for the first 4 years after approval, and a description of how the State plans to meet those costs.

(9) A commitment from the State to submit, at least annually to the Administrator, information regarding the State's enforcement activities including, but not limited to, the number of criminal and civil, judicial and administrative enforcement actions commenced and concluded; the penalties, fines and sentences obtained in those actions; and the number of administrative orders issued.

(10) A requirement under State law that, if a timely and complete application for a permit renewal is submitted to the permitting authority, then one of the following shall occur:

(i) The permit shall not expire until the renewal permit has been issued or denied.

(ii) All the terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied. These terms and conditions do not include the permit shield contained in § 70.6(h) of this part.

(iii) The renewal permit shall be issued or denied before the expiration of the part 70 permit.

Notwithstanding this paragraph, if the permitting authority fails to act in a timely way on a permit renewal, EPA may invoke its authority under section 505(e) of the Act to terminate, revoke, and reissue the permit.

(11) A transition plan providing a schedule for submittal and final action on initial permit applications for all part 70 sources. This plan shall provide for submittal of permit applications by all part 70 sources by no later than one full year after the effective date of the permit program (or a partial or interim program), and assure that at least one third of such applications will be acted upon annually over a period not to exceed 3 years after such effective date, and provide that any complete permit application containing an early reduction demonstration under section 112(i)(5) of the Act shall be acted upon within 9 months of receipt. It shall also provide for the submission of permit applications, whether for initial permits or permit renewals, and for the permitting of affected sources under the acid rain program in accordance with

the deadline provided in parts 72 through 79 of this chapter.

(12) Any permitting programs, such as those of local air pollution control agencies, providing for the issuance of permits by a permitting authority other than the State, shall be consistent with all the elements required in paragraphs (b)(1) through (11) of this section.

(c) *Partial programs.* The EPA may approve a partial program if, at a minimum, it applies and ensures compliance with title V of the Act and with all the requirements following, as they apply to the source categories covered by the partial program:

(1) All requirements of title V of the Act and of these regulations.

(2) All requirements established under title IV of the Act applicable to affected sources.

(3) All requirements established under sections 111 and 112 of the Act applicable to major sources, area sources, and new sources.

(4) All other requirements of title I of the Act (other than section 112 of the Act).

Approval of any partial program does not relieve the State from its obligation to submit a whole program or from application of any sanctions for failure to submit a fully approvable whole program.

(d) *Interim approval.* If a program (including a partial permit program) submitted under this part substantially meets the requirements of this part, but is not fully approvable, the Administrator may by rule grant the program interim approval. The EPA will not grant interim approval to any program unless it meets each of the following minimum requirements:

(1) *Adequate fees.* The program must provide for collecting permit fees adequate to meet the requirements of § 70.9 of this part.

(2) *Applicable requirements.* The program must provide for adequate authority to issue permits that assure compliance with all applicable requirements of the Act, including the requirements of the applicable implementation plan, for those sources covered by the program.

(3) *Fixed term.* The program must provide for fixed permit terms, consistent with paragraph (b)(3)(iii) and (iv) of this section.

(4) *Public participation.* The program must provide for public notice of and an opportunity for public comment and a hearing on draft proposed permits.

(5) *EPA review.* The program must allow EPA an opportunity to review each proposed permit and to object to its issuance.

(6) *Permit issuance.* The program must provide that the proposed permit will not be issued if EPA objects to its issuance.

In the notice of final rulemaking granting interim approval, the Administrator shall specify the changes that must be made before the program can receive full approval and the conditions for implementation of the program until that time. Such interim approval shall expire on a date set by the Administrator (but not later than 2 years after such approval), and may not be renewed. Sources will become subject to the program according to the schedule approved in the State program. Permits granted under an interim approval shall expire at the end of their fixed term, unless renewed under a fully- or partially-approved program.

(e) *EPA review of permit program submittals.* Within 1 year after receiving a program submittal, the Administrator shall approve or disapprove the program, in whole or in part, by publishing a notice in the **Federal Register**. Any EPA action disapproving a program, in whole or in part, shall include a statement of the revisions or modifications necessary to obtain approval. The Administrator shall approve State programs that conform to the applicable requirements of this part.

(1) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If EPA finds that a State's submission is complete, the 1-year review period (i.e., the period of time allotted for formal EPA review of a proposed State program) shall be deemed to have begun on the date of receipt of the State's submission. If EPA finds that a State's submission is incomplete, the 1-year review period shall not begin until all the necessary information is received by EPA.

(2) If the State's submission is materially changed during the statutory review period, the one-year review period shall begin again upon receipt of the revised submission.

(f) *State response to EPA review of program.*—(1) *Disapproval.* The State shall submit to EPA changes to the program that address the revisions or modifications required by the Administrator's action disapproving the program, or any part thereof, within 180 days of receiving notification of the disapproval or such other time as specified by the Administrator, but not to exceed 2 years.

(2) *Interim approval.* The State shall submit to EPA changes to the program addressing the deficiencies specified in the interim approval no later than 6 months prior to the expiration of the interim approval.

(g) *Effective date.* The effective date of a permit program, or partial or interim program approved under this part, shall be the effective date of approval by the Administrator.

(h) *Individual permit transition.* Upon approval of a State program, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program. After program approval, EPA shall retain jurisdiction over any permit (including general permit) that it has issued unless arrangements have been made with the State to assume responsibility for these permits. Retention of jurisdiction shall include the processing of any permit appeals or modification requests; the conduct of inspections; and the receipt and review of monitoring reports. If any permit appeal or modification request is not finally resolved when the federally-issued permit expires, EPA may, with the consent of the State, retain jurisdiction until the matter is resolved. Upon request by a State, the Administrator may delegate authority to implement all or part of a permit issued by EPA, if a part 70 program has been approved for the State. The delegation may include authorization to the State to collect appropriate fees, consistent with § 70.9 of this part.

(i) *Program revisions.* Either EPA or the State with an approved program may initiate a program revision. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The State shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, forms, procedures, or priorities.

(1) *Mandatory.* If the Administrator determines that a State is not adequately administering the requirements of this part, or that the State's permit program is inadequate in any other way, the program, or its means of implementation by the State, shall be revised to correct the inadequacy. The program shall be revised within 180 days, or such other period as the Administrator may specify, following notification by the Administrator, or within 2 years if the State demonstrates that additional legal authority is necessary to effectuate the program revision.

(2) Revision of a State program shall be accomplished as follows:

(i) The State shall submit a modified program description, Attorney General's statement, or such other documents as

EPA determines to be necessary under the circumstances.

(ii) Whenever EPA determines that the proposed program revision is substantial, EPA shall issue public notice and provide an opportunity to comment for a period of at least 30 days. The public notice shall be mailed to interested persons and shall be published in the **Federal Register** and in enough of the largest newspapers to provide appropriate coverage. The public notice shall summarize the proposed revisions and provide for the opportunity to request a public hearing.

(iii) The Administrator shall approve or disapprove program revisions based on the requirements of this part and of the Act.

(iv) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial revision shall be published in the **Federal Register.** Notice of approval of non-substantial program revisions may be given by a letter from the Administrator to the Governor or his designee.

(v) Any permitting agency with an approved program shall notify EPA whenever it proposes to transfer all or part of the program to any other agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until the revision has been approved by the Administrator under this paragraph.

(3) Whenever the Administrator has reason to believe that circumstances have changed with respect to a State program, he may request, and the State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as he determines are necessary.

(j) *Sharing of information.* (1) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information to EPA under this section. Any information obtained from a State accompanied by a claim of confidentiality will be treated in accordance with the regulations in part 2 of this chapter.

(2) The EPA shall furnish to States with approved programs the information in its files which the State needs to implement its approved program. Any such information submitted to EPA under a claim of confidentiality will be subject to the conditions in part 2 of this chapter.

(k) *Administration and enforcement.* Any State that fails to adopt a complete, approvable part 70 program, or that EPA determines is not adequately administering or enforcing such a program, shall be subject to certain Federal sanctions as set forth in § 70.10 of this part.

§ 70.5 Permit applications.

(a) *Duty to apply.* Any person who owns or operates a part 70 source required to have a permit under this part shall submit a timely and complete permit application in accordance with this section. For a source applying for a part 70 permit for the first time, a timely application is one that is submitted 12 months after the source becomes subject to the permit program or such earlier date as the permitting authority may establish. For purposes of a permit renewal, where a State in its program approval has not met either § 70.4(b)(10)(i) or (ii) of this part, a timely application is one that is submitted 18 months prior to the date of permit expiration, or such other time as may be approved by the Administrator. The Administrator shall approve a corresponding reduction in the 18 months requirement if the permitting authority is required to issue part 70 permits for terms less than 5 years or to act on part 70 permits in less than 18 months, except that in no event shall a time less than 6 months before permit expiration be approved.

(b) *Standard application form and required information.* The State program under this part shall provide for a standard application form or forms. The permitting authority may use its discretion in developing application forms that best meet program needs and administrative efficiency, but the forms and attachments chosen shall include, as a minimum, the key elements specified below:

(1) General company information, including company name and address (or plant name and address if different from the company name), owner's name and agent, plant site manager/contact.

(2) A plant description in terms of the processes and products (including identification by Standard Industrial Classification Code).

(3) The following emissions related information:

(i) All emissions of regulated pollutants and all emissions of pollutants subject to regulation for which the source is major.

(ii) Identification and description of all emissions points in sufficient detail to establish the basis for fees and applicability of requirements of the Act.

(iii) Emissions rates in total tons per year and in such other terms as are necessary to establish compliance consistent with the applicable standard reference test method.

(iv) Fuels, fuel use, and raw materials used.

(v) Identification and description of air pollution control equipment.

(vi) Limitations on source operation affecting emissions or any work practice standards, where applicable for all pollutants regulated at the part 70 source.

(vii) Other information required by any applicable requirements (including information related to stack height limitations developed pursuant to section 123 of the Act), such as the location of emissions units, flow rates, building dimensions, and stack parameters (including height, diameter, and plume temperature) for all pollutants regulated at the part 70 source, except for VOC's.

(viii) Calculations on which the above items are based.

(4) The following air pollution control requirements:

(i) Citation and description of applicable State and Federal air pollution control requirements, including requirements that will become effective during the term of a permit, if such requirement has been promulgated at the time of permit application.

(ii) Description of any applicable test method for determining compliance with each requirement.

(5) Such other information, specific to particular program requirements of the Act, as may be necessary to implement and enforce those other requirements of the Act.

(6) Additional information as necessary to define reasonably anticipated alternative operating scenarios, which must be included in the part 70 permit.

(7) A compliance plan for sources that are not in compliance with all applicable requirements. With respect to the requirements for which the source is not in compliance, such a compliance plan shall include the following:

(i) A description of how those requirements under the Act will be achieved.

(ii) A description of the compliance status of the source with respect to such requirements.

(iii) A schedule of compliance that includes a schedule of measures, including an enforceable sequence of actions with milestones, leading to compliance with all such requirements of the Act. The compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or

administrative order to which the source is subject.

(iv) A schedule for submission of certified progress reports no less frequently than every 6 months or such other shorter period as specified in the underlying applicable requirement.

(v) An explanation of any proposed exemptions from otherwise applicable air pollution control requirements.

The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source under Title IV of the Act, except as specifically superseded by part 72 of this chapter, with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(8) Requirements for compliance certification, including the following:

(i) A certification of compliance by a responsible official consistent with paragraph (b)(10) of this section that addresses all air pollution control requirements applicable to the source, except, in the case of an affected source under the acid rain program, the designated representative of the source shall make this certification.

(ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.

(iii) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually or for such other shorter period as specified by the underlying applicable requirement.

(iv) A statement that the source is in compliance with any applicable enhanced monitoring and compliance certification requirements of the Act.

(9) The use of nationally standardized forms for acid rain portions of permit applications and compliance plans, as required by part 72 of this chapter.

(10) Any application form, report, or compliance certification submitted pursuant to regulations under this part shall require certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, to the best of the signer's knowledge, information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

(c) *Completeness determination.* The program shall provide criteria and procedures for determining in a timely fashion when applications are complete. To be deemed complete, an application must provide all information necessary pursuant to paragraph (b) of this section to begin to process the application for the particular source. This information must be sufficient to evaluate the subject source and determine applicable regulatory requirements. The program shall require that a responsible official certify the submitted information consistent with paragraph (b)(10) of this section. Unless a determination that an application is not complete is made by the permitting authority within 30 days of receipt of the application, an application shall be deemed to be complete. If, during the processing of an application after it has been determined to be complete, the reviewing authority determines that additional information is necessary in order to evaluate or take final action on that application, such information may be requested in writing from the source. The source's ability to continue operation without a permit as set forth in § 70.7(b) of this part shall remain in effect from the time that the permitting authority determines that the application is complete until the final permit is issued, as long as the applicant submits such requested additional information by the deadline specified by the permitting authority.

(d) *Duty to supplement or correct application.* If the applicant becomes aware that he failed to submit any relevant facts or submitted incorrect information in a permit application, he shall promptly submit such supplementary facts or corrected information.

§ 70.6 Permit content.

(a) *Standard permit requirements.* Each permit issued under this part shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that are applied to assure compliance with all applicable requirements of the Act, including the requirements of the applicable implementation plan as are necessary to ensure compliance with applicable requirements of the Act, at the time of permit issuance.

(i) The permit shall specify and reference the origin of and authority for each requirement incorporated therein, and identify any difference in form as compared to the regulation upon which the limit or requirement is based.

(ii) The permit shall state that where another applicable requirement of the Act is more stringent than any applicable requirement of parts 72 through 79 of this chapter, both provisions shall be incorporated into the permit and shall be federally-enforceable.

(2) Permit duration. The permitting authority shall issue permits for a fixed term of 5 years in the case of affected sources under title IV of the Act, and for a term not to exceed 5 years in duration in the case of all other sources. Notwithstanding this requirement, the permitting authority shall issue permits for solid waste incineration units combusting municipal waste subject to section 129(e) of the Act for a period not to exceed 12 years and review such permits no less often than every 5 years. Permit requirements shall not remain in effect where inconsistent with State law or as provided in part 72 of this chapter for the acid rain portions of a permit.

(3) Monitoring and related recordkeeping and reporting requirements:

(i) The permit shall set forth monitoring, recordkeeping, and reporting requirements that are required to assure compliance with requirements of the Act that are applicable to the source, including those implementing Parts 72 through 79 of this chapter. Such requirements shall assure use of consistent terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable emissions limitations, standards, and other requirements contained in the permit.

(ii) To meet the requirements of paragraph (a)(3)(i) of this section with respect to monitoring, the permit shall:

(A) Incorporate all applicable emissions monitoring and analysis procedures or test methods required under the Act, including any procedures and methods promulgated pursuant to section 504(b) or 114 of the Act.

(B) Specify required monitoring including type, intervals, and frequency sufficient to yield data that are representative of the monitored activity.

(C) The permit shall, as necessary, specify requirements concerning the proposed use, maintenance, and, when appropriate, installation of monitoring equipment or methods.

(iii) To meet the requirements of paragraph (a)(3)(i) of this section with respect to recordkeeping, the permit shall require the following:

(A) Records of monitoring information that include the following:

(*1*) The date, place as defined in the permit, and time of sampling or measurements.

(*2*) The date(s) analyses were performed.

(*3*) The company or entity which performed the analyses.

(*4*) The analytical techniques or methods used.

(*5*) The Results of such analyses.

(B) A record of changes made at the source that result in emissions of a regulated pollutant subject to an applicable requirement, but not otherwise regulated under the permit and the emissions resulting from those changes.

(C) The permittee to retain records of all monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(iv) To meet the requirements of paragraph (a)(3)(i) of this section with respect to reporting, the permit shall:

(A) Require reports of any required monitoring to be submitted no less often than every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with § 70.5(b)(10) of this part.

(B) Require prompt reporting of deviations from permit requirements including those attributable to upset conditions as defined in the permit, the cause of such deviations, and any corrective actions or preventive measures taken.

(4) A condition prohibiting emissions exceeding any allowances that the source lawfully holds under the acid rain program, pursuant to title IV of the Act.

(i) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program and that do not violate any other permit term or condition.

(ii) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other requirement under the Act.

(iii) Any such allowance shall be accounted for according to the procedures established in parts 72 through 79 of this chapter.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Provisions stating the following:

(i) *Duty to comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(ii) *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(iii) *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(iv) *Property rights.* This permit does not convey any property rights of any sort, or any exclusive privilege.

(v) *Duty to provide information.* The permittee shall furnish to the permitting authority, within a reasonable time, any information that the permitting authority may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the permitting authority copies of records required by the permit to be kept.

(7) A provision to ensure that a part 70 source pays fees to the permitting authority consistent with the fee schedule approved pursuant to § 70.9 of this part.

(8) Emissions trading. A provision stating that no permit revision shall be required for increases in emissions allowed through emissions trading to the extent such trades are authorized by the applicable requirements of the Act, including any applicable implementation plan.

(b) *Federally-enforceable requirements.* All applicable requirements under the Act in a part 70 permit are enforceable by the United States and citizens under the Act. The State permitting authority shall specifically designate as not federally enforceable any State provisions in the permit which are more stringent than the applicable requirements under the Act.

(c) *Compliance requirements.* All part 70 permits shall contain the following elements with respect to compliance:

(1) Requirements for monitoring and analysis of pollutants regulated under the Act, including any prescribed by rule by the Administrator, sufficient to determine if each emissions unit of the source complies with any applicable emission limits, standards or requirements. States may establish testing requirements based on level of emissions expected, testing of similar units, likelihood of noncompliance, or other criteria submitted to and approved by the Administrator.

(2) Compliance certification, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a part 70 permit shall contain a certification by a responsible official or, for requirements under title IV of the Act a designated representative, of the permittee consistent with § 70.5(b)(10) of this part.

(3) Inspection and entry requirements that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the permitting authority, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), to perform the following:

(i) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit.

(ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit.

(iii) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit.

(iv) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

(4) For sources covered by § 70.5(b)(7) of this part, a schedule of compliance.

(5) For sources covered by § 70.5(b)(7) of this part, progress reports consistent with an applicable schedule of compliance to be submitted no less frequently than semiannually, or such other more frequent period as specified in the underlying applicable regulation and contain the following:

(i) Required and actual dates for achieving the activities, milestones, or compliance required by the schedule of compliance.

(ii) Where appropriate, an explanation of why any deadlines were not met, and any preventive or corrective measures adopted.

(6) Requirements for compliance certification with applicable requirements relevent to the source, including emission limitations, standards, or work practices. Permits shall include:

(i) The frequency (not less than annually or such more frequent periods

as specified in the underlying requirement) of submissions of certifications.

(ii) A means for assessing or monitoring the compliance of the source with its emissions limitations, standards, and work practices.

(iii) A requirement that the compliance certification describe the following:

(A) The applicable requirements that are the basis of the certification.

(B) The current compliance status.

(C) Whether compliance was continuous or intermittent.

(D) The methods used for determining compliance, currently and over the reporting period, and whether the method used is the test method for initial compliance or a means for determining continuing compliance.

(E) Such other factors as the permitting agency may require.

(iv) A requirement that all compliance certifications showing noncompliance be submitted to EPA as well as the permitting authority.

(v) Such additional requirements as may be specified pursuant to section 114(a)(3) of the Act.

(7) Such other provisions as the permitting authority may require.

(d) *Flexible source operation.* (1) The permitting authority shall issue permits that allow changes to a Part 70 source without requiring a permit revision before the source makes such changes, if those changes are not modifications under any provision of title I of the Act and do not exceed the emissions allowable under the permit, whether expressed therein as a rate of emissions or in terms of total emissions for any timeframe addressed in the permit.

(2) If a part 70 source wishes to make a change that would increase any emission above a level allowed in the permit, and such change is not a modification under any provision of title I of the Act and would not be prohibited by any applicable requirement under the Act, then the source shall be required to revise its permit pursuant to procedures established by the State. Such procedures may provide for maximum operating flexibility, provided they meet the requirements set forth under § 70.7(f).

(3) The permitting authority shall meet the requirement contained in paragraph (d)(1) of this section by the following.

(i) Issuing a permit that would identify reasonably anticipated operating scenarios provided by the source as long as each such operating scenario is not prohibited by applicable requirements under the Act. This shall include the identification of all applicable emissions limitations, standards, other requirements and prohibitions that would apply to each emissions unit, so as to ensure enforceability under each scenario. Any changes, including emissions increases, which are included in such reasonably anticipated scenarios, shall be allowed without requiring a permit revision.

(ii) For pollutants regulated at the source, allowing changes in the operation of a facility which are not included in the permit as a reasonably anticipated operating scenario that would not increase either the rate of emissions or total emissions beyond what are allowed under any timeframe addressed by the permit. For any such change, the source shall provide the permitting authority and EPA with 7 calendar days advance written notification. Such notification shall describe the proposed changes, including changes in emissions, and any requirements that would be applicable as a result of the changes.

(iii) Not allowing changes that would constitute modifications or reconstructions under sections 110, 111, or 112 under the Act without requiring a permit revision pursuant to § 70.7 of this part, or requirements under the acid rain program without appropriate review under those programs and permit revision procedures under this section.

(iv) Neither notification nor permit revision is required for changes at the source that are allowed for and regulated by the permit, or that are not regulated or prohibited by the permit.

(v) Accomplishing the timely update of the part 70 permit pursuant to the same procedures for processing administrative permit amendments contained in § 70.7(e) of this part.

(e) *Reopenings.* Each permit shall address reopenings, consistent with the requirements of § 70.7(g) of this part.

(f) *General permits.* The permitting authority may, after notice and opportunity for public hearing, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to conventional part 70 permits. Any source covered by a general permit must apply to the permitting authority for use of the general permit. General permits shall not be authorized for affected sources under the acid rain program unless otherwise provided in parts 72 through 79 of this chapter.

(g) *Temporary sources.* The permitting authority may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No such permit shall be issued unless it meets the following conditions:

(1) It contains conditions that will assure compliance with all applicable requirements of the Act at all authorized locations.

(2) It contains a requirement that the owner or operator notify the permitting authority at least 20 days in advance of each change in location.

(3) It contains conditions that will assure compliance with all other provisions of this section.

(4) It does not address any affected source under title IV of the Act.

(h) *Permit shield.* (1) The permitting authority may provide that compliance with the Part 70 permit shall be deemed compliance with other applicable provisions of the Act if, for each such provision, either of the following conditions is met:

(i) The permit includes all the applicable requirements of such provisions.

(ii) The permitting authority in acting on the permit application makes a determination relating to the permittee that the specified provisions referred to in such determination are not applicable to the source and the permit includes the determination or a concise summary thereof.

(2) A Part 70 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this subsection or in any Part 70 permit shall alter or affect the following:

(i) The provisions of section 303 of the Act (emergency orders), including the authority of the Administrator under that section.

(ii) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance.

(iii) The applicable requirements of the acid rain program, consistent with section 408(a) of the Act.

(iv) The ability of EPA to obtain information from a source pursuant to section 114 of the Act.

(i) *Property limitation.* The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

§ 70.7 Permit issuance, renewal, reopenings, operational flexibility and revisions.

(a) *Action on application.* (1) A permit modification, renewal, or reopening may be issued only if all of the following conditions apply:

(i) The permitting authority has received a complete application for a permit, except that a complete application need not be received before issuance of a general permit under § 70.6(f) of this part.

(ii) The permitting authority has complied with the public participation procedures for permit issuance specified in paragraph (i) of this section.

(iii) The conditions of the permit provide for compliance with the applicable requirements of the Act, and regulations promulgated under Act.

(iv) The Administrator has received a copy of the permit and any notices required under §§ 70.8(a) and 70.8(b) of this part, and has not objected to issuance of the permit under § 70.8(c) of this part within the time period specified therein.

(2) Except as provided under the initial transition plan provided for under § 70.4(b)(11) of this part or in parts 71 and 72 of this chapter for the permitting of affected sources under the acid rain program, the program shall provide that the permitting authority take final action on each permit application (including request for permit modification or renewal) within 18 months after receiving a complete application.

(3) The program shall also contain reasonable procedures to prioritize action on applications for construction or modification under title I, parts C and D of the Act.

(4) The permitting authority shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority provides an applicant a notice of incompleteness (outlining additional information requirements, within 30 days of receipt of an application, the application shall be deemed complete.

(5) The permitting authority shall develop a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA and any other person expressing an interest.

(6) The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under sections 110, 165, 172, or 173 of the Act.

(b) *Requirement for a permit.* (1) Except as provided in the following sentence, no part 70 source may operate after the time that it is required to submit a timely and complete application under an approved permit program except in compliance with a permit issued under a permit program approved under this part or part 71 of this chapter. The program shall provide that if a part 70 source submits a timely and complete application for permit issuance (including for modification or renewal), the source's failure to have a part 70 permit is not a violation of this part until the permitting authority takes final action on the permit application, except as noted in paragraph (b)(1) (i) through (iii) of this section.

(i) This protection shall cease to apply if the applicant fails to submit by the deadline specified by the permitting authority any additional information needed to process the application and requested in writing by the permitting authority subsequent to the completeness determination made pursuant to paragraph (a)(4) of this section to process the application.

(ii) This process shall not affect the requirement that any source have a preconstruction permit under sections 110, 165, 172, or 173 of the Act.

(2) The protection provided by paragraph (b)(1) of this section to operate without a permit shall also apply if the application or requested additional information is submitted less than 3 months after the required submittal date. Nothing in this paragraph shall be deemed to prevent the permitting authority or EPA from bringing an enforcement action and assessing penalties against a source for failing to submit a timely application. In such case, penalties may be assessed for the entire period from the time the application was required to be submitted to the time a complete application was actually submitted.

(3) The protection provided by paragraph (b)(1) of this section to operate without a permit shall also apply if the source submits a timely application and if the permitting authority determines it to be incomplete despite good faith effort on the part of the source; provided that the source cures the defect during an expeditious time period specified by the permitting authority. Nothing in this paragraph shall be construed to limit the exception to such protection that is set forth in the introductory text of paragraph (b)(1) of this section:

(c) *Permit renewal and expiration.* The program shall provide the following:

(1) Permits being renewed are subject to the same procedural requirements, including those for public participation and Federal oversight, that apply to initial permit issuance.

(2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application is submitted consistent with paragraph (b) of this section.

(d) *Permit modifications.* (1) A permit modification includes any proposed revision to address a change at the source, including monitoring, that would constitute a modification under any provision of title I of the Act, as provided in § 70.2(c)(5).

(2) Notwithstanding § 70.6(d) of this part, and paragraph (e) of this section, any relaxation in the reporting requirements or to milestones with the schedule of compliance for a noncomplying source in the current version of the part 70 permit are subject to § 70.7(d) as a permit modification.

(3) Permit modifications shall be subject to the same procedural requirements, including those for public comment and Federal oversight, as original permit issuance, except that the required review shall cover only the proposed changes rather than the unchanged activities of the permittee. Nothing in this provision shall limit the authority of the permitting authority or EPA under paragraphs (g) and (h) of this section.

(e) *Administrative permit amendments.* An Administrative permit amendment shall be made by the permitting authority administratively and consistent with the requirements of paragraph (f)(3) of this section without being subject to advance notification or the procedural requirements applicable to a permit modification. The principles governing what constitutes administrative or minor permit amendments for purposes of the acid rain portion of the permit shall be governed by part 72 of this chapter.

(f) *Minor permit amendments*—(1) *Applicability.* The permitting authority may treat any proposed revision to a part 70 permit as a minor permit amendment in accordance with this subsection if the proposed revision:

(i) Does not constitute a modification under any provision of title I of the Act; and

(ii) Complies with all applicable requirements of the Act relevant to the source.

(2) *Notice.* (i) At least 7 calendar days before making the proposed change, the source applicant shall submit a notice to the permitting authority and the Administrator. The permitting authority may provide in its regulation a different timeframe for notices involving emergencies.

(ii) Such notification shall describe the proposed changes, including changes in emissions, any requirements that would be applicable as a result of the changes, and the revised permit language under which the source proposes to operate.

(iii) The source may implement the proposed change unless the permitting authority notifies the source within the

period for prior notice, established pursuant to § 70.7(f)(2)(i), that the proposed change does not qualify as a minor permit amendment or would not meet all applicable requirements of the Act. In the event that the source fails to demonstrate to the satisfaction of the permitting authority that the proposed change qualifies for processing as a minor amendment under this paragraph, the proposed change shall be processed as a permit modification under the procedures set forth in paragraph (d) of this section. In such event the change shall not occur until the permit is revised following the EPA review period.

(3) *Permit revision.* (i) The permitting authority shall take no more than 60 days from receipt of the notice required in paragraph (f)(2) of this section to revise the part 70 permit and may use administrative procedures to incorporate the changes comprising the minor permit amendment, provided that it designates any such permit revisions as having been made pursuant to this paragraph.

(ii) The permitting authority shall submit a copy of the revised permit to the Administrator and make it readily available at the offices of the permitting authority.

(g) *Reopening for cause.* (1) Each issued permit shall include provisions addressing the conditions for revision prior to the expiration of the permit. Such revisions shall be made as expeditiously as practicable. Reopenings shall be performed for the following reasons:

(i) Additional requirements under the Act become applicable to a major part 70 source and for which 3 or more years remain on the original term of the permit. Such revisions shall be made not later than 18 months after the promulgation of relevant standards or regulations. No such revision is required if the effective date of the requirement is later than the date on which the permit is due to expire.

(ii) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Excess emissions offset plans shall be deemed to be incorporated into the permit upon approval by the Administrator.

(iii) The permitting authority or EPA determines that the permit contains a material mistake made in establishing the emissions standards or limitations, or other requirements of the permit.

(iv) The EPA determines that the permit must be revised to assure compliance with the applicable requirements of the Act.

(2) The permitting authority shall terminate, modify, or revoke and reissue permits for cause.

(3) Proceedings to reopen a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists.

(4) Reopenings under paragraph (g)(1)(i) of this section shall not be initiated before a notice of such intent is provided to the affected part 70 source by the permitting authority at least 30 days in advance of the date that the permit is to be reopened, except that the permitting authority may provide a shorter time period in the case of an emergency.

(5) The permitting authority shall reopen a part 70 permit pursuant to this § 70.7(g) whenever the permitting authority or the Administrator determine that any permit revision accomplished pursuant to § 70.7(f) does not assure compliance with all applicable requirements of the Act or did not qualify for processing under § 70.7(f).

(h) *Reopenings for cause by EPA.* (1) If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to paragraph (g) of this section, the Administrator shall notify the permitting authority and the permittee of such finding in writing.

(2) The permitting authority shall, within 90 days after receipt of notification, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend this 90-day period for an additional 90 days if he finds that a new or revised permit application is necessary or that the permitting authority must require the permittee to submit additional information.

(3) The Administrator shall review the proposed determination from the permitting authority within 90 days of receipt. The permitting authority shall have 90 days from receipt of an EPA objection to resolve any objection that EPA makes.

(4) If the permitting authority fails to submit a proposed determination pursuant to paragraph (h)(2) of this section or fails to resolve any objection pursuant to paragraph (h)(3) of this section, the Administrator shall terminate, modify, or revoke and reissue the permit after taking the following actions:

(i) Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in paragraph (h) (1), (2) and (3) of this section.

(ii) Providing the permittee an opportunity for comment on the Administrator's proposed action and for a hearing, which shall be held after exhaustion of the procedures in paragraphs (h) (1), (2) and (3) of this section.

(5) The EPA's decision to terminate, modify or revoke and reissue the permit shall constitute final action for purposes of judicial review under section 307 of the Act.

(i) Public participation in permit issuance. All permit issuance proceedings, including renewals, modifications, and reopenings, shall provide an opportunity for public participation on the draft proposed permit. The State shall develop such procedures after considering the requirements of part 124 of this chapter and the adopted procedures shall at a minimum include the following:

(1) Availability for public inspection in at least one location in the community in which the source is located of the information submitted by the applicant, and the permitting authority's analysis of the proposed action as set forth in the statement of basis.

(2) A public notice, by advertisement in the area affected, of the opportunity for submittal of public comment and for a public hearing with a copy of the notice to the Administrator, unless EPA agrees not to require the notice for some or all permits.

(3) A period of no less than 30 days for submittal of public comments.

(4) A public hearing, as deemed appropriate by the permitting authority because a request for such has been made that raises significant issues affecting the terms and conditions of the permit and such hearing would contribute to the permitting exercise.

(5) Such notice and opportunity for participation by other States as is provided for by § 70.8 of this chapter.

§ 70.8 Permit review by EPA and affected States.

(a) *Transmission of information to the Administrator.* (1) The permit program shall require that the permitting authority shall provide, or require the applicant to provide, to the Administrator a copy of each permit application, including the compliance plan, and each proposed permit and final permit. If the permitting authority and Administrator so agree, the permitting authority may submit to the Administrator a permit application summary form and any relevant portion of the permit application or compliance

plan, in place of such full application and compliance plan specified in this paragraph.

(2) The Administrator may waive the requirements of paragraphs (a)(1) and (b)(1) of this section for any category of sources (including any class, type, or size within such category) other than major sources according to the following:

(i) At the time of approval of a State program pursuant to this part.

(ii) By regulation.

(3) Any State permitting authority shall keep for 5 years such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act or of this part.

(b) *Affected State review.* (1) The program shall provide that the permitting authority give notice of each draft proposed permit to any affected State on or before the time that the permitting authority provides this notice to the public under § 70.7(i) of this part.

(2) The program shall provide that the permitting authority, as part of the submittal of the proposed permit to the Administrator, shall notify the Administrator and any affected State in writing of any refusal by the permitting authority to accept all recommendations for the proposed permit that the affected State submitted during the public comment period. The notice shall include the permitting authority's reasons for not accepting any such recommendation.

(c) *EPA objection.* (1) The Administrator shall object, pursuant to section 505(b) of the Act, to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements of the Act including requirements of the applicable implementation plan. No permit shall be issued for the purpose of part 70 if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and notice pursuant to paragraphs (a) and (b) of this section.

(2) Any EPA objection under paragraph (c)(1) of this section shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections. The Administrator shall provide the permit applicant a copy of the objection.

(3) Failure of the permitting authority to do any of the following also shall constitute grounds for an objection:

(i) Submit the required items and notices under paragraphs (a) or (b) of this section.

(ii) Submit any information necessary to adequately review the proposed permit.

(4) If the permitting authority fails, within 90 days after the date of an objection under paragraph (c)(1) of this section, to submit a proposed permit revised to meet the objection, the Administrator shall issue or deny the permit in accordance with the requirements of part 71 of this chapter. If the permitting authority submits a revised permit within this time period that only partially meets the Administrator's objection, the Administrator may grant further time for revision of the permit, not to exceed an additional 90 days.

(d) *Public petitions to the Administrator.* The program shall provide that if the Administrator does not object in writing pursuant to paragraph (c) of this section, any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to take such action. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in § 70.7(i) of this part, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. A petition for review does not stay the effectiveness of the permit or its requirements. If EPA objects to the permit as a result of petition filed pursuant to this paragraph, the permitting authority shall suspend the permit until EPA's objection has been resolved.

(e) *Prohibition on default issuance.* Consistent with § 70.4(b)(3)(ix) of this part, for the purposes of Federal law and title V of the Act, no State program may provide that a part 70 permit (including a permit renewal or modification) will issue until affected States and EPA, have had an opportunity to review the proposed permit as required under this section. When the program is submitted for EPA review, the State Attorney General or independent legal counsel shall certify that no applicable provision of State law requires that a permit be issued after a certain time if the permitting authority has failed to take action on the application (or includes any other similar provision providing for default issuance of a permit), unless EPA has waived such review for EPA, affected States, or both.

§ 70.9 Fee determination and certification

(a) *Fee requirement.* (1) The program shall require that the owners or operators of sources subject to the requirement to obtain a permit under this part pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable direct and indirect costs of developing and administering the permit program. Procedures for determining this sum are set forth in this section.

(2) The State shall provide that the revenue generated from permit fees will be used solely to support the reasonable cost of the development and implementation of the air pollution control program in all areas relevant to the permit program, including support of local agencies that do not issue permits directly, but that support permit issuance or enforcement.

(b) *Fee schedule adequacy.* The State program shall establish a fee schedule that meets either of the following tests:

(1) *Program support test.* The fee program shall result in the collection and retention of revenues sufficient to support the reasonable direct and indirect costs of developing and implementing the permitting program (considering any associated overhead charges for personnel, equipment, buildings, and vehicles), including but not limited to the following activities:

(i) Reviewing and acting on any application for a permit or permit revision.

(ii) Implementing and enforcing the terms of any part 70 permit, (not including any court costs or other costs associated with any formal enforcement action).

(iii) Emissions and ambient monitoring, including adequate resources to audit and inspect source-operated monitoring programs.

(iv) Preparing generally applicable regulations, or guidance.

(v) Modeling, analyses, or demonstrations.

(vi) Preparing inventories and tracking emissions.

(vii) Providing support to part 70 sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program contained in section 507 of the Act.

(2) *Cost-per-ton test.* The fee program shall result in the collection and retention, from all sources subject to the permitting program, of an amount not less than $25 per ton in the aggregate, as adjusted pursuant to the criteria set forth in paragraph (c) of this section, of each regulated pollutant that the part 70 sources emit.

(i) For the purposes of determining the required minimum fee amount, carbon monoxide shall be excluded from the definition of "regulated pollutant."

(ii) In determining the required minimum fee amount, the permitting authority is not required to include any amount of a regulated pollutant that:

(A) The part 70 source emits in excess of four thousand (4,000) tons per year of that regulated pollutant:

(B) The emissions of such pollutant are otherwise regulated and already included in the fees owed by the part 70 source.

(iii) For those regulated pollutants emitted by part 70 sources, but to which no State or Federal air pollution control requirements are applicable, the emissions fee requirements contained in this section remain applicable. The plan may, at the State's discretion, include criteria (such as *de minimis* amounts) to exclude any such emissions of regulated pollutants from the fee requirement, to the extent that such exemptions are consistent with the resource adequacy determination required by § 70.4(b)(7) of this part.

(iv) For the purpose of determining the total tons of regulated pollutants that the Part 70 sources in the State emit, the State shall base its calculation on the actual emissions of each regulated pollutant.

(v) Nothing in the cost-per-ton provisions of this paragraph shall restrict a permitting authority from collecting more or less than the amount determined under this paragraph from any one part 70 source or any class or category of part 70 sources, as determined by the permitting authority, provided the permitting authority collects a total amount of fees sufficient to meet the program support requirements of paragraph (b)(1) of this section. For example, States may reduce fee amounts for small businesses as authorized by section 507(f) of the Act.

(c) *Fee adjustment.* (1) The program shall provide that the fees collected pursuant to this section shall be increased (consistent with the need to cover reasonable costs) in December of each year by the percentage, if any, by which the Consumer Price Index for that calendar year exceeds the Consumer Price Index for the calendar year 1989.

(i) The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

(ii) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for the calendar year 1989 shall be used.

(2) The Administrator reserves the right to adjust the fees required pursuant to this test upward if significant amounts of toxic pollutants are subject to permit review.

(d) *Fee demonstration.* The permitting authority shall provide a demonstration that the fee schedule selected will result in the collection and retention of fees in an amount sufficient to satisfy the applicable tests specified in paragraphs (a) and (b) of this section. The Administrator will not approve a demonstration pursuant to paragraph (b) of this section unless it contains an initial accounting (and periodic updates as required by the Administrator) of how fee revenues are used to cover the costs of meeting the various functions of the permitting program.

§ 70.10 Federal oversight and sanctions.

(a) *Failure to submit an approvable program.* If a State fails to submit a fully approvable whole part 70 program, or a required revision thereto, in conformance with the provisions of § 70.4 of this part, or if an interim approval expires and the Administrator has not approved a whole part 70 program.

(1) At any time the Administrator may apply any one of the sanctions specified in section 179(b) of the Act.

(2) Within 18 months after the date required for submittal or the date of disapproval by the Administrator, the Administrator shall apply such sanctions in the same manner and with the same conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a) of the Act.

The Administrator shall promulgate a whole program or a partial program as appropriate for such State if full approval of a whole part 70 program has not taken place within 2 years after the date required for such submission.

(b) *State failure to administer or enforce.* Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this part and any agreement between the State and the Administrator concerning operation of the program.

(1) Whenever the Administrator makes a determination that a permitting authority is not adequately administering or enforcing a Part 70 program, or any portion thereof, the Administrator shall notify the authority of the determination and the reasons therefore. The Administrator shall publish such notice in the **Federal Register**.

(2) If, after 90 days from issuing the notice under paragraph (b)(1) of this section, the permitting authority fails to take action to assure adequate administration and enforcement of the program, the Administrator may take any one or more of the following actions:

(i) Withdraw approval of the program or portion thereof using procedures consistent with § 70.4(e) of this part.

(ii) Apply any of the sanctions specified in section 179(b) of the Act.

(iii) Promulgate, administer, or enforce a program or partial program.

(3) Whenever the Administrator has made the finding and issued the notice under paragraph (b)(1) of this section, the Administrator shall apply the sanctions under section 179(b) of the Act within 18 months after that notice. These sanctions shall be applied in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a) of the Act.

(4) Whenever the Administrator has made the finding and issued the notice under paragraph (b)(1) of this section, the Administrator shall, unless the State has corrected such deficiency within 18 months after the date of such finding, promulgate a whole or partial program within 2 years of the date of such finding.

(5) If the permitting authority's failure is a failure to act on one or more timely and complete applications (including renewal applications) within 18 months of the date that a complete application was filed, the Administrator may issue or deny the permits as appropriate.

(6) Nothing in this section shall limit the Administrator's authority to take any enforcement action against a source for violations of the Act or a permit issued under rules adopted pursuant to this section in a State that has been delegated responsibility by EPA to implement a part 71 program.

(c) *Criteria for withdrawal of State programs.* (1) The Administrator may withdraw program approval when the approved program no longer complies with the requirements of this part, and the permitting authority fails to take corrective action. Such circumstances, in whole or in part, include the following:

(i) Where the permitting authority's legal authority no longer meets the requirements of this part, including the following:

(A) Failure of the permitting authority to promulgate or enact new authorities when necessary.

(B) Action by a State legislature or court striking down or limiting State authorities.

(ii) Where the operation of the State program fails to comply with the requirements of this part, including the following:

(A) Failure to exercise control over activities required to be regulated under this part, including failure to issue permits.

(B) Repeated issuance of permits that do not conform to the requirements of this part.

(C) Failure to comply with the public participation requirements § 70.7(i) of this part.

(D) Failure to collect, retain, or allocate fee revenue consistent with § 70.9 of this part.

(iii) Where the enforcement program fails to comply with the requirements of this part, including the following:

(A) Failure to act on violations of permits or other program requirements.

(B) Failure to seek adequate enforcement penalties or to collect administrative fines when imposed.

(C) Failure to inspect and monitor activities subject to regulation.

(d) *Federal collection of fees.* If the Administrator determines that the fee provisions of a part 70 program do not meet the requirements of § 70.9 of this part, or if the Administrator makes a determination under paragraph (b)(1) of this section that the permitting authority is not adequately administering or enforcing an approved fee program, the Administrator may, in addition to taking any other action authorized under title V of the Act, collect reasonable fees from part 71 sources or part 70 sources or both to cover the Administrator's costs of administering the provisions of the permitting program promulgated by the Administrator, without regard to the requirements of § 70.9 of this part.

§ 70.11 Requirements for enforcement authority.

All programs in order to be approved under this part must contain the following provisions:

(a) Any agency administering a program shall have available, as remedy for violations of program requirements, the following authority:

(1) To restrain immediately and effectively any person by order or by suit in court from engaging in any activity in violation of a permit and which is presenting an imminent and substantial endangerment to the public health or welfare, or the environment.

(2) To sue in courts with jurisdiction to enjoin any violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit.

(3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, according to the following:

(i) Civil penalties shall be recoverable for the violation of any permit condition; any fee or filing requirement; any duty to allow or carry out inspection, entry or monitoring activities or, any regulation or orders issued by the permitting authority. These penalties shall be recoverable in a maximum amount of not less than $10,000 a day for each violation. State law shall not include mental state as an element of proof for civil violations.

(ii) Criminal fines shall be recoverable against any person who knowingly violates any applicable standards or limitations; any permit condition; or any fee or filing requirement. These fines shall be recoverable in a maximum amount of not less than $10,000 a day for each violation.

(iii) Criminal fines shall be recoverable against any person who knowingly makes any false statement, representation or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any monitoring device or method required to be maintained by the permitting authority. These fines shall be recoverable in a maximum amount of not less than $10,000 for each instance of violation.

(b) (1) The civil penalty or criminal fine(s) (as provided in paragraph (a)(3) of this section) shall be assessable for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, shall be no greater than the burden of proof or degree of knowledge or intent required under the Act.

(c) A civil penalty assessed, sought, or agreed upon by the permitting authority under paragraph (a)(3) of this section shall be appropriate to the violation.

[FR Doc. 91-10148 Filed 5-9-91; 8:45 am]

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federal register

Friday
May 10, 1991

Part III

Department of Education

Bilingual Vocational Instructor Training Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

DEPARTMENT OF EDUCATION

[CFDA No.: 84.099]

Bilingual Vocational Instructor Training Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

Note to applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of program: The Bilingual Vocational Instructor Training Program provides financial assistance for conducting training for instructors aides, counselors, or other ancillary personnel in bilingual vocational education and training programs for individuals with limited English proficiency.

Eligible applicants: State agencies or public and private non-profit educational institutions.

Deadline for transmittal of applications: July 12, 1991.

Deadline for Intergovernmental review: September 10, 1991.

Available funds: $433,200.

Estimated range of awards: $187,000–$430,000.

Estimated average size of awards: $216,000.

Estimated number of awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 18 months.

Applicable regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations) Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), Part 82 (New Restrictions on Lobbying), Part 85 (Government-wide Debarment and Suspension (Nonprocurement), Government-Wide Requirements for Drug-Free Workplace (Grants)), and Part 86 (Drug-Free Schools and Campuses).

Invitational Priority

The Secretary is particularly interested in applications that meet the following invitational priority:

Applications that address a national or statewide need for inservice training for personnel in bilingual vocational education and training programs for individuals with limited English proficiency.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses. The Secretary assigns the 15 points, reserved in 34 CFR 408.30(b), as follows: 10 points to selection criterion (b)—Plan of operation—in 34 CFR 408.31(b) for a total of 30 points for that criterion; and 5 points to selection criterion (c)—Quality of key personnel—in 34 CFR 408.31(c) for a total of 25 points for that criterion.

(a) *Need.* (20 points)

(1) The Secretary reviews each application for specific information that shows the need for the proposed training in the local geographic area.

(2) In making this determination the Secretary looks for information that shows—

(i) The need for the proposed training;

(ii) Specifically how the need will be met; and

(iii) Ongoing and planned activities in the community that pertain to the need, where appropriate.

(b) *Plan of operation.* (30 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel.* (25 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the projec .

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (c)(2) (i) and (ii) will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project; as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference: See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Approved under OMB Control No. 1830-0013)

Additional Factors

(a) After evaluating the applications according to the selection criteria, and consulting with the appropriate State board, the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the equitable distribution of projects under this program within the affected State.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 17, 1990, pages 38210-38211.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.099, U.S. Department of Education, Room 4161, 400 Maryland Avenue, SW., Washington, DC 20202-0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CDFA #84.099), Washington, DC 20202-4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Eduation, Application Control Center, Attention: (CFDA #84.099), room #3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC 20202-4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-9495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED Form 80-0013) and instructions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80-0014) and instructions. (NOTE: ED Form 80-0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Laura Karl, Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue SW., (Room 4512, Mary E. Switzer Building), 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 202 Area Code, telephone 708-9300) between 8:00 a.m. and 7:00 p.m. Eastern time.

Program Authority: 20 U.S.C. 2441(b).

Dated: May 2, 1991.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

Appendix A

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 0 9 9

TITLE: Bilingual Vocational Instructor Training

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7 Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Budget Part II—Information

For the Bilingual Vocational Instructor Training Program (CFDA No. 84.099), Section, A, B, and C should include budget estimates for the entire project period.

Note: Sections D and E need not be completed to apply for this program.

All applications should contain a breakdown by the object class categories shown in Section B, Lines 6a through 6j.

Section A. Budget Summary

Line 1. Columns (a) through (g)—Enter on Line 1 the catalog program title in Column (a) and the catalog program number in Column (b). Leave Columns (c) and (d) blank. Enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for either the entire project period or the first year of the project, as appropriate.

Section B. Budget Categories

Lines 6a through 6i—Fill in the total requirements for Federal funds by object class categories for either the entire project period or the first year of the project, as appropriate.

Line 6a—Personnel: Show salaries and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included in Line 6f.

Line 6b—Fringe Benefits: Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits to personnel are treated as part of the indirect cost rate.

Line 6c—Travel: Indicate the amount requested for travel of employees.

Line 6d—Equipment: Indicate the cost of nonexpendable personal property which has a useful life of more than two years and an acquisition cost of $300 or more per unit.

Line 6e—Supplies: Include the cost of consumable supplies to be used in this project. These should be items which cost less than $300 per unit with a useful life of less than two years.

Line 6f—Contractual: Show the amount to be used for: (a) procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (b) subgrants or payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc.

Line 6g—Construction: Construction expenses generally are not allowed.

Line 6h—Other: Indicate all direct costs not clearly covered by lines 6a through 6g. If there are trainee costs or stipends, enter the total cost of these expenses. The maximum allowance for stipends is $3.35 per contact hour.

Line 6i—Total Direct Charges: Show total of lines 6a through 6h.

Line 6j—Show the amount of indirect cost to be charged to the project.

Note. The indirect cost rate for training projects cannot exceed eight percent of total direct charges.

Line 6k—Enter the total of the amounts on Lines 6i and 6j.

Section C. Non-Federal Resources

Line 8—Enter any amounts of non-Federal resources that will be used on the grant. If any in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the catalog program title.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter the totals of Columns (b), (c), and (d).

Section F. Other Budget Information

Prepare a detailed budget Narrative that explains, justifies, and/or clarifies the budget figures shown in sections A, B, and C.

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program, the information regarding the priority, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

Please limit the Application Narrative to no more than 30 double-spaced, typed, 8½"×11" pages (on one side only).

Include as an appendix to the Application Narrative supporting documentation, also on 8½"×11" paper, (e.g., letters of support, footnotes, resumes, etc.) or any other pertinent information that might assist the Secretary in reviewing the application.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830-0013, Washington, DC 20503. (Information collection approved under OMB control number 1830-0013. Expiration date: 10/31/92.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse. (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U S.C 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 --

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 —

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter ____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*
Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

[FR Doc. 91-11125 Filed 5-9-91; 8:45 am]
BILLING CODE 4000-01-C

federal register

Friday
May 10, 1991

Part IV

Environmental Protection Agency

40 CFR Part 744

Land Application of Sludge from Pulp and Paper Mills Using Chlorine and Chlorine Derivative Bleaching Processes; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 744

[OPTS-62100; FRL 3873-2]

RIN 2070-AC23

Proposed Regulation of Land Application of Sludge from Pulp and Paper Mills Using Chlorine and Chlorine Derivative Bleaching Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would regulate the use, disposal, and distribution in commerce of process wastewater treatment sludges intended for land application from pulp and paper mills employing chlorine or chlorine derivative-based bleaching processes (hereafter referred to as "paper mill sludge" or "sludge"). This rule is proposed under the authority of section 6(a) of the Toxic Substances Control Act (TSCA) to prevent unreasonable risks to wildlife and humans presented by exposure to 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (TCDD) and 2,3,7,8-tetrachlorodibenzofuran (TCDF) present in paper mill sludge. TCDD and TCDF are chemical reaction products of pulp bleaching processes involving the use of chlorine and chlorine derivatives. TCDD, has been classified by EPA as a probable human carcinogen. Highest exposure from paper mill sludge land application occurs through the dietary pathway (risks from consuming food grown and animals grazed on sludge-amended lands) and through the runoff pathway (risks from consuming fish from sludge-contaminated surface waters).

DATES: Written comments in triplicate must be received on or before August 8, 1991. If EPA receives requests from interested persons wishing to make oral comment, it will hold an informal hearing in Washington, DC September 17, 1991. The exact time and location of the hearing may be obtained by contacting the Environmental Assistance Division at (202) 382-3532. Written requests to participate in the informal hearing must be received by August 8, 1991. For further information regarding the hearing, see Unit XII of this preamble.

ADDRESSES: Non-confidential comments should be sent in triplicate to: U.S. Environmental Protection Agency, Rm. NEG-004 (TS-793), 401 M St., SW., Washington, DC 20460, Attention: OPTS-62100. Comments should also include the docket number (OPTS-62100). Non-confidential comments will be placed in the rulemaking record for public inspection. See Unit XI of this preamble for information on submitting comments containing confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), U.S. Environmental Protection Agency, 401 M St. SW., rm. E-543B, Washington, DC 20460, telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This document proposes to regulate the use, disposal, and distribution in commerce of sludge intended for land application from pulp and paper mills using chlorine or chlorine-derivative bleaching processes.

I. Authority

Section 6(a) of TSCA authorizes EPA to regulate chemical substances or mixtures if the Agency finds that there is a reasonable basis to conclude that activities involving them present or will present an unreasonable risk of injury to human health or the environment. Section 6(a)(1) authorizes EPA to prohibit or limit the manufacturing, processing, or distribution in commerce of such substances. Section 6(a)(2) authorizes EPA to prohibit or limit manufacturing, processing, or distribution in commerce of such substances for particular uses. Section 6(a)(3) authorizes labelling or warning rules. Sections 6(a)(4) and 8(a) authorize EPA to require records maintenance and monitoring. Sections 6(a)(5) and 6(a)(6) authorize rules prohibiting or otherwise regulating, respectively, commercial use or disposal of substances or mixtures. These sections of TSCA provide EPA the authority to propose this rule.

II. Introduction and Background

A. Litigation History

On October 22, 1984, the Environmental Defense Fund (EDF) and the National Wildlife Federation (NWF) filed a citizen's petition under section 21 of TSCA requesting that EPA regulate certain polyhalogenated dibenzo-*p*-dioxins (PHDDs) and polyhalogenated dibenzofurans (PHDFs) from all known sources (PHDDs and PHDFs include TCDD and TCDF). EPA denied the petition, prompting a lawsuit brought by EDF and NWF. Before the case was to go to trial, the plaintiffs and EPA reached a settlement and signed a consent decree on July 27, 1988 (*EDF v. Thomas*, DC District Court, Civil Action No. 85-0973).

The consent decree required EPA to perform a number of activities under its various statutes. The activity which eventually led to this proposal was a multi-media, multi-pathway risk assessment for 2,3,7,8-TCDD and 2,3,7,8-TCDF emissions from chlorine bleaching pulp and paper mills. EPA, the Food and Drug Administration (FDA), and the Consumer Product Safety Commission (CPSC) performed the risk assessment, which consists of 10 separate assessments examining aproximately 120 exposure pathways, including sludge use and disposal. The sludge assessment is entitled "Assessment of Risks from Exposure of Humans, Terrestrial and Avian Wildlife, and Aquatic Life to Dioxins and Furans from Disposal and Use of Sludge from Bleached Kraft and Sulfite Pulp and Paper Mills" (EPA 560/5-90-013, July 1990) (hereafter referred to as the "Integrated Risk Assessment"). Chapters 3 and 6 on wildlife and human health risks from land application served as the basis for this proposed rule. EPA revised these chapters for this proposed rule. The revised risk assessments are "Environmental Risk Assessment for TCDD and TCDF-Contaminated Pulp Sludges on Terrestrial and Aquatic Wildlife" (January 31, 1991), for chapter 3, and "Human Health Risk Assessment for Dioxin in Sludge: Technical Support Document for the Proposed Land Application Rule" (April 1991), for chapter 6. The original sludge assessment and these revised documents are in the rulemaking record.

By April 30, 1990, the consent decree required EPA to take at least one of four possible actions with respect to the matters considered in the risk assessment. The four options were:

1. Commit to propose regulations in the **Federal Register** by April 30, 1991.
2. Commit to refer under TSCA section 9 some or all matters under consideration to another Federal agency or agencies by October 30, 1990.
3. Determine that regulations and/or referrals are unnecessary.
4. Determine that EPA does not have sufficient information to make one of the above determinations, and establish a schedule to obtain the required information by April 30, 1991, then within 180 days take at least one of the options.

On April 30, 1990, in a letter signed by the Deputy Administrator and addressed to M.V. Patten, counsel for NWF, and K. Florini, counsel for EDF, EPA decided that with respect to paper mill sludge land application, it would exercise option 1, and for paper mill sludge landfills and surface

impoundments, it would exercise option 4. Under the terms of the consent decree, EPA will use its best efforts to either promulgate this land application rule in final form or to withdraw it within 18 months of the publication of this proposed rule.

B. History of Dioxin in the Paper Industry

The initial discovery of chlorinated dibenzo-*p*-dioxins and dibenzofurans (CDDs/CDFs) and theories about their formation and presence in various media led to the National Dioxin Study, published in August 1987. This was a nationwide, multimedia evaluation initiated at the request of Congress in House Report 98-223. The study was requested in response to growing public concern over the high toxicity and persistence of CDDs and CDFs, and the numerous incidents of contamination and exposure in the United States and abroad. It was the first major nationwide CDD/CDF investigation undertaken by the Federal Government. An unanticipated result of the study was the strong implication that some pulp and paper mills could be sources of TCDD/TCDF.

These findings prompted EPA, the American Paper Institute (API), and the National Council of the Paper Industry for Air and Stream Improvement (NCASI) to enter into an agreement on June 20, 1986, entitled "USEPA/Paper Industry Cooperative Dioxin Screening Study - Agreement", to jointly screen five bleached kraft pulp and paper mills for CDD/CDF production and release. The results of the "5-mill study", published as "U.S. EPA/Paper Industry Cooperative Dioxin Screening Study" (March 1988), verified that CDDs/CDFs were present in the treated effluent, wastewater treatment sludges, and bleached pulps, and that TCDD and TCDF were formed during the bleaching of kraft pulps with chlorine and chlorine derivatives. In addition it showed that, in terms of toxicity, the principal CDDs and CDFs formed were the 2,3,7,8-TCDD/TCDF congeners.

The EPA/Paper Industry Cooperative Dioxin Study (July 1990), commonly referred to as the "104-mill study," was conducted from April 1988 to August 1989 at 87 kraft (sulfate) and 17 sulfite pulp mills. The preliminary results from this study served as the database for the integrated risk assessment and the revisions to the integrated assessment for this proposed rule.

Concentrations of TCDD and TCDF were measured from treated wastewater effluents, sludges, and all bleached pulp lines. Data on wastewater treatment operations, wastewater discharge characteristics, and paper mill sludge management practices were also collected. The results indicated that the TCDD/TCDF concentrations in kraft mill pulp were considerably higher than concentrations in sulfite mill pulp, and that the concentrations of TCDF were roughly an order of magnitude higher than those of TCDD. The major finding of the study was the widespread presence of TCDD and TCDF in treated effluents, sludges, and bleached pulps from kraft and sulfite mills.

C. Generation, Use, and Disposal of Paper Mill Sludge

Paper mill sludge is the result of processes used to treat process wastewater (effluent) before it is released into receiving waters. In treating effluent, solids are settled out which contain chlorinated organics, including TCDD and TCDF, which are chemical reaction products of the chlorine used in the pulp bleaching process.

Approximately 2,500,000 dry metric tons (DMT) of paper mill sludge are generated annually by all 104 chlorine bleaching mills. Some mills use more than one disposal practice. The integrated risk assessment shows approximate sludge volumes broken down by practice, extrapolated from the 104-mill study. But because the mills did not report exact sludge volumes going to each disposal practice, it is unknown exactly how much sludge is actually disposed of through land application. EPA estimated that approximately 20 percent of the total sludge generated annually from all mills is land applied. More recent information on sludge volumes per disposal practice is contained in the "Regulatory Impact Assessment for Land Application of Bleached Pulp and Paper Mill Wastewater Treatment Sludges", dated February 12, 1991, located in the rulemaking record.

The distribution of land applied sludge among the various land application practices is unknown; however, EPA estimates that approximately 80 percent goes to silvicultural land, 10 percent to agricultural land, and 10 percent to mine reclamation.

Paper mill sludges come in three forms: primary, secondary, and a mixture of the two. Primary paper mill sludge is a sedimentary product composed of wood fiber, lime, and other waste products that is low in nutrients but high in organic carbon. It is potentially beneficial as an organic amendment, but it may also deplete the soil of plant-available nitrogen as soil bacteria digest the wood fibers. Secondary paper mill sludge is a product of biological treatment and contains microbes and the nutrients added to encourage microbial growth. It is normally produced in lesser quantities, has a higher nutrient content and is valuable as a substitute for fertilizer, and may also provide organic matter. The benefits of paper mill sludge as a soil amendment depend on the characteristics of the particular sludge, the mill's sludge management practices, and the characteristics of the soil to which the sludge is applied.

D. Recent Scientific Developments

EPA is undertaking a reassessment of the risks of exposure to dioxin, in light of scientific advances that provide additional understanding of those risks. The reassessment will include ecological risks, human toxicity, and exposure. EPA cautions that it cannot draw conclusions about the results of the reassessment until a complete review of it has been performed. The reassessment is expected to be completed by mid-1992, and will then be subjected to a peer review by scientific experts, as well as public comment.

This reassessment has been prompted by several factors, including the general consensus among participants in the October 1990 Banbury Conference that work should begin on a new biologically-based model for assessing the toxicity of dioxin. In addition, the results of a number of new studies and reports indicate that exposure and risk factors also need to be reviewed.

EPA is evaluating the potential impacts of this scientific reassessment on Agency dioxin programs. Until this evaluation is complete, however, EPA plans to continue with all dioxin-related activities, including this proposed rule.

III. Description of the Proposed Rule

A. General Provisions

This rule would require generators of paper mill sludge to ensure that certain requirements are followed when such sludge is applied to land. The requirements include TCDD/TCDF soil concentration limits, management practices, and monitoring, recordkeeping, and reporting requirements, which collectively define the level of control that paper mill sludge generators must attain.

B. Land Application Restrictions

1. *Maximum soil concentration.* Section 744.125(b) of the rule proposes a limit of 10 ppt TCDD/TCDF in the soil following land application of paper mill sludge. EPA has established this maximum soil concentration to limit the

risks to humans and wildlife from dietary exposure to TCDD/TCDF. The 10 ppt soil concentration limit is expressed as a toxicity equivalent (TEQ), which describes the toxicity of individual CDDs/CDFs or of mixtures of CDDs/CDFs as an equivalent concentration of TCDD. For the purpose of this proposed rule, the TEQ is calculated by adding the measured concentration of TCDD (that is, 2,3,7,8-TCDD) to one-tenth the measured concentration of TCDF (that is, 2,3,7,8-TCDF), found in the soil and sludge samples. Other CDDs/CDFs are not considered since their contribution to the overall toxicity is insignificant. For the remainder of this proposed rule discussion, TCDD/TCDF refers to the TCDD TEQ.

The concentration of TCDD/TCDF in the soil following paper mill sludge land application depends on whether or not soil incorporation occurs. If the sludge is incorporated, the soil will dilute the TCDD/TCDF concentration of the sludge, producing a concentration in the soil that reflects the sludge/soil mixture. Section 744.125(b) specifies a formula to calculate the TCDD/TCDF concentration of the sludge/soil mixture, and requires incorporation to a minimum depth of 15 centimeters. The formula takes into account the level of TCDD/TCDF already present in the soil prior to sludge application, the mass of the soil, and the mass and TCDD/TCDF concentration of the sludge. If the sludge is not incorporated, then the sludge concentration will be considered the soil concentration and therefore cannot exceed 10 ppt.

2. *Management practices.* The following management practices are also proposed to address risks to human health posed by sludge and sludge/soil runoff.

a. *Set back.* Section 744.125(c)(1) would require that sludge not be applied to land that is 10 meters or less from intermittent or perennial surface waters.

b. *Vegetative Cover.* Section 744.125(c)(2) would require that a vegetative cover be established on the land to reduce erosion. For nonagricultural land — land not being used to grow food, feed, fiber, or oilseed crops — it would adopt the U.S. Department of Agriculture (USDA), Soil Conservation Service (SCS), *Practice Standard 342, Critical Area Planting* ("Standard 342"), as the guideline for the choice of species and the methods and dates for planting. This standard is tailored to each local geographical region, and requires the planting of perennial species. Copies of the standard designed for the area in which a sludge land application site is located can be obtained from the state office of the USDA/SCS, for the state in which the land is located. A list of state telephone numbers entitled "USDA Soil Conservation Service Directory of State Offices" is available in the rulemaking record. Alternatively, or for site uses which, like agriculture and forestry, are not specifically covered by Standard 342, the applier could use an equivalent standard approved by EPA prior to any sludge land application at the site. Samples of standards which EPA may consider equivalent would include soil conservation plans which meet the guidelines mandated for participation in any Federal Government soil programs, or which comply with state erosion and sediment control regulations.

In addition to requirements for establishing a vegetative cover, the rule would require that no area to which sludge has been applied be allowed to remain uncovered for more than 30 days. This would preclude mills or appliers from allowing a large site to remain untreated during the entire time that sludge is applied.

Where sludge is incorporated into bare soil or cleared lands such as timber harvest areas or idle fields, it may be necessary to shape the site for runoff control in preparation for seeding. This requirement is frequently cited in Standard 342 as a necessary step to ensure revegetation. Section 744.145(d)(2) would require that any surface preparation necessary for successful vegetative establishment be done in accordance with the USDA SCS *Engineering Field Manual*, or with any state engineering standards that may be required as part of a state permit. This manual, or its state counterparts, can be obtained by contacting the state office of the USDA SCS. A list of state telephone numbers entitled "USDA Soil Conservation Service Directory of State Offices" is available in the rulemaking record.

In addition to requiring the establishment of a vegetative cover, § 744.125(c)(3) would require periodic follow-up maintenance to ensure that an adequate stand of vegetation is established, and that any rill and gully erosion is corrected in a timely manner. Such maintenance would be required for the first 3 years following planting. For the purpose of this rule, adequate vegetative cover would be a stand of vegetation which, in the judgment of a trained agronomist or person of similar knowledge, would protect the site from surface runoff and erosion.

c. *Other requirements.* Section 744.125(c)(4) and (c)(5) would also prohibit sludge land application to frozen, flooded, or snow-covered land, unless the mill could demonstrate that the application would not cause a pollutant discharge that would violate any requirements of the Clean Water Act (CWA). Any land application of sludge which would restrict the flow of a base flood, reduce the temporary water storage capacity of the floodplain, or pose a hazard to human health, wildlife, or land or water resources because of the presence of sludge in the runoff from the base flood would also be prohibited. These practices have been similarly prohibited in the Standards for the Disposal of Sewage Sludge (54 FR 5746, Feb. 6, 1989) (hereafter referred to as "municipal sewage sludge rule") under the CWA.

C. Monitoring, Sampling, and Analytical Protocols

Section 744.130 of the proposed rule identifies the procedures to be followed in the collection of sludge and application site soil samples and in their analysis to determine their TCDD/TCDF concentration.

The proposed rule would require sampling of the sludge, and also sampling of the soil at the land application site. Sludge sampling is needed to determine the TCDD/TCDF concentration in the sludge to calculate the amount of sludge which may be applied. Site sampling is needed to determine if the site contains prior TCDD/TCDF contamination, such as from a previous application of sludge. For example, if site testing was not required, a facility might apply sludge at a rate that would not, in itself, be enough to exceed the 10 ppt limit of TCDD/TCDF in the soil, only to find later that the site contains more than the allowable limit because the new application, combined with the concentration already present in the soil, exceeded 10 ppt.

The sludge sampling protocol is a composite core sampling approach. It would require that the pool, compound, impoundment, or other storage structure containing sludge intended for land application be overlaid by a grid dividing the area into 20 units of roughly equal size, and that a core sample be drawn from the center of each of those units. Each core sample would extend to the full depth of the storage area. Once taken, the 20 cores would be aggregated to produce 1 composite, homogenous sample. One analytical sample would be drawn from the composite sample, to determine the TCDD/TCDF concentration of the sludge. Sludge sampling would be required on a quarterly basis.

A similar protocol would be used in collecting soil samples from each proposed land application site prior to sludge spreading. The number of cores taken would depend upon the size of the site. If the entire site, defined as the contiguous land area on which a single mill or applier is proposing to apply paper mill sludge during a 1-year period, is less than or equal to 100 hectares in area, that entire site would be divided into 20 units of roughly equal size, and core samples would be drawn from each unit to a depth of 15 centimeters. Those samples would be aggregated into a single, homogenous composite sample, from which one analytical sample would be drawn to determine the TCDD/TCDF concentration in the soil at the site. If, on the other hand, the entire site exceeded 100 hectares in area, the site would be divided into areas of equal size not to exceed 100 hectares. A site totalling 150 hectares, for example, would be divided into two areas of 75 hectares each. Each such area would be divided into 20 units of equal size, and one core sample to a depth of 15 centimeters would be drawn from each unit. To determine the TCDD/TCDF concentration in the soil for the entire site, all of the cores drawn from the smaller areas within the site would be aggregated into a single, homogenous sample, from which one analytical sample would be drawn. Section 744.125(b) of the proposed rule requires soil sampling before each land application where the same site, or the same fields or other lands within a site, are used for repeated land application.

Section 744.130 provides that the analysis of sludge and soil samples be conducted in accordance with USEPA Method 1613 (56 FR 5090, "Water Programs; Guidelines Establishing Test Procedures for the Analysis of Pollutants", February 7, 1991). Method 1613 is a high resolution capillary column gas chromatography, high resolution mass spectrometry (HRGC/HRMS) method which permits the analysis of tetra- through octa-chlorinated dibenzodioxins and dibenzofurans using isotope dilution. Method 1613 has undergone extensive peer review and comment, and has been proposed as a standard for interim approval under section 304(h) of the CWA. It was designed to permit detection of CDDs/CDFs in waters, soils, sludges, and other matrices. Use of this method would permit the identification and quantification of TCDD/TCDF concentrations in terms of TEQs.

D. Recordkeeping and Reporting Requirements, Implementation, and Enforcement

The proposed rule would impose recordkeeping and notice requirements on anyone who generates paper mill sludge through processes involving chlorine bleaching, and who proposes to use, dispose of, or distribute or market such sludge for land application. Pulp and paper mills not using chlorine bleaching processes, or mills which use chlorine bleaching but which do not use, dispose of, or distribute or market their sludge for land application, would not be subject to these requirements.

Section 744.135 would require each generator of land-applied paper mill sludge to maintain records tracking the fate of all sludge utilized in land application, and to prepare and submit to the EPA an annual report summarizing that information. Each specific land application site would have to be identified by its full legal description, and the mill would be required to maintain in its records an original USGS 7.5-minute topographic map, or, if that is unavailable, a 15-minute map, showing the location and boundaries of the sludge land application site. For each site, the mill would be required to record the number of hectares in the site, the pre-application TCDD/TCDF concentration in the soil at the site, the total amount of sludge by dry weight applied to the site, the total amount of sludge by dry weight applied per hectare, the TCDD/TCDF concentration of the sludge applied to the site, the method of land application used to spread the sludge (with a statement indicating whether or not the sludge was incorporated into the soil by plowing, disking, harrowing, or some other method), and the last date when sludge was applied to that site. The mill would be required to maintain the original laboratory reports of all sludge and soil TCDD/TCDF testing, and to record the dates of and observations made during site inspections.

The records would have to be maintained at the sludge-generating facility for at least 3 years. Where more than one facility is controlled by a single owner or operator, the records for all of those facilities could be maintained at a single plant, provided that the location of the records is identified at each facility and that the recordkeeping location is normally occupied for 8 hours a day.

A notice requirement would also apply to mills engaged in sludge land application activities. Section 744.125(a) would require a generator to supply written notice to EPA 45 days prior to the land application of pulp and paper mill sludge to any site. The notice would have to contain the name and address of the mill, the distributor, and the applier; the TCDD/TCDF concentration of the sludge to be applied at the site; the pre-application TCDD/TCDF concentration of the soil at the site; one original USGS 7.5 minute series topographic map (or a 15-minute series map, if the 7.5 is unavailable) indicating the boundaries of the land application site or sites; and two statements, certifying that the mill has the legal right to apply sludge at the sites described in the notice, and that the information supplied in the notice is accurate and complete.

E. Other Requirements

The proposed rule contains some additional miscellaneous provisions addressing the distribution and marketing of sludge and enforcement and inspection issues.

Section 744.127 would define distribution and marketing as the commercial sale or give-away of paper mill sludge or of a product derived from such sludge, either in containers (e.g., bags) or in bulk form. This definition would include any original sale or give-away by the generator of the sludge, as well as any subsequent transaction performed by a distributor.

Section 744.127 of the proposed rule would specify that, with respect to paper mill sludge which is distributed or marketed, the generator of the sludge remains responsible for compliance with all of the procedures governing the land application of such sludge, including the soil concentration limits, and the management practice, recordkeeping, and notice requirements.

Sludge land application activities may be subject to regulation under other existing statutes. For example, generators and appliers must adhere to the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531 to 1544), and all mine reclamation activities must comply with the provisions of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 to 1211, 1231 to 1328). In addition, the application of paper mill sludge to agricultural land may result in residues in crops that are subject to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq.

IV. Unreasonable Risk Standard

To take action under TSCA section 6, EPA must find that there is a "reasonable basis to conclude" that activities involving a chemical substance or mixture present or will present an "unreasonable risk" of injury

to human health or the environment. It is important to note at the outset that section 6 does not require a factual certainty, but only a "reasonable basis to conclude" that a risk is unreasonable. The legislative history of TSCA makes it quite clear that EPA may take regulatory action to prevent harm even thought there are uncertainties as to the threshold levels of risk. EPA's decisions, of necessity, are nearly always based on considerations of scientific theories, projections from available data, modelling using reasonable assumptions and extrapolations from limited data (TSCA House Report at 32, H. Rept. 1341, 94th Cong., 2d Sess., July 14, 1976).

Although TSCA uses unreasonable risk as its basic standard for deciding on appropriate action with respect to chemical substances, it does not define what is meant by unreasonable risk. The only guidance in the statute is provided in section 6(c), which establishes the requirement that to make an unreasonable risk determination under section 6(a), EPA must consider the following:

1. The effects of the chemical on health and the magnitude of its exposure to humans.
2. The effects of the chemical on the environment and the magnitude of its exposure to the environment.
3. The benefits of the chemical for various uses and the availability of substitutes.
4. The reasonably ascertainable consequences of regulation, after consideration of the effect on the national economy, small businesses, technological innovation, the environment, and public health.

Section 6(c) offers no further guidance to decisionmakers. In particular, it does not discuss how each of these factors are to be weighed in relationship to each other.

Consequently, guidance on implementation of the unreasonable risk standard in regulatory decisionmaking requires consideration of the legislative history. The House Report on TSCA (H. Rept. 1341, 94th Cong., 2nd Sess. at 13–15, 32) provides the most useful pertinent explanation. Consistent with the reluctance of Congress to define unreasonable risk, the House Report states that the standard cannot be defined in precise terms but, instead, requires exercise of judgment by the decisionmaker. Also consistent with the four considerations outlined in section 6(c), the House Report describes the finding of unreasonable risk as involving a balancing of the probability that harm will occur, and the magnitude and severity of that harm, against the adverse effects (social and economic) on society of proposed Agency action to reduce the harm. In other words, unreasonable risk involves a weighing of the risks to be reduced by Agency action and the consequences of the action. With respect to risk, the House Report states that: "...risk is measured not solely by the probability of harm, but instead includes elements both of probability of harm and severity of harm and those elements may vary in relation to each other."

This standard becomes highly judgmental in the case of health and environmental risks covered by EPA where, as a practical matter, much of the scientific evidence contains a high degree of uncertainty and risk is characterized in terms of probability. Because of the significant ranges of uncertainty in these probability estimates, there are generally no definitive answers as to what the risk may be. Therefore, in evaluating risk, EPA considers the various relationships among such factors as the strength of the evidence on toxicity (usually in animal tests), the effects that are predicted to occur (e.g. death vs. reversible effects), and extrapolations (using various modelling techniques) as to the numbers of individuals exposed and the levels of exposure.

It is important, moreover, to distinguish between risk and unreasonable risk. The finding of unreasonable risk cannot be made considering risk alone. As the House Report states: "***the implementation of the [unreasonable risk] standard will of necessity vary depending on the specific regulatory authority which the Administrator seeks to exercise." The probability and severity of risk (with all the associated uncertainties) must be weighed against the impact of any action EPA proposes to take. The greater the probability or the more severe the potential risk shown by the evidence, the more restrictive could be EPA action. Conversely, evidence of lesser probability or less severe harm would justify more measured responses. Evidence on risk may justify, for example, minimal costs such as a labeling requirement even if the evidence would not justify the costs of more extreme measures.

Using this analysis, EPA has concluded that the continued uncontrolled land application of paper mill sludge containing TCDD/TCDF presents an unreasonable risk of injury to human health and the environment. The factors leading to this conclusion involve the high toxicity of TCDD/TCDF, the extent of wildlife exposure (as well as some consideration for human exposure), and the relatively low cost of imposing the least burdensome controls which should reduce the risk to reasonable levels. These individual factors are discussed in more detail in subsequent units of this preamble. Unit V of this preamble contains EPA's risk assessments, including the types of effects predicted by animal studies, the strength of the evidence on toxicity, and the levels of exposure extrapolated from modelling. Important assumptions used in the assessment methodology and briefly described in Unit V of this preamble are set out in detail in the integrated risk assessment and the revisions to the integrated assessment, which are available in the rulemaking record. Unit VI of this preamble discusses EPA's analysis of the social and economic consequences of this rule In Unit VII of this preamble, EPA discusses the balancing of the considerations raised in Units V and VI of this preamble to describe its finding of unreasonable risk.

V. Risk Assessment Summary

A. Introduction

This unit describes EPA's assessment of risks from the land application of paper mill sludge, and from alternative disposal methods. The assessment describes methods, results, and associated uncertainties. Unit B of this preamble describes the assessment of risks to wildlife, and Unit C of this preamble describes the assessment of human health risks. At the end of each unit is a discussion of conclusions that are relevant to the unreasonable risk finding in Unit VII of this preamble. This risk assessment evaluates existing data on land application, including application to agricultural and silvicultural lands, as well as mine reclamation. Landfilling and surface impounding are also evaluated. Incineration is qualitatively assessed. The applicable exposure pathways, including runoff to surface water, migration to ground water, and contamination of soil and air, are examined for each practice.

The integrated risk assessment served as the basis for this proposed rule. During development of this proposed rule, EPA revised the integrated assessment, particularly the human health assessment and the discussion of other sludge disposal practices. In general, the exposure and risk assessment models were not changed, but less conservative values were used for some of the key parameters. Summary discussions of the revisions follow.

The revisions to the integrated assessment estimate risks from current management practices, then assess risks under several options EPA considered for regulating land application. Details of risk assessment methodologies, results, and uncertainties are available in the integrated assessment and in the wildlife and human risk assessment revisions performed for this rule. Copies of all three are in the rulemaking record.

The revised risk assessments estimate exposures to measured TCDD and TCDF in sludge from the 104-mill study only, since these congeners account for most of the CDD/CDF toxicity in the sludge. Also, since TCDF is less toxic than TCDD, an estimation of total toxicity was necessary. A means of comparing relative toxicities of TCDD/TCDF to human health, referred to as the Toxic Equivalency Factor (TEF) system, has been accepted by members of the North Atlantic Treaty Organization (NATO) and by EPA. Under this system, TCDD, the most toxic congener, is assigned a value of 1. All other congeners are assigned fractional values, representing their lower relative toxicities. The concentration of any particular form or mixture of CDDs/CDFs can therefore be expressed in terms of an equivalent concentration of TCDD. The human health TEF for TCDF is 0.1. Therefore, when exposures involving both TCDD and TCDF are discussed throughout this proposed rule, the values are expressed as Toxic Equivalents (TEQs) to TCDD, comprising the sum of the identified TCDD concentration and 0.1 times the TCDF concentration.

B. Wildlife Risk Assessment

1. *Introduction.* A summary of the wildlife risk assessment as revised from the integrated assessment is presented below. It begins with a synopsis of toxicity information used in the assessment, and continues with a summary of relevant exposure analyses. EPA used two methods to assess environmental exposures and risks to terrestrial wildlife from land application of paper mill sludge: (1) Laboratory-generated pharmacokinetic models using environmental parameters reported for several states, and (2) evaluation of field monitoring data from a paper mill sludge land application program in Wisconsin.

Risks to selected terrestrial wildlife species from land application are discussed, as are risks from runoff to terrestrial and aquatic wildlife in general. Risks from landfills, surface impoundments, and incineration are then analyzed, analytical uncertainties are discussed, and general conclusions are presented.

2. *Toxicity values.* In its risk assessment, EPA used available toxicity values from laboratory animal studies as "benchmark" toxicity values. Such benchmarks serve as toxic effect standards, to which estimated or measured wildlife exposure levels are compared to estimate risks. Risk assessors prefer to use no observable adverse effect levels (NOAELs) for the most sensitive species as benchmarks, since they represent levels below which no adverse effects to the most sensitive, and thus any other species, are expected. However, some benchmark toxicity values used in this assessment are laboratory lowest observable adverse effect levels (LOAELs). This is because, for a number of species, there are no laboratory NOAELs determined from studies involving TCDD/TCDF. Use of LOAELs rather than NOAELs introduces greater uncertainty into estimating risks, because the LOAELs themselves are effect levels, with unquantified gaps existing between these lowest observed effect levels and the presumed no effect levels.

In the terrestrial scenarios, the chronic rat dietary LOAEL of 10 ng/kg/day TCDD for decreased fertility and neonatal survival was used for small mammalian species, i.e., those less than 1 kg (2.2 lbs), such as shrews and moles. For larger mammals, such as opossum and skunk, the dietary toxicity LOAEL value of 1.7 ng/kg/day TCDD for increased abortions in rhesus monkeys was considered more appropriate.

For birds, different toxicity values were used for year-round resident species, migratory species, and embryos. A NOAEL toxicity value of 100 ng/kg/day (TCDD) was used from a 21-day study with white leghorn chicks, and was adjusted for the appropriate duration of exposure for species that are year-round residents (6 ng/kg/day TCDD) and for migratory species that are present in the treated areas for only 6 months (11 ng/kg/day TCDD). A LOAEL toxicity value of 65 ppt (TCDD), as determined by direct injection of TCDD into chicken eggs, was used for avian embryos. Fish toxicity data for the aquatic risk assessment were based on a 0.038 pg/L chronic estimate. That estimate was derived from a 28-day exposure/28-day depuration study on rainbow trout yielding 45 percent mortality at a 38 pg/L lowest observable adverse effect concentration (LOAEC). This value was adjusted by three factors of 10 to account for differences in species sensitivity, variations in acute and chronic toxicities, and differences in laboratory to field toxic effects. A 3 ng/kg (3000 pg/kg) chronic threshold estimate was used for wildlife that consume fish.

For most toxicity values in the wildlife assessment, EPA relied upon these animal experiments. Due to the lack of definitive wildlife data regarding TCDF chronic toxicity, however, EPA used as the best value available the human health TEF for 2,3,7,8-TCDF of 0.1. The use of data extrapolated from human studies to wildlife appeared reasonable, since numerous human cancer studies are based on extrapolations of laboratory animal data to humans.

The key benchmark toxicity values used in the wildlife assessment are summarized in the following Table 1:

TABLE 1.—BENCHMARK TOXICITY VALUES

Species	Endpoint(effects)	Toxicity value
Terrestrial:		
Mammals:		
Rat	LOAEL(F1 and F2 decreased fertility)	10 ng/kg/day
Rhesus monkey	LOAEL(abortions)	1.7 ng/kg/day
Birds:		
Leghorn chicken	NOAEL	100 ng/kg/day
Migratory adults(Chronic)	NOAEL Estimate	11 ng/kg/day
Non-migratory adults(Chronic)	NOAEL Estimate	6 ng/kg/day
Chicken(eggs)	LOAEL(cardiovascular malformations)	65 ng/kg
Aquatic:		
Fish:		
Rainbow trout	LOAEC(45% mortality)	38 pg/L

TABLE 1.—BENCHMARK TOXICITY VALUES—Continued

Species	Endpoint(effects)	Toxicity value
Chronic[1]	Estimate	0.038 pg/L
Piscivorous Wildlife(chronic threshold)	Estimate	3 ng/kg

[1] EPA estimates.

These benchmark toxicity values were selected while considering toxicological and metabolic differences in sensitivity among: (1) Wildlife groups (e.g., mammals versus birds versus fish); (2) life stages (e.g., adult birds versus embryos); and (3) animal size (e.g., small versus large mammals). In addition to addressing these differences in sensitivity, the use of several toxicity values also suggested some range of risks. There are many more studies on different species within these animal groups. However, EPA selected what it believed to be the most sensitive test result for each of the relevant groups in order to support a decision that would be protective of the environment.

3. *Exposure modelling.* The terrestrial and aquatic wildlife risk assessments were largely based on pharmacokinetic models. The models were used to estimate TCDD/TCDF levels in various biota, as well as the risks to terrestrial birds and mammals from dietary exposures of contaminated earthworms and insects, exposures to fish from surface waters, and exposures to birds and mammals feeding on benthic organisms and fish. Risk assessments were made for several native species representative of wildlife found in different generic habitats, including silvicultural, agricultural, and mine reclamation sites, as well as nearby aquatic areas. Within each land application scenario, exposure levels were estimated for several states. Assessments of potential risks were limited to only one route of exposure per species, because the toxicity data for other routes were unavailable.

Each exposure estimate begins with a projection of soil concentration. The estimate of soil concentration takes into account a number of factors including the frequency and rate of application of sludge, the concentration of TCDD/TCDF in the sludge, and the extent of soil incorporation.

To calculate individual animal exposure, the model accounts for the rate at which prey bioconcentrates TCDD from its environment, the amount of prey ingested by the animal daily, the absorption rate of TCDD by the animal from its diet, the body weight of the animal, the fraction of the animals diet that consists of TCDD bearing prey, and the fraction of the animal's diet that consists of soil.

The parameters used in the land application models were selected to bound the range of wildlife exposures that may be associated with land application practices. EPA generally used three values for each parameter: a high, a low, and a best estimate thought to represent typical exposures. The assessment focused on the best estimate.

Wherever possible, best estimate analyses used mean values and assumed good management practices, such as installing control structures to prevent runoff, and uniform vegetative cover. In comparison, assumptions used in the models for assessments of low and high (worst case) exposures were compilations of all exposure assumption values from either the low range or the high range as appropriate, resulting in an estimate of the lowest of risks or the highest of risks. The low and high risk estimates are discussed at length in the wildlife risk assessment.

Some of the key parameters used in the wildlife risk assessment and their best estimate assumptions are provided in the following Table 2. A complete list of these assumptions, as well as the low and high values, can be found in the wildlife risk assessment documents in the rulemaking record. Table 2 reads as follows:

TABLE 2.—KEY PARAMETERS AND ASSUMPTIONS

Parameter	Assumption
Earthworm Bioaccumulation Factor.	3.5
Insect Bioaccumulation Factor.	1
Fish Bioaccumulation Factor (from sediment).	0.1
Bird Whole-body Elimination Rate.	$T_{1/2}$ = 21 days
Percent Transfer of TCDD/TCDF, Hen/Egg.	4.8
Mix of Food Sources	Species Specific
Amount of TCDD/TCDF Absorbed from Diet.	75%

4. *Risk determination.* The potential for adverse effects on each wildlife species is expressed as a risk quotient (RQ), a ratio comparing the estimated TCDD/TCDF exposure of a typical species member in a particular environment with the benchmark toxicity value selected for that species, as listed in Table 1. As this ratio increases, the likelihood of adverse effects increases. Thus, if estimates show a typical shrew to be exposed to 52 ng/kg/day in its diet, EPA would estimate an RQ value of 5.2 for the shrew, employing the rat dietary LOAEL of 10 ng/kg/day for small mammals. Note that the discussion of RQ pertains to a "typical" individual; assessment data are insufficient to allow discussion of risk to populations. EPA based some of the RQs within the risk assessment on LOAELs, since laboratory-derived NOAELs often did not exist, and wildlife toxicity data were limited for many species. Note that RQ values based on LOAELs cannot be directly compared to RQs based on NOAELs. If the RQ for a species is based on a NOAEL, an RQ of 1 means no likely adverse effect for a member of that species. However, if the RQ is based on a LOAEL, which indicates an observed adverse effect, an RQ of 1 means there still might be an adverse effect for that species' member.

For this risk assessment EPA determined soil concentrations that would produce wildlife exposures corresponding to RQ values of 1 for the most exposed avian and mammalian species, which for this evaluation were the woodcock embryo and the shrew. In both cases, the RQs were based on LOAELs. Without accounting for uncertainties, the soil concentration resulting in an RQ of 1 is 3 ppt for the woodcock embryo and 4 ppt for the shrew.

a. *Risks to terrestrial wildlife.* EPA used two methods to assess potential environmental risks to terrestrial wildlife posed by land application: (1) The laboratory-generated pharmacokinetic models discussed above; and (2) field monitoring data from a paper mill sludge land application program in Wisconsin, wherein TCDD concentrations in soils and in animals, as well as in eggs of select bird species, were measured. The risk levels determined in the pharmacokinetic modelling are

discussed below, followed by a discussion of the field data.

(1) *Pharmacokinetic modelling.* Using the modelling method, land application practices (type of application, application rate, area receiving sludge, and depth of incorporation) were first identified for known land application areas. EPA estimated expected soil concentrations, averaged over 1 year, from measured TCDD/TCDF concentrations in sludge in the 104–mill study, and proceeded to model for TCDD (or TCDD/TCDF) uptake by various species. Exposures were then compared to the appropriate benchmark toxicity values for those species.

(a) *Silvicultural land application.* When sludge is applied as a soil amendment on silvicultural sites, it is generally not incorporated into soil. In the absence of this incorporation, the soil surface exposure levels are essentially equivalent to the sludge levels.

RQs were estimated for sites where sludge application to silvicultural lands were reported in the 104–mill study. Differences in potential risks from land application as modelled were primarily due to the differences in TCDD/TCDF levels measured in sludge in the 104–mill study, and to different application rates at different sites. Risks in silvicultural areas were highest for woodcock embryos, because woodcocks feed primarily on earthworms, which were estimated to readily bioaccumulate TCDD/TCDF.

The range of RQs for the best estimate TCDD TEQ exposures were greater than 1 for many species at various locales, although less than 1 for some species at others. The estimated RQs of greatest concern included: 36 for adult woodcocks and 65 for embryos; 57 for shrews; 23 for bats; 19 for moles; and 11 for robin embryos. The TCDD TEQ RQ values for the best estimate analysis ranged down to an RQ of 0.01 for avian embryos at several locations.

(b) *Mine reclamation.* Some pulp and paper mills use their sludges in reclaiming lands disturbed by mining operations. Best estimate RQs greater than 1 were calculated for all but one terrestrial wildlife species assessed for this land application practice. The most exposed species were the small mammals and birds. Calculated RQs included: 32 to 56 for the shrew; 31 for woodcock embryos; 13 to 22 for the bat; 11 to 19 for the mole; 5.1 to 9.2 for robin embryos; and 1.4 to 2.3 for the skunk.

(c) *Agricultural land application.* Some pulp and paper mills apply their sludges to agricultural fields as soil amendments. The sludge is typically incorporated into the soil to a depth of 15 cm, as discussed in EPA's Integrated Risk Assessment.

RQs greater than 1 were estimated for 3 out of 10 terrestrial wildlife groups. The most exposed species were the shrew (RQ = 3.5), the bat (RQ = 1.4), and the mole (RQ = 1.2). However, the sludge and soil TCDD levels were very low at some sites considered in the evaluation, and the associated RQ values did not exceed 1 for any terrestrial species at those locations.

(d) *Accounting for uncertainty in risk estimates based on modelling studies.* As noted above, EPA estimated soil concentration levels equivalent to laboratory LOAELs for the most sensitive species--the woodcock embryo and the shrew, 3 ppt and 4 ppt respectively. However, because of uncertainties in both the pharmacokinetic model and the benchmark toxicity values, 3 ppt and 4 ppt may be either overestimates or underestimates. For decision making purposes, EPA believes it is appropriate to discuss not only the soil concentration that is most likely to be equivalent to laboratory LOAELs, but also the ranges of soil concentrations within which the actual equivalent to the LOAEL or NOAEL might reasonably be expected to occur.

EPA addressed uncertainty in estimating the toxicity of TCDD/TCDF to wildlife by applying uncertainty factors. For each major source of uncertainty EPA applied a factor of 10. Since the benchmark toxicity values used in this analysis are based on LOAELs derived from laboratory studies, EPA applied two factors of 10 to account for the uncertainties of using LOAELs as opposed to NOAELs, and of considering laboratory species to be as sensitive as wildlife.

Uncertainty in the pharmacokinetic model for estimating exposure was addressed by running the model with high, most likely (best estimate), and low values for the key parameters. The Agency took care to ensure that the high and low estimates were based on reasonable rather than extreme variations in the key parameters. For the woodcock embryo, the TCDD/TCDF levels in soil equivalent to the LOAEL were estimated to be 130, 3, and 0.5 ppt for low, best estimate, and high exposure assumptions, respectively. For the shrew, soil concentrations equivalent to the LOAEL were estimated to be 60, 4, and 1.6 ppt TCDD, respectively.

After accounting for uncertainty in both the toxicity and the exposure estimates, EPA determined that the range of soil levels at which adverse effects might occur in the woodcock extends from a high of 130 ppt to a low of 0.03 ppt, and the range for the shrew extends from 60 ppt to 0.04 ppt. The high range values (130 ppt for the woodcock and 60 ppt for the shrew) were estimated by using the lowest exposure assumptions from the pharmacokinetic model, without any uncertainty factor applied for toxicity estimates. The low range soil levels (0.03 ppt for the woodcock and 0.04 ppt for the shrew) were derived by adjusting the most likely exposure scenario from the pharmacokinetic model by two factors of 10. These factors were used to account for uncertainty due to use of LOAELs rather than NOAELS, and for reliance upon laboratory data as opposed to field observations.

(2) *Monitoring data analysis of terrestrial wildlife risks.* Risks to terrestrial wildlife were also assessed using the results of field monitoring of paper mill sludge applied to a Wisconsin forest plantation. The results of this study are presented here for comparison with the pharmacokinetic modelling results.

During the Wisconsin field study, TCDD/TCDF levels were measured in sludge, soil, earthworms, insects, deer mice, and several species of female birds and their eggs. Population studies were made on earthworms, deer mice, eastern bluebirds, and tree swallows. The initial results from the field study were reported by S.G. Martin et al. in "Effects of Paper Industry Sludge Containing Dioxin on Wildlife in Red Pine Plantations" (1987). TCDD in the study area's soil was measured at 11 ppt. Earthworm, deer mouse, and insectivorous bird populations were generally larger in the sludge-spread areas than in other areas. Furthermore, litter invertebrate diversity and density were unaffected by sludge, although soil invertebrate diversity and density were reduced.

No chemically-induced conditions were found during gross and histological examinations of a total of 91 animals. Species examined included deer mice and several birds. Adult robins and bluebirds in sludge-treated areas had elevated levels of liver mixed-function metabolizing enzymes, which suggest exposure to some toxic substance or substances. The report concluded that "the risk of harm to wildlife appears to be extremely low".

A second report, "Evaluation of the Effects of Dioxincontaminated Sludge on Wild Birds" by D.A. Thiel et al. (1988), and its summary, concluded that there were no adverse effects on either reproduction or growth in eastern bluebirds and tree swallows from land

application of paper mill sludge. However, the summary did not discuss the TCDD levels that had been measured in a number of American robin eggs. In the text of the report, the authors expressed concern for the 140 ppt (mean) TCDD level found in a composite sample of six American robin eggs. At that time the authors concluded that the robin egg sample may have been contaminated, because the TCDD/TCDF levels were so high and the TCDD:TCDF ratio did not match results from the eggs of other bird species. The authors used a LOAEL toxicity value of 10,000 ppt for eastern bluebirds in that study to assess risks to avian embryos.

In an unpublished report entitled "Dioxin Analyses Related to the NEKOOSA Biogreen Program", dated November 1, 1989 and prepared for the Dioxin Work Group, Thiel summarized the monitoring data from all of the Wisconsin field studies, including new data on TCDD/TCDF levels in robin eggs. Thiel concluded that the sludge land application program may be exposing some robin eggs to as much as 140 ppt TCDD. The author assessed potential risks to all bird eggs, using a new LOAEL toxicity value of 1,000 ppt in eggs derived from a ring-necked pheasant egg injection study. An EPA assessment of potential risks to bird eggs indicated that one out of nine sets of robin eggs was within a factor of 10 of the 1,000 ppt egg LOAEL. Seven out of nine sets of robin eggs, four out of sixteen eastern bluebird eggs, and two out of four tree swallow eggs were within a factor of 100 of that LOAEL.

EPA believes the Wisconsin field population studies contain major limitations, which allow considerable uncertainty in study results. Bird and mammalian species in the sludge-treated areas that were predicted to be the most exposed, such as shrews, woodcocks, or other animals that normally feed heavily on the most contaminated food source (earthworms), were not monitored. Some monitoring of robin nests was conducted, and eggs were never found in newly-built robin nests. Thiel and Martin concluded that predation of robin nests was too severe for population surveys to be successful.

It is neither unexpected nor inconsistent with the pharmacokinetic model that results of the population surveys on deer mice, as well as on bluebirds and swallows, did not indicate any adverse effects. The model used by EPA predicts few effects for these species at the exposure levels found in Wisconsin. Their diets are such that they are unlikely to ingest as much TCDD/TCDF as woodcocks, robins, or other species that feed heavily on prey such as earthworms, which bioaccumulate TCDD/TCDF to the highest levels. The salient fact is that toxicity data on TCDD/TCDF are sparse for wildlife species. Therefore, there are no means for accurately predicting which local species are the most TCDD sensitive and should be monitored for adverse effects.

A further limitation of the Wisconsin study involved the sample sizes collected for analysis. EPA believes these population samples were too small to accommodate the assessment methodology. Therefore, the monitoring data lacked adequate sensitivity to fully assess risks.

The land application of sludge in the study area also introduced overall limitations to the analysis. Land application dramatically altered soil properties such as moisture content, density, and porosity, so that study area soils were no longer comparable to those in control plots. Limitations in the comparability of survey and modelling results were due to the environmental conditions prevailing in the survey area from one year to the next. For example, greater availability of earthworms in a study year due to increased rainfall could have caused robins to feed on more earthworms and thus ingest more TCDD/TCDF. Since the pharmacokinetic model limited the robin diet to 2 percent earthworms, the model might have underestimated exposures from a soil concentration of 11 ppt TCDD than actual field uptake would indicate.

b. *Risks to aquatic organisms and wildlife feeding on aquatic organisms.* Risks to aquatic wildlife were also addressed through modelling for all best estimate and worst-case land application scenarios. Sediments adjacent to, and downstream from, land application sites are predicted to be contaminated by TCDD/TCDF. Under current sludge handling practices, TCDD/TCDF contaminated sludges/soils can be transported to the aquatic environment via runoff from land application sites.

The extent of downstream contamination of a surface water depends on many factors, including levels of TCDD/TCDF in the runoff, sediment carrying rates, and the amount of runoff entering the aquatic environment. The amount of sludge/soil runoff entering surface water similarly depends on numerous parameters, including the amount and intensity of precipitation, the inherent erodibility of the soil/sludge matrix, the soil's existing moistness and hydrologic properties, the length and degree of slope, the use of mulch or vegetative cover, the employment of vegetative management practices, and the distance to surface water. All but three of these parameters--precipitation, soil moisture/hydrologic properties, and soil erodibility--can be controlled using conventional soil conservation and agronomic practices, and by ensuring that sludge is not applied close to surface waters. For purposes of this analysis, the hydrologic, geologic, and climatic conditions, siting parameters, and soil conservation and agronomic practices in the sludge management area were assumed to be the same as in the surrounding drainage area.

TCDD/TCDF concentrations in whole body fish, surface water, and benthic organisms were estimated from projected sediment concentrations. However, because studies on benthic organisms were unavailable, animal and water concentration data from studies of typical and MEI human exposures were used to assess risks to fish and wildlife. In the runoff model providing values for that assessment, TCDD/TCDF concentrations in sediments were a function of particulate deposition. The concentrations in fish and the surface water were then determined directly from sediment levels. Water column concentrations were estimated from the sediment using partition coefficients for TCDD and TCDF.

A bioaccumulation factor (BAF) of 3.5 times the sediment contamination levels calculated for the human health risk assessment was used for "best estimates" of potential risks to bird and mammalian species feeding on benthic organisms accumulating TCDD/TCDF. This value is the same average BAF assumed for earthworms in contaminated soils. It was selected because earthworm exposures to soil are similar to benthic species' exposures to sediments, which assumes that TCDD/TCDF bioaccumulation levels in benthic organisms in sediments will at least equal TCDD/TCDF uptake levels from soil by earthworms.

Best estimate and high risk estimates for TCDD/TCDF bioaccumulation from sediments to fish were 0.1 and 10 times sediment levels, respectively. The model did not consider TCDD/TCDF bioconcentration in fish from water, bioaccumulation via the food web (especially benthic prey), or any additive component of all potential exposure routes.

The RQ for fish was determined using the surface water concentrations for TCDD/TCDF divided by the total TCDD TEQ estimate of 0.038 pg/L, as noted in

Table 1. RQs for birds and mammals feeding on benthos and fish were determined using body burden concentrations in both benthos and fish divided by the chronic threshold estimate of 3 ng/kg, as noted in the same table.

Assessments of risks in the aquatic environment were limited only to those for fish, wildlife consuming benthic organisms, and wildlife consuming fish, due to the lack of data for other (and combined) exposures.

(1) *Risks to fish.* The RQs for fish and aquatic wildlife were comparatively low for all land application "best estimates." However, these results should be evaluated with some caution because the study used to determine TCDD toxicity to fish was based on relatively long exposures (28 days). There have been some laboratory tests in which lethality has been observed several days after TCDD exposures as short as 6 hours, although the TCDD/TCDF concentrations involved were higher. It is thus possible that the toxicity factor for determining the fish RQ could be a smaller number than the value used in this assessment. The RQs, then, would be higher. While this risk assessment indicated very low risk to fish, therefore, it does not account for the fact that death could occur in some fish even though they were exposed for only a few hours while passing through a contaminated segment of a surface water.

(2) *Risks to wildlife feeding on benthic organisms.* Bioaccumulation of TCDD/TCDF by benthic organisms from contaminated sediments is a likely source of TCDD/TCDF in the aquatic food web. Because no benthic organism best estimate RQ exceeded 1, however, EPA has determined that feeding on benthos in TCDD/TCDFcontaminated streams poses low, if any, risks to wildlife.

(3) *Risks to wildlife feeding on fish.* In assessing the risks to wildlife from consuming contaminated fish, the uptake of TCDD/TCDF by fish was assumed to occur directly from sediments. EPA used BAFs estimated from fish/sediment studies, and the same TCDD/TCDF sediment concentrations as in the benthic scenario. Best estimate RQs for land application were all less than 1 for wildlife that consume fish. Therefore, it appears that land application poses minimal risks to fish-eating mammals and birds.

c. *Wildlife risks from landfills and surface impoundments.* A number of pulp and paper mills reported sludge disposal in landfills, some of which were municipal landfills. The risk estimates for landfilling in this assessment, however, were based on scenarios involving disposal in typical paper mill sludge landfills. Estimates for these facilities have been generalized to describe exposures and risks from disposal in municipal landfills.

Some pulp and paper mills identified in the 104–mill study store or dispose of sludge in surface impoundments. "Surface impoundments" are defined as facilities in which sludge is deposited on land without a cover layer of soil. For this analysis, it was assumed that the sludge contained in such facilities had a higher moisture content than the sludge deposited in landfills, at least while the facilities were active.

Both a best estimate and a worst-case assessment were made for landfill/surface impoundment disposal of sludge. The best estimate scenario for landfills assumed good management practices. In this assessment, the best estimate scenario assumed adequate runoff controls and a final soil cover. The best estimate case for surface impoundments used good management practices and considered surface impoundments surrounded by earthen embankments to prevent runoff into adjacent streams.

The distribution of TCDD/TCDF concentrations in sludge for mills that use landfills was determined. The mean concentrations reported were 62.1 ppt TCDD and 504.6 ppt TCDF. Mean TCDD/TCDF concentrations were used for the best estimate of risks to terrestrial species in landfill areas in the assessment. Worst case risks were estimated using 90th percentile exposure levels.

The best estimate risks to terrestrial wildlife from landfills appeared to be minimal. Sludge provides little, if any, nutritional value to terrestrial species other than microbes, earthworms, and some insects. Frequent disposal of additional sludge and final covering with soil minimizes the introduction and growth of resident populations of soil organisms. Risks to wildlife at closed landfills would be reduced to the degree that sludges are covered with soil.

For surface impoundments, the good management scenario was assumed to yield no runoff and thus no risks to aquatic organisms in adjacent streams.

The assumed frequency and duration of use of the surface impoundments by foraging wildlife were not different for the best estimate and the worst-case scenarios. Consequently, in the assessment of risks from good and poor management practices, no differences in potential exposure levels to terrestrial wildlife feeding in the surface impoundments were determined.

The best estimate risk quotients for landfills/surface impoundments were all less than 1 for wildlife that consume fish. Landfills and surface impoundments that use good management practices posed no risks because it was assumed that runoff was controlled from these sites. Therefore, it appears that best estimate risks to fish-eating mammals and birds from these paper mill sludge management practices are minimal. The risks to wildlife are not unlike estimates for land application scenarios, except that standing water in surface impoundments is also likely to attract migratory or resident waterfowl. Species such as herons and ducks, which might be found feeding at the surface impoundments, would likely be at risk.

Moist sludge/soil and accumulation of standing water in surface impoundments provide suitable habitats for the growth of populations of soil invertebrates, such as earthworms, and possibly some aquatic species, such as tadpoles and some insects. Bioaccumulation of TCDD/TCDF in the food web could present risks to mammalian and avian species feeding in the area. A qualitative analysis of the risks to visiting birds from feeding at surface impoundments indicated that the level of risk would be dependent on the concentrations of TCDD and TCDF present in the sludge.

Potential risks to fish were estimated to be low (RQ less than 1) for all best estimate landfill and surface impoundment scenarios.

d. *Wildlife risks from incineration.* Insufficient data were available to determine the concentrations of TCDD/TCDF in ambient air or in ash that would result from pulp and paper mill incinerators/combustors. It is currently unknown whether additional TCDD/TCDF might be formed during combustion from the available precursors, and whether the combustion process is efficient enough to destroy existing TCDD/TCDF in sludge. Absence of data on TCDD/TCDF levels in stack emissions and ash, and lack of appropriate modelling data on particulate size distribution preclude the use of complicated models to estimate downwind deposition of TCDD/TCDF on soil, plants, and in aquatic habitats. Therefore, no definitive environmental risk assessment for potential effects on wildlife was made for this disposal method. Based on the economic analysis in Unit VI of this preamble, however, EPA expects that, because of its expense, incineration will not be used to any greater extent than currently as an alternative to land application.

5. *Analytical uncertainties.* EPA solicits comment on the analytical uncertainties in this wildlife risk assessment. It is important to recognize that certain basic assumptions made in the risk assessment were critical to developing the structure of the proposed rule, and that changes to that rule may occur as a result of comments on those assumptions received from the public and the peer review. Important assumptions include, among others: nondegradation of TCDD/TCDF within land-applied paper mill sludge; the selection of particular uptake and BAFs; basing risk projections on laboratory studies with direct injection of TCDD into avian eggs, as opposed to field observations; and presuming that runoff TCDD/TCDF concentration at the point of runoff discharge into surface waters directly determines impacts on fish and humans.

a. *Non-degradation of TCDD/TCDF.* EPA has no reliable data concerning the rate of environmental degradation of TCDD/TCDF. To assure appropriate protection of the environment, therefore, EPA assumed no degradation would occur. Based on studies of other organic compounds, some scientists believe that TCDD/TCDF may decay in soil. Half-lives are estimated from 5 to 20 years. It is unclear whether decay would take place in any of the scenarios in this assessment, and if so, how rapidly. If the TCDD and/or the TCDF do degrade, dietary uptake would be reduced and the RQs in the current assessment could be overestimates.

b. *Selection of uptake and bioaccumulation factors.* In the risk assessment EPA selected a number of factors that reflect differences in dietary uptake and bioaccumulation in each of the species under study. For each exposure pathway modelled, EPA also used a variety of different factors and assumptions, which varied considerably for each representative species. If each factor deviates by a small amount, such as two or three times, in one modelling process as compared to another, multiplication alone could result in large differences in the calculated RQ. EPA is interested in comments on the choice of factors and assumptions within the wildlife assessment.

However, it may not matter whether there are small discrepancies in any particular factors, given the overall range of uncertainty in the risk assessment. Risk assessments based on limited data are not very precise, and can only allow for broad parameters of inquiry. EPA acknowledges that in any assessment of risk, there are numerous variables that cannot be verified by direct observation. Errors in these factors can easily cancel each other out. Assumptions and inferences are made in all assessments, and any assessment has a great range of uncertainty. EPA endeavors to examine a reasonable range of factors and arrive at broad conclusions for developing policy that is protective of the environment. As in the case of this risk assessment, EPA evaluates assessment parameters and, as a matter of policy, is conservative in judgments about risk.

Wherever possible in this assessment, EPA used high, low, and "best estimates" for each uptake and bioaccumulation factor. EPA believes this allowed the Agency to develop an appropriate range of risk estimates.

Finally, field monitoring data of levels in soil and levels found in bird embryos compare favorably with EPA's pharmacokinetic modelling. Field data showed measured TCDD levels of 11 ppt in soil, and of 140 ppt TCDD in a composite of six robin eggs. EPA's modelling predicted that a soil concentration of 3 ppt would result in having 65 ppt in a woodcock egg (the LOAEL value from the chicken egg study). The ratio of field measurements of 11 ppt in the soil compared to 140 ppt in the egg is approximately the same as that from modelling of 3 ppt in soil to 65 ppt in eggs, and is well within the range of scientific uncertainty.

c. *Reliance on laboratory studies.* Toxicity data for TCDD/TCDF used in the pharmacokinetic model came from studies on laboratory and domestic species rather than on native wildlife. It was assumed for purposes of the assessment that wild species are as sensitive as laboratory animals. There are some indications that this is appropriate, because toxicity values are very close for some wildlife species and the more sensitive laboratory animals. For example, acute oral LD_{50} values for wild mink (4.3 μg/kg) and bobwhite quail (15 μg/kg) are close to those for the laboratory guinea pig (0.6 to 2.5 μg/kg) and the domestic chicken (25 to 50 μg/kg). However, controversy exists over whether effects observed under laboratory conditions would be significant or even occur under field conditions.

In general, some scientists prefer field studies over modelling based on laboratory studies, because the field studies involve interaction between the entire ecosystem and the chemical being tested, and are more realistic because they involve actual populations. Conversely, some scientists prefer using models based on laboratory studies to predict effects, because they allow greater control over variables, and they more reliably identify adverse effects than field study observations. In the case of TCDD laboratory studies, however, great variability in parameter values were found for different species. This is an important limiting factor on the predictive value of modelling.

Considerable controversy has arisen over the bird embryo toxicity value. The embryo benchmark toxicity value of 65 ppt in the egg was determined by injecting chicken eggs. This test method is not reflective of normal routes of exposure. Also, blind sampling and clear dose-response relationships were not evident in the test. Furthermore, because a large number of controls died, the 65 ppt lowest dose value at which effects were observed is suspect.

While EPA acknowledges these weaknesses, the Agency considers the 65 ppt value to be reasonable. This is because a laboratory study involving ring-necked pheasants indicates that the level at which adverse effects were observed — 1000 ppt in the egg — is also a LOAEL. Furthermore, the pheasant egg study is not yet published. EPA thus considers the chicken embryo study to be the best available published data for the most sensitive avian species. Even if EPA were to use the pheasant figure of 1,000 ppt as the benchmark toxicity value for bird embryos, there would not be a significant difference in the final result. If EPA used the same bioaccumulation and uptake factors it used in the pharmacokinetic models, the RQ = 1 value (from a LOAEL) for the best estimate in EPA's modelling would be 46 ppt TEQ in soil. Using the 0.01 (combined) adjustment factor to account for uncertainties, the model would still indicate that adverse effects might occur at levels as low as 0.5 ppt.

It should be emphasized that the pheasant study is still a LOAEL. This may indicate that there could be other effects which the study is not sensitive enough or structured to find, such as infertility or egg shell thinning. Finding these effects would, for example, require an avian reproduction study. Therefore, risk assessment based on any egg injection study may underestimate risk. Even if EPA were to disregard the avian embryo study, its evaluations of soil levels would not materially change. EPA has determined that the RQ of 1 soil concentration level for a mammal (the shrew) is only slightly higher than that for the woodcock embryo (4 versus 3 ppt).

An argument has been made that, instead of relying on laboratory data, EPA should consider, as definitive, field observations in the Wisconsin studies.

Levels of 11 ppt for TCDD in soil yielded no obvious adverse effects on individuals or populations. EPA cannot determine from field studies whether the lack of observed effects results from the absence of the effects or from the inability to detect them using the studies' techniques. In the wild, animals that die are quickly devoured by scavengers. Affected animals frequently crawl into hiding, and are difficult to find and count. Furthermore, failure to find an effect can simply result from a number of factors unrelated to whether there is, in fact, a risk. For example, too few subjects may be observed, or available, in the environment to find any effects from low-level contamination. In addition, species variation and varying behavior patterns unrelated to contaminant toxicity and exposures can cause population cycling. In such a case, the fact that no effect was observed does not mean there was no effect from the contaminant. Furthermore, short-term observations in the field would not likely find reproductive dysfunctions, which would require long-term population observations.

EPA expects much interest about its use of laboratory studies in this risk assessment, and thus solicits comments about how it should weigh the use of models and laboratory data against field data, as from the Wisconsin studies, in its decision making.

d. *General uncertainties in the terrestrial assessment.* A major uncertainty in the terrestrial risk assessment involves whether the representative species EPA chose to evaluate in its exposure assessment are, in fact, appropriate surrogates for actual exposed animals. EPA believes that the natural history of each representative species indicates that it would fill a niche parallel to those occupied by the animals actually exposed.

EPA acknowledges the possibility that the terrestrial assessment could underestimate risks for a number of reasons. For example, uncertainties in the risk assessments result because NOAELs are unavailable for many species, although the use of adjustment factors when calculating final TCDD/TCDF soil concentrations reduces the potential for underestimating risks. Also, chronic effects for many sensitive endpoints used in the risk assessment models are unavailable because the studies were not run to equilibrium in the test animals. Furthermore, only one route of exposure was considered for each species; multiple routes could have resulted in higher RQs. Finally, risks may be underestimated by the use of 1-year average TCDD/TCDF soil levels. Higher soil concentrations and therefore greater risks could result from multiple applications over a number of years of paper mill sludge with varying TCDD/TCDF concentrations.

e. *General uncertainties in the aquatic assessment.* EPA assumed that the contaminant concentration in a surface water is equivalent to the runoff concentration from the entire drainage area, with no dilution in the surface water. This directly affects exposures to fish, benthos, and aquatic mammals, since this assumption regarding runoff concentrations is especially conservative.

EPA, however, believes it is appropriate to be conservative in this case. First, the assessment of risk to aquatic species was limited to only one route of exposure, due to the absence of data. For example, only the dietary exposures of aquatic mammals and birds were addressed. Uptake from contaminated sediments was the only route of exposure considered for bioaccumulation in benthic organisms. Uptake from dietary or water column exposures were not estimated. Toxicity to fish was estimated only from water column exposures. No dermal or dietary exposures were considered. Second, risk assessments were based on an average, whole-body TCDD concentration. This may significantly underestimate exposures for some predators. For example, the highest chemical levels are normally found in the viscera and outer skin of fish and aquatic organisms. For scavenger birds and mammals such as the bald eagle and other species that tend to feed mostly on the softer viscera, the risk may be higher than predicted for the average body concentration of TCDD/TCDF in aquatic organisms.

f. *Individual versus population risk.* The extent of the potential risks to fish and wildlife populations from paper mill sludge land application is difficult to assess. The quantification of adverse effects on populations was not attempted, because doseresponse curves are not available for the benchmark toxicity data, and the number of wildlife affected for each species are unknown. However, the estimated exposure levels are sufficient in many scenarios to exceed NOAEL, LOAEL, and threshold toxicity levels for individuals of many species of terrestrial and aquatic wildlife. The risk quotients are sufficiently high within many scenarios to suggest that significant adverse effects are likely for some individuals. This also applies to risks from sludge landfilling and surface impounding.

EPA specifically requests comment on possible methodologies to permit the collection and assessment of information concerning the population and ecosystem effects of TCDD/TCDF. This issue will be raised during the peer review of the wildlife risk assessment.

6. *Conclusion.* The available studies on TCDD/TCDF indicate that they produce effects at very low concentrations. Many of the key studies used in this risk assessment provided LOAELs rather than NOAELS, meaning that adverse effects were observed even at the lowest doses used in the experiments. Had NOAELs been determined, EPA would have greater confidence that doses lower than the lowest dose used in the studies were unlikely to cause adverse effects. Current paper mill sludge land application practices, however, result in soil concentrations that are significantly higher than exposure levels at which effects were predicted from laboratory studies.

Pharmacokinetic modelling has indicated that a range of TCDD/TCDF soil concentrations from 0.03 to 130 ppt may produce effects in the most exposed species. Using best estimate data assumptions (i.e., the middle of the range of values), the model itself shows effects occurring in soils with TCDD/TCDF concentrations at or below 3 ppt in the most exposed avian (woodcock embryo) species and 4 ppt in the most exposed small mammal (shrew) species. Including an adjustment factor of 100 (combined) to take into account the uncertainties of species variation and the extrapolation from laboratory to field conditions, and the use of a LOAEL rather than a NOAEL, the model indicates that effects to individuals may occur at soil concentrations as low as 0.03 or 0.04 ppt. The model cannot estimate the risks to populations.

The Wisconsin field studies have supported the EPA's model at least with respect to the extent to which a TCDD/TCDF concentration in the soil may produce certain concentrations in the eggs of several bird species. The ratio of a measured soil concentration to measured egg concentrations compared favorably, i.e., within an order of magnitude, to the ratio of a soil concentration estimated from modelling to the egg concentration obtained from a laboratory study. In contrast to the modelling results, however, the field study did not report significant adverse effects at a soil concentration of 11 ppt within the individual birds and mammals which it observed, nor did it report population effects in the recorded species occupying the study site.

Because of the uncertainties associated with modelling, laboratory

studies do not conclusively prove the potential for adverse effects in wildlife. The weakness of field studies is that the failure to observe adverse effects does not mean that effects are not occurring. Given the lack of precision in the two approaches, however, their results are consistent, particularly in that the measured TCDD/TCDF uptake in eggs was similar to the uptake projected by modelling.

EPA cannot say with a high degree of confidence the level at which wildlife effects will begin to occur. On the basis of laboratory tests and modelling extrapolations, however, it has estimated that threshold toxicity is in the range of 0.03 to 130 ppt, with the low range including the aforementioned uncertainty factors, and the high range unadjusted. The model indicates 3 to 4 ppt as the most probable lowest soil level for observable adverse effects to typical individuals in the most exposed species. The results of the field study do not dismiss concerns that individual effects might occur at lower levels, but they failed to demonstrate clear adverse effects at 11 ppt.

Because EPA acknowledges uncertainties within the risk assessments for wildlife and human health, it is assembling a peer review group to analyze the assessment methodologies, assumptions, and results. This review will be completed and its results will be considered before the final rule is promulgated.

EPA has received preliminary comments from several parties, including the American Paper Institute (API) and the Environmental Defense Fund (EDF), on its uses of certain toxicity data and assessment methodologies. Copies of these preliminary comments are in the rulemaking record.

C. Human Risk Assessment for Land Application

Of the 120 exposure pathways examined in the integrated assessment, approximately 24 pertained to human exposure to paper mill sludge. Sixteen of the 24 pathways examined human exposure to sludge from land application. This unit describes the models and major assumptions used in the integrated assessment and the modifications that have been performed since that time for the "critical exposure pathways" (defined as those producing the highest MEI risks) used in this rulemaking. While EPA is concerned about the exposures from the other pathways, it believes that by reducing the exposure from the critical pathways, exposures from other pathways will also be reduced.

1. *Integrated assessment* — a. *Land application.* For each exposure pathway, EPA developed, for current practices, estimates of maximum incremental carcinogenic risk to the MEI and to the exposed population as a whole. The integrated assessment used the same methodologies to assess exposure to the MEI and to the estimated exposed population as a whole. However, the MEI evaluation used reasonable worst-case input values, while typical or average input values were used in the population risk assessment. For the population risk assessment, the size of the exposed population also had to be estimated. The risks were estimated based on lifetime exposures (assumed to be 70 years).

The exposures estimated for each pathway were combined with the EPA cancer potency estimates for TCDD/TCDF to obtain individual risk. Individual cancer risk for a typical exposed individual was converted to annual total population risk (in cases per year) by multiplying the number of persons exposed by the individual risk and dividing by the average human life-span.

Population risks were estimated based on the mean TCDD/TCDF concentration in paper mill sludge across all of 104 mills, while the 90th percentile paper mill sludge concentrations were used in the analysis of risks to the MEI. This approach was favored over using practice-specific sludge concentrations, since the disposal practices of particular mills may shift over time.

The risks from land application practices were estimated based on generic descriptions of practices on agricultural land, silvicultural land, and reclaimed mine sites.

Exposure pathways differed somewhat depending on the type of land receiving the sludge. Two pathways were considered in developing human exposure estimates for silvicultural land application and mine reclamation: ingestion of water contaminated by soil eroded from the land application site, and ingestion of fish caught in water contaminated by eroded soil. Human risk estimates from agricultural land application considered the two pathways above and also evaluated exposure through ingestion of agricultural products (animals and crops) grown on sludge-amended land, through dermal contact, through direct ingestion of TCDD/TCDF-contaminated soil, through inhalation of volatilized contaminants and through inhalation of contaminated suspended particulates.

The critical pathways from the integrated assessment were (1) ingestion of agricultural products (animals and crops) grown in contaminated soil (when this pathway is discussed collectively with the equivalent pathway for wildlife, it is termed the "dietary pathway"); and (2) ingestion of fish caught in water contaminated by sludge or soil/sludge run-off (also referred to as the "runoff pathway"). The following discusses the exposure models used for these two pathways.

(1) *Ingestion of agricultural products.* Dietary exposures can occur when the TCDD/TCDF in sludge are absorbed into the tissue of crops which are subsequently ingested by humans. TCDD/TCDF in sludge can also be absorbed into the tissues of animal feeds or pasture grasses, which are then consumed by livestock. In addition, grazing animals can also ingest the sludge-amended soil that adheres to the leaves or roots of pasture grasses. The meat and dairy products produced by these livestock may then be consumed by humans. For the integrated assessment, the most exposed individual was assumed to be a subsistence farmer who eats both vegetable and animal food grown on his/her own sludge-amended land, while population exposure was assumed to occur through ingestion of foods sold on the market.

To evaluate dietary exposure, a model was created using information regarding paper mill sludge land application rates and sludge contaminant concentrations to calculate the uptake of contaminants by crops and by animals feeding on crops and pasture. The exposure calculation consisted of three steps. First, the model calculated tissue concentrations of contaminants in each food and feed crop as a result of land application. Second, the model estimated concentrations of the contaminants in meat or dairy products due to direct ingestion of sludge/soil and to ingestion of contaminated feed crops by livestock. Third, the model totaled the amount of each contaminant in all crops and animal products ingested by humans to estimate total typical or MEI exposure.

The specific models used to calculate MEI exposure differed somewhat from those used to estimate total population exposure. MEI exposure to crops was estimated by multiplying the daily dietary consumption of each crop by the fraction of that crop produced in sludge-amended soil, by the soil concentration, and by the crop-specific uptake rate. The daily dietary consumption rates for each type of crop were obtained for the integrated assessment from EPA's Tolerance Assessment System (TAS).

For the MEI, maximum daily consumption rates across all age-gender groups were used. The percentage of the daily consumption of vegetation assumed to originate in sludge-amended soil reflects the percentage of foods consumed in farms that have home gardens.

Added to the exposure from home-grown crops was the exposure from home-slaughtered animals raised on contaminated feed or pasture. The level of contamination in animals was calculated as the product of the contaminant concentration in feed crops (and in sludge-amended soil adhering to pasture grasses), the daily consumption of feed (and of sludge-amended soil), and uptake rates into animal tissue. The MEI dose is then obtained by multiplying animal tissue concentration by human consumption rates. An important input to this calculation is the fraction of a grazing animal's diet that consists of paper mill sludge. The integrated assessment assumes that about 8 percent of a grazing animal's diet consists of sludge-amended soil. Based on the parameters in the integrated assessment, the estimated lifetime risk is 2×10^{-2} for the MEI under current practices as determined in the 104–mill study.

Population dose is not directly dependent on TAS estimates of daily consumption. Rather, the total amount of contaminated food is estimated, using information on crop or animal product yield per acre applied. This total amount of food is then divided over the entire number of people who could buy from the market in which the product is distributed. In this case, the total available dose is not dependent on the size of the exposed population. Therefore, the estimate of the size of the exposed population does not affect the estimated incremental cases per year.

(2) *Ingestion of fish.* Particles of paper mill sludge or soil from the surface of a land application site can be transported by erosion to nearby lakes or streams. Fish living in these waters can accumulate TCDD/TCDF, which can also lead to exposure to those persons consuming the fish.

The methodology to estimate exposure from fish ingestion and surface water ingestion begins with the estimation of contaminant concentrations in water and sediment. The Universal Soil Loss Equation (USLE), site size, drainage area, and sediment delivery ratios are used to estimate the fraction of a lake or stream's sediment that originates from the paper mill sludge land application site. For the population exposure analysis, an average site size was compared to the size of a drainage area corresponding to a major stream, assumed to be 5,000 square miles (1,295,547 hectares). For the MEI analysis, a worst-case (i.e., large) site size was coupled with a worst-case (i.e., small) drainage area; under these conditions, the site would contribute a relatively large fraction to the sediment in the stream.

Once the fraction of sediment that the land application site contributes is determined, the fraction is multiplied by the concentration of TCDD/TCDF in soil particles on the site surface. The analysis then derives estimates of the concentration of contaminants in "dry" sediment. This contaminant load is then partitioned between adsorbed and dissolved phases, based on the assumption of equilibrium partitioning between the two phases.

Exposure through fish ingestion can be derived from estimated sediment concentrations. Based on the assumption that sediment concentrations are the best predictor of fish concentrations of hydrophobic compounds like TCDD and TCDF, the methodology uses empirically-derived bioaccumulation factors to estimate concentrations of contaminant in freshwater fish as a function of concentrations in stream or lake sediment. Estimated contaminant concentrations in fish tissue are multiplied by an estimated amount of fish consumed daily to yield a human dose of TCDD or TCDF. The analysis assumed fish consumption of 6.5 grams per day for a typical individual for the population exposure analysis. Since these overall averages include a large proportion of individuals who eat no freshwater fish at all, particular populations may consume larger quantities. In particular, subsistence fishers are likely to consume fish at a higher rate than a typical individual. The MEI analysis used 140 grams per day (roughly one meal per day) to represent a consumption rate for a subsistence fisher. Based on the parameters used in the integrated assessment, the estimated lifetime risk for the MEI is 2×10^{-1} under current practices.

Finally, the estimated typical exposures are combined with estimates of the size of exposed populations to derive estimates of total population risk. The size of the exposed population for both water and fish ingestion is estimated by assuming that the size of the exposed population is positively correlated with the size of the contaminated surface water and that the size is positively correlated with the drainage area. This relationship is quantified by multiplying the drainage area of the contaminated stream by the national average population density.

For fish ingestion exposure pathways, the analysis assumed that the entire exposed population ingests or eats fish contaminated at the mouth of the drainage area. Since the population exposed will inhabit a large area (1,295,000 hectares or 5,000 square miles), this assumption is conservative. In reality, dilution and dispersion of the contaminant will probably have occurred before much of the population is exposed.

b. *Landfill and surface impoundment exposure models.* Since very little information was provided in the 104–mill study on specific practices associated with these types of disposal scenarios, theoretical representations of industrial landfills and surface impoundments receiving paper mill sludge were constructed. Typical parameter values were used for the population risk analysis; worst-case assumptions were used for the MEI analysis. According to previous EPA studies on nonhazardous industrial landfills, 30 acres was thought to be a representative area for industrial landfills, which have an average active lifetime of 14 years. Landfills for the MEI analysis were assumed to be 60 acres in size. For both analyses, the landfill was assumed to be 6 meters deep. Typical surface impoundments were assumed to be 25 acres, with worst-case impoundments being twice that size. Both typical and worst-case surface impoundments were assumed to be 3 meters deep, and each facility was assumed to have 3 impoundments. For the integrated assessment, there were no data on the design and operating characteristics of paper mill landfills. To be conservative, it was assumed that there was no daily or final cover on these sites, and that they did not have liners, leachate collection systems, berms or any other runoff controls.

The integrated assessment estimated human exposure to TCDD/TCDF through four exposure pathways associated with landfills and surface impoundments:

(1) Inhalation of volatilized TCDD/TCDF emitted from the land application site surface.

(2) Groundwater contamination.

(3) Ingestion of drinking water from surface water contaminated by sludge-amended soil eroded from the site.

(4) Ingestion of fish caught in contaminated water bodies.

The pathway producing the highest risk estimate was fish ingestion.

Since landfills and surface impoundments were assumed to be uncovered, particles of paper mill sludge or soil from the landfill or surface impoundment surface could be transported by erosion to nearby lakes or streams. If humans consume water or fish from these lakes or streams, they may be exposed to TCDD/TCDF from the landfilled or impounded paper mill sludge. This analysis conservatively assumed that runoff from an inactive surface impoundment will result in the same amount of soil transport per unit area as was estimated for landfills without cover. The methodology to estimate risks from this pathway was identical to that used for land application sites, although the particular input parameters, such as the size of the site, varied.

c. *Incineration.* For incineration, only one exposure pathway, inhalation of stack emissions, was evaluated. Deposition and subsequent exposure to the contaminated soil were not assessed for lack of data.

Risks were determined for each mill using two different methods for determining emission rates. EPA was provided data on stack gas concentrations from one incinerator that burned sludge. Therefore, in the first method, referred to as the stack gas method, emission rates were calculated by multiplying each incinerator's operating hours by each incinerator's stack gas volume and the TCDD/TCDF equivalent stack gas concentration obtained for the incinerator with measured data. Emission rates were developed in units of TEQs.

In the second method, referred to as the sludge concentration method, the sludge concentration data from the 104-mill study were used. Since information on the effectiveness of existing control devices in removing TCDD/TCDF was unavailable, it was assumed as a worst case that these devices were unable to remove TCDD/TCDF and that all the TCDD/TCDF present in paper mill sludge was emitted to the atmosphere. Emission rates were estimated by multiplying the amount of paper mill sludge burned per hour at each mill by the concentration of TCDD/TCDF reported to be present in each paper mill's sludge. If sludge concentrations were unavailable, the average emission rate for all other pulp and paper mills incinerating sludge was used. While in one sense this method can be considered worst case, it must be noted that secondary formation of TCDD/TCDF as products of incomplete combustion as well as from other chlorinated organics was not considered.

Overall, it must be realized that both of these methods are limited in their ability to estimate the risks of incinerating sludge. The major problem with the stack gas method is the limited data, while the sludge concentration method was limited by the lack of information on control device effectiveness and accounting for secondary formation of TCDD/TCDF.

2. *Revisions made since the integrated assessment.* Since the completion of the integrated risk assessment, EPA has made a number of revisions to its analyses in an attempt to provide more realistic estimates of risk for the two exposure pathways, ingestion of agricultural products and fish ingestion, for which the greatest risks from land application were projected. EPA is focussing its additional analyses for this regulation on these two pathways since they would be the critical factors in developing regulatory limits. There may well be a number of revisions which would be appropriate for the other exposure pathways. However, since the analysis of those pathways is likely to affect regulatory limits less severely than the agricultural product and fish ingestion pathways, EPA is not at this time planning to revise those portions of the integrated assessment. The revised human health risk assessment, entitled "Human Health Risk Assessment for Dioxin in Sludge: Technical Support Document for the Proposed Land Application Rule" (April 1991), can be found in the rulemaking record.

a. *Land application.* Since the integrated assessment was completed, a statistical refinement of the paper mill sludge concentration data was performed. The recalculated mean and 90th percentile concentrations were incorporated into the risk analysis for this proposed rule, although the changes were relatively minor.

The subsistence farmer daily dietary consumption rates have been changed since the integrated assessment. The new values represent the weighted average lifetime daily consumption rates rather than the maximum values across all age-gender groups. The new values are based on an EPA reassessment of an FDA dietary assessment. The percentage of the daily consumption assumed to originate in paper mill sludge-amended soil reflects the percentage of foods consumed in farm homes that have home gardens.

The amount of sludge/soil which a grazing animal ingests has been revised from 8 percent to 3 percent of its diet, based on further review of available information.

In the original MEI analysis a very small drainage area (40 square miles) was used with the largest site size. The assessment now uses the average size of the cataloging units in the United States, or approximately 1,700 square miles (approximately 440,000 hectares), as the appropriate drainage area size. The cataloguing units have been defined and described by the U.S. Geological Survey in its publication entitled "State Hydrologic Unit Maps, Open File Report 84-708" (1984).

The distance between the site and surface water also has been changed in this assessment. In the original assessment, a value of 30 meters was used. To be consistent with other regulatory activities in EPA, a distance to stream of 10 meters is now assumed for the MEI. A sensitivity analysis has shown this parameter to have minimal impact on the assessment. If 30 meters was the setback distance instead of 10, there would only be a factor of 1.3 difference in exposure level. Similarly, if the setback distance was 1 mile as opposed to 10 meters, the exposure level would change by only a factor of 3.

Finally, the vegetative cover parameter has been changed. The integrated assessment assumed that the vegetative cover parameter differed between agricultural land application sites and the surrounding drainage area. It is now assumed that the vegetative cover of the land application site and the surrounding drainage area is the same for each land application practice (silvicultural land is surrounded by silvicultural land only, agricultural land by agricultural land only).

b. *Landfills and surface impoundments.* Under section 308 of the CWA, EPA is collecting data on management practices at landfills and surface impoundments. When these data are available (expected in spring 1991) EPA will decide whether regulatory action is necessary to ensure adequate controls. Under the terms of the Consent Decree in *EDF v. Thomas*, EPA must announce by October 1991 whether it considers current controls to be adequate or whether it will propose regulations. Therefore, for the purposes of this rule, EPA assumes that good management practices either are or will be in place at industrial landfills and surface impoundments where paper mill sludge is disposed. This means that the analysis now assumes that berms and other runoff controls are in place at both landfills and surface impoundments. In addition, the runoff analysis assumes that final covers are applied to the

landfill and to the filled surface impoundments.

c. *Results of the revised assessment.* The results presented are those based on the modifications mentioned above. The estimated MEI risk from the land application of paper mill sludge from the consumption of fish contaminated by runoff to surface water and from the consumption of produce, meat and dairy products grown on sludge-amended land is on the order of 10^{-3}.

Some of the major assumptions which resulted in this risk are provided in Table 3. The human health technical support document in the rulemaking record for this rule contains a complete list of the parameters and their assumptions used in the analysis. Table 3 reads as follows:

TABLE 3.— KEY ASSUMPTIONS

Parameter	Assumption
Percent of cow's diet that is soil.	3
Beef, hog, and chicken fat bioconcentration factors (BCFs).	6
Milk fat BCF	5
Fish filet BCF	5
Human agricultural product consumption rate.	Weighted average daily lifetime (varies by food item)
Fish consumption rate (subsistence fisher).	140 grams/day
Drainage area	440,000 hectares
Distance to stream	10 meters
TCDD/TCDF degradation	none

The revised assumptions for landfills and surface impoundments resulted in virtual elimination of the estimated risks from exposure pathways associated with erosion from those sites. Again, it is important to note that if the information under CWA section 308 is inconsistent with the assumptions of adequate runoff controls, then EPA is committed under the consent decree to develop regulations to ensure adequate controls.

d. *Population risks.* Since the integrated assessment, some of the assumptions used in assessing population risks have been changed. These changes included assumptions for TCDD/TCDF concentrations, disposal practices, and land application site sizes. However, these changes do not reflect recent developments in pulp and paper manufacturing processes which may have caused significant reductions in TCDD/TCDF levels in some mills. In addition, two mills may have stopped using land application as a disposal method pending publication of this proposed rule.

During the 104–mill study, 12 mills practiced land application. Of the 12 mills, 1 was applying sludge to agricultural land, 4 were applying to silvicultural land, 2 were practicing mine reclamation, and 5 were distributing and marketing sludge as a soil amendment to smaller volume users. Entry of mills into the practice of land application is not assumed to result from this proposed rule. The effects of the proposed rule on the risk were examined for the 12 mills only.

Total annual population health risks are presented in terms of estimates of the total number of cancer cases predicted for the population as a function of the options under consideration in the regulatory impact analysis. Any other effects, including longterm noncarcinogenic effects, have not been addressed. Estimates of human health risk in terms of total population cancer cases for various TCDD/TCDF concentrations in soil range from 0.3 cases per year under current practices to 0.0002 cases per year. The maximum risk reduction which could be expected from any regulatory option is approximately 0.3 cases per year.

3. *Conclusions.* From the analyses performed for this rulemaking it can be seen that:

(a) The MEI risks are on the order of 10^{-3} for land application.

(b) The population risks range from 0.3 to 0.0002 cancer cases per year.

4. *Uncertainties.* The limits developed for this rule were calculated based on those pathways estimated to have the highest risk in the assessment supporting this rule. This section identifies and describes those inputs to the exposure models that significantly influenced the risk estimates. Full descriptions of the models can be found in the rulemaking record.

a. *Construction of the reasonable worst-case scenario.* As discussed above, exposure and risk were estimated for the MEI based on a combination of typical and worst-case assumptions for many model input parameters. Combining a number of worst-case assumptions can lead to overly conservative scenarios because there is little likelihood that all worst-case conditions would occur in a single real situation. For this reason, for certain inputs, such as human dietary consumption and drainage area, typical values were used in the MEI assessment for this rule. EPA believes that the combination of worst-case and typical parameter values used builds in the appropriate degree of conservatism.

b. *Behavior of TCDD in soil.* To ensure sufficient protection of the MEI, this analysis assumes that there is no decay of TCDD or TCDF in paper mill sludge applied to land. It is unclear whether decay would take place in soil incorporation scenarios, or in lower layers of contaminated sludge at these sites. However, the proposed rule will allow monitoring to determine whether degradation has occurred and whether additional sludge can be applied.

c. *Drainage area.* Drainage area is a key parameter in the assessment of risks via fish and water ingestion. The size of the drainage area relative to the size of the land application site is an important factor in determining the magnitude to which the runoff from the land application site will be diluted in the surface water body. As explained earlier, the drainage area now used in the MEI analysis is the mean USGS cataloging unit.

d. *Model used to estimate runoff.* To estimate soil erosion from land application sites, the assessment used the USLE model and assumed that the parameters affecting the sediment delivery ratio (such as slope and vegetative cover) were essentially the same for the site and for the drainage area as a whole.

e. *Ingestion of soil by grazing animals.* Ingestion of sludge-amended soil by grazing animals accounts for a significant portion of the risk from the dietary pathway. EPA has revised its assumption and now assumes that soil represents a smaller percentage of a grazing animal's diet (3 percent), although higher values have sometimes been reported. EPA is also considering longterm average values as low as 1.5 percent if the animal does not graze exclusively on the sludge-amended field or if the grass cover is more dense. Changes in the ingestion rates used for the analysis would result in proportional changes in the calculated risks to humans.

f. *Uptake rates into animal tissue.* Because ingestion of animal products accounts for a significant portion of the human dietary health risk, the rate at which animals are assumed to take up TCDD/TCDF from their food is a particularly important parameter. In the best estimate analysis, EPA assumed an uptake rate of 4 in the soil for all animals except fish, which were assumed to have an uptake rate of 0.1 to 10 in feed or sediment. For the MEI analysis, the uptake rates ranged from 5 to 6, depending on the animal, except for fish, which had an assumed uptake rate of 10 in feed or sediment. It has been suggested that the average uptake rate could be as low as 2 for animals other than fish, and that an uptake rate of 1

should be used for fish in the MEI analysis. Reduction in uptake rates would result in proportional reductions in calculated risks to humans.

g. *Human exposure from diet.* The quantity of each food group in the human diet was originally taken from the TAS for the age and gender group with the highest daily consumption rate. Since these consumption rates were higher than would be expected for any one single individual over a lifetime, the dietary consumption values have now been changed to correspond to a weighted average daily consumption rate calculated from a reanalysis of FDA dietary data.

The MEI analysis also assumed that a relatively higher percentage of the diet originates from sludge-amended soil. This assumption reflects the fact that the MEI for this scenario is a member of a rural farm family that raises its own crops and slaughters its own animals. As much as 60 percent of certain food items are assumed to originate from the farm garden.

h. *Rate of human consumption of fish.* The MEI was assumed to consume fish at a rate of 140 grams per day. This is the 90th percentile value for a recreational fisher and one which EPA considers a reasonable rate of consumption for a subsistence fisher.

5. *Range of potential soil concentration and hectare limits for regulation.* The two critical pathways for human risks, agricultural product ingestion and fish ingestion, have different critical parameters contributing to risk. TCDD/TCDF concentration in soil is the critical parameter for estimating risk in the agricultural product ingestion pathway. In the fish ingestion pathway, TCDD/TCDF concentration in soil and size of the land application site are the critical parameters for estimating risk.

Since agricultural product TEQs are a function of the soil concentration, a soil concentration for different risk ranges must be calculated. The calculation of the soil concentration ranges proceeds through the risk assessment steps, but in reverse order. It therefore begins with a risk level and ends with a soil concentration.

For cancer risks ranging from 1×10^{-4} to 1×10^{-6}, the reference intake range from 0.6 pg/kg/day to 0.006 pg/kg/day is calculated from EPA's slope factor for TCDD of 1.6×10^{5} $(mg/kg/day)^{-1}$. The soil concentration range is calculated by dividing the intake range by a model that moves TCDD/TCDF from the soil to the MEI. This model uses assumptions regarding TCDD/TCDF uptake rates from soil into food products, daily consumption rates for the food items, the fraction of the food item originating from sludge-amended sources, and the bioavailability of TCDD/TCDF from the diet. The resulting calculated TCDD/TCDF soil concentration range is 12 ng/kg (ppt) for a 10^{-4} risk to the MEI to 0.12 ng/kg (ppt) for a 10^{-6} MEI risk.

Determining limits to control exposure through the fish ingestion pathway also requires reversing the risk assessment steps. In general, the fish ingestion TEQs are determined by the TEQs in the sediment. The sediment concentration levels are a function of the soil concentration levels and the size of the land application site.

The derivation of limits begins with the same intake range as the agricultural product ingestion pathway. The intake range translates into a fish filet concentration range from 0.3 ng/kg to 0.003 ng/kg for carcinogenic risks to the MEI of 1×10^{-4} to 1×10^{-6}, respectively, with a corresponding sediment concentration range of 60 pg/kg to 0.6 pg/kg. The sediment concentration is a function of the inverse relationship between soil concentration and size of the land application site. Table 4 shows the relationship between ranges of soil concentrations derived to achieve a range of risk levels for the subsistence farmers of 1×10^{-4} to 1×10^{-6} and ranges of hectare limits needed to achieve the same risk ranges to subsistence fishers. The table shows that to achieve a 1×10^{-4} risk level for both subsistence farmers and fishers, the soil concentration would be 12 ppt and the hectare limit would be 833. Since there is a linear inverse relationship between soil concentration and site size, the site size increases if the soil concentration decreases. Thus, if the soil concentration were 10 ppt, the site size could increase to 1000 hectares. Table 4 reads as follows:

TABLE 4.—SOIL CONCENTRATIONS, HECTARE LIMITS, AND RISK RANGES

Subsistence Fisher Risk Level	Subsistence Farmer Soil Concentration/Risk level		
	0.12 ppt(1×10^{-6})	1.2 ppt(1×10^{-5})	12 ppt(1×10^{-4})
1×10^{-6}	833 ha	83.3 ha	8.33 ha
1×10^{-5}	8330 ha	833 ha	83.3 ha
1×10^{-4}	83,300 ha	8333 ha	833 ha

6. *Other relevant information.* An example of contamination of agricultural products is a residence located near the Koppers Oroville wood preserving facility in Oroville, California. Preliminary sampling indicates that CDD/CDF levels in soil at the residence range from 36 to 42 pg/g TEQs. Contamination has been measured in beef cattle, range-fed chickens and chicken eggs, with levels in eggs ranging from 9 to 23 pg/g TEQ of egg. Assuming a 70 kg person consumes one 60 gram egg per day for 70 years, the calculated lifetime excess cancer risk is approximately 10^{-3}.

EPA is also concerned about potential reproductive effects from exposure to TCDD/TCDF. However, the daily dose which would lead to an estimated lifetime incremental cancer risk of 1×10^{-4} for the MEI is lower than the reference dose (RfD) for reproductive effects.

VI. Economic Analysis of the Proposed Rule

In support of the unreasonable risk finding presented in Unit VII of this preamble, and in compliance with Executive Order 12291, EPA performed an economic analysis of this proposed rule. The full "Regulatory Impact Assessment for Land Application of Bleached Pulp and Paper Mill Wastewater Treatment Sludges" (April 19, 1991) (RIA) is contained in the rulemaking record. This unit summarizes the RIA and identifies the likely risk reduction advantages of the regulatory alternatives. Details on risk reduction are discussed in Unit V of this preamble.

A. Benefits of Sludge Land Application

Beneficial uses of sludge arise from its nutrient supplement and soil conditioning value. Any reduction in beneficial uses from this proposed rule would therefore be a negative impact of the rule, while increases in beneficial

uses would be a positive impact. As discussed more fully below, if technical and economic considerations would cause a mill to cease land application in response to this proposed rule, those lost benefits would add to the cost of the rule. Alternatively, if more mills could land apply after the proposed rule, the costs of the rule would be concomitantly reduced. Increased land application could occur because of reduced uncertainty (for example, mills may have been waiting for proposal of this rule before commencing with land application), or because of production process changes that reduce TCDD/TCDF concentrations in their sludge to acceptable levels.

Many potential benefits of paper mill sludge would be lost if it were disposed of in surface impoundments or landfills rather than through land application. These benefits include nutrient and soil conditioning value when applied to agricultural and silvicultural lands, and nutrient and fill value when applied to mining sites. In mine reclamation, the sludge offers both practical and aesthetic returns by reducing acidic discharge into streams and providing the basis for vegetative growth which may encourage the return of animal species. In forestry, it may permit the growth of taller trees and, by providing a richer soil environment for earthworms and insects, may attract larger populations of some bird species. Additionally, land application offers a means of beneficial use of a waste material which would otherwise be consigned to disposal through landfilling, incineration, or surface impoundment.

The cost analysis developed estimates of these benefits based on the nutrient composition of paper mill sludge and on prices for similar soil supplements. The analysis used 1990 retail fertilizer prices published by the USDA and by The Fertilizer Institute to derive an average nutrient value of $7.28 per dry metric ton (DMT) based on the nutrient composition of the sludge as reported by NCASI and the Technical Association of the Pulp and Paper Industry (TAPPI). The value of soil conditioning was estimated at $4.00/DMT based on the price of rough finished compost and on the likelihood that a different soil conditioner would be used on the land if sludge were not applied. For agricultural and forestry sites, the total nutrient and soil conditioning value was estimated at $11/DMT. Similarly, for mining, the weighted average of the nutrient value and fill value of the sludge was estimated at $6.62/DMT. These values, representing the loss of beneficial uses of sludge, were added to the cost of the regulation for those land appliers who were predicted to change disposal practices as a result of the regulation.

It is possible that additional mills may begin to land apply upon promulgation of the final rule if they can meet its restrictions. Such mills may have refrained from incurring the initial costs associated with land application in anticipation of regulatory action. This cost analysis used the 12 mills which performed land application during the 104-mill study as a baseline. The scenario of additional mills starting to practice land application following regulation was not considered. If more mills were to begin land application following regulation and this decreased their disposal costs, then the real cost of the regulation would be lower than estimated in the cost analysis.

The scarcity of municipal landfill space was not considered for purposes of this analysis because, for the baseline mills, municipal landfills were estimated to be the most expensive disposal option. If additional mills were to begin land applying, demand for municipal landfill space could be reduced. This effect has not been evaluated in the cost analysis.

Current regulations require the reclamation of mine sites to restore aesthetic beauty. Therefore, EPA assumed that the reclamation of a site would occur with other materials if sludge were not available. Thus, EPA believes that the aesthetic value of the sludge is captured in the price of substitute fill material such as granite or soil.

B. Overview of Analysis

EPA evaluated a range of limits on the TCDD/TCDF concentration in soil where sludge has been land applied. Additional activities to assist in controlling exposure have also been considered, including the limitation of the amount of land in a drainage area which could be treated with sludge, the construction of berms around land application sites, testing for TCDD/TCDF concentrations in sludge and soil, and recordkeeping. In addition, management practices designed to assist in controlling runoff from land application sites within a drainage area have been examined. These include the establishment of permanent vegetative cover, notice requirements preceding land application in a drainage area, and restrictions on the time and place of application.

The data base for this economic analysis was, again, the 104-mill study. Statistics on concentrations of TCDD/TCDF in paper mill sludge came directly from the "USEPA/Paper Industry Cooperative Dioxin Study, 'The 104-Mill Study', Statistical Findings and Analyses" (July 1990). Because the 104-mill study did not contain mill-specific economic and practice information, cost data were developed using algorithms from the 1985 EPA handbook entitled "Estimating Sludge Management Costs" (EPA 625/685-010), developed in support of EPA's municipal sewage sludge rule. To make information from the 104-mill study consistent with the more generic cost data, mills were grouped by size category based on annual sludge production volumes in dry metric tons, and were generically categorized by TEQ values associated with reported sludge concentrations of TCDD/TCDF.

C. Current Sludge Disposal Practices

Twelve mills utilized land application during the 104-mill study. Of the mills not practicing land application, the majority used landfills, while others used surface impoundments or incinerators to dispose of their sludge.

Of the 12 mills, 1 was applying to agricultural land, 4 were applying to silvicultural land, 2 were providing sludge for strip mine reclamation, and 5 were distributing and marketing sludge as a soil amendment to smaller volume users. In this analysis, the costs of the regulation were examined within the context of the proposed rule's effect on the 12 mills because it was assumed that no additional mills would commence land application.

Developments in paper manufacturing technology since the 104-mill study may affect the results presented in this analysis. Two mills are believed to have stopped practicing land application pending publication of this proposed rule. In addition, the industry has submitted preliminary data indicating that changes in pulp washing and bleaching processes have substantially reduced TCDD/TCDF concentrations at a number of mills. This information suggests that the economic analysis may understate the number of mills able to continue land application activities and that the cost of the rule may be overstated.

D. Costs of the Proposed Rule

1. *Costs of sludge disposal.* To estimate the potential impact of rules on the land application of paper mill sludge, the baseline costs of sludge disposal were first determined. The baseline costs consist of the costs of sludge management and disposal, including land application and other methods reported in the 104-mill study. Sludge production and concentration data were used to develop five

representative size classes of mills. Existing EPA cost algorithms for the analysis of municipal sewage sludge disposal costs were adapted and modified for estimating the costs of disposal of paper mill sludge, and additional engineering costs were used in the calculation of costs of disposal to landfill and surface impoundment.

These analyses generally showed land application to be the least costly means of disposal at current costs, assuming that all mills face the same set of market and technological factors. Site-specific circumstances, such as the distance to suitable land application sites, may vary, however, and partially explain why all mills do not currently use land application. Table 5 below shows, for example, the total costs and costs per ton for an average size mill which generates 22,500 dry metric tons (DMT) of sludge per year. This table breaks out land application by type of use, including agricultural and silvicultural land application, mine reclamation and distribution/marketing.

Table 5 shows that costs for sludge land application are generally lower than costs for other disposal methods. At $30.35/DMT, mine reclamation is the least costly type of land application, partly because it is assumed that the mining company, rather than the mill, incurs the costs of transporting sludge to the site. In both mine reclamation and agricultural land application, site owners perform the application, while in silvicultural land application ($75.56/DMT) the mill transports sludge and applies it to its own sites. Table 5 reads as follows:

TABLE 5.—CURRENT ESTIMATED TOTAL COSTS PER YEAR AND COSTS PER TON TO 22,500 DMT/YEAR PULP AND PAPER MILL OF LAND SPREADING AND ALTERNATIVE DISPOSAL OPTIONS[1]

Type of Disposal	Total cost ($000/yr)	Cost/DMT
Land application:		
Agricultural	$909	40.40
Forestry	1,700	75.56
Mining	683	30.35
Distribution and marketing	2,072	92.11
Alternatives to land application:		
Onsite landfill	$2,555	113.54
Surface impoundment	2,148	95.46
Incineration	3,144	139.75
Municipal landfill	3,645	162.00

[1]Source: ERG estimates.

2. *Costs for soil concentration limits.* EPA considered several regulatory options designed to limit the soil concentration of TCDD/TCDF to certain levels. These limits were considered to protect wildlife and the subsistence farmer MEI by controlling exposure through the dietary pathway. Table 6 below shows the soil concentration limits considered and the associated costs of regulating at each level. Column 2 of the table shows the number of mills that EPA predicted would be able to continue land application at each concentration level based on the reported TCDD/TCDF levels in the sludge generated at each mill. The third column indicates the total costs of sludge disposal for the 12 mills at each concentration level, and the fourth column indicates the estimated cost of each regulatory option (total costs less baseline costs).

To evaluate the costs of these regulatory options, EPA first needed to determine the number of mills which could continue land application under each soil concentration limit. To do this, EPA made the following assumptions. Mills practicing silvicultural land application or mine reclamation were assumed to not incorporate sludge into the soil. Therefore, if their reported sludge concentration exceeded the soil concentration limit, they were assumed to cease land application activities. Mills applying to agricultural lands or distributing/marketing sludge were assumed to incorporate sludge into soil. Soil concentrations were calculated using the formula described in this proposed rule to calculate TCDD/TCDF concentration in the soil. If the resulting soil concentration exceeded the limit, then the mill was assumed to cease land application.

If a mill was predicted to cease land application, it was assumed to choose the next least costly sludge disposal method. Based on the analysis described in the previous section, EPA found the next least costly disposal method to be surface impounding ($95.46/DMT). Surface impounding may require considerable land in close proximity to the mill's wastewater treatment facility, and a lack of available land could limit the feasibility of this option. The considerably higher cost of disposal to municipal landfills ($162.00/DMT) reflects the general trend towards higher tipping fees for high volume wastes. Disposal to on-site landfills is estimated to cost $113.54/DMT, while the construction and operation of dedicated sludge incinerators is estimated to cost $139.75/DMT. Incineration costs include requirements for compliance with relatively stringent air quality standards.

This analysis attempted to include costs incurred by parties other than the mill, as well to as account for the loss of beneficial uses of land applied sludge as a consequence of regulation. The primary non-mill costs were sludge transportation and application, which might be borne by owners of land application sites. As discussed previously, the beneficial uses of land applied sludge were valued at $11/DMT of sludge for the purposes of this analysis, and were counted as a cost of the regulation in each instance where a mill was estimated to discontinue land application as a result of the rule.

The requirements prohibiting application to frozen, snowcovered, or flooded land, and requiring setbacks and vegetative cover, are not expected to cause changes in the procedures currently followed by land appliers, and therefore should not increase their costs.

Under these assumptions, Table 6 indicates that the baseline costs of sludge disposal were estimated at $26.2 million per year for the 12 mills. The costs of the options ranged from $1.3 million per year for a 200 ppt soil concentration limit to $13.4 million per year for 0.5 ppt or less. Table 6 reads as follows:

TABLE 6.—COSTS OF REGULATORY OPTIONS

Concentration Limits (ppt)	Mills Able to Meet Regulatory Limit	Annual Costs ($millions)	
		Total Costs of Sludge Disposal	costs of Option Above Baseline[1]
Baseline(current practices)	12	$26.2	–
200	10	27.5	1.3
100	8	30.1	3.9
30	7	31.3	5.1
10	6	31.7	5.5
5	4	38.7	12.5
3	4	38.7	12.5
1	3	38.8	12.6
0.5	1	39.6	13.4
0.3	1	39.6	13.4
0.05	1	39.6	13.4
0.03	0	39.6	13.4
Ban	0	39.5	13.3

[1] Total costs of option minus costs of current practices.

Note: Costs of options 2 to 12 include estimated Agency costs of $0.1 million per year for enforcement and administration. Under several of the options, although no mills are predicted to continue land application, there is no assurance that this will actually occur and enforcement and administrative costs will be incurred by the

Agency. Costs of option 13 (ban on land application) are lower than options 2 to 12 by $0.1 million since administrative and enforcement activities will not be needed.

Source: ERG estimates.

3. *Costs of hectare limits combined with soil concentration limits.* Soil concentration limits are designed to reduce the risks from TCDD/TCDF exposure to wildlife and the subsistence farmer. However, EPA also evaluated the cost of reducing risks to subsistence fisher MEIs through exposure from the runoff pathway. To address all of these risks, EPA examined several regulatory options which combined soil concentration limits with limits on the number of hectares in a drainage area to which paper mill sludge could be applied in order to restrict risks to the fisher MEI to levels of 10^{-3}, 10^{-4}, and 10^{-5}. Under the concentration and hectare limits which would limit the MEI subsistence fisher risk to 10^{-5}, all mills were predicted to cease land application activities. Thus, the action was similar to a ban. EPA estimated that the regulatory option limiting risks to the MEI fisher to 10^{-3} would cost approximately $6.8 million annually, and would allow three mills to continue land application.

Several options were examined which combined soil concentration and hectare limits associated with a 10^{-4} risk to the subsistence fisher. The soil concentration and hectare limit of 10 ppt and 1,000 is the only combination which limits both the subsistence farmer and the subsistence fisher to a 10^{-4} risk level. Any combination with a soil concentration limit below 10 ppt implies less than a 10^{-4} risk to the subsistence farmer while maintaining a risk of 10^{-4} to the subsistence fisher. Soil concentrations greater than 10 ppt increase risk to the subsistence farmer while holding risk to the subsistence fisher at 10^{-4}.

The costs of soil concentration and hectare limits were examined by predicting the number of mills which would be unable to continue land application, and then evaluating the costs to these mills to switch to other disposal practices. These costs, in addition to costs incurred by EPA in administering the rule and costs to individuals losing the beneficial use of land applied sludge, were included in the cost of each regulatory option.

The number of mills predicted to continue land application was determined using two steps. First, a mill's ability to meet the soil concentration limit was considered. The basic methodology behind this determination was described in the previous section. Second, of the mills that could meet the soil concentration limit, the area required to dispose of the mill's total sludge volume was determined. If this area exceeded the hectare limit, the mill was assumed to cease land application. This area was determined by dividing total annual sludge volume by the optimal application rate. In the analysis, optimal application rates were based on typical rates that promote productivity in the growth of vegetation (ie. field crops in agriculture). Estimates regarding these optimal rates were based on contacts in several states and from NCASI Technical Bulletin #439.

The estimated effect of a combined soil concentration and hectare limit of 10 ppt and 1,000 hectares is that two mills would be able to continue land application. The cost of this regulatory option is estimated to be $8.5 million per year, while the cost of a 10 ppt soil concentration limit only is estimated at $5.5 million per year. Therefore, a cost of $3 million per year could be attributed to the addition of the fixed hectare limit to protect the subsistence fisher to a 10^{-4} risk level. If, however, a hectare limit designed to limit risk to 10^{-3} were added to a 10 ppt soil concentration, it is predicted that no additional cost would be incurred over the cost of the soil concentration limit alone. The predicted annual costs of the combined soil concentration and hectare limits decrease from $13.4 million to $8.5 million for options ranging from a 200 ppt and 50 hectare limit to a 10 ppt and 1,000 hectare limit. As soil concentrations become more restrictive than 10 ppt (and their associated hectare limits become less restrictive), the costs of the options begin to increase.

The hectare limit per drainage area was calculated assuming that land application operations would produce the maximum permitted 10 ppt TCDD/TCDF concentration in soil. If the soil concentration were maintained below 10 ppt, however, the land application size could be proportionally increased without increasing the risk to the subsistence fisher. For example, if the TCDD/TCDF concentration in soil following application were 5 ppt, 2,000 hectares in the drainage area could be treated without raising the risk to the fisher above the 10^{-4} level.

EPA considered implementing a flexible hectare and soil concentration approach, which would still limit the maximum soil concentration to 10 ppt to contain wildlife and human subsistence farmer risks, but which would allow mills to spread on land areas larger than 1,000 hectares if their soil concentrations were lower than 10 ppt. The cost of this flexible hectare option with a 10 ppt soil concentration limit was estimated at $7.7 million annually, which represents an annual increase of $2.2 million over the concentration limit only option. This annual cost would be approximately $0.8 million lower than the cost of the fixed 10 ppt and 1,000 hectare limits, largely because the increased flexibility in application area was predicted to permit two additional mills to continue land application.

If more stringent soil concentration limits were to be applied with a flexible hectare limit, for example, if the soil concentration were limited to a maximum of 5 ppt rather than 10 ppt, the estimated annual cost for the option would increase to $12.6 as fewer mills were able to meet first the soil concentration limit and then the land area restriction.

Important assumptions underlie the development of the costs of options associated with any combination of soil concentration and hectare limits. The restrictiveness of hectare limits depends on the assumption that land application is not merely for disposal, but is intended to provide some benefits such as fertilizer or inexpensive fill material. To promote the benefits of the sludge, optimal land application rates are assumed to be strictly followed. If the rate of sludge land application required to meet the hectare limit was lower or higher than the economically optimal rate, it was assumed that the mills or land appliers would choose to cease land application.

This assumption presents a worst case analysis in that some land appliers may choose to apply sludge at rates considerably different from the optimal one. There is some anecdotal evidence that mills are applying at highly variable rates for the same type of site and that mills are land applying on sites considerably smaller than 1,000 hectares. In addition, some users may choose to land apply only part of their sludge volume and to dispose of the rest through alternative means. According to the 104-mill study, 91 mills used one disposal method, while 13 used 2 or 3 methods. Based on this finding and because the economic analysis showed that all disposal methods demonstrated economies of scale (that is, $/DMT for disposal decrease as annual sludge volume increases), it was assumed for this analysis that mills would use one disposal method.

The size of a drainage area assumed in the risk assessment was approximately 1,700 square miles (appr. 440,000 hectares), based on the average cataloging unit as defined by USGS. This analysis assumed that mills are

located at the center of a drainage area and that all areas available for land application are within one drainage area. This assumption does not capture all contingencies, but based on the actual location of each of the 12 mills currently land applying, it is reasonable. For example, a mill may be located on the border between two drainage areas, allowing for land application in both. Or more than one mill may be land applying within a drainage area, which would mean that the hectare limits could be more stringent on a per mill basis.

The costs of other management practices have been considered but not included in the cost of the options presented. As an alternative to hectare limits for controlling runoff, the installation of berms was considered. The estimated costs for the construction of berms surrounding land application sites were based on costs for berms for landfills and surface impoundments, and amounted to $21.90 per linear meter. This figure does not include other costs which may also be significant, such as engineering design and equipment costs.

E. Risk Reduction Advantages

Unit V of the preamble discusses the ecological and human health risks associated with exposure to TCDD/TCDF. In this economic analysis, the value of risk reduction resulting from various regulatory options is discussed.

For wildlife exposed to land application sites, potential adverse effects to highly sensitive individuals include reproductive effects and mortality. This could mean that reductions in populations or species diversity could occur. Related ecological damages may include reduced aesthetic values and diminished recreational activities associated with the damaged ecological amenity. The reduction or prevention of such damages are part of the value of the regulation. With regard to human health, exposure to TCDD/TCDF may increase cancer risks and the incidence of adverse reproductive effects. Associated economic damages may include increased medical costs and loss of labor productivity.

The proposed regulation is intended to reduce risks to wildlife and decrease ecological damages. The reduction in damages was not addressed quantitatively due to the lack of specific information regarding exposed populations and population effects. Rather, the analysis included a characterization of land application sites including species (and species surrogates) which may be affected by exposure to paper mill sludges at these sites. The value of the reduction in damages is discussed in terms of increased recreational potential such as hunting, fishing and birdwatching, and the potential for increased aesthetic values associated with the ecological amenity.

In addition to ecological risk reduction, the net change in the number of cancer cases predicted for the population as a result of the proposed regulation is an indication of some of the advantages of the rule. These numbers are more thoroughly discussed in Unit V of the preamble. However, the number of cancer cases that would be avoided by the imposition of a 10 ppt concentration limit is predicted to be 0.31 cases per year.

To the extent that human and ecological damages are prevented or controlled by the regulation, the value of the regulation is increased. The balancing of reduced risks and economic impacts of the regulation is discussed in Unit VII of the preamble.

F. Limitations of the Regulatory Analysis

Several factors were not considered in the analysis because of a lack of available data or because simplifying assumptions were made to be able to use the sludge cost model. The incorporation of these factors might result in a lower estimate of regulatory costs than estimated by EPA's cost analysis. The analysis assumed that mills engaged in land application apply all of their reported sludge volumes. In some cases, mills land apply only a portion of their sludge, and the cost to such mills of switching to another disposal method is likely to be overstated in EPA's analysis. Second, since the 104-mill study, 2 of the 12 mills may have discontinued land application; using a baseline which deleted these mills would lessen the costs associated with a regulatory option.

Furthermore, TCDD/TCDF concentrations may have decreased since reported in the 104-mill study due to voluntary changes in the pulp washing and bleaching processes. In an informal submission, one company reported achieving a 96 percent overall reduction in TCDD/TCDF formation since 1988, and provided sample test sheets showing sludge 2,3,7,8-TCDD concentrations below 10 ppt. (Letter from Stephen H. Tabor, Westvaco, to Julie Lyddon, EPA, January 30, 1991). Decreases in TCDD/TCDF concentrations of this sort throughout the industry could lower the cost of the regulation since more mills may be able to meet the lower concentration limits than this analysis determined.

Also, if mills do not follow the land application rates assumed in the analysis and apply only a portion of their sludge to small areas, the cost of a hectare limit could be less than estimated in the analysis. Finally, as previously discussed, the analysis did not consider the possibility that additional mills may begin land application following promulgation of the final rule. To the extent that entry would occur, the costs of the regulation could be less than the estimated costs in this analysis.

On the other hand, the cost of the regulation might be underestimated because of several factors. For example, if transportation distances to alternative disposal sites are greater than estimated, the cost to switch to alternative disposal methods would be greater. Lastly, site specific factors not captured by the economic models may cause some mills to switch to more expensive disposal alternatives such as industrial landfills. This could occur if, for some reason, surface impoundment costs are higher than estimated for a particular mill, or if a mill does not have available land in the immediate vicinity on which to build a surface impoundments.

G. Summary of the Regulatory Impact Assessment

Examination of Table 6 shows that a 10 ppt limit represents a relatively small incremental cost of $0.4 million per year over a 30 ppt limit. The increase in stringency from 30 ppt to 10 ppt does not yield additional risk reduction in terms of additional cancer cases avoided, but may yield increased wildlife protection and some potential for ecological damage reduction. Increasing the stringency to 5 ppt, however, represents a much larger incremental cost estimated at $7.0 million annually, with no change in risk reduction to human health, but a possible decrease in risk to wildlife.

The addition of hectare limits would decrease the number of cancer cases per year from a predicted level of 0.02 cases at 10 ppt to near zero cases per year (residual risk is predicted to remain). The hectare limit, however, would decrease the risk to the MEI subsistence fisher to 1×10^{-4} with an incremental cost of approximately $3.0 million annually over a concentration limit alone.

Increasing regulatory stringency from a 30 ppt soil concentration and 333 hectare limit to a 10 ppt soil concentration and 1,000 hectare limit would result in no predicted increase in annual costs, but a further increase in

stringency to a 5 ppt soil concentration and 2,000 hectare limit would be accompanied by an approximately $4.8 million increase in annual costs. No further reduction in the annual number of cancer cases is predicted when moving from a 30 ppt and 333 hectare limit to a 10 ppt and 1,000 hectare limit. Risks to wildlife, however, could decrease.

H. Cost Impact

Despite the uncertainties inherent in the analysis, EPA believes that the proposed rule will have a negligible impact on the national economy since the total cost is estimated at $5.5 million. The impact on the industry is also expected to be minimal based on available net income data for 7 out of the 12 firms engaged in land application. The combined annual net income of these 7 mills is over $2.5 billion, while total compliance costs for the 6 mills which are projected to stop land application under the proposed rule are estimated at $5.5 million.

It should be emphasized that these large companies are frequently horizontally and vertically integrated; that is, the majority of sales is likely to be from operations other than the paper mill. Moreover, EPA recognizes that compliance impacts and sludge disposal options may be evaluated at the mill or site level rather than at the company level. These data were not available at the time of the cost analysis. It is expected that the paper companies will provide more recent information to EPA, allowing for improved accuracy in the economic analysis and the avoidance of assumptions which could misrepresent current practices. EPA will also continue to evaluate its minimal impact determination as additional information becomes available under other information gathering activities.

VII. Unreasonable Risk Finding

A. Finding for Proposed Rule

EPA finds that, due to the presence of TCDD/TCDF in paper mill sludge, current paper mill sludge land application practices present an unreasonable risk of injury to the environment. EPA believes that the requirements in this proposed rule will protect adequately against unreasonable risk while imposing the lowest burden on society.

Specifically, EPA believes that current paper mill sludge land application practices present an unreasonable risk because: (1) They cause high apparent levels of TCDD/TCDF exposure to wildlife; and (2) for an apparently low cost, the practices could be altered to reduce the TCDD/TCDF concentration to levels that would substantially limit risk. To restrict the risk to reasonable levels while still retaining the benefits of land application, EPA has determined that those practices should be changed to reduce post-land application TCDD/TCDF levels in soil to the lowest concentrations that would still allow substantial continuation of sludge land application.

This decision was reached after weighing the scientific evidence of human and environmental risk derived from pharmacokinetic models and field studies (discussed in Unit V of this preamble) against the economic consequences of restricting land application (discussed in Unit VI of this preamble). These consequences include the loss of the benefits of the practice and the relatively low social and financial costs of imposing the proposed limitations. These limitations, furthermore, are designed to force paper mills to develop all reasonable means to reduce TCDD/TCDF levels in sludge.

For the final rule, EPA will consider a range of regulatory options justified by scientific evidence and appropriate public policy. Those options could include imposing limits on the amount of land in a drainage area to which sludge could be applied. They could also include banning the land application of paper mill sludge, although EPA does not at present believe that a ban is justified.

1. *Introduction.* EPA has extensively studied 2,3,7,8-TCDD. Its toxicity at very low levels is well known, and is discussed in the background documents contained in the rulemaking record. Other CDD/CDF congeners are also considered toxic, but are lower in toxicity than 2,3,7,8-TCDD. Issues regarding the toxicity of the other congeners have been considered in the development of the TEFs, which have been accepted by the international community. Because most of the toxicity of paper mill sludge is attributable to TCDD and TCDF, only these two congeners are addressed in this proposed rule.

TCDD has caused cancer in animals and, therefore, may pose a risk of cancer to humans. Animal tests also show significant noncancer effects for TCDD at lower dose levels than for almost all other toxic chemicals. For a number of species, laboratory tests show adverse effects even at the lowest administered dose. For these species, a NOAEL has not been established, and risk analysis is based on the LOAEL, the lowest laboratory dose level which shows adverse effects.

Toxicity, however, is not the only factor which must be considered in determining whether regulation is warranted. The extent of animal and human exposure must also be assessed, and the beneficial uses of the sludge and the costs of potential regulation must be considered. The EPA risk assessment for this rule has focussed primarily on the levels at which animals and humans are exposed to TCDD/TCDF from paper mill sludge. The following discussion explains how EPA used the evidence on these matters to reach its decision.

2. *Risk estimates* — a. *Wildlife.* In performing its risk assessment, EPA analyzed data from both pharmacokinetic modelling and field studies. Both approaches have drawbacks: modelling, which relies on laboratory techniques, may not fully account for conditions in the wild, while field studies cannot definitively demonstrate the absence of adverse effects.

Pharmacokinetic modelling indicates that at current practices, as determined from measurements in the 104-mill study, some wildlife species are receiving doses of TCDD/TCDF that far exceed the dose levels at which laboratory studies showed reproductive effects. Under EPA's RQ analysis, which shows by how many times estimated exposure levels exceed the laboratory NOAEL or LOAEL for a particular species, some species have RQs ranging from 30 to 65. For many species, the RQ exceeds 1. This is of special concern because many species' RQs are based on LOAELs, not NOAELs. This means that those species may be subject to significant adverse effects even at an RQ of 1.

EPA supports the conclusions of its pharmacokinetic modelling even though a number of uncertainties are associated with it. Both the toxicity and exposure models are reasonable. With respect to toxicity, EPA believes that the bird embryo LOAEL of 65 ppt in the egg and the rat LOAEL of 10 ng/kg/day in the diet were appropriate benchmark toxicity values to represent the most exposed avian and small mammal species. The reasons supporting these choices are in the risk assessment summary (Unit V of this preamble) and the support documents. In conducting environmental risk assessments, EPA generally attempts to identify the species within an ecosystem which is most likely to demonstrate adverse effects. For this rulemaking, EPA believes that it is appropriate to choose the most exposed species to determine appropriate risk management levels in the environment.

With respect to exposure, some field measurements seem to corroborate the results of uptake and bioaccumulation modelling. For example, EPA's best estimate modelling projected that a 3 ppt TCDD concentration in soil would result in 65 ppt TCDD levels in bird eggs, the LOAEL in a chicken egg study. One field measurement has shown an 11 ppt soil TEQ resulting in a 140 ppt concentration in a composite of six robin eggs. The ratio of 65/3 (21.7) projected in the model is generally consistent with 140/11 (12.7) observed in the field study. There is a wide variation in field measurements, however. Several have shown lower levels in eggs than models would have anticipated, and in some cases TCDD was not detected.

Although EPA relies on pharmacokinetic modelling, it acknowledges that there is a significant degree of uncertainty in modelling predictions, and that risks to some or to all wildlife species at the projected exposures may be insignificant. Published reports of field observations at a soil concentration close to that in the proposed rule have indicated no adverse effects. However, as noted in the risk assessment summary, given the constraints on field study observations, the failure to observe adverse effects does not demonstrate that no such effects occurred.

Furthermore, EPA's modelling only predicts risk to individuals within a species. EPA has insufficient information to estimate risks to populations. That is, EPA cannot say what percentage of a population may be adversely affected at any particular dose, nor can it predict what impact any potential effects would have on the population or the ecosystem as a whole.

The wildlife risk assessment shows a range of modelled soil TCDD/TCDF concentration values from 0.5 to 130 ppt at which individuals in sensitive species may be affected. However, EPA's best estimate modelling indicated that adverse effects would probably begin to occur at or below 3 or 4 ppt. Applying a one hundred-fold uncertainty factor to that LOAEL, as discussed in the risk assessment, would produce a level of 0.03 to 0.04 ppt. Although this level is 100 times lower than the LOAEL for the most sensitive species, it does not generate the same level of confidence as a NOAEL, and does not demonstrate an absence of risk.

Field study results have proven consistent with certain of the assumptions used in modelling, particularly with regard to TCDD/TCDF concentrations in soil producing particular concentrations in bird eggs. At an 11 ppt soil concentration, no adverse effects were observed in individuals of the particular species studied, and no significant population effects were observed. Although field studies cannot demonstrate the absence of effects on individuals, this result may suggest that, at least with respect to population effects, the threshold effect level may be 11 ppt or higher.

b. *Human health effects.* Human cancer risks to the general population appear to be relatively low. Even under current practices, EPA estimates that 0.0002 to 0.3 cases per year may be attributable to land application.

3. *Risk reduction and economic consequences.* EPA's choice of the 10 ppt soil concentration limit is based on balancing the risk considerations discussed above with the economic consequences of regulation.

For wildlife, the proposed 10 ppt limitation reduces RQs based on the wildlife risk model from levels as high as 65 to an RQ of approximately 3 for the most exposed species. With respect to wildlife risks, EPA would ideally prefer setting a soil concentration limit which would reduce exposures to the level where risk is insignificant. EPA accordingly evaluated the 0.03 ppt TCDD/TCDF soil concentration limit which modelling suggested as protective. However, this soil concentration, besides being 33 times lower than the analytical limit of detection and therefore difficult if not impossible to enforce, would effectively ban paper mill sludge land application. Because of the benefits of land application, both in terms of the sludge's value as a soil conditioner and as an alternative means of disposal, as noted in the analysis in Unit VI of this preamble, EPA does not currently advocate a ban.

EPA's analysis indicates that a 10 ppt TCDD/TCDF soil concentration is the lowest practicable level that would still allow substantial spreading. EPA's analysis of the 104-mill study shows that 6 of the 12 mills currently spreading could continue land application at the 10 ppt soil concentration limit. EPA has received subsequent information indicating that TCDD/TCDF levels throughout the industry have been substantially decreased as a result of bleaching process changes, and that other mills may be able to spread at the 10 ppt limit. Furthermore, mills not currently land applying may choose to begin the practice.

EPA cannot precisely estimate the extent to which land application can continue. For the purpose of this proposal, however, the 10 ppt TCDD/TCDF soil concentration limit seems appropriate. In choosing 10 ppt as the soil concentration limit, EPA acknowledges that all hypothetical risks will not be eliminated. This level, however, is below the 11 ppt concentration at which no effects were observed in the field, and is well within the range of the scientific uncertainty in EPA's pharmacokinetic modelling.

In addition to addressing risks to wildlife, the 10 ppt level is estimated to reduce cancer risks to the general human population to nearly zero.

There appears to be little incremental risk reduction from imposing levels lower than 10 ppt, while the incremental costs would be comparatively high. EPA estimates a total cost of $5.5 million for the 10 ppt soil concentration limit in this proposed rule. A further restriction to 5 ppt has been estimated to add $4.8 million to that total, an approximately 60 percent incremental cost. In addition, lower levels would produce virtually no incremental risk reduction in statistical cancer risks for the general population.

The 10 ppt soil concentration may still result in the bioaccumulation of TCDD/TCDF throughout the food web and pose a risk of reproductive and developmental toxicity to birds and small mammals. The 10 ppt level is three times the lowest level at which adverse effects were observed in laboratory chicken egg injection studies, and is two times the laboratory LOAEL for small mammals. Further risk reduction could be achieved by setting a lower soil concentration limit. Given the uncertainty of the models, however, there is no assurance that a limit below 10 ppt would result in significant risk reduction. Given the balance between the incremental costs of lower soil concentration limits and the considerable uncertainty in extrapolating from laboratory experiments to the wild, and in determining what adverse effect may actually occur in chronically exposed wildlife, EPA believes that the remaining risks at 10 ppt are reasonable. EPA specifically invites comment on alternative TCDD/TCDF soil concentrations.

In implementing this limit, EPA specifically elected to apply it to all paper mill sludge land application, even though that restriction may effectively eliminate distribution and marketing to small volume users. Distribution and marketing is of concern to EPA because, according to currently available information, most sludge would have to be incorporated into the soil to meet the proposed 10 ppt TCDD/TCDF soil concentration limit. Permitting distribution and marketing for general, unsupervised use — for example, by

homeowners in gardens — could result in unincorporated application, producing high soil TCDD/TCDF concentrations and significantly increasing health and environmental risks. EPA requests comment on the degree of risk that may be presented by distribution and marketing applications, and on the appropriate level of regulation for such activities.

B. Alternative Finding

The proposed rule is driven by the risk of injury to the environment, not by human cancer effects. However, because of the uncertainties in the science, EPA acknowledges that there is a range of acceptable policies under the unreasonable risk standard of TSCA. Accordingly, EPA is soliciting comment on an alternative finding to allow for the inclusion of a limitation on the amount of land in a drainage area to which paper mill sludge may be applied, in order to protect human MEI's from cancer risks.

As discussed in Unit V of this preamble, EPA's risk assessment indicated that current paper mill sludge land application practices could present significant lifetime cancer risks to two categories of potential human MEI's: subsistence farmers and subsistence fishers. Under current practices, lifetime cancer risks for subsistence farmers and fishers are estimated to be on the order of 10^{-3}.

The 10 ppt soil concentration in the proposed rule would have the effect of limiting risks to the subsistence farmer to a 10^{-4} level. A soil concentration limit alone, however, would only partially address risk to the the subsistence fisher. Risk to the fisher MEI could result from the runoff of TCDD/TCDF from an application site, and is a function of both the soil concentration and the amount of land in a given drainage area to which TCDD/TCDF was applied. To control this runoff risk, it may be reasonable to impose a limit on the amount of land in a drainage area to which sludge could be applied.

To protect the MEI fisher to a 10^{-4} risk level, EPA may implement an application area size limit of 1,000 hectares per drainage area. Combining that hectare limit with the 10 ppt soil concentration limit, based on the 104-mill data, would mean that 2 of the 12 mills currently spreading would be predicted to continue the practice. That reduction in the number of spreading mills would amount to an approximately $3.0 million increase in the cost of the regulation, as described in Unit VI of this preamble. Reducing MEI fisher risks to a 10^{-5} level, however, would effectively ban land application.

EPA has not included a hectare limit as part of this proposed rule because the incremental cost of such a provision appears to be excessive in light of the hypothetical nature of the risk and of the low aggregate risk, and in view of the limited aggregate risk reduction which would be achieved. Currently available data has not demonstrated the actual existence of individuals in the subsistence fisher category who would be placed at risk by sludge land application activities, and EPA expects that any such population would be very small. Further, EPA's modelling shows almost no human cancer risks to the general population from runoff. The uncertainties associated with the risk assessment would not in themselves preclude the Agency from imposing an area limit. However, in view of the nature and uncertainties of the subsistence fisher risk assessment coupled with the relatively high incremental cost of the area limitation, the Agency has chosen to suspend imposition of the area limitation until some of the uncertainty has been reduced, significant population risks have been identified, or the incremental costs have been shown to be lower than currently estimated.

EPA reserves the option of imposing a hectare limit if it proves justified, however. As described in Unit II of this preamble, ongoing studies like those discussed at the Banbury Conference are exploring and further defining the health hazards of TCDD/TCDF, and may offer additional support for the conclusions drawn in the risk assessment. In addition, information concerning the existence and size of the subsistence fisher population may require EPA to revise its estimate of the actual risk and of the potential risk reduction which may be achieved by imposing such a limit. Finally, although EPA has considered the 1,000 hectare limit as restrictive in its economic analysis in Unit VI of this preamble, EPA acknowledges that the limit actually may not be significantly restrictive. Thus, the $3.0 million may be an overestimate, and the incremental cost could actually be very low. The 10^{-4} risk level may be readily achievable. Under such circumstances, EPA would find the imposition of a hectare limit warranted if the population risks including risks to subsistence fishers exceeded the cost of the hectare limit.

VIII. Other Regulatory Options Considered

A. Drainage Area Limitations

The requirements discussed in this unit are proposed as the means by which limitations could be imposed in the final rule upon the amount of land in a drainage area to which paper mill sludge could be applied, as discussed in Units V, VI, and VII of this preamble. Comment on these potential provisions is specifically requested.

If drainage area hectare limitations were imposed, mills would be required to specify in their notice filings and records the drainage area of each of their application sites by reference to the USGS Hydrologic Cataloguing Unit Number for the location of the site. In all site-related records and notices, mills would be required to indicate the total number of hectares in each drainage area to which sludge was applied, and the TCDD/TCDF concentration of that sludge. Where a mill proposes to use several sites in a single drainage area, it could identify and list all of the sites in a single notice. For the purpose of this rule option, the USGS Hydrologic Cataloguing Unit in which the land application site was located would be considered the drainage area for the site.

In order to implement this option, the regulation would include several additional provisions. Section 744.125(a) of the proposed rule would include a requirement that the drainage area of the site be specified by reference to the USGS Cataloguing Unit Number for the area containing the site, and that the number of hectares in the drainage area to which sludge would be applied also be specified.

Section 744.125(a) of the proposed rule would also be altered to include a paragraph requiring the generator of paper mill sludge, at least 15 days prior to filing a notice, to conduct a diligent inquiry, search and review of the notices on file with EPA to determine whether its land application activities, incombination with those already described in existing notices, would exceed the hectare limitation on spreading in a given drainage area. If a 1,000 hectare limit were imposed, for example, and existing notices covered 800 hectares, the generator proposing additional operations in that drainage area could not submit any notice describing land application sites totalling more than 200 hectares. If existing notices covered all 1,000 of the permitted spreading hectares in a drainage area, no generator could file any further notice for land within that drainage area.

A new section, 744.125(d), would be inserted into the proposed rule to establish the drainage area hectare limit, and to define the USGS Hydrologic Cataloguing Unit including

the site as the drainage area for the site. For example, if a 1,000 hectare limit were imposed, the section would specify that paper mill sludge could not be applied such that the combined total of all land application activities exceeds 1,000 hectares in each drainage area. If flexible hectare limits were imposed to vary with the actual soil concentration, this subsection would include a formula for calculating the number of hectares corresponding to the permitted total TCDD/TCDF load for the drainage area.

Section 744.135 of the proposed rule would include the requirement that the drainage area for each site be identified, and that the number of hectares in each drainage area, as well as the TCDD/TCDF concentration and weight of sludge applied to that area, be recorded.

B. Permit Systems

As an alternative to the drainage area limit systems described above, EPA is considering promulgating one of two permit systems. Each is intended to provide more land application flexibility by taking into account site-specific factors. One system is intended to be an alternative means of meeting national requirements; the other would allow for the development of requirements based on site-specific determinations of unreasonable risk.

1. *National standard permits.* In the first permit system, the national unreasonable risk standard described in the current proposal and modified by the addition of a hectare limit would serve as the standard for judgment of each permit. EPA would continue to limit the soil concentration to 10 ppt, but would allow for variation in the hectare limit. By keeping the 10 ppt limit, unreasonable risks to wildlife and humans from ingestion of food crops grown and animals grazed on sludge-amended lands would still be prevented. If a mill could demonstrate that it could control runoff to limit risks to the human subsistence fisher MEI to less than 10^{-4}, then EPA could consider allowing the mill to apply to more than 1,000 hectares.

Mills would be required to demonstrate that they could control the annual amount of sludge or sludge/soil runoff from the land application site after runoff controls are in place. Land application would have to be controlled to the extent that total annual runoff from the entire drainage area would not exceed a 10^{-4} risk to the subsistence fisher. In addition, any mill intending to land apply sludge would have to control runoff from its site to the extent that the 1,000 hectare national runoff standard would not be exceeded. This requirement is particularly important if there is more than one land application site in a drainage area, and is of greater importance if more than one mill is land applying in a single drainage area. Total runoff would probably be determined by manipulating the USLE and a sediment delivery ratio specified by EPA, followed by a determination of the risks from that amount of runoff.

This system would allow for more flexibility in the amount of sludge a mill could dispose of through land application. For example, if a mill intended to apply paper mill sludge such that the resulting soil concentration on a plot of land were to be 5 ppt, then the mill could apply sludge up to 2,000 hectares. The mill costs for this permit option are estimated at $10,000-$13,300 per permit. EPA's cost of administering this permit option are estimated at $1900 per permit.

2. *Site-specific permits.* In this permit system, unreasonable risk would be determined by EPA on a site by site basis. There would be no 10 ppt/1,000 hectare limits; instead, the maximum soil concentration and maximum hectare limits would be determined in conjunction with the appropriate levels of wildlife and human risk for that drainage area. Mills would be required to demonstrate that their sludge management practices adequately control exposure and release. EPA would determine whether resulting exposures produce unreasonable risk based on sitespecific factors such as the nature and behavior of potentially exposed human and environmental populations, runoff controls, other sources of TCDD/TCDF, the size of the drainage area, slope of the site, soil type, local economic conditions, benefits from land application at a particular site, and others. If a mill could convince EPA that risks from land application in a particular drainage area could be adequately controlled, then EPA would grant the permit. The risk levels in the current proposal could possibly serve as national guidelines. This approach would give EPA more flexibility in evaluating unreasonable risk in the context of conditions within each drainage area. EPA cost for administering this permit option is estimated to be $3,800 per permit.

In both permit systems, mills would have flexibility in their land application practices. EPA could track the total land area and resulting soil concentration(s) in the drainage area from all land application activities including past land application. Permits could also facilitate resolution of disputes between multiple mills intending to apply in the same drainage area in that EPA could grant or deny permits based on the total drainage area risk.

In both permit systems, local risks would be calculated by EPA using the same procedures as used for the risk assessments performed for this rule. The analyses would be modified by EPA as appropriate to reflect local conditions. EPA would perform the risk assessments for each potential land application site prior to approving permits. EPA may also allow the mills to perform the risk assessments. If this were the case, the methodologies would be provided by EPA through a guidance document. EPA would publish the guidance document upon promulgation of the final rule. Based on discussions with risk assessment consultants, mill costs for the site-specific permits are estimated to range from $50,000 to $150,000 per site.

3. *Administrative procedures.* To issue permits, EPA would require the mill to receive the approval of the appropriate Regional Administrator or the Director of the Office of Toxic Substances (OTS). The permit application would include a complete land application program description, the legal location and description of the site, the TCDD/TCDF TEQ (as defined in this proposed rule) concentration in the sludge to be land applied, the resulting soil concentration, the sludge management practices to be used, and how the site would be managed including staffing and funding descriptions. Application requirements would also include any information that the Regional Administrator or the OTS Director identifies as reasonably necessary to approve the permit.

The Regional Administrator or OTS Director would approve the land application permit with any conditions that he/she determines are necessary to ensure that the land application activity will not present an unreasonable risk of injury to human health or the environment from TCDD/TCDF. The approval would be in writing and signed by the Regional Administrator or OTS Director. EPA is considering placing the permit systems on a 5-year renewal cycle, at the end of which time the permit process described above would begin again. During the time in which permits would be developed, no mill would be allowed to land apply sludge. Land application could commence upon approval and issuance of the permit.

EPA is also considering accepting determinations of unreasonable risk from applicable state authorities to meet the federal requirements under TSCA, if the states could demonstrate that the same TSCA principles of unreasonable risk were used. EPA would retain the

authority to reject state determinations. EPA could also delegate to the states the authority to conduct inspections which the Agency could use in determining whether permit violations have occurred. EPA is also considering allowing the states to act as representatives of the Agency in enforcing permits. In such cases, EPA would retain the authority to determine whether a permit violation has occurred, and would bring the enforcement action. EPA specifically requests comment on whether a site-specific permit system should be administered at the federal or the state level.

If either permit option were chosen, EPA expects that it would be in place within 18 months of the date of this proposal, consistent with the Consent Decree in *EDF/NWF v. Thomas* [see Unit II.A of this preamble]. The effective date of the final rule would probably be delayed to allow the mills time to develop their permit applications. EPA wishes to emphasize that it does not intend to re-propose this rule if it decides to promulgate any of the permit systems discussed in this unit. Therefore, EPA requests that all interested parties submit thorough, complete comments on these permit options.

C. Alternative Recordkeeping Requirements

An additional provision considered by EPA would have required that information on sludge land application activities be entered into official legal records pertaining to the land, including but not limited to the deed for any property onto which paper mill sludge has been applied.

IX. Alternative Statutory Approaches

Sections 6(c) and 9(b) of TSCA require EPA to take regulatory action on a chemical substance or mixture under other statutes administered by the Agency if actions under those statutes could eliminate or reduce to a sufficient extent the risks posed by the substance or mixture. TSCA may still be used, however, if the Administrator determines that it is in the public interest to take action under it. In this unit, EPA describes its consideration of the RCRA and CWA as statutory mechanisms for addressing the risks posed by paper mill sludge.

A. Resource Conservation and Recovery Act (RCRA)

Under RCRA Subtitle D section 4004(a), EPA has the authority to promulgate regulations containing criteria for distinguishing between proper disposal facilities (for example sanitary landfills or land application areas) and open dumps [42 U.S.C. 6944(a)]. The criteria are to assure that "there is no reasonable probability of adverse effects on health or the environment from disposal of solid waste" at proper disposal facilities. Those facilities that do not satisfy the criteria are considered to be engaging in "open dumping", which is prohibited by RCRA section 4005(a).

EPA could utilize the authority under section 4004(a) of RCRA to establish limits on the levels of TCDD/TCDF in paper mill sludge for land application. However, EPA's authority to enforce such rules issued under section 4004(a) is limited under RCRA. Because TSCA will provide EPA with more direct enforcement authority (under sections 11, and 15 through 17) than RCRA Subtitle D, EPA has determined that it is in the public interest to utilize the authority of TSCA section 6 to protect against the risks from land application (as defined in this rule) of paper mill sludge.

EPA has authority under RCRA Subtitle C section 3001 to list pulp and paper mill sludge contaminated with TCDD/TCDF as a hazardous waste (42 U.S.C. 6921). Such a listing would subject paper mill sludge to the full set of regulations applicable to generators, transporters, and owners and operators of treatment, storage, and disposal facilities that have been promulgated under RCRA Subtitle C (42 U.S.C. 6921 et seq.; 40 CFR parts 260–271).

Although RCRA Subtitle C provides EPA with authority to address the risks posed by the disposal of paper mill sludge to human health and the environment, the Administrator has determined that it is in the public interest to utilize the authority provided under TSCA section 6(a) at this time, rather than RCRA Subtitle C, to reduce those risks. As indicated above, once paper mill sludge is listed as a hazardous waste under RCRA section 3001, the sludge would be subject to the full range of hazardous waste management regulations. By utilizing the authority of TSCA section 6(a), EPA can specifically tailor regulatory requirements to the particular risks that paper mill sludge presents to human health and the environment. For example, use of TSCA authority allows EPA to address the specific disposal practice of land application through this regulation while it continues to investigate whether additional regulations are required for other storage and/or disposal practices.

B. Clean Water Act (CWA)

Because paper mill sludge is generated through the treatment of pulp and paper mill process wastewaters, EPA also considered regulating paper mill sludge land application under CWA. EPA considered such an approach in order to promote regulatory efficiency. This strategy would have relied on in-place CWA permit programs to implement paper mill sludge land application requirements.

Two provisions of the CWA potentially provide authority to regulate the land application of paper mill sludge. Section 405 of the CWA requires EPA to develop regulations that identify pollutants that may be present in municipal sewage sludge which may adversely affect human health and the environment, and to develop specific numerical pollutant limits [33 U.S.C. 1345(d)]. In the Water Quality Act amendments of 1987, Congress expanded the scope of the regulations required by section 405(d) to include sludges generated by industrial manufacturing and processing facilities that treat municipal sewage along with industrial wastes and wastewater [Conf. Rept. 1004, 99th Cong., 2d Sess. 160 (1986)].

In February 1989, pursuant to its authority under section 405, EPA proposed standards for the disposal of sewage sludge when it is applied to land, placed in surface disposal sites, disposed of in sludge-only landfills, incinerated, or distributed and marketed for home garden use. However, as explained in the preamble to the "Standards for the Disposal of Sewage Sludge" (54 FR 5746, 5792-93, February 6, 1989), EPA did not have sufficient data to develop standards for sludge from industrial facilities at the time of that proposal. EPA further indicated that, after evaluation of certain data, it would determine whether additional regulations should be developed for industrial facilities that co-treat municipal sewage with industrial wastewater and anticipated that any further regulations would be developed under the joint authority of RCRA and CWA section 405.

EPA has decided that the public interest dictates regulation of paper mill sludge under section 6(a) of TSCA rather than section 405 of the CWA. Section 405 does not authorize comprehensive regulation of industrial treatment sludge, but only of industrial sludge with a municipal sewage component. Consequently, facilities that generate wastewater sludge that is not derived, in part, from the treatment of

sanitary wastes as well as industrial wastewater would not be subject to any regulation developed under section 405. This statutory anomaly could encourage some facilities to re-pipe municipal sewage from any combined treatment facility merely to avoid regulation, a result clearly at odds with environmental protection. By contrast, any TSCA regulation would apply whether or not the sludge resulted from co-treatment of process wastewater and sanitary flow.

EPA also considered regulating paper mill sludge under section 304(e) of the CWA [33 U.S.C. 1314(e)]. Section 304(e) provides EPA with the authority to publish best management practice (BMP) regulations. These may be supplemented with effluent limits which control plant site runoff, spillage, leaks, sludge and other waste disposal, and drainage from raw material storage which may contribute significant amounts of toxic or hazardous pollutants to waters of the United States. Such regulations and applicable controls must be included in any National Pollutant Discharge Elimination System (NPDES) permit issued for a point source within the affected industrial category under section 402 of CWA.

EPA concluded that regulation under section 304(e) is inappropriate at this time. BMP regulations for environmentally sound management of paper mill sludge would become enforceable only when incorporated in CWA NPDES permits issued to point source dischargers. These permits are issued for fixed terms not to exceed 5 years, and may be modified during the permit term under specific conditions [40 CFR 122.46 and 122.62]. Under EPA's current regulations, new BMP regulations for a point source category are not cause for a modification of NPDES permits. Consequently, unless the specific terms of an NPDES permit provided for its automatic reopening to incorporate newly developed BMPs, such BMPs would not be included until the permit was reissued. As a result, in certain instances there could be some time lag between the issuance of CWA BMP regulations for paper mill sludge and a legal requirement to comply with the conditions dictated by the regulations.

There would be no similar problem with regulations issued under TSCA section 6(a) because such requirements are effective immediately upon issuance of a final rule, and do not require incorporation into specific existing permits.

X. Export Notification

Section 12(b) of TSCA requires any person who exports or intends to export to a foreign country a chemical substance or mixture for which a rule has been proposed or promulgated under section 6 to notify EPA of such exportation or intent to export. Since paper mill sludge is a mixture of chemical substances, it would be subject to export notification requirements.

EPA anticipates that the burden of export notification requirements will be minimal. EPA does not believe that a significant amount of sludge is exported. Companies are required only to provide notification the first time they export or intend to export paper mill sludge to each country in a calendar year. The notification consists of the company's name and address, name of the mixture, the TSCA section 6 action that triggered the notice, countries that are to receive the export, and the export date or intended export date. Exporters should see 40 CFR 707.60 through 707.75 for further details on the export notification requirements.

XI. Confidential Business Information

Any person who submits written comments containing confidential business information (CBI) must mark the comments as "Confidential Business Information". Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as "Confidential Business Information" will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be CBI must prepare and separately submit a public version of the comments that EPA can place in the public file. CBI comments should be submitted in triplicate to: Document Control Office (TS-790), U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. CBI comments should be mailed in a double envelope with "CBI" and the docket number OPTS-62100 marked on the inner envelope, and the comments should be marked with docket number OPTS-62100.

XII. Hearing Procedures

If persons request time for oral comment, EPA will hold informal hearings in Washington, DC. Any informal hearing will be conducted in accordance with EPA's "Procedures for Conducting Rulemaking Under Section 6 of the Toxic Substances Control Act" (40 CFR part 750). Persons or organizations desiring to participate in the informal hearing must file a written request to participate. The written request must be sent to the Environmental Assistance Division at the address listed under FOR FURTHER INFORMATION CONTACT. The written request must include:

1. A brief statement of the interest of the person or organization in the proceeding.
2. A brief outline of the points to be addressed.
3. An estimate of the time required.
4. If the request comes from an organization, a non-binding list of the persons to take part in the presentation.

Organizations are requested to bring with them, to the extent possible, employees with individual expertise in and responsibility for each of the areas to be addressed. Organizations which do not submit comments on the proposed rule will not be allowed to participate at the hearing, unless the Record and Hearing Clerk grants a waiver of this requirement in writing.

The deadline for receipt of written requests to participate in a hearing is in the DATES section of the preamble.

XIII. Rulemaking Record

A. General Information

EPA has established a record of this rulemaking (docket number OPTS-62100). The record includes basic information considered by EPA in developing this proposed rule. EPA will supplement the record with additional information as it is received.

EPA will accept additional materials for inclusion in the rulemaking record at any time between this proposal and designation of the complete, closed docket. EPA will identify the complete record by the date of promulgation. A public version of this record containing nonconfidential materials is available for reviewing and copying from 8 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, U.S. Environmental Protection Agency, Rm. NEG004, 401 M St., SW., Washington, DC 20460.

B. Support Documents

(1) USEPA, OPTS, ETD. "Regulatory Impact Assessment for Land Application of Bleached Pulp Paper Mill Wastewater Treatment Sludges." Final Report. (April 17, 1991): 214pp. Prepared under Contract No. 68-D0-0020 by ERG, Inc., and Abt Associates, Inc.

(2) USEPA, OPTS/OSW. "Estimates of Exposure and Risks to Wildlife from Land Applications of Pulp and Paper Sludge." Ch. 3. In: *Assessment of Risks from Exposure of Humans, Terrestrial and Avian Wildlife, and Aquatic Life to*

Dioxins and Furans from Disposal and Use of Sludge from Bleached Kraft and Sulfite Pulp and Paper Mills. (July 1990):329–365. EPA 560/5–90 013. [Aka "Integrated Risk Assessment"]

(3) USEPA, OPTS/OSW. "Estimates of Exposure and Risks to Humans Based on Generic Disposal/Reuse Scenarios," Ch. 6. In: *Assessment of Risks from Exposure of Humans, Terrestrial and Avian Wildlife, and Aquatic Life to Dioxins and Furans from Disposal and Use of Sludge from Bleached Kraft and Sulfite Pulp and Paper Mills.* (July 1990):427–535. EPA 560/5–90 013. [Aka "Integrated Risk Assessment"]

(4) USEPA, OPTS, HERD. "Environmental Risk Assessment for TCCD and TCDF-Contaminated Pulp Sludges on Terrestrial and Aquatic Wildlife". (July 31, 1991):96pp. B. Rabert. [Revision to Ch 3. in Ref. 2].

(5) USEPA, OSW." Human Health Risk Assessment for Dioxin in Sludge: Technical Support Document for the Proposed Land Application Rule". (April 1991). Prepared under contract by Abt Associates. [Revision to Ch. 6 in Ref. 3].

C. Other References

(1) API. Preliminary comments re: EPA's uses of certain toxicity data and assessment methodologies. American Paper Institute.

(2) EDF. Preliminary comments re: EPA's uses of certain toxicity data and assessment methodologies. Environmental Defense Fund.

(3) EDF/NWF. Citizens Petition of October 22, 1984 requesting EPA to regulate chlorinated dibenzo-*p*-dioxins (CDDs) and chlorinated dibenzofurans (CDFs). Environmental Defense Fund and National Wildlife Fund. Filed at OPTS 210016.

(4) EDF and *NWF v Thomas*. Consent Decree, July 27, 1988, U.S. District Court Civil Action No. 85–0973. (July 27, 1988):22pp.

(5) Martin S. G., D. A. Thiel et al. "Effects of Paper Industry Sludge Containing Dioxin on Wildlife in Red Pine Plantations". In: *TAPPI 1987 Environmental Conference Proceedings*, Portland, Oregon. (1987):363–377.

(6) NCASI. "The Land Application and Related Utilization of Pulp and Paper Mill Sludges". *Technical Bulletin 439.* (August 6, 1984.) National Council of the Paper Industry for Air and Stream Improvements, Inc.

(7) Nekoosa Paper Inc. "Dioxin Analysis Related to the Nekoosa Biogreen Program". Nekoosa Report to Dioxin Work Group. Unpublished Report. (November 1, 1989):19pp. D.A. Thiel.

(8) Thiel, D.A., S.G. Martin et al. "Evaluation of the Effects of Dioxin-Contaminated Sludge on Wild Birds." In: *TAPPI 1988 Environmental Conference Proceedings*, Portland, Oregon. (1988):487–507.

9. U.S. Congress, House of Representatives. "Legislative History of the Toxic Substance Control Act." House Report on TSCA H. Rept.1341, 94th Cong., 2nd Session (July 14, 1976): 1,13 15,32.

(10) U.S. Congress, House of Representatives. H. Rept. 223, 98th Cong., 1st Session. (May 24, 1983):19–22.

(11) U.S. Congress, House of Representatives. Conf. Rept. 10004, 99th Cong., 2nd Session, 160. (October 1986):1–3,160–161.

(12) USDA, SCS. Soil Conservation Service Directory of State Offices. Telephone numbers for obtaining *Practice Standard 342, Critical Area Planning* and *Engineering Field Manual.* Soil Conservation Service, U.S. Department of Agriculture.

(13) USDOI, USGS. State Hydrologic Unit Maps, Open File Report 84–708. (1984). U.S. Geological Survey, U.S. Department of the Interior.

(14) USEPA. "Standards for Disposal of Sewage Sludge; Proposed Rule." 54 FR 5746 at 5792–93. (Feburary 6, 1989). [Aka Municipal Sewage Sludge Rule].

(15) USEPA. "Water Programs; Guidelines Establishing Test Procedures for the Analysis of Pollutants; Proposed Rule." 56 FR 5090. (Febuary 7, 1991).

(16) USEPA, AX. Letter from F.H. Habicht, II, Deputy Administrator, to M.V. Putten, Counsel, NWF and K. Florini, Counsel, EDF re: Consent Decree. (April 30, 1990):2pp.

(17) USEPA/API/NCASI. Agreement of June 20, 1986. USEPA/Paper Industry Cooperative Dioxin Screening Study: [Agreement]. (June 20, 1986): 6pp.

(18) USEPA, OHEA, ECAO. "Reanalysis of the FDA Revised Total Diet Food List." In: *Appendix I to Development of Risk Assessment Methodology for Land Application and Distribution and Marketing of Municipal Sludge.* ECAO–CIN–489. (1987):34pp.

19. USEPA, ORD. *Estimating Sludge Management Costs. 1985 EPA Handbook.* (1985). EPA 625/6–85/010.

(20) USEPA, OPTS, OSW. "Assessment of Risks from Exposure of Humans, Terrestrial and Avian Wildlife, and Aquatic Life to Dioxins and Furans from Disposal and Use of Sludge from Bleached Kraft and Sulfite Pulp and Paper Mills". (July 1990):706pp. Prepared under contract Nos 68–02–4283 and 68 D9–0169 by Abt Associates, Inc., Cambridge, MA. EPA 560/5 90–013. [Aka: "Sludge Assessment" and "Integrated Risk Assessment"].

(21) USEPA, OW, OWRS. U.S. EPA/Paper Industry Cooperative Dioxin Screening Study. (March 1988): EPA 440/1–88–025. [Aka "5-Mill Study"].

(22) USEPA OW, OWRS. EPA/Paper Industry Cooperative Dioxin Study. "104–Mill Study." *Statistical Findings and Analysis.* (July 1990):171pp.

(23) Westvaco. Letter from S.H. Tabor to J. Lyddon, CCD, OPTS, USEPA, on reduction of dioxin formation. (January 30, 1991): 125pp.

XIV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and would not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of this rule, EPA estimates that the cost would be approximately $5.5 million.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act [5 U.S.C. 605(b)], EPA has determined that this rule would not have a significant impact on a substantial number of small businesses.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by EPA (ICR No. 1585) and a copy may be obtained from Sandy Farmer, Information Policy Branch, 401 M St., SW., (PM-223), Washington, DC 20460, or by calling (202) 382-2740.

Send comments regarding this burden estimate or any other aspect of these information collection requirements, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to 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 requirements contained in this proposed rule.

List of Subjects in 40 CFR Part 744

Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Sludge, Toxic substances.

Dated: May 1, 1991.

William K. Reilly,

Administrator.

Therefore, 40 CFR chapter I, subchapter R is proposed to be amended by adding part 744 to read as follows:

Part 744—Industrial Sludge

Subpart A—General Provisions

744.1 Purpose and scope.
744.3 Definitions.

Subparts B-F—[Reserved]

Subpart G—Land Application of Industrial Sludge from Pulp and Paper Mills Using Chlorine and Chlorine Derivative Bleaching Processes

744.120 Purpose and applicability.
744.123 Definitions.
744.125 Land application.
744.127 Distribution and marketing.
744.130 Sampling protocols and analytical methods.
744.135 Recordkeeping.
744.157 Enforcement.
744.158 Inspections.

Authority: 15 U.S.C. 2605.

Subpart A—General Provisions

§ 744.1 Purpose and scope.

The purpose of this part is to establish requirements under section 6 of TSCA for the manufacturing, processing, use, disposal, distribution in commerce, and/or marketing of industrial sludges, particularly those contaminated with polychlorinated dibenzo-pdioxins and/or polychlorinated dibenzofurans.

§ 744.3 Definitions.

The following definitions apply to this part:

CWA means the Clean Water Act, Public Law 92-500, as amended.

Dibenzofuran or *furan* means any of a family of compounds which has as a nucleus a triple-ring structure consisting of two benzene rings connected through a pair of bridges between the benzene rings. The bridges are a carbon-carbon bridge and a carbon-oxygen-carbon bridge at both substitution positions.

Dibenzo-p-dioxin or *dioxin* means any member of a family of compounds which has as a nucleus a triple-ring structure consisting of two benzene rings connected at the para positions by a pair of oxygen atoms.

EPA means the U. S. Environmental Protection Agency.

HSWA means the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, as amended.

Industrial sludge means any solid, semi-solid, or liquid residue removed during the treatment of industrial process wastewater. Municipal sewage sludge is not included in this definition.

Person means an individual, association, partnership, corporation, municipality, commission, State or Federal agency, political subdivision of a State, or any interstate body, or an agency or employee thereof.

Polychlorinated dibenzofuran or *CDF* means any member of a class of dibenzofurans with two to eight chlorine substituents.

Polychlorinated dibenzo-p-dioxin or *CDD* means any member of a class of dibenzo-*p*-dioxins with two to eight chlorine substituents.

RCRA means the Resource Conservation and Recovery Act, Public Law 94-580, as amended.

Municipal sewage sludge means any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater and domestic sewage or the treatment of domestic sewage. Municipal sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumpings, Type III marine sanitation device pumpings, and municipal sewage sludge products.

State means one of the several states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

Toxicity equivalent or *TEQ* means the total toxicity of individual CDDs and CDFs or of mixtures of CDDs and CDFs expressed as an equivalent concentration of 2,3,7,8-tetrachlorodibenzo-*p*-dioxin or 2,3,7,8-TCDD. For the purpose of this part, the TEQ is calculated by adding the concentration of 2,3,7,8-TCDD to one-tenth the concentration of 2,3,7,8-tetrachlorodibenzofuran, or 2,3,7,8-TCDF. Other CDDs and CDFs are not considered.

TSCA means the Toxic Substances Control Act, Public Law 94-469, as amended.

USGS means the U.S. Geological Survey.

Subparts B-F—[Reserved]

Subpart G—Land Application of Industrial Sludge from Pulp and Paper Mills Using Chlorine and Chlorine Derivative Bleaching Processes

§ 744.120 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to establish requirements for the use, disposal, and distribution in commerce, and marketing of process wastewater treatment sludges intended for land application from pulp and paper mills employing chlorine or chlorine derivative-based bleaching processes. Such sludge is generally contaminated with 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (TCDD) and/or 2,3,7,8-tetrachlorodibenzofuran (TCDF). This subpart contains general requirements, numeric TCDD/TCDF concentration limits, and management practices that protect public health and the environment from any reasonably anticipated adverse effects from TCDD/TCDF in paper mill sludge.

(b) *Applicability.* (1) This subpart establishes regulatory requirements for paper mill sludge which is applied to land, and which is distributed in commerce and marketed for such land application purposes. This subpart governs any person who generates or manufactures paper mill sludge, any person who uses or disposes of such sludge by applying it to land, and any person who distributes in commerce or markets such sludge for application to land.

(2) Any person who uses or disposes of paper mill sludge through the practices identified in paragraph (b)(1) of this section shall do so in accordance with the regulatory requirements in this subpart.

(c) *Exclusions.* This subpart does not apply to:

(1) Municipal sewage sludge under parts 257, 258 or 503 of this chapter.

(2) Sludge determined to be hazardous under Subtitle C of RCRA.

(d) *Saving clause.* Nothing in this subpart precludes States from imposing requirements which are more stringent than the requirements in this subpart for the use, disposal, distribution in commerce, and marketing of the sludge subject to this subpart.

§ 744.123 Definitions.

In addition to the definitions in § 744.3, the following definitions apply to this subpart:

Agricultural land means land used for the production of food, feed, fiber, or oilseed crops.

Applier means a person who receives paper mill sludge from a pulp and paper mill or from a distributor and who applies such sludge to the land.

Base flood means a flood that has a 1 percent or greater chance of occurring in any given year or a flood of a magnitude equalled or exceeded once in 100 years, on the average, over a significantly long period.

Distribution and marketing means the give-away or sale of paper mill sludge either in containers (e.g., bags) or in bulk form by generators, manufacturers, and/or distributors of paper mill sludge.

Distributor means a person who is distributes in commerce and/or markets paper mill sludge.

Floodplain means the lowland and relatively flat areas adjoining inland and coastal waters, including flood prone areas of offshore islands, inundated by a base flood.

Generator means the owner or operator of a pulp or paper mill producing sludge.

Land application means the application of liquid, de-watered, dried, or composted paper mill sludge to the land by spraying or spreading onto the surface of the land, by injection below the surface of the land, or by incorporation into the soil.

Manufacturer means the person who prepares a paper mill sludge product for distribution and marketing.

Nonagricultural land means land not used for the purpose of growing food, feed, fiber, or oilseed crops. This includes, but is not limited to, silvicultural land and reclaimed land such as strip mines.

Pulp and paper mill means any facility which employs chlorine and/or chlorine derivative bleaching processes, or any facility which buys pulp produced with such processes on the open market or otherwise uses such pulp in its production processes.

Pulp and paper mill sludge or *paper mill sludge* means sludge generated during the treatment of process wastewater from chlorine and/or chlorine derivative bleaching processes. This includes products derived from such sludge (e.g., a mixture of such sludge and wood chips).

2,3,7,8-tetrachlorodibenzofuran or *TCDF* means the member of the class of dibenzofurans containing four chlorine atoms substituted at the 2, 3, 7, and 8 positions on the benzene rings.

2,3,7,8-tetrachlorodibenzo-p-dioxin or *TCDD* means the member of the class of dibenzo-*p*-dioxins containing four chlorine atoms substituted at the 2, 3, 7, and 8 positions on the benzene rings.

TCDD/TCDF concentration means the measured level in parts per trillion or nanograms per kilogram of TCDD and TCDF present in soil and in sludge, expressed as a TEQ.

§ 744.125 Land application.

(a) *Notice requirements.* At least 45 days prior to the commencement of land application of paper mill sludge, the generator of the sludge shall provide written notice by registered mail to the EPA regional office for the site of the proposed land application activity. Such notice shall contain:

(1) The name and address of the generator of the sludge.

(2) The name and address of the manufacturer of the sludge, if any.

(3) The name and address of the distributor of the sludge, if any.

(4) The name and address of the person who receives the sludge and applies the sludge to the land.

(5) The measured TCDD/TCDF concentration, in parts per trillion (ppt) or nanograms per kilogram (ng/kg), of the sludge to be applied to the land, expressed as a TEQ.

(6) The measured TCDD/TCDF concentration, in parts per trillion (ppt) or nanograms per kilogram (ng/kg), of the soil at the land application site, expressed as a TEQ.

(7) The identification of the total number of hectares at the site to which sludge is to be applied.

(8) An original USGS 7.5-minute series topographical map, or if unavailable, a 15-minute series map, showing the boundaries of the sludge land application site.

(9) A statement certifying that the generator has the legal right, including but not limited to property title, lease, or easement, to apply sludge to the land application site(s) specified in the notice.

(10) A statement certifying that, to the best of the generator's knowledge and belief, all information provided in the notice is complete and accurate.

(b) *Soil TCDD/TCDF concentration limits.* (1) Paper mill sludge shall not be applied in a manner which would cause the TCDD/TCDF concentration in the soil at the land application site to exceed 10 parts per trillion.

(2) Soil sampling as specified in § 744.130(b) shall be conducted before any application of paper mill sludge to the site, and between successive applications where the same land is subject to repeated applications of such sludge.

(3) Where soil incorporation as described in paragraph (b)(4) of this section is not used, the TCDD/TCDF concentration in the paper mill sludge shall be considered to be the TCDD/TCDF concentration in the soil.

(4) Paper mill sludge may be incorporated into the soil by plowing, disking, harrowing, or other methods. The minimum depth for incorporation shall be 15 centimeters. Where incorporation is used, the resulting TCDD/TCDF concentration in the soil shall be determined by the application of the following formula:

$$SC = \frac{[(ESC)(2.7 \times 10^6\ kg/ha)] + [(TS)(SLC)(1{,}000\ kg/DMT)]}{(2.7 \times 10^6\ kg/ha) + [(TS)(1{,}000\ kg/DMT)]}$$

where:

SC = TCDD/TCDF concentration in soil (ng/kg) following incorporation.

ESC = Existing soil concentration (ng/kg) at the site as determined by laboratory test. (Where test results indicate no detectable TCDD/TCDF, the ESC shall be assumed to be the detection limit in soil for the test method used.)

TS = Total paper mill sludge to be applied to the site in dry metric tons per hectare (DMT/ha).

SLC = TCDD/TCDF concentration in sludge (ng/kg).

1,000 kg/DMT = Conversion factor between kg and DMT.

2.7×10^6 kg/ha = Mass of soil in the top 15 centimeters of a hectare of land.

(c) *Management practices.* (1) Paper mill sludge shall not be applied to land that is 10 meters or less from an intermittent or perennial surface water.

(2) A vegetative cover shall be established on land on which paper mill sludge is applied. No site where such sludge has been applied shall remain bare or otherwise unprotected from erosion for more than 30 days. Where sludge is applied to nonagricultural land, the vegetative cover shall consist of perennial species. If land application occurs outside the planting dates for perennial species, mulch or temporary plantings shall be used to protect the site from erosion, and a perennial vegetative cover shall be planted on

nonagricultural lands during the first planting season following sludge application. The species mix for temporary and permanent vegetation, the methods and dates for planting, and any other requirements for nonagricultural land vegetative establishment such as, but not limited to, fertilizer, lime, and grazing deferment, shall be in accordance with the United States Department of Agriculture, Soil Conservation Service *Practice Standard 342, Critical Area Planting*, or an equivalent standard approved by EPA prior to use. Furthermore, any diversions, terraces, waterways, or other land-shaping activities necessary for erosion and sediment control shall be implemented in accordance with the United States Department of Agriculture, Soil Conservation Service *Engineering Field Manual*, or if available, any state engineering standards that may apply as part of a state permit, or an equivalent standard approved by EPA prior to use.

(3) Vegetative cover which has been established on land application sites shall be inspected by an agronomist, or person of equivalent knowledge and experience, at least twice each year during the growing season, for a period of three years following planting. Such inspections shall be conducted to evaluate the progress of vegetative recovery and to correct any fertility deficiencies, repair and re-plant any areas where rill or gully erosion has occurred, re-plant any other bare areas, and take any additional action necessary to ensure the successful establishment of a vegetative cover. Such actions as may be required shall be done in a timely manner.

(4) Paper mill sludge shall not be applied to the land if such sludge would:

(i) Restrict the flow of a base flood.

(ii) Reduce the temporary water storage capacity of the floodplain.

(iii) Pose a hazard to human health, wildlife, or land or water resources because of such sludge in the runoff from the flood base.

(5) Paper mill sludge shall not be applied to frozen, snowcovered, or flooded land unless it can be demonstrated that the land application will not cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of CWA.

§ 744.127 Distribution and marketing.

Following the distribution and marketing of paper mill sludge, the generator of such sludge shall remain responsible for compliance with all the procedures specified in this subpart.

§ 744.130 Sampling protocols and analytical methods.

(a) *Sludge sampling protocol.* Paper mill sludge samples shall be collected in accordance with the following procedures:

(1) The pool, compound, impoundment or other storage area containing the sludge which is to be used for land application shall be overlaid with a grid dividing the area into 20 units of equal size.

(2) One core sample shall be drawn from the center of each unit, with each core extending to the full depth of the storage area.

(3) The 20 core samples shall be combined into a single composite sample, which shall be thoroughly blended to produce a homogenous mixture.

(4) One analytical sample shall be drawn from the composite sample, and shall be analyzed in accordance with the procedures specified in paragraph (c) of this section.

(5) Sampling shall be conducted quarterly.

(b) *Soil sampling protocol.* Soil samples shall be collected in accordance with the following procedures:

(1) If the paper mill sludge application site, consisting of all contiguous land upon which such sludge is to be spread within a 1-year period, is less than or equal to 100 hectares in area:

(i) The entire site shall be overlaid by a grid dividing the site into 20 units of equal size.

(ii) One core sample shall be drawn from the center of each unit, to a depth of 15 centimeters.

(iii) The 20 core samples shall be combined into a single composite sample, which shall be thoroughly blended to produce a homogenous mixture.

(iv) One analytical sample shall be drawn from the composite sample, and shall be analyzed in accordance with the procedures specified in paragraph (c) of this section.

(2) If the paper mill sludge application site, consisting of all contiguous land upon which such sludge is to be spread within a 1-year period, is greater than 100 hectares in area:

(i) The site shall be divided into areas of equal size not to exceed 100 hectares.

(ii) Each such area within the site shall be overlaid by a grid dividing the area into 20 units of equal size.

(iii) One core sample shall be drawn from the center of each unit, to a depth of 15 centimeters.

(iv) All of the core samples drawn from all of the areas within the site shall be combined into a single composite sample, which shall be thoroughly blended to produce a homogenous mixture.

(v) One analytical sample shall be drawn from the composite sample, and shall be analyzed in accordance with the procedures specified in paragraph (c) of this section.

(c) *Analytical methods.* Paper mill sludge and soil samples collected in accordance with paragraphs (a) and (b) of this section shall be analyzed in accordance with USEPA Method 1613 under appendix A to part 136 of this chapter, to determine their respective TCDD/TCDF concentrations.

§ 744.135 Recordkeeping.

(a) Each generator of paper mill sludge which uses, disposes of, or distributes or markets such sludge for land application shall develop and maintain records on the disposition of all such land-applied sludge. These records shall form the basis of an annual report document to be prepared by each mill and sent by registered mail to the EPA regional office for the site of the land application activity on or before February 1 of each year, covering the preceding calendar year. Generators with one or more mills shall maintain these records and and a copy of these reports at one of the mills that is normally occupied for 8 hours a day, provided that the identity of this mill is available at each mill that generates such sludge. The following information for each mill shall be included in the annual report document. All units of measure shall be expressed in dry metric tons, hectares, and either nanograms per kilogram or parts per trillion.

(1) The weight of all paper mill sludge used in, distributed and marketed for, or disposed of by land application.

(i) For each land application site:

(A) The location of the site, using the full legal description common to the geographic area and identifying the drainage area to which it belongs.

(B) The land area of the site.

(C) An original USGS 7.5-minute series topographic map, or if unavailable, a 15-minute series map, showing the location and boundaries of the sludge land application site.

(D) The pre-application TCDD/TCDF concentration in the soil at the site.

(E) The total amount of paper mill sludge by weight applied to the site.

(F) The total amount of paper mill sludge by weight applied to each hectare.

(G) The TCDD/TCDF concentration of the paper mill sludge applied to the site.

(H) The original laboratory reports of all paper mill sludge and soil TCDD/TCDF testing relating to the site.

(I) The method (e.g., surface spraying, spreading, or injection into the soil) used to apply the paper mill sludge to the land and a statement about whether and how the paper mill sludge will be incorporated into the soil.

(J) The dates of and observations made during the biannual site inspections.

(K) The last date of application.

(ii) For all paper mill sludge distributed and marketed for land application, the names, addresses, and telephone numbers of all persons receiving such sludge; the amount of such sludge by weight received by each person; the TCDD/TCDF concentration of such sludge; and for each land application site, the information specified in paragraph (a)(2)(i) of this section.

(2) Immediately upon discovery, report any unauthorized use, disposal, distribution in commerce, and/or marketing of paper mill sludge through land application to EPA.

(b) The records identified in paragraph (a) of this section shall be maintained for at least 3 years.

§ 744.157 Enforcement.

(a) Failure to comply with any provision of this subpart is a violation of section 15 of TSCA [15 U.S.C. 2614].

(b) Failure or refusal to establish and maintain records, or to permit access to or copying of records as required by section 11 of TSCA [15 U.S.C. 2610] is a violation of section 15 of TSCA [15 U.S.C. 2614].

(c) Failure or refusal to permit entry or inspection as required by section 11 of TSCA [15 U.S.C. 2610] is a violation of section 15 of TSCA [15 U.S.C. 2614].

(d) Violators are subject to the civil or criminal penalties in section 16 of TSCA [15 U.S.C. 2615] for each violation.

(e) EPA will seek to enjoin the use, disposal, distribution in commerce and marketing of paper mill sludge and sludge products for land application in violation of this subpart, or take any other actions under the authority of sections 7 or 17 of TSCA [15 U.S.C. 2606 or 2616] that are appropriate.

§ 744.158 Inspections.

EPA may conduct inspections under section 11 of TSCA [15 U.S.C. 2610] to ensure compliance with this subpart.

[FR Doc. 91-11105 Filed 5-9-91; 8:45 am]
BILLING CODE 6560-50-F

federal register

Friday
May 10, 1991

Part V

Department of Health and Human Services

Office of Community Services

Fiscal Year 1991 Community Food and Nutrition Program; Request for Applications; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS 91-4]

Request for Applications Under the Office of Community Services' Fiscal Year 1991 Community Food and Nutrition Program

AGENCY: Office of Community Services, Family Support Administration, Department of Health and Human Services.

ACTION: Request for applications under the Office of Community Services' Community Food and Nutrition Program.

SUMMARY: The Office of Community Services (OCS) announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under section 681A of the Community Services Block Grant Act of 1981 as amended. This Program Announcement contains forms and instructions for submitting an application. Grants made under this program announcement are subject to the availability of funds for support of these activities.

CLOSING DATE: The closing date for submission of application is: July 9, 1991.

CONTACT: Office of Community Services, Office of State and Project Assistance, 370 L'Enfant Promenade SW., Washington, DC 20447. You may also call (202) 401-5252. Attention: James Hearn, Chief, Community Food and Nutrition Program.

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Part A—Preamble

1. Legislative Authority

The Community Services Block Grant Act as amended authorizes the Secretary of Health and Human Services to make funds available under several programs to support program activities which will result in direct benefits targeted to low-income people. This Program Announcement covers the grant authority found at Section 681A, Community Food and Nutrition, which authorizes the Secretary to make funds available for grants to be awarded on a competitive basis to eligible entities for local and statewide and national programs (1) to coordinate existing private and public food assistance resources, whenever such coordination is determined to be inadequate, to better serve low-income communities; (2) to assist low-income communities to identify potential sponsors of child nutrition programs and to initiate new programs in underserved or unserved areas; and (3) to develop innovative approaches at the State and local levels to meet the nutrition needs of low-income people.

2. Definitions of Terms

For purposes of this Program Announcement the following definitions apply:

—Displaced worker: An individual who is in the labor market but has been unemployed for six months or longer.

—Indian tribe: A tribe, band, or other organized group of Native American Indians recognized in the State or States in which it resides or considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose.

—Innovative project: One that departs from or significantly modifies past program practices and tests a new approach.

—Migrant farmworker: An individual who works in agricultural employment of a seasonal or other temporary nature who is required to be absent from his/her place of permanent residence in order to secure such employment.

—Seasonal farmworker: Any individual employed in agricultural work of a seasonal or other temporary nature who is able to remain at his/her place of permanent residence while employed.

—Underserved area (as it pertains to child nutrition programs): A locality in which less than one-half of the low-income children eligible for assistance participate in any child nutrition program.

—Budget Period: The term "budget period" refers to the interval of time into which a grant period of assistance (project period) is divided for budgetary and funding purposes.

—Eligible Entity: States and local public and private non-profit agencies/organizations.

—Project Period: The term "project period" refers to the total time a project is approved for support, including any approved extensions.

—Self-Sufficiency: A condition where an individual or family does not need and is not eligible for public assistance.

Part B—Application Prerequisites

1. Eligible Applicants

Eligible applicants are States and local public and private non-profit agencies/organizations with a demonstrated ability to successfully develop and implement programs and activities similar to those enumerated above. OCS encourages Historically Black Colleges and Universities to submit applications. In addition, applicants for the $150,000 set-aside must be either: (1) Indian tribes, (2) private non-profit groups whose governing board is comprised of a majority of Indians and whose primary purpose is serving Indian populations, or (3) groups whose sole purpose is serving migrant and seasonal farmworker populations.

Proof of non-profit status must be included in the Appendices of the Project Narrative where applicable.

2. Availability of Funds and Grant Amounts

a. FY 91 Funding

The amount of funds available for grant awards under the CFN Program in FY 91 is $_____.

b. Grants Amounts

No individual grant request will be considered for an amount which is in excess of $50,000 in OCS funds.

c. Mobilization of Resources

OCS would like to mobilize as many resources as possible to enhance projects funded under this program. Proposals submitted by applicants whose programs will leverage other resources, either cash or third party in-kind, will be looked upon favorably and will be eligible to receive additional points in the competitive review process.

3. Project Periods and Budget Periods

For most projects OCS will grant funds for one year. However, in rare instances, depending on the characteristics of any individual project and on the justification presented by the applicant in its proposal, a grant may be made for a period of up to 17 months.

4. Administrative Costs/Indirect Costs

There is no administrative cost limitation for projects funded under this program. However, applicants who do not propose to charge any administrative costs to the OCS grant will receive rating preference.

OCS accepts approved indirect cost rates as allowable costs. Applicants should enclose a copy of the current approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services. However, it should be understood that indirect costs are part of, and not in addition to, the amount of funds awarded in the subject grant.

5. Program Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits targeted toward low-income people as defined in the most recent Annual Update of Poverty Income Guidelines published by DHHS.

Attachment A to this announcement is an excerpt from the most recently published guidelines. Annual revisions of these guidelines are normally published in the **Federal Register** in February or early March of each year and are applicable to projects being implemented at the time of publication. Grantees will be required to apply the most recent guidelines throughout the project period. The **Federal Register** may be obtained from public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

No other government agency or privately defined poverty guidelines are applicable to the determination of low income eligibility for this OCS program.

6. Number of Projects in Application

An application may contain only one project and this project must address the basic criteria found in Part C. Applications which are not in compliance with these requirements will be ineligible for funding.

7. Multiple Submittals

There is no limit to the number of applications that can be submitted as long as each application contains a proposal for a different project.

8. Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the eligible applicant is primarily to serve as a conduit for funds to other organizations.

Part C—Purpose

The Department of Health and Human Services is committed to improving the health and well-being of individuals through improved preventive health care and promotion of personal responsibility. The Department seeks to unify the approach to health promotion and disease prevention activities with personal messages aimed at families and communities, in various settings and environments in which individuals and groups can most effectively be reached.

The Department is specifically interested in improving the health status of minority and low-income persons. HHS encourages community efforts to improve the coordination and integration of health services for all low-income families, and to identify opportunities for integrating other programs and services for this population.

1. Projects Funded Under this Program Should

a. Be designed and intended to provide nutrition benefits, including those which incorporate the benefits of disease prevention, to a targeted low-income group of people;

b. Provided outreach or public education to inform low-income individuals and displaced workers of the services available to them under the various Federally-assisted nutrition programs;

c. Focus on one or more legislatively mandated program activities:

(1) Coordination of existing private and public food assistance resources, whenever such coordination is determined to be inadequate, to better serve low-income populations; (2) assistance to low-income communities in identifying potential sponsors of child nutrition programs and initiating new programs in underserved or unserved areas; and (3) development of innovative approaches at the State and local levels to meet the nutrition needs of low-income people.

2. Project Elements

Projects Must

Focus on one or more of the legislatively mandated program activities in the above—Part C.

3. General Projects

The application should include a description of the target area and population to be served as well as a discussion of the nature and extent of the problem to be solved. The application must contain a detailed and specific work program that is both sound and feasible. Projects funded under this announcement must produce permanent and measurable results that fulfill the purposes of this program as described in the above Part C. The OCS grant funds, in combination with private and/or other public resources, must be targeted to low-income individuals and communities.

Applicants will certify in their submission that projects will only serve the low-income population as stipulated in the DHHS Poverty Guidelines (Attachment A). If an applicant is proposing a project which will affect a property listed in or eligible for inclusion in the National Register of Historical Places, it must identify this property in the narrative and explain how it has complied with the provisions of Section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the National Register of Historic Places, applicant should consult with the State Historic Preservation Officer. The applicant should contact OCS early in the development of its application to.

OCS for instructions regarding compliance with the Act and data required to be submitted to the Department of Health and Human Services. Failure to comply with the cited Act may result in the application

being ineligible for consideration for funding.

In the case of projects proposed for funding which mobilize or improve the coordination of existing public and private food assistance resources, the guidelines governing those resources apply. However, in the case of projects providing direct assistance to beneficiaries through grants funded under this program, beneficiaries must fall within the official DHHS poverty income guidelines Poverty Guidelines as set forth in Attachment A.

Any proposal submitted by an applicant requesting funding for the continuation of a project for which it received OCS funds in FY 1990, or for implementation of a project similar to one for which it received OCS funds in FY 1990, will not be eligible for funding in FY 1991.

Submissions which propose the use of grant funds for the development of any printed or visual materials must contain convincing evidence that these materials are not available from other sources. OCS will not provide funding for such items if justification is not sufficient. Any films or visual presentations approved for development under the grant must be submitted to the Office of Community Services for clearance by the Department of Health and Human Services prior to dissemination. In cases where material outlays for equipment are requested, specific evidence must be presented that there is a definite programmatic connection between the equipment usage and the outreach requirements described in Part C(1)(b) of the announcement.

OCS also is interested in projects that address the needs of homeless families, welfare in public housing, low-income and minority health initiatives.

OCS welcomes project proposals which seek to develop innovative approaches to promote health particularly among low-income and minority populations. These proposals should have as their goals the reduction of incidences of premature death and chronic disease among these populations.

4. Set-Asides

In recognition of the special needs of Indians and Migrant and Seasonal Farmworkers, a $150,000 set-aside will be established to afford priority consideration to proposals submitted by agencies serving these populations.

Applications which are not funded within this limited set-aside will also be considered competitively within the larger pool of eligible applicants. See Part D, Section 2, (Criterion II) for special instructions on developing a work program.

Part D—Review Criteria

Applications which pass the initial screening and pre-rating review (See Part F, Section 5) will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the Announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements as described in Part F.

Applicants Should Write Their Project Narrative to the Review Criteria Using the Same Sequential Order

Note: The following review criteria reiterate collection of information requirements contained in Part D of this announcement. These requirements are approved under OMB Control Number 93.033.

Criteria for Review and Evaluation of Applications Submitted under this Program Announcement

1. Criterion I: Analysis of Needs/ Priorities (Maximum: 13 Points)

(a) Target area and population to be served are adequately described (0–5 points).

In Addressing the Above Criterion, the Application Should Include the Following

The applicant should include a description of the target area and population to be served including specific details on the minority population(s).

(b) Nature and extent of problem are adequately described and documented (0–8 points).

In Addressing the Above Criterion, the Applicant Should Include the Following

Applicant should discuss the nature and extent of the problem including specific information on minority population(s).

2. Criterion II: Adequacy of Work Program (Maximum: 15 Points)

(a) Set forth realistic quarterly time targets by which the various work tasks will be completed (0–7 points).

(b) Activities are adequately described and appropriately related to goals (0–8 points).

In Addressing the Above Criterion, the Applicant Should Include the Following

The application should address the basic criteria and legislative-mandated activities found in Part C–(c) and should include:

(a) Project priorities and rationale for selecting them;

(b) Goals and objectives; and (c) Project activities.

3. Criterion III: Significant and Beneficial Impact (Maximum: 38 Points)

(a) Applicant proposes to significantly improve or increase nutrition services to low-income people and such improvements or increases are quantified. (0–12 points).

(b) Project incorporates minority low-income health prevention activities along with nutritional services (0–8 points).

(c) Project will significantly leverage or mobilize other community resources and such resources are detailed and quantified (0–6 points).

(d) Project builds on an existing outreach activity (0–5 points).

(e) Proposal addresses a problem which can be resolved by one-time OCS funding or demonstrates that non-Federal funding is available to continue the project without Federal support (0–7 points).

Quantitative data must be provided with regard to items (a), (b), (c), and (d).

4. Criterion IV: Coordination/Services Integration (Maximum: 15 Points)

Other appropriate organizations will be involved in project implementation so as to avoid duplication and to achieve an improved delivery system (0–15 points).

In Addressing the Above Criterion, the Applicant Should Include the Following

If the applicant is receiving funds from the State for community food and nutrition activities, the applicant should address how the funds are being utilized and, if they will be used in the project for which OCS funds are being requested, their usage should be specifically described.

5. Criterion V: Organization Experience in Program Area and Staff Responsibilities (Maximum 12 points)

(a) *Organization experience in program area (0–4 points).* Documentation provided indicates that projects previously undertaken have been relevant and effective and have provided permanent benefits to the low-income population. Organizations which propose providing training and technical assistance have detailed competence in

the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants also addresses related achievements and competence of each cooperating or sponsoring organization.

(b) *Management History (0–4 points).* Applicants must fully detail their ability to implement sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also detail that they have consistently complied with financial and program progress reporting and audit requirements. Applicants should submit any available documentation on their management practices and progress reporting procedures along with a certification by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

(c) *Staffing skills, Resources and Responsibilities (0–4 points).* The application describes in brief resume form the experience and skills of the proposed project director showing that the individual not only well qualified, but that his/her professional capabilities are relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description which indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project.

The application must indicate that the applicant has adequate facilities and resources (i.e. space and equipment) to successfully carry out the work plan.

In Addressing the Above Criterion, the Applicant Should Include the Following

The applicant must fully describe the experience and skills of the proposed project director showing that the individual is not only well qualified but that his/her professional capabilities are relevant to the successful implementation of the project. It must clearly show that sufficient time of the Project Director and other senior staff will be budgeted to assure timely implementation and oversight of the project and that the assigned responsibilities of the staff are appropriate to the tasks identified for the project.

6. Criterion VI: Adequacy of Budget (Maximum: 7 points)

(a) Budget is adequate and administrative costs are appropriate in relation to the services proposed (0–3 points).

(b) Administrative costs are fully assumed by applicant (0–4 points).

In Addressing the Above Criterion, the Applicant Should Include the Following

The applicant should describe how the project will continue after the completion of the grant, including what funds will be available for its continuation.

Part E—Additional Instructions for Completing Application Package

(Approved by the OMB under Control Number 93.033.)

The standard forms attached to this announcement shall be used when submitting applications for all funds under this announcement.

It is recommended that the applicant reproduce the SF–424 (Attachment B), SF–424A (Attachment C), and SF–424B (Attachment D), and that the application be typed on the copies. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, the applicant should write "NA" for "Not Applicable."

The application should be prepared in accordance with the standard instructions in Attachments B and C corresponding to the forms, as well as the OCS specific instructions set forth below:

1. SF–424 "Application for Federal Assistance"

ITEM

1. For the purposes of this announcement, all projects are considered "Applications"; there are no "Pre-Applications." Also for the purposes of this announcement, construction projects are those which involve major renovations or construction. All others are considered non-construction.

5/6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled "Federal Identifier" located at the top right hand corner of the form.

7. If the applicant is a non-profit corporation, enter "N" in the box and specify "non-profit corporation" in the space marked "Other." Proof of non-profit status such as IRS determination, Articles of Incorporation, or by-laws, must be included as an appendix to the project narrative.

8. For the purposes of this announcement, all applications are "New".

9. Enter "DHHS–FSA/OCS".

10. The Catalog of Federal Domestic Assistance number for the OCS program covered under this announcement is "93.033".

The title is "Community Services Block Grant Discretionary Awards—Community Food and Nutrition Program."

15a. For purposes of this Announcement, this amount should reflect the amount requested for the entire project period.

15b-e. These items should reflect both cash and third party in-kind contributions for the total project period.

2. SF–424A—"Budget Information-Non-Construction Programs"

See Instructions accompanying this page as well as the instructions set forth below:

In completing these sections, the "Federal Funds" budget entries will relate to the requested OCS Community Food and Nutrition Program funds only, and "Non-Federal" will include mobilized funds from all other sources—applicants, state, and other. Federal funds other than those requested from the Community Food and Nutrition Program should be included in "Non-Federal" entries.

Sections A and D of SF–424A must contain entries for both Federal (OCS) and non-Federal (mobilized funds).

Section A—Budget Summary

Line 1–4
Col. (a):
Line 1 Enter "OCS Community Food and Nutrition Program";
Col. (b):
Line 1 Enter "93.033".
Col. (c) and (d): Not Applicable
Col. (e)–(g)
For each line 1–4, enter in columns (e), (f) and (g) the appropriate amounts needed to support the project for the entire project period.
Line 5 Enter the figures from Line 1 for all columns completed, (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the first budget period of 12 months will be entered in Column #1. Allowability of costs are governed by applicable cost principles set forth in 45 CFR part 74 and 92.

A separate itemized budget justification should be included to

explain fully and justify major items, as indicated below. The budget justification should immediately follow the Table of Contents.

Column 5: Enter total requirements for Federal funds by the Object Class Categories of this section.

Personnel-Line 6a: Enter the total costs of salaries and wages.

Justification

Identify the project director. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits-Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on line 6j.

Justification

Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Travel-Line 6c: Enter total costs of out-of-town travel by employees of the project. Do not enter costs for consultant's travel or local transportation.

Justification

Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment-Line 6d: Enter the total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property", for purposes of non-governmental entities, means tangible personal property having a useful life of more than two years and an acquisition cost per unit of $500. Non-expendable personal property", for purposes of governmental entities, means tangible personal property having a useful life of more than one year and an acquisition value of $5,000 or more.

Justification

Equipment to be purchased with Federal funds must be required to conduct the project, and the applicant organization or its subgrantees must not already have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies-Line 6e. Enter the total costs of all tangible personal property (surplus) other than that included on line 6d.

Other-Line 6h. Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publications, computer use training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Indirect Charges—Line 6j: Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies. With the exception of local governments, applicants should enclose a copy of the current approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates and submit it to the appropriate DHHS Regional Office.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

The total amount shown in Section B, Column (5), Line 6k, should be the same as the amount shown in Section A, Line 5, Column (e).

Program Income-Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Column 5: Carry totals from Column 1 to Column 5 for all line items.

Justifications

Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of "Non-Federal" resources that will be used to support the project. "Non-Federal" resources mean other OCS funds for which the applicant is applying. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Category, (See Section B.6) and whether it is cash or third-party in-kind. The firm commitment of these required funds must be documented and submitted with the application in order to be given credit in the criterion. Except in unusual situations, this documentation must be in the form of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8:

Col. (a): Enter the project title.

Col. (b): Enter the amount of cash or donations to be made by the applicant.

Col. (c): Enter the State contribution.

Col. (d): Enter the amount of cash and in-kind contributions to be made from all other sources.

Col. (e): Enter the total of columns (b), (c), and (d).

Lines 9, 10, and 11 should be left blank.

Line 12: Carry the total of cash of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, Column (f).

Justification

Describe third party in-kind contributions, included.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the first 12 month budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the total of Lines 13 and 14.

Section F—Other Budget Information

Line 21—Include narrative justification required under Section B for each object class category for the total project period.

Line 22—Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the approved rate

agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF-424B "Assurances-Non-Construction"

All applicants must sign and return the "Assurances" with the application.

4. Project Narrative

Each narrative should include the following major Sections:

a. Analysis of Need
b. Project Design (Work Programs)
c. Organizational Experience in Program Areas
d. Management History
e. Staffing and Resources
f. Staff Responsibilities

The project narrative must address the specific purpose mentioned in Part C of this Program Announcement. The narrative should provide information on how the application meets the evaluation criteria in part D of this Program Announcement.

Part F—Application Procedures

1. Availability of Forms

Applications for awards under this OCS program must be submitted on Standard Forms (SF) 424, 424A, and 424B. Part F and attachments B, C, and D to this Program Announcement contain all the instructions and forms required for submittal of applications. The forms may be reproduced for use in submitting applications. Copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources they may be obtained by writing or telephoning the office listed in the section entitled "For Further Information" at the beginning of this announcement.

2. Application Submission

The date by which applications must be received is indicated under "Closing Date" at the beginning of this announcement. An application will be considered to be received on time under either one of the following two circumstances:

a. Applications may be mailed to: Family Support Administration, Division of Grants Management, 6th floor OFM/DGM, 370 L'Enfant Promenade, SW., Washington, DC 20447.

b. Hand delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Family Support Administration, Division of Grants Management, 901 D Street, SW., Sixth Floor OFM/DGM, Washington, DC 20447.

An application will considered to be received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than through the U.S. Postal Service or commercial carrier shall be considered as acceptable only if physically received at the above address before close of business on or before the deadline date.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated post mark. Before relying on this method, applicants should check with their local post office. In some instances packages presented for mailing after a pre-determined time are postmarked with the next day's date. In other cases, postmarks are not routinely placed on packages. Applicants are cautioned to verify that there is a date on the package, and that it list the correct date of mailing, before accepting a receipt.

Applications which have a postmark later than the closing date, or which are hand-delivered after the closing date, will be returned to the sender without consideration in the competition.

One signed original application and four copies is required. The first page of the SF-424 must contain in the lower right-hand corner, one of the following designations:

FN—for general grants.

SA—for projects where migrant and seasonal farmworker organizations and Indian tribes or Indian organizations are applying specifically for set-aside funds described in part B.

3. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Program," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Virginia, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these nine jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Applicants must submit any required material to the SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions, so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards. Therefore, the comment period for State processes will end 60 days after the date of publication of this Announcement to allow time for FSA to review, consider and attempt to accommodate SPOC input. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to FSA, they should be addressed to: Department of Health and Human Services, Family Support Administration, Division of Grants Management, 6th Floor, 370 L'Enfant Promenade SW., Washington, DC, 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment G of this announcement.

4. Application Consideration

Applications which meet the screening requirements in section 5 below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this announcement. Applications will be reviewed by persons outside of the OCS unit which would be directly responsible for programmatic management of the grant. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will generally be

considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the Director may also consider other factors deemed relevant including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years: Comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants. OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

5. Criteria for Screening Applications

a. Initial Screening

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a completed Standard Form (SF) 424.

(2) The SF-424 must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

b. Pre-rating Review

Applications which pass the initial screening will be forwarded to reviewers for analytical comment and scoring based on the criteria detailed in Section below and the specific requirements contained in Part C of this Announcement. Prior to the programmatic review, these reviewers and/or OCS staff will verify that the applications comply with this program announcement in the following areas:

(1) *Eligibility:* Applicant meets the eligibility requirements found in Part B.

(2) *Number of Projects:* The application contains only one project.

(3) *Target Populations:* The application clearly targets the specific outcomes and benefits of the project to low-income participants and beneficiaries as defined in the DHHS Poverty Income Guidelines (Attachment A).

(4) *Grant Amount:* The amount of funds requested does not exceed $50,000 in OCS funds.

(5) *Program Focus:* The application addresses the purposes described in Part C of this announcement.

(6) *Continuation or Duplication of Projects:* The applicant does not propose the continuation of a project funded by OCS in FY 1990 nor does the applicant propose undertaking a project similar to one for which it received funds in FY 1990. An a180X may be disqualified from the competition and returned if it does not conform to one or more of the above requirements.

c. Evaluation Criteria

Applications which pass the initial screening and pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this announcement.

Part G—Contents of Application Package and Application

(Approved by the Office of Management and Budget under Control Number [to be inserted])

1. Application Package

Each application submission must include: A signed original and four additional copies of the application.

Each copy of the application must contain in the order listed each of the following:

a. *Table of Contents* with page numbers noted for each major section and subsection of the proposal and each section of the appendices. Each page in the application, including those in all appendices, must be numbered consecutively.

b. *Standard Form 424. Application for Federal Assistance.* (See Attachment B) The SF-424 should be completed in accordance with instructions provided with the form, as well as OCS specific instruction set forth in Part E of this Announcement.

Applicants must also be aware that the applicant's legal name as required in SF-424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6).

c. *Standard Form 424A, Budget Information.* (See Attachment C) Pages 1 and 2 should be completed.

d. *Standard Form 424B. Assurances—Non-Construction Programs.* (See Attachment D) This form must be signed and submitted with the Application.

e. *Restriction on Lobbying Activities*—Certification for Contracts, Grants, Loans, and Cooperative Agreements: (Required only if lobbying has actually taken place or is expected to take place in trying to obtain the grant for which the applicant is applying.) Fill out, sign and date form found at Attachment H.

f. *Disclosure of Lobbying Activities*—SF-ILL: Fill out, sign and date form found at Attachment H.

g. *Project Narrative*—(See Part E, Section 4.)

Please note the following:

—Applications may not exceed 30 pages in their entirety.
—The SF-424 must contain an original signature of the certifying representative of the applicant organization.
—Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore applications must be submitted on 8½×11 inch paper only. They must not include colored, oversized or folded materials, organizational brochures, or other promotional materials, slides, films, clips, etc., in the proposal. Such materials will be discarded if included.
—Applications should be submitted in ringbinders that will allow for easy separation and reassembly.
—While applications must be comprehensive, OCS encourages conciseness and brevity in the presentation of materials and cautions the applicant to avoid unnecessary duplication of information.
—All applicants will receive an acknowledgment postcard with an identification number which will be noted on the acknowledgment. This number must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgment is not received within three weeks after the deadline date, applicants must notify FSA by telephone (202) 401-9230.
—Applicant should also submit a mailing label for the acknowledgment card.

Part H—Award Recipient Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Notice of Grant Award which provides the amount of Federal funds approved for use in the project, the budget period for which support is provided, and the terms and conditions of the award.

In addition to the General Conditions and Special Conditions (where the latter

are warranted) which will be applicable to grants, grantees will be subject to the provisions of 45 CFR parts 74 (non-governmental) and 92 (governmental).

Grantees will be required to submit quarterly progress and financial reports (SF-269) as well as a final progress and financial report.

Grantees are subject to the audit requirements in 45 CFR parts 74 and 92.

Section 319 of Public Law 101-121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying when applicant has engaged in lobbying activities or is expected to lobby in trying to obtain the grant. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of non-appropriated funds, and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or subgrantees will pay with the nonappropriated funds and (3) to file quarterly up-dates about the use of lobbyists if any event occurs that materially affects the accuracy of the information submitted by way of declaration and certification. The law establishes civil penalties for noncompliance, and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment H for certification and disclosure forms to be submitted with applications for this program.

Attachment I indicates the regulations which apply to all applicants/grantees under the Discretionary Grants Program.

Dated: May 3, 1991.

Eunice S. Thomas,

Director, Office of Community Services.

ATTACHMENT A—1991 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$6,620
2	8,880
3	11,140
4	13,400

ATTACHMENT A—1991 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA—Continued

Size of family unit	Poverty guideline
5	15,660
6	17,920
7	20,180
8	22,440

For family units with more than 8 members, add $2,260 for each additional member.

Poverty Income Guidelines for Alaska

1	$8,290
2	11,110
3	13,930
4	16,750
5	19,570
6	22,390
7	25,210
8	28,030

For family units with more than 8 members, add $2,820 for each additional member.

Poverty Income Guidelines for Hawaii

1	$7,610
2	10,210
3	12,810
4	15,410
5	18,010
6	20,610
7	23,210
8	25,810

For family units with more than 8 members, add $2,600 for each additional member.

Attachment B—SF 424, Application for Federal Assistance and Instruction for the SF-424

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE_____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Attachment C—SF 424A, Budget Information—Non-Construction Programs and Instructions for the SF-424A

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d) Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

Attachment D—SF 424B, Assurances—Non-Construction Programs

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

BILLING CODE 4150-04-C

Attachment E—U.S. Department of Health and Human Services Certification Regarding Drug-Free Workplace Requirements Grantees Other than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the U.S. Department of Health and Human Services determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of the grant, or governmentwide suspension or debarment.

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) the dangers of drug abuse in the workplace;

(2) the grantee's policy of maintaining a drug-free workplace;

(3) any available drug counseling, rehabilitation, and employee assistance programs; and

(4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) make it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) abide by the terms of the statement; and

(2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted;

(1) taking appropriate personnel action against such an employee, up to and including termination; or

(2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state or local health, law enforcement or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), and (f)

B. The grantee shall insert in the space provided below, the site(s) for the performance of work done in connection with the specific grant (Street address, city, county, state, zip code):

Attachment F—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and belief that its principals involved:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The ability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction. The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions", provided below, without modification in all lower tier covered transactions and in all solicitations for lower tier covered actions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment G—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125-0347, Telephone (205) 284-8905

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280-1315

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371-1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323-7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866-2156

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106-4459, Telephone (203) 566-3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736-3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania

Avenue, NW., Washington, DC 20004, Telephone (202) 727-9111

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399-0001, Telephone (904) 488-8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656-3855

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Telephone (808) 548-3016 or 548-3085

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782-8639

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232-5610

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281-3725

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564-2382

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289-3261

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Telephone (301) 225-4490

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727-7001

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373-7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373-6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960-4280

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751-4834

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202, State Capitol, Helena, Montana 59620, Telephone (406) 444-5522

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, NV 89710, ATTN: John B. Walker, Clearinghouse Coordinator

New Hampshire

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271-2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-9025.

New Mexico

Dorothy E. (Duffy) Rodriquez, Deputy Director, State Budget Division, Department of Finance & Administration, Room 190, Bataan, Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827-3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474-1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733-0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224-2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Telephone (614) 466-0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843-9770

Oregon

Attn: Dolores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, NE., Salem, Oregon 97310, Telephone (503) 373-1998

Pennsylvania

Sandra Kline, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Telephone (717) 783-3700

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277-2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734-0493

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773-3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741-1676

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463-1778

Utah

Utah State Clearinghouse, Attn: Carolyn Wright, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Telephone (801) 538-1547

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination,

Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828-3326

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH-51, Olympia, Washington 98504-4151, Telephone (206) 753-4978

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community, and Industrial Development, Building No. 6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348-4010

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707-7864, Telephone (608) 266-1741

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration, (608) 266-0267.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777-7574

Territories

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472-2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O Box 41119, San Juan, Puerto Rico 00940-9985, Telephone (809) 727-4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774-0750

Attachment H—Restrictions on Lobbying and SF-LLL and Instructions

RESTRICTIONS ON LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3 The undersigned shall require that the language of this certification be included in the award documents for subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or grantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

_____

Signature

_____

Title

_____

Organization

_____

Date

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known*:

Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*: _____

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

BILLING CODE 4150-04-C

Attachment I—DHHS Regulations Applying to all Applicants/Grantees under the Community Food and Nutrition Program

The following DHHS regulations apply to all applicants/grantees under the Community Food and Nutrition Program:

Title 45 of the *Code of Federal Regulations:*

Part 16—Procedures of the Department Grant Appeals Board
Part 74—Administration of Grants (non-governmental)
Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):
Section 74.62(a) Non-Federal Audits
Section 74.173 Hospitals
Section 74.174 (b) Other Nonprofit Organizations
Section 74.304 Final Decisions in Disputes
Section 74.710 Real Property, Equipment and Supplies
Section 74.715 General Program Income
Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension from Eligibility for Financial Assistance
Subpart F—Drug Free Workplace Requirements
Part 80—Non-discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services
Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 83—Nondiscrimination on the basis of sex in the admission of individuals to training programs
Part 84—Nondiscrimination on the Basis of Handicap in Programs
Part 91—Nondiscrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment J—Optional Checklist for Use in Submitting OCS Grant Applications

Optional Checklist (for Use of Applicant Only) to Verify Contents of Application

Check

A. Application contains:
1. Table of Contents [ ]
2. Completed SF 424, Application for Federal Assistance [ ]
3. Completed SF 424A, Budget Information—Non-Construction Programs [ ]
4. Signed SF 424B, Assurances—Non-Construction Programs [ ]
5. A project narrative with the following components:
a. Analysis of need [ ]
b. Project design [ ]
c. Organizational experience in program [ ]
d. Management history [ ]
e. Staffing and resources (resume or job description) [ ]
f. Staff responsibilities [ ]
6. Relevant portions of the organization's by-laws and articles of incorporation confirming eligibility. [ ]
7. A *signed* copy of Certification Regarding the Anti-Lobbying Provision; [ ]
8. A completed Disclosure of Lobbying Activities form, if appropriate; [ ]
9. A self-addressed mailing label which can be affixed to a postcard to acknowledge receipt of application. [ ]

B. Application does not exceed a total of 30 pages. [ ]

C. Application includes one original and four copies, printed on white 8½ by 11 inch paper, and presented in a ring binder. [ ]

D. Applicant is aware that in signing and submitting the application for funds under the CFN Program, it is certifying that it has read and understood the Federal Guidelines concerning a drug-free workplace and the debarment regulations set forth in attachments E and F respectively. [ ]

[FR Doc. 91-11067 Filed 5-9-91; 8:45 am]

BILLING CODE 4150-04-M

federal register

Friday
May 10, 1991

Part VI

Department of Health and Human Services

Office of Refugee Resettlement

Refugee Resettlement Program; Proposed Availability of Funding for Formula Grants; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

Refugee Resettlement Program; Proposed Availability of Funding for Formula Grants for FY 1991 Targeted Assistance for Services to Refugees in Local Areas of High Need

AGENCY: Office of Refugee Resettlement (ORR), FSA, HHS.

ACTION: Notice of proposed availability of funding for formula grants for FY 1991 targeted assistance for services to refugees [1] in local areas of high need.

SUMMARY: This notice announces the proposed availability of funds and award procedures for FY 1991 targeted assistance formula grants for services to refugees under the Refugee Resettlement Program (RRP). These grants are for service provision in localities with large refugee populations, high refugee concentrations, and high use of assistance, and where specific needs exist for supplementation of currently available resources.

This notice proposes to apply the same formula for the allocation of targeted assistance funds as was used in FY 1990, updated to take into account FY 1990 arrivals.

DATE: Comments on the proposals contained in this notice must be received by June 10, 1991.

ADDRESS: Address written comments, in duplicate, to: Director, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

APPLICATION DEADLINE: The deadline for applications will be established by the final notice; applications should not be sent in response to this proposal.

Applications from States for grants under this notice must be received on time. An application will be considered to be received on time under either of the following two circumstances:

A. The application was sent via the U.S. Postal Service or by private commercial carrier not later than 45 days after publication of the final notice unless it arrives too late to be considered by the reviewers. (Applicants are responsible for assuring that the U.S. Postal Service or private commercial carrier dates the application package. Applicants should be aware that not all post offices or private commercial carriers provide a dated postmark unless specifically instructed to do so.)

B. The application is hand-delivered on or before the closing date to the Division of Grants Management, ACF, 6th floor, 901 D Street, SW., Washington, DC 20447. Hand-delivered applications will be accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday (excluding Federal legal holidays) up to 4:30 p.m. of the closing date.

Late applications will be returned to the sending agency.

To be considered complete an application package must include a signed original and one copy of Standard Form 424, 424A, and 424B, dated April 1988. A copy should also be sent to the ACF Regional Administrator. The package must also include the following three certifications by the applicant: Drug-Free Workplace, Debarment, and Anti-Lobbying. (We will provide copies of these materials to all targeted assistance States.)

GRANT REGULATIONS: Grants are subject to the administrative regulations published under title 45 of the Code of Federal Regulations, part 74, sections 74.62(a), 74.174(b), 74.304, 74.710, and 74.715, and Part 92.

FOR FURTHER INFORMATION ON APPLICATION AND GRANT PROCEDURES, STATES SHOULD CONTACT: Shirley Parker, Division of Grants Management, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone (202) 401-4618.

FOR FURTHER PROGRAMMATIC INFORMATION, STATES SHOULD CONTACT: Ron Munia, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone (202) 401-4559.

SUPPLEMENTARY INFORMATION:

I. Purpose and Scope

This notice announces the proposed availability of funds for grants for targeted assistance for services to refugees in counties where, because of factors such as unusually large refugee populations, high refugee concentrations, and high use of public assistance, there exists and can be demonstrated a specific need for supplementation of resources for services to this population.

The Office of Refugee Resettlement (ORR) has available $48,795,000 in FY 1991 funds for the targeted assistance program (TAP) as part of the FY 1991 appropriations for the Department of Health and Human Services (Pub. L. 101-517).

The Conference Report on appropriations reads as follows with respect to the targeted assistance funds (H. Con. Rept. 101-908, p. 27):

The conference agreement for targeted assistance includes the same funding level as provided in fiscal year 1990 to continue the current program of support to communities affected as a result of the massive influx of Cuban and Haitian entrants during the Mariel boatlift. The conference agreement also provides that 10 percent of the total appropriated for targeted assistance by used for grants to localities most heavily impacted by the influx of refugees such as Laotian Hmong, Cambodians, and Soviet Pentecostals, including secondary migrants who entered the United States after October 1, 1979. The conferees expect these grants to be awarded to communities not presently receiving targeted assistance because of previous concentration requirements and other factors in the grant formulas, as well as those who do currently receive targeted assistance grants. This agreement is consistent with the policy established in Public Law 101-166, the fiscal year 1990 Appropriations Act, and Public Law 101-302, the fiscal year 1990 Supplemental Appropriations Act.

The conferees intend that the State of California, which has 49 percent of the nation's refugees, shall be held harmless in the formula allocation of targeted assistance funds as a result of any reductions to the total amount appropriated for the targeted assistance program. California's total share of funding under the formula allocation in fiscal year 1991 should be no less than the percentage share of California's allotment under fiscal year 1990 appropriations, excluding funds appropriated by Public Law 101-302, the fiscal year 1990 Supplemental Appropriations Act. In determining the hold harmless allocation to California, the total amount appropriated for targeted assistance will be used.

In accordance with the Conference Report language, the Director of the Office of Refugee Resettlement (ORR)

[1] In addition to persons admitted to the United States as refugees, eligibility for targeted assistance includes Cuban and Haitian entrants, certain Amerasians from Vietnam who are admitted to the U.S. as immigrants, and certain Amerasians from Vietnam who are U.S. citizens. (See section III of this notice on "Authorization.") The term "refugee," used in this notice for convenience, is intended to encompass such additional persons who are eligible to participate in refugee program services, including the targeted assistance program.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the targeted assistance program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival.

proposes to use the $48,795,000 appropriated for FY 1991 targeted assistance as follows:

- $25,373,400 is proposed for allocation under the updated formula, as set forth in this notice.
- $18,542,100 will be awarded to Florida for the Dade County public schools and Jackson Memorial Hospital, Miami, the same amount as was provided in FY 1990 less the 2.41 percent reduction required by sec. 514(b) of the FY 1991 Appropriations Act (Pub. L. 101-517).
- $4,879,500 (10% of the total) will be awarded to the most heavily impacted localities under a competitive grant announcement which will be published separately setting forth application requirements and evaluation criteria. States will be able to apply on behalf of impacted counties that do not receive TAP formula grants as well as those that do.

This notice proposes slight changes in requirements regarding the use of the FY 1991 targeted assistance formula allocations, as follows: (1) Encourages the use of bilingual women on service agency staffs to ensure adequate service access by refugee women; (2) encourages States and counties to treat day care services as a priority employment-related service in order to allow women with children the opportunity to participate in employment services or to accept or retain employment; and (3) clarifies that if a job placement resulting from TAP services has not resulted in sufficient earnings to terminate cash assistance, TAP services may continue to be provided to the refugee as part of a self-sufficiency plan after job placement to help the refugee retain employment or move to self-sufficiency.

The purpose of targeted assistance grants is to provide, through a process of local planning and implementation, direct services intended to result in the economic self-sufficiency and reduced welfare dependency of refugees through job placement.

The targeted assistance program reflects the requirements of section 412(c)(2)(B) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99-605), which provides that targeted assistance grants shall be made available "(i) primarily for the purpose of facilitating refugee employment and achievement of self-sufficiency, (ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity".

Services funded under the targeted assistance allocations are required to focus primarily on those refugees who, either because of their considerable and protracted use of public assistance or continued difficulty in securing employment, constitute a major resettlement problem for the affected jurisdiction which cannot be addressed without additional services. In order to ensure sufficient emphasis on services to appropriate clients, each State is required to assure that, for each qualified local area, cash assistance recipients (time-eligible and time-expired recipients under any program of the State or locality) will make up a percentage of the FY 1991 targeted assistance clientele which is not less than the State's final FY 1989 dependency rate.

Reflecting section 412(a)(1)(A)(iv) of the INA, the Director expects States to "insure that women have the same opportunities as men to participate in training and instruction." In addition, States are expected to make sure that services are provided in a manner that encourages the use of bilingual women on service agency staffs to ensure adequate service access by refugee women. In order to facilitate refugee self-support, the Director also strongly encourages States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit, particularly in the case of large families. States and counties are encouraged to treat day care services as a priority employment-related service in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To be eligible for day care funded through targeted assistance, a refugee would have to be participating in TAP employment services or have accepted employment. For an employed refugee, TAP-funded day care would be limited to 6 months after the refugee becomes employed.

Funds awarded under this program are intended to help fulfill the Congressional intent that "employable refugees should be placed on jobs as soon as possible after their arrival in the United States" (section 412(a)(1)(B) of the INA). Therefore at least 85% of targeted assistance funds are required to support projects which directly enhance refugee employment potential, have specific employment objectives, and are designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program. General or remedial educational activities—such as adult basic education (ABE) or preparation for a high school equivalency or general education diploma (GED)—may be provided only within the context of an individual employability plan for a refugee which is intended to result in job placement in less than one year. Services may continue to be provided as part of a self-sufficiency plan for a refugee after job placement (a) to help the refugee retain employment or (b) to move the refugee to self-sufficiency if the placement has not resulted in sufficient earnings to enable the refugee's cash assistance to terminate. Targeted assistance funds cannot be used for long-term training programs such as vocational training that lasts for more than a year or educational programs that are not intended to lead to employment within a year.

The degree of success of targeted assistance programs would be measured in terms of job placements, job retention, and reductions in cash assistance—the principal objectives of the authorizing legislation.

In order to meet extreme and unusual needs, up to 15% of a local area's allocation could be used for services which are not directed toward the achievement of a specific employment objective in less than one year but which are essential to the adjustment of refugees in the community, provided such needs are clearly demonstrated and such use is approved by the State, or by ORR in the case of State-administered local programs.

Cases in which a county plan contains proposed program activities not allowable under section VII, below, could be entertained by a State only where extreme and unusual need exists and is clearly demonstrated in the county's proposed plan. Such cases would be considered to involve a change in program scope or objectives and will therefore be subject to ORR prior approval.

A State could request a waiver in order to be able to allow a county to use more than 15% for non-employment-related services. ORR will approve such a request only in the most extreme circumstances of need.

The award of funds to States under this notice would be contingent upon the completeness of a State's application as described in section IX, below.

II. [Reserved for discussion of comments in final notice.]

III. Authorization

Targeted assistance projects are funded under the authority of section 412(c)(2) of the Immigration and nationality Act (INA), as amended by

the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605), 8 U.S.C. 1522(c); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above; section 584(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202), insofar as it incorporates by reference with respect to certain Amerasians from Vietnam the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above, including certain Amerasians from Vietnam who are U.S. citizens, as provided under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513).

IV. Eligible Grantees

The following requirements, which have previously applied to TAP, would continue to apply with respect to FY 1991 awards:

Eligible grantees are those agrencies of State governments which are responsible for the refugee program under 45 CFR 400.5 in States containing counties which qualify for FY 1991 targeted assistance awards. The use of targeted assistance funds for services to Cuban and Haitian entrants is limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

The State agency will submit a single application on behalf of all county governments of the qualified counties in that State. Subsequent to the approval of the State's application by ORR, local targeted assistance plans will be developed by the county government or other designated entity and submitted to the State.

A State with more than one qualified county is permitted, but not required, to determine the allocation amount for each qualified county within the State. However, If the State chooses to determine county allocations differently from those set forth in this notice, the allocations proposed by the State are subject to ORR approval.

Applications submitted in response to this notice are not subject to review by State and area wide clearinghouses under Executive Order 12372, "Intergovernmental Review of Federal Programs."

V. Qualification and Allocation Formula

The Director of ORR proposes to base the FY 1991 TAP formula allocations on the same formula as in FY 1990 updated to reflect arrivals through September 30, 1990.

Under this formula, one portion of the allocation is based on refugee and Cuban/Haitian entrant arrivals during FY 1980–1982; funds for this portion of the formula are allocated on the same proportionate basis among participating counties as in FY 1990. The second portion, of the allocation is based on refugee and entrant placements in these counties during calendar year (CY) 1983—September 30, 1990, and on cash assistance dependency rates. Because of the lack of more recent dependency rate data, the Director proposes to use States' dependency rates as of September 30, 1989.

In determining whether additional counties would be eligible to participate in this targeted assistance formula allocation, the Director has applied the same four criteria used previously, including the same cutoff points, to the updated information on refugee arrivals, concentrations, dependency rates, and receipt of cash assistance. As before, a county would have to meet three out of the four criteria in order to qualify. (For a detailed discussion of these criteria, see the FY 1989 TAP notice published in the **Federal Register** of July 3, 1989, section V. "Qualification and Allocation Formula," subsection on "Formula Used to Date" (54 FR 27944).) In applying these criteria, ORR has found that no county not currently participating in TAP meets at least three out of the four criteria.

For the participating counties, the $25,373,400 which is proposed to be allocated by formula would be apportioned as follows:

a. $11,418,030, or 45%, would be allocated on the basis of the formula which has been used for all previous targeted assistance allocations ("old formula") and which is based on initial placements during FY 1980–1982 and other factors as described under "Formula Used to Date" in the reference cited above.

b. $13,955,370, or 55%, would be allocated on the basis of arrivals during CY 1983—September 30, 1990 ("new formula").

The above percentages are based on the proportion of initial placements in these counties during the two periods: 340,737, or 45%, during the old-formula period; and 410,549, or 55%, during the new-formula period.

The old-formula allocation of $11,418,030 follows the same distribution among counties as in the past.

The new-formula allocation of $13,955,370 is based on the number of initial placements in each county during CY 1983—September 30, 1990, multiplied by the State's time-eligible [2] dependency rate as of September 30, 1989. The weighted index resulting from this calculation was used to determine each county's share of the new-formula funds. We continue to believe that, in the absence of additional data, each county's proportionate share of the number of initial placements and the State's time-eligible dependency rate provide good indicators of relative need.[3]

VI. Proposed Allocations

Table 1 lists the participating counties, the amount of each county's proposed allocation which is based on the old formula, the number of placements in each county during CY 1983—September 30, 1990, the State's dependency rate as of September 30, 1989, the amount of each county's allocation which is based on the new formula, and the county's total proposed allocation.

Although Table 1 shows an amount for each county, the Director proposes, in the case of a State which contains more than one qualified county, to continue to permit the State to determine (in accordance with the requirements set forth in this notice) the appropriate allocation of the State's targeted assistance award among the qualified counties in the State. The Director sees this as continuing ORR's practice of providing as much authority and flexibility as possible to States in determining the relative needs of the qualified counties within a State. Thus each such State, as in the FY 1990 TAP, would be responsible for determining an appropriate and equitable basis for allocating the funds among the qualified counties in the State and for including in its application for approval by ORR a description of this allocation basis, the

[2] The term "time-eligible" means refugees in their first 24 months in the U.S., the time-period for which States could claim cash and medical assistance costs against ORR's grants to the States as of the end of FY 1989. "Time-expired" refers to refugees who have been in the U.S. more than 24 months.

[3] More specific data might include the estimated county population of refugees who arrived during CY 1983—FY 1990 and actual numbers of time-expired refugees who are receiving cash assistance. However, it is not possible to estimate county refugee populations reliably because of lack of county-level information on secondary migration. Data are not universally available on the receipt of cash assistance by time-expired refugees.

data to be used, and the allocation proposed for each county.

Table 2 provides State totals for the proposed county allocations set forth in Table 1.

TABLE 1.—PROPOSED TARGETED ASSISTANCE ALLOCATIONS: FY 1991

County	State	Arrivals Jan. 1983–Sept. 1990 (A)	Percent receiving assistance (9/30/89) (B)	Portion of FY 1991 proposed allocation under old formula (C)	Portion of FY 1991 proposed allocation under new formula (D)	Total FY 1991 proposed allocation* (E)
1 Alameda	CA	10,339	80.1	$287,451	$533,588	$821,039
2 Contra Costa	CA	2,865	80.1	82,189	147,860	230,049
3 Fresno	CA	8,231	80.1	158,730	424,795	583,525
4 Los Angeles	CA	69,507	80.1	1,451,587	3,587,202	5,038,789
5 Merced	CA	2,734	80.1	193,743	141,100	334,843
6 Orange	CA	23,162	80.1	645,910	1,195,373	1,841,283
8 Sacramento	CA	7,545	80.1	246,030	389,392	635,422
9 San Diego	CA	14,220	80.1	481,416	733,883	1,215,299
10 San Francisco	CA	15,219	80.1	373,598	785,441	1,159,039
11 San Joaquin	CA	6,699	80.1	248,259	345,730	593,989
12 Santa Clara	CA	19,046	80.1	480,840	982,949	1,463,789
13 Stanislaus	CA	2,349	80.1	44,918	121,230	166,148
14 Denver	CO	4,715	38.0	94,836	112,898	207,734
15 Broward	FL	923	18.5	157,090	10,760	167,850
16 Dade	FL	28,741	18.5	2,740,546	335,037	[1]21,617,683
17 Hillsboro	FL	1,658	18.5	49,367	19,328	68,695
18 Palm Beach	FL	607	18.5	65,259	7,076	72,335
19 Honolulu	HI	2,229	67.7	104,429	95,086	199,515
20 Cook/Kane	IL	20,686	19.5	490,550	254,174	744,724
21 Sedgwick	KS	2,705	24.9	116,897	42,441	159,338
22 Orleans	LA	2,794	7.2	79,857	12,676	92,533
23 Montgomery/Prince Georges	MD	5,026	18.0	97,150	57,005	154,155
24 Middlesex	MA	4,029	60.3	76,746	153,086	229,832
25 Suffolk	MA	10,585	60.3	176,138	402,187	578,325
26 Hennepin	MN	6,222	75.4	123,745	295,611	419,356
27 Ramsey	MN	6,174	75.4	173,993	293,331	467,324
28 Jackson	MO	1,648	16.9	45,428	17,549	62,977
29 Essex	NJ	4,025	18.8	26,289	47,681	73,970
30 Hudson	NJ	1,346	18.8	175,915	15,945	191,860
31 Union	NJ	791	18.8	35,314	9,370	44,684
32 New York	NY	58,899	25.1	392,498	931,540	1,324,038
33 Multnomah	OR	8,120	49.2	266,670	251,733	518,403
34 Philadelphia	PA	11,070	39.7	182,537	276,922	459,459
35 Providence	RI	3,578	43.1	130,377	97,171	227,548
36 Harris	TX	12,491	18.3	213,965	144,035	358,000
37 Salt Lake	UT	4,968	22.3	65,045	69,808	134,853
38 Arlington	VA	1,935	20.4	112,718	24,873	137,591
39 Fairfax	VA	4,948	20.4	135,916	63,603	199,519
40 King/Snohomish	WA	14,990	47.1	324,694	444,879	769,573
41 Pierce	WA	2,730	47.1	69,390	81,022	150,412
Total		410,549	48.5	$11,418,030	$13,955,370	$43,915,500

[1] The allocation for Dade County, Florida, includes $18,542,100 for Jackson Memorial Hospital (Miami) and the Dade County (Miami) public schools, the same amount as in FY 1990, less the 2.41% reduction applied to the FY 1991 HHS appropriation. This is referred to in the Conference Report on the appropriation "to continue the current program of support to communities affected as a result of the massive influx of Cuban and Haitian entrants during the Mariel boatlift." The amounts are $10,380,039 for Jackson Memorial and $8,162,061 for the Dade County schools.

In accordance with the Conference Report, California has been held harmless in the formula allocation, accounting for approximately 28.86% of the funds awarded in both FY 1990 and FY 1991.

TABLE 2.—PROPOSED TARGETED ASSISTANCE ALLOCATIONS BY STATE: FY 1991

State	FY 1991 proposed allocation
California	$14,083,214
Colorado	207,734
Florida	[1] 21,926,563
Hawaii	199,515
Illinois	744,724
Kansas	159,338
Louisiana	92,533
Maryland	154,155
Massachusetts	808,157
Minnesota	886,680
Missouri	62,977
New Jersey	310,514
New York	1,324,038

TABLE 2.—PROPOSED TARGETED ASSISTANCE ALLOCATIONS BY STATE: FY 1991—Continued

State	FY 1991 proposed allocation
Oregon	518,403
Pennsylvania	459,459
Rhode Island	227,548
Texas	358,000
Utah	134,853
Virginia	337,110
Washington	919,985
Total	$43,915,500

[1] The allocation for Florida includes $18,542,100 for Jackson Memorial Hospital (Miami) and the Dade County (Miami) public schools. See footnote to Table 1.

VII. Allowable Activities and Client Prioritization

At least 85% of a county's FY 1991 targeted assistance funds would be used to support activities permissible under section 412(c) of the INA which have specific employment objectives and are directly related to aiding refugees in finding and retaining jobs within less than one year's participation in the targeted assistance program. Examples of these activities are: Job development; job placement; job-related and vocational English; short-term job

training specifically related to opportunities in the local economy; on-the-job training; business and employer incentives (such as on-site employee orientation, vocational English training, or bilingual supervisor assistance); and business technical assistance. These funds may be used for general or remedial educational services—such as adult basic education (ABE) or preparation for a high school equivalency or general education diploma (GED)—only if such service is provided within the context of an individual employability plan for a refugee which is intended to result in job placement within less than one year. Services may continue to be provided as part of a self-sufficiency plan for a refugee after job placement (a) to help the refugee retain employment or (b) to move the refugee to self-sufficiency if the placement has not resulted in sufficient earnings to enable the refugee's cash assistance to terminate. Targeted assistance funds cannot be used for long-term training programs such as vocational training that lasts for more than a year or educational programs that are not intended to lead to employment within a year.

The Director of ORR expects States to "insure that women have the same opportunities as men to participate in training and instruction." In addition, States are expected to make sure that services are provided in a manner that encourages the use of bilingual women on service agency staffs to ensure adequate service access by refugee women.

In order to facilitate refugee self-support, the Director also strongly encourages States to implement strategies which address simultaneously the employment potential of both male and female wage earners, particularly in the case of large families. States are encouraged to treat day care services as a priority employment-related service in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To be eligible for day care funded through targeted assistance, a refugee would have to be participating in TAP employment services or have accepted employment. For an employed refugee, TAP-funded day care would be limited to 6 months after the refugee becomes employed.

Up to 15% of a local area's allocation could be used for other services which are permissible under section 412(c) of the INA and which are identified and demonstrated in the county plan to be essential services in addressing extreme and unusual needs of the refugee population in the targeted assistance area even though they do not have the specific objective of job placement within less than one year. Subject to State review and approval, a maximum of 15% of the allocation amount for each area could be used in funding these services.

In the event that a State might wish to grant a local area's request to allocate more than 15% of its funds for such non-employment-related services, the State would be required to obtain formal prior approval by the Director of ORR. Only the most extreme needs would be considered adequate justification for a local area to use more than 15% of its TAP funds for these services. In order to justify the provision of services for extreme and unusual needs, a county plan would have to identify the target population, demonstrate clearly the nature and extent of the needs, and describe how the use of more than 15% of its targeted assistance funds to address such needs would contribute to the adjustment of the refugee population.

Services funded under TAP would be required to focus primarily on those refugees who, either because of their considerable and protracted use of public assistance or continued difficulty in securing employment, constitute a major resettlement problem for the affected jurisdiction which cannot be addressed without additional services. In order to ensure sufficient emphasis on services to appropriate clients, each State would be required to provide an assurance in its application to ORR that, for each qualified local area, cash assistance recipients (time-eligible and time-expired recipients under any program of the State or locality) would make up a percentage of the FY 1991 targeted assistance clientele which is not less than the State's final FY 1989 dependency rate as determined by ORR.

This client prioritization requirement would not apply to the 15% funds described above.

VIII. Application and Implementation Process

Under the FY 1991 targeted assistance program, as in FY 1990, States would apply for and receive grant awards on behalf of qualified counties in the State. A single allocation would be made to each State by ORR on the basis of an approved State application. The State agency would, in turn, receive, review, and determine the acceptability of individual county targeted assistance plans.

TAP is a multi-year program, with grant project periods issued for periods of 3 years and grant funding generally limited to 12-month budgets within the grant project period. In the event that targeted assistance funds are appropriated in future years, additional 12-month budget period applications will be considered as noncompetitive continuation grant applications so long as they are within the total grant project period.

Although funding for educational services in Dade County, FL, and for medical services at Jackson Memorial Hospital in Miami, FL, is part of the appropriation amount for targeted assistance, the scope of activities for these special projects will be administratively determined. Applications for those funds are therefore not subject to provisions contained in this notice but to other requirements which have been conveyed separately. Similarly, the requirements regarding the 10% of the targeted assistance appropriation that will be awarded separately will be addressed in the grant announcement for those funds.

IX. Application Requirements

The proposed State application requirements for grants for the FY 1991 targeted assistance formula allocations are as follows:

States that are currently operating under approved management plans for their FY 1990 targeted assistance program and wish to continue to do so for their FY 1991 grants may provide the following in lieu of resubmitting the full currently approved plan:

The State's application shall provide:

A. Assurance that the State's current management plan for the administration of the targeted assistance program, as approved by ORR, will continue to be in full force and effect for the FY 1991 targeted assistance program, subject to any additional assurances or revisions required by this notice which are not reflected in the current plan. Any proposed modifications to the approved plan will be described separately in the application and are subject to ORR review and approval.

B. Timetables for awarding funds to the local areas consistent with the conclusion of services under the FY 1990 program as modified by no-cost extensions of prior-year targeted assistance funds and service periods, including budgets with an estimated carryover of unobligated balances from the prior-year budget period. New budget periods are to be for 12 months; however, budget periods greater than 12 months but less than 18 months will be considered if adequately justified.

C. A line item budget and justification for State administrative costs limited to a maximum of 5% of the total award to the State.

D. Revised information and description of any proposed plan modifications. Any proposed changes must address and reference all appropriate portions of the FY 1990 application content requirements to ensure complete incorporation in the State's management plan.

E. If an unobligated balance is available from a prior year, a State must indicate at the time of application how any proposed carryover of unobligated funds will be used. If this information is not available when the application is submitted, the State must submit a supplement to the application explaining how the unobligated funds will be used to expand the program. The proposed budget must also be adjusted accordingly.

F. This paragraph applies only to States administering the program locally: States that have administered the program locally or provide direct service to the refugee population (with the concurrence of the county) must submit a program summary to ORR for prior review and approval. The summary must include a description of the proposed services; a justification for the projected allocation for each component including relationship of funds allocated to numbers of clients served, characteristics of clients, duration of training and services, projected outcomes, and cost per placement. In addition, the program component summary should describe any ancillary services or subcomponents such as day care, transportation, or language training.

G. This paragraph applies only to States with two or more counties receiving targeted assistance funds: As in FY 1990, a State with two or more local areas which qualify for the program may choose to determine respective county allocations. If the State chooses to determine county allocations differently from those set forth in Table 1 of this notice, the State should provide a description of the State's proposed allocation plan. The allocation approach should be based upon existing FY 1990 funds, prior-year funds carried forward, and indicators of refugee need for targeted assistance services. The application should contain a description of the allocation approach, data used in its determination, and the calculated allocation amount for each county. States are encouraged to revise allocation formulas to assure appropriate funding among eligible counties for the duration of the grant such that targeted assistance activities within the State conclude simultaneously. The allocation formula is subject to ORR approval. If the State chooses not to determine county allocation amounts, the State must provide the allocations which are specified in this notice.

H. Assurances that, for each qualified local area, cash assistance recipients (time-eligible or time-expired recipients under any program of the State or locality) will make up a percentage of the FY 1991 targeted assistance clientele no less than the State's final FY 1989 dependency rate, as determined by ORR, unless a waiver of this requirement is granted by ORR.

I. Assurance that at least 85% of targeted assistance funds will support projects which directly enhance refugee employment potential, have specific employment objectives, and are designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program.

J. The following certifications: Drug-Free Workplace, Debarment, and Anti-Lobbying.

X. Review, Technical Assistance, and Award Policy

Applications will be considered on a non-competitive basis. They will be reviewed and approved in accordance with the criteria set forth in this announcement. Continuation awards will be considered based on the receipt of the required program and financial reports and ORR's determination that continued funding is in the best interest of the Government. The Department will provide technical assistance to the applicant if it is necessary in order to develop a proposal which warrants the award of funds at the proposed allocation amount and if such assistance is requested by the applying State agency. Final determination as to the acceptability of applications is at the discretion of the Director of ORR

XI. Reporting Requirements

FY 1991 TAP grants must be tracked separately from previous TAP grants, both financially and programmatically. For the FY 1991 program, States are required to submit semiannual reports and one final report as in previous years on the services provided in each targeted area. States are required to report on the number of job placements and retentions, cash assistance recipients placed on jobs, costs per placement, and other items specified in the "Reporting Requirements for Targeted Assistance Grants for Services for Refugees in Local Areas of High Need," OMB No. 0970-0042, expiration date February 28, 1991. Semiannual reports covering activity through September 30 and March 31 of each year are due on October 31 and April 30 of each year. A final cumulative report is due 90 days after the end of the full grant period.

Dated: April 25, 1991.

Chris Gersten,

Director, Office of Refugee Resettlement.

Attachment A—DHHS Regulations Applicable To All Appicants/Grantees

The following DHHS regulations apply to all applicants/grantees.

Title 45 of the *Code of Federal Regulations:*

Part 16—Departmental Procedures of the Grant Appeals Board

Part 74—Administration of Grants (non-governmental)

Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):

Sections 74.62 (a) Non-Federal Audits
74.173 Hospitals
74.174(b) Other Nonprofit Organizations
74.304 Final Decisions in Disputes
74.710 Real Property, Equipment and Supplies
74.715 General Program Income

Part 75—Informal Grant Appeals Procedures

Part 76—Debarment and Suspension from Eligibility for Financial Assistance

Subpart F—Drug Free Workplace Requirements

Part 80—Nondiscrimination:

Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964

Part 81—Practice and Procedures for Hearings Under Part 80 of this Title

Part 83—Nondiscrimination on the Basis of Sex in the Admission of Individuals to Training Programs

Part 84—Nondiscrimination on the Basis of Handicap in Programs

Part 91—Nondiscrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance

Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments

Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities.

BILLING CODE 4150-04-M

Attachment B—SF-424, Application For Federal Assistance and Instructions For the SF-424

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*: _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Attachment C—SF-424A, Budget Information—Non-Construction Programs and Instructions for the SF-424A

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

Attachment D—SF-424B, Assurances—Non-Construction Programs

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12 Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Attachment E—SF-424C, Budget Information—Construction Programs and Instructions for the SF-424C

OMB Approved No. 0348-0041

BUDGET INFORMATION — Construction Programs

NOTE: Certain Federal assistance programs require additional computations to arrive at the Federal share of project costs eligible for participation. If such is the case you will be notified.

COST CLASSIFICATION	a. Total Cost	b. Costs Not Allowable for Participation	c. Total Allowable Costs (Column a-b)
1. Administrative and legal expenses	$ .00	$ .00	$ .00
2. Land, structures, rights-of-way, appraisals, etc.	$ .00	$ .00	$ .00
3. Relocation expenses and payments	$ .00	$ .00	$ .00
4. Architectural and engineering fees	$ .00	$ .00	$ .00
5. Other architectural and engineering fees	$ .00	$ .00	$ .00
6. Project inspection fees	$ .00	$ .00	$ .00
7. Site work	$ .00	$ .00	$ .00
8. Demolition and removal	$ .00	$ .00	$ .00
9. Construction	$ .00	$ .00	$ .00
10. Equipment	$ .00	$ .00	$ .00
11. Miscellaneous	$ .00	$ .00	$ .00
12. SUBTOTAL	$ .00	$ .00	$ .00
13. Contingencies (sum of lines 1-11)	$ .00	$ .00	$ .00
14. SUBTOTAL	$ .00	$ .00	$ .00
15. Project (program) income	$ .00	$ .00	$ .00
16. TOTAL PROJECT COSTS (subtract #15 from # 14)	$ .00	$ .00	$ .00
FEDERAL FUNDING			
17. Federal assistance requested, calculate as follows: Enter eligible costs from line 16c Multiply X _____ % (Consult Federal agency for Federal percentage share). Enter the resulting Federal share.			$ .00

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INSTRUCTIONS FOR THE SF-424C

This sheet is to be used for the following types of applications: (1) "New" (means a new [previously unfunded] assistance award); (2) "Continuation" (means funding in a succeeding budget period which stemmed from a prior agreement to fund); and (3) "Revised" (means any changes in the Federal government's financial obligations or contingent liability from an existing obligation). If there is no change in the award amount there is no need to complete this form. Certain Federal agencies may require only an explanatory letter to effect minor (no cost) changes. If you have questions please contact the Federal agency.

Column a. — If this is an application for a "New" project, enter the total estimated cost of each of the items listed on lines 1 through 16 (as applicable) under "COST CLASSIFICATIONS."

If this application entails a change to an existing award, enter the eligible amounts *approved under the previous award* for the items under "COST CLASSIFICATION."

Column b. —If this is an application for a "New" project, enter that portion of the cost of each item in Column a. which is *not* allowable for Federal assistance. Contact the Federal agency for assistance in determining the allowability of specific costs.

If this application entails a change to an existing award, enter the adjustment [+ or (-)] to the previously approved costs (from column a.) reflected in this application.

Column c. — This is the net of lines 1 through 16 in columns "a." and "b."

Line 1 — Enter estimated amounts needed to cover administrative expenses. Do not include costs which are related to the normal functions of government. Allowable legal costs are generally only those associated with the purchase of land which is allowable for Federal participation and certain services in support of construction of the project.

Line 2 — Enter estimated site and right(s)-of-way acquisition costs (this includes purchase, lease, and/or easements).

Line 3 — Enter estimated costs related to relocation advisory assistance, replacement housing, relocation payments to displaced persons and businesses, etc.

Line 4 — Enter estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan).

Line 5 — Enter estimated engineering costs, such as surveys, tests, soil borings, etc.

Line 6 — Enter estimated engineering inspection costs.

Line 7 — Enter estimated costs of site preparation and restoration which are not included in the basic construction contract.

Line 9 — Enter estimated cost of the construction contract.

Line 10 — Enter estimated cost of office, shop, laboratory, safety equipment, etc. to be used at the facility, if such costs are not included in the construction contract.

Line 11 — Enter estimated miscellaneous costs.

Line 12 — Total of items 1 though 11.

Line 13 — Enter estimated contingency costs. (Consult the Federal agency for the percentage of the estimated construction cost to use.)

Line 14 — Enter the total of lines 12 and 13.

Line 15 — Enter estimated program income to be earned during the grant period, e.g., salvaged materials, etc.

Line 16 — Subtract line 15 from line 14.

Item 17 — This block is for the computation of the Federal share. Multiply the total allowable project costs from line 16, column "c." by the Federal percentage share (this may be up to 100 percent; consult Federal agency for Federal percentage share) and enter the product on line 17.

Attachment F—SF-424D, Assurances—Construction Programs

OMB Approved No. 0348-0042

ASSURANCES — CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program, If you have questions, please contact the Awarding Agency. Further, certain federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statues relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686) which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) which prohibit discrimination of the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107) which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended, relating to non-discrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other non-discrimination provisions in the specific statute(s) under which application for Federal assistance is being made, and (j) the requirements on any other non-discrimination Statute(s) which may apply to the application.

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11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), the Contract Work Hours and Safety Standards Act (40 U.S. §§ 327-333) regarding labor standards for federally assisted construction subagreements.

14. Will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

19. Will comply with all applicable requirements of all other Federal laws, Executive Orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE

APPLICANT ORGANIZATION	DATE SUBMITTED

Attachment G—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125-0347, Telephone (205) 284-8905

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280-1315

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371-1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323-7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, room 520, Denver, Colorado 80203, Telephone (303) 866-2156

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106-4459, Telephone (203) 566-3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736-3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004,Telephone (202) 727-9111

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399-0001, Telephone (904) 488-8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656-3855

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Telephone (808) 548-3016 or 548-3085

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782-8639

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232-5610

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281-3725

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564-2382

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289-3261

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Telephone (301) 225-4490

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727-7001

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373-7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373-6223

Mississippi

Cathy Mallett, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960-4280

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751-4834

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444-5522

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Attn: John B. Walker, Clearinghouse Coordinator

New Hampshire

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271-2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-9025

New Mexico

Dorothy E. (Duffy) Rodriquez, Deputy Director, State Budget Division, Department of Finance & Administration, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827-3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474-1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733-0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224-2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Telephone (614) 466-0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843-9770

Oregon

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations

Division, State Clearinghouse, 155 Cottage Street, N.E., Salem, Oregon 97310, Telephone (503) 373-1998

Pennsylvania

Sandra Kline, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Telephone (717) 783-3700

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277-2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734-0493

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773-3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741-1676

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463-1778

Utah

Utah State Clearinghouse, Attn: Carolyn Wright, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Telephone (801) 538-1547

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828-3326

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH-51, Olympia, Washington 98504-4151, Telephone (206) 753-4978

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348-4010

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707-7864, Telephone (608) 266-1741

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration, (608)-266-0267

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777-7574

Territories

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472-2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Telephone (809) 727-4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774-0750

Attachment H—DHHS Certification Regarding Drug-Free Workplace Requirements—Grantees Other Than Individuals

Attachment H—U.S. Department of Health and Human Services Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the January 31, 1989 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the U.S. Department of Health and Human Services determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of the grant, or governmentwide suspension or debarment.

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) the dangers of drug abuse in the workplace;

(2) the grantee's policy of maintaining a drug-free workplace;

(3) any available drug counseling, rehabilitation, and employee assistance programs; and

(4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Make it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) abide by the terms of the statement; and

(2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted;

(1) taking appropriate personnel action against such an employee, up to and including termination; or

(2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), and (f).

B. The grantee shall insert in the space provided below, the site(s) for the performance of work done in connection with the specific grant (Street address, city, county, state, zip code):

Attachment I—Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and belief that its principals involved:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered

transactions by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commissions of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause of default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction. The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions", provided below, without modification in all lower tier covered transactions and in all solicitations for lower tier covered actions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and all solicitations for lower tier covered transactions.

BILLING CODE 4150-04-M

Attachment J—Restrictions on Lobbying and SF-LLL and Instructions

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3 The undersigned shall require that the language of this certification be included in the award documents for subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or grantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

_____

Signature

_____

Title

_____

Organization

_____

Date

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*

b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

[FR Doc. 91-11068 Filed 5-9-91; 8:45 am]
BILLING CODE 4150-04-C

federal register

Friday
May 10, 1991

Part VII

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1 and 2

Revision of Patent and Trademark Fees; Proposed Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 910373-1073]

RIN 0651-AA45

Revision of Patent and Trademark Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (PTO) proposes to amend the rules of practice in patent and trademark cases, parts 1 and 2 of title 37, Code of Federal Regulations, to adjust certain patent and trademark fee amounts and to amend certain procedures in accordance with the applicable provisions of H.R. 1613.

In brief, the PTO is proposing to establish a two-year fee cycle for fiscal years 1992 and 1993. During the 1992-1993 fee cycle, fees set under 35 U.S.C. 41 (a) and (b) would remain at the present level. Fees set under 35 U.S.C. 41(d), 35 U.S.C. 376, and section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), would be adjusted. The small entity subsidy would be continued, but would apply only to patent application filing fees.

DATES: Written comments must be submitted on or before June 12, 1991; a public hearing will be held on June 12, 1991, at 9 a.m. Requests to present oral testimony should be received on or before June 11, 1991.

ADDRESSES: Address written comments and requests to present oral testimony to the Commissioner of Patents and Trademarks, Washington, DC 20231, Attention: Frances Michalkewicz, suite 507, Crystal Park 1, or by FAX to (703) 557-8664. The hearing will be held in suite 912 on the 9th floor of Building 2, Crystal Park, located at 2121 Crystal Drive, Arlington, Virginia. Written comments and a transcript of the hearing will be available for public inspection in suite 507 of Building 1, Crystal Park, at 2111 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Frances Michalkewicz by telephone at (703) 557-1610 or by mail marked to her attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: This proposed rule change is designed to adjust the Paten. and Trademark Office fees in accordance with the provisions of H.R. 1613.

Patent and trademark fees were set on October 1, 1982, in accordance with the provisions of title 35, United States Code, and the provisions of section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113).

On November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) imposed a 69 percent surcharge on all patent fees set under 35 U.S.C. 41 (a) and (b). Section 10101 of Public Law 101-508 requires the Commissioner to make recommendations for any statutory changes necessary to implement new fee proposals. Furthermore, the PTO's authorizing legislation (Pub. L. 100-703) will expire on September 30, 1991. Legislation to authorize appropriations for the Patent and Trademark Office for fiscal years 1992 and 1993 and for other purposes has been introduced as H.R. 1613.

Background

Statutory Provisions

Patent fees are authorized by 35 U.S.C. 41 and 35 U.S.C. 376. Subsections 41 (a) and (b) of title 35, United States Code, establish a number of statutory fees. Among them are fees for filing a patent application, issuing a patent, and maintaining a patent in force.

Section 10101 (a) of Public Law 101-508 imposes a 69 percent surcharge on all fees authorized by 35 U.S.C. 41 (a) and (b), effective November 5, 1990. Section 1(c) of H.R. 1613 would require the Commissioner to keep section 41 (a) and (b) fees at this level.

Section 41(h) of title 35, United States Code, authorizes the 50 percent reduction in the fees paid under 35 U.S.C. 41(a) and 35 U.S.C. 41(b) by independent inventors, small business concerns, and nonprofit organizations, who meet the prescribed definitions. Section 4(d) of H.R. 1613 would amend 35 U.S.C. 41(h) to apply the 50 percent reduction only to patent application filing and claim fees when those fees are paid upon filing the application.

Section 4(a) of H.R. 1613 would amend 35 U.S.C. 41(d) to allow the Commissioner to establish fees for all other processing, services, or materials related to patents and not specified in 35 U.S.C. 41(a) and (b) to recover, in the aggregate with other revenues, the estimated cost of the operations of the PTO.

Section 376 of title 35, United States Code, authorizes the Commissioner to set fees for patent applications filed under the Patent Cooperation Treaty. H.R. 1613 makes no modifications to 35 U.S.C. 376.

Section 4(b) of H.R. 1613 would amend subsection 41(f) of title 35, United States Code, to provide that all fees set under 35 U.S.C. 41(a) and (b) may be adjusted every two years beginning October 1, 1993, by fluctuations in the Consumer Price Index (CPI) over the previous two years.

Section 4(c) of H.R. 1613 would amend subsection 41(g) of title 35, United States Code, to allow new fee amounts established after October 1, 1991, to take effect thirty days after notice in the **Federal Register.**

Section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), authorizes the Commissioner to establish fees for the filing and processing of an application for the registration of a trademark or other mark, and for all other services and materials relating to trademarks and other marks. The current section 31 also precludes any fee for the filing or processing of an application for the registration of a trademark or other mark or for the renewal or assignment of a trademark or other mark from being adjusted more than once every three years.

Section 42(c) of title 35, United States Code, provides that trademark fees available to the Commissioner are to be used exclusively for the processing of trademark registrations and for other services and materials related to trademarks. Section 4(f) of H.R. 1613 would modify 35 U.S.C. 42(c) so that trademark fees could be used to support a fair share of trademark-related activities including administrative, legislative, international and outreach programs that to date have been funded from taxpayer revenues. Trademark fees could be reprogrammed for other authorized PTO activities not specified above only upon compliance with the guidelines for reprogramming set forth in the Department of Commerce's annual appropriations act.

Section 4(g) of H.R. 1613 would allow trademark fees to be adjusted every two years, and after October 1, 1991, would allow new fee amounts to take effect thirty days after notice in the **Federal Register.**

General Procedures

Recovery Level Determinations

The PTO proposes to recover its operating costs for fiscal years 1992 and 1993 as stated in the President's Fiscal Year 1992 Budget. The budget request for fiscal year 1992 totals $461,790,000 and the estimate for fiscal year 1993 totals $554,899,000. Recovery levels were guided by OMB Circular A-25, "User

Fees," and OMB Circular A-130, "Management of Federal Information Resources."

Workload Projections

Determination of future year workloads varies by fee code. Principal workload projection techniques are as follows:

Patent and trademark application workloads were projected from statistical regression models using recent application trends. Patent issues are projected from an in-house patent productivity model and reflect examiner production achievements and goals. Patent maintenance fee workloads utilize patents issued 3.5, 7.5 and 11.5 years prior to payment and assume payment rates of 80 percent, 50 percent and 25 percent, respectively. Trademark affidavit projections are based on filing trends for marks registered five to six years prior. Trademark renewal projections are based on marks registered 20 years prior to 1989. Service fee workloads follow linear trends from prior year activities. Workload estimates are calculated by the Office of Budget and the office responsible for the fee activity.

Income Projections

For each patent statutory fee, the amount of each fee set forth in the **Federal Register** of November 26, 1990, at 55 FR 49040 was multiplied by the projected workload for 1992 and 1993 to project the income from that fee item during the two-year period. The sum of the projected incomes from all patent statutory fees for the two-year period was subtracted from the two-year budget requests of $913,433,000 for patents. The result was the amount that would have to be recovered from patent non-statutory fees and Patent Cooperation Treaty fees.

Section 4(a) of H.R. 1613, along with 35 U.S.C. 376, would allow the PTO to set fees to recover in the aggregate with revenues projected to be generated from patent statutory fees, the estimated cost of patent operations for the two-year period, 1992-1993. Each of the proposed fee amounts was multiplied by the projected workload during the fee cycle to project the income from that fee item. The sum of revenues projected to be generated from patent statutory fees, patent non-statutory fees, and Patent Cooperation Treaty fees equals the President's Budget request for patents for fiscal years 1992 and 1993.

Section 4(g) of H.R. 1613 would allow the PTO to set trademark fees to recover the estimated cost of the trademark operations for the two-year period, 1992-1993. The two-year budget request for trademarks is $99,956,000.

A comparison of existing and proposed fee amounts is included as an Appendix to this proposed notice.

Any fee amount that is paid on or after October 1, 1991, would be subject to the new fee schedule. Under H.R. 1613, the small entity subsidy would be continued, but would apply only to patent application filing and claims fees. Fees set in 35 U.S.C. 41(a)(1) for additional claims would be subject to reduction for small entities only if the additional claims were included in the application as filed. No small entity reduction would apply for claims presented later than on filing the application. Fee amounts established by 35 U.S.C. 41(a)(2), (a)(3)(c), (a)(3)(d), (a)(5)-(a)(8), and 41(b) that are paid on or after October 1, 1991, would no longer be reduced by 50 percent for small entities.

For purposes of determining the amount of the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing, where authorized under 37 CFR 1.8, will be considered to be the date of receipt in the PTO. A "Certificate of Mailing under section 1.8" is not "proper" for items which are specifically excluded from the provisions of § 1.8. Section 1.8 should be consulted for those items for which a Certificate of Mailing is not "proper." Such items include, inter alia, the filing of national and international applications for patents and the filing of trademark applications. The provisions of 37 CFR 1.10 relating to filing papers and fees with an "Express Mail" certificate, however, do apply to any paper or fee (including patent and trademark applications) to be filed in the PTO. If an application or fee is filed by "Express Mail" with a proper certificate dated on or after the effective date of the rules, the amount of the fee to be paid is the fee established herein if a change is being made in the fee. In order to ensure clarity in the implementation of the fee proposals, a discussion of specific sections is set forth below.

Discussion of Specific Rules

37 CFR 1.12 Assignment Records Open to Public Inspection

Section 1.12, paragraph (a), if amended as proposed, would change the reference for payment of a fee to § 1.19(b)(3), and add a reference to the fee set in the trademark rules at § 2.6(b)(5). Section 1.12, paragraph (d), if amended as proposed, would change the reference for payment of a fee to § 1.21(j), and add a reference to the fee set in the trademark rules at § 2.6(b)(10).

37 CFR 1.13 Copies and Certified Copies

Section 1.13, if amended as proposed, would revise paragraph (b) to be consistent with proposed revisions to paragraphs 1.19(b) and 2.6(b).

37 CFR 1.16 National Application Filing Fee

Section 1.16, paragraphs (b)-(d), (i) and (j), if revised as proposed, would clarify that the reduced fee amounts to be paid by a small entity are applicable only when the claims are filed with the original application. Fees for presentation of claims in an original application later than on filing are set forth in proposed new 37 CFR 1.17 (p) and (q).

Section 1.16, paragraph (e), if revised as proposed, would adjust the patent application surcharge fee as authorized by section 4(a) of H.R. 1613, and would eliminate the two-tier fee structure, as authorized by section 4(d) of H.R. 1613. All applicants would pay the same fee amount.

37 CFR 1.17 Patent Application Processing Fees

Section 1.17, paragraphs (a)-(g), (l) and (m), if revised as proposed, would eliminate the two-tier fee structure as authorized by section 4(d) of H.R. 1613. All applicants would pay the same amount.

Section 1.17, paragraphs (h)-(k) and (n)-(o), if revised as proposed, would adjust the fee amounts as authorized by section 4(a) of H.R. 1613.

Section 1.17, if revised as proposed, would add new paragraphs (p) and (q).

Proposed new paragraph (p) would set forth fees for presentation to claims in an original application later than on filing.

Proposed new paragraph (q) would set forth fees for presentation of claims in a reissue application later than on filing.

37 CFR 1.18 Patent Issue Fees

Section 1.18, if revised as proposed, would eliminate the two-tier fee structure as authorized by section 4(d) of H.R. 1613. All applicants would pay the same amounts.

37 CFR 1.19 Document Supply Fees

Section 1.19, if revised as proposed, would establish that the Office would sell certified or uncertified copies of documents at the same flat fee. Most requests for documents are for certified copies. Customers who need uncertified copies of documents or copies of

portions of documents also would be able to make those copies themselves at a self-service copy charge, per page. The Office no longer would compare and certify documents that were not made by Office staff.

Section 1.19, subparagraph (a)(1), if revised as proposed, would adjust the fee amount as authorized by section 4(a) of H.R. 1613. Subparagraph (a)(1), if revised as proposed, also would clarify and set fees for different levels of service available for obtaining copies of patents in black and white. In addition to regular service, the PTO would provide for expedited local service to be fulfilled within one workday for orders delivered to the Public Service Window at double the fee amount set for regular service; and expedited service via electronic ordering service and delivered by overnight express delivery service as previously provided by subparagraph (a)(6). There are two Public Service Windows at the PTO: One in the Patent Search Room and another in the Trademark Search Library. Unless otherwise requested, copies of patents would be delivered to the Public Service Window in the Patent Search Room.

Section 1.19, subparagraph (a)(2), if revised as proposed, would adjust the fee amount as authorized by section 4(a) of H.R. 1613, and delete reference to copies of statutory invention registrations, which would be provided by renumbered subparagraph (a)(3).

Section 1.19, if revised as proposed, would delete existing subparagraph (a)(3). In the future, the PTO only would provide certified or uncertified copies of documents at a flat fee, as set forth in renumbered subparagraph (b)(3).

Section 1.19, renumbered subparagraph (a)(3), if revised as proposed, would clarify and set fees for different levels of service available for obtaining copies of utility patents or statutory invention registrations containing color drawings. In addition to regular service, the PTO would provide for expedited local service to be fulfilled within one work day for orders delivered to a Public Service Window at double the fee amount set for regular service.

Section 1.19, if revised as proposed, would delete subparagraphs (a)(5) and (a)(6). The service formerly provided under subparagraph (a)(5) would be provided under subparagraphs (a)(1)(ii) and (a)(2)(iii), and the service formerly provided under subparagraph (a)(6) would be provided under (a)(1)(iii).

Section 1.19, subparagraph (b)(1), if revised as proposed, would adjust the fee amount as authorized by section 4(a) of H.R. 1613, and also clarify and set fees for different levels of service available for obtaining certified copies of patent applications as filed. In addition to regular service, the PTO would provide for expedited service, fulfilled within five work days, excluding mailing time, at double the fee amount set for regular service.

Section 1.19, subparagraph (b)(2), if revised as proposed, would reduce the fee for providing a certified or uncertified copy of a patent file wrapper and contents.

Section 1.19, if revised as proposed, would delete subparagraphs (b)(3) and (b)(4). Certified or uncertified copies of Office records would be provided under the renumbered (b)(3). Expedited service as currently provided under subparagraph (b)(4) would be provided under subparagraph (b)(1)(ii).

Section 1.19, if revised as proposed, would renumber subparagraph (b)(5) as (b)(3), and adjust the fee amount as authorized by section 4(a) of H.R. 1613. Section 1.19, subparagraph (b)(3), if revised as proposed, would establish that the PTO provides copies of certified documents, but does not certify documents provided by the public.

Section 1.19, if revised as proposed, would renumber subparagraph (b)(6) as (b)(4) and would adjust the fee amount as authorized by section 4(a) of H.R. 1613.

Section 1.19, paragraphs (d)–(f), if revised as proposed, would adjust the fee amounts as authorized by section 4(a) of H.R. 1613.

Section 1.19, if revised as proposed, would delete paragraph (g) because the PTO no longer would certify copies that are not prepared by the PTO.

Section 1.19, if revised as proposed, would renumber paragraph (h) as (g), and adjust the fee amount in renumbered paragraph (g) as authorized by section 4(a) of H.R. 1613.

37 CFR 1.20 Post-Issuance Fees

Section 1.20, paragraphs (a)–(c), if revised as proposed, would adjust the fee amounts as authorized by section 4(a) of H.R. 1613.

Section 1.20, paragraph (d), if revised as proposed, would eliminate the two-tier fee structure as authorized by section 4(d) of H.R. 1613. All would pay the same amounts.

Section 1.20, paragraphs (e)–(g), if revised as proposed, would adjust the fee amounts as authorized by section 4(a) of H.R. 1613 to make them comparable to the amounts established by § 41(b) and set forth in the **Federal Register** of November 26, 1990, at 55 FR 49040 under 37 CFR 1.20(h)–(j), respectively.

Section 1.20, paragraphs (e)–(g), if revised as proposed, would provide for the payment of maintenance fees on original and reissue patents, except design or plant patents, based on all applications filed on or after December 12, 1980. Paragraphs (e)–(g) formerly provided for the payment of maintenance fees on original and reissue patents, except design or plant patents, based on applications filed on or after December 12, 1980, but before August 27, 1982. Paragraphs (h)–(j), which are proposed to be deleted, provided for the payment of maintenance fees on original and reissue patents, except design or plant patents, based on applications filed on or after August 27, 1982. The distinction in the maintenance fee due based on the application filing date would be eliminated by section 4(a) of H.R. 1613. Section 4(d) of H.R. 1613 would eliminate the two-tier fee structure for the payment of maintenance fees. All would pay the same amounts.

Section 1.20, if revised as proposed, would delete paragraphs (h)–(j). The fees for maintaining all original or reissue patents, except design or plant patents, including those based on applications filed on or after August 27, 1982, would be set forth in paragraphs (e)–(g).

Section 1.20, if revised as proposed, would renumber paragraph (k) as paragraph (h), and adjust the fee amounts as authorized by section 4(a) of H.R. 1613. This paragraph would provide for a surcharge for payment of a maintenance fee during the six-month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant of a patent based on an application filed on or after December 12, 1980. Paragraph (h) formerly provided for a surcharge for late payment of maintenance fees on original and reissue patents, except design or plant patents, based on applications filed on or after December 12, 1980, but before August 27, 1982. Paragraph (l), which is proposed to be deleted, provided for a surcharge for late payment of maintenance fees on original and reissue patents, except design or plant patents, based on applications filed on or after August 27, 1982. Section 4(d) of H.R. 1613 would eliminate the two-tier fee structure for the payment of maintenance fees. All would pay the same amounts.

Section 1.20, if revised as proposed, would delete paragraph (l). The fees for the late payment of a maintenance fee for all original or reissue patents, except

design or plant patents, based on applications filed on or after December 12, 1980, are set forth in proposed renumbered paragraph (h).

Section 1.20, if revised as proposed, would renumber paragraphs (m) and (n) as paragraphs (i) and (j), and adjust the fee amounts as authorized by section 4(a) of H.R. 1613.

37 CFR 1.21 Miscellaneous Fees and Charges

Section 1.21, if revised as proposed, would reserve paragraph (f) and delete paragraphs (p) and (q).

Section 1.21, paragraphs (a), (c)-(e), (h), and (l)-(n), if revised as proposed, would adjust the fee amounts as authorized by section 4(a) of H.R. 1613.

Section 1.21, subparagraph (a)(4), if revised as proposed, would provide a certificate of good standing for $10.00 and a certificate that is suitable for framing at double that fee amount.

Section 1.21, subparagraph (b)(1), if revised as proposed, would eliminate the fee requirement for reinstating a deposit account. This fee requirement has been found to be unnecessary because the Office no longer suspends accounts when there is no activity. The fee amount for establishing a deposit account would remain at $10.00.

Section 1.21, if revised as proposed, would delete paragraph (f), since this service would be provided under revised paragraph (j). Paragraph (f) would be reserved.

Section 1.21, paragraph (g), if revised as proposed, would establish a self-service copy charge amount, per page. The self-service copy charge would be applied to the per copy amounts on CopiShare cards as previously provided by this paragraph, and the marginal cost for each printed page generated from the Automated Patent System, as previously provided by paragraph (q).

Section 1.21, paragraph (j), if revised as proposed, would eliminate the fee for providing duplicate passes. The Office would continue to provide duplicate passes free of charge.

Proposed new paragraph (j) would establish one fee amount for each hour of service, or fraction thereof, requested from the PTO. Examples of services would be searching PTO records, as previously provided by this paragraph; PTO staff assistance to conduct a search using the Automated Patent System, as previously provided in paragraph (p); and other miscellaneous requests for services where PTO staff are providing direct labor support to customers.

Section 1.21, paragraph (k), if revised as proposed, would require the payment of the actual cost for performing special services provided by the PTO. Generally, services provided by the PTO would be charged at the $40.00 hourly rate set forth in paragraph (f) of this section. Paragraph (k) is reserved for non-labor charges, such as computer services, special supplies, extra mailing costs, etc., that are authorized by the customer.

37 CFR 1.24 Coupons

Section 1.24, if revised as proposed, would adjust the fee for the purchase of coupons for patents and trademarks to make it comparable to the fee required for the purchase of copies of patents and trademarks, and to adjust the amount of the coupon books.

37 CFR 1.26 Refunds

Section 1.26, paragraph (c), if revised as proposed, would provide for a refund of $2,250 if the Commissioner decides not to institute reexamination proceedings. The $2,250 refund would apply to those instances where the proposed reexamination fee of $3,000 under 37 CFR 1.20(c) was paid. The current $1,500 refund would be made in those cases where the current $2,000 reexamination fee was paid.

37 CFR 1.27 Statement of Status as Small Entity

Section 1.27, if revised as proposed, would clarify that small entity status is available only when paying the application filing fees, in accordance with section 4(d) of H.R. 1613.

37 CFR 1.28 Effect on Fees of Failure to Establish Status as a Small Entity

Section 1.28, if amended as proposed, would revise paragraphs (a) and (c), and delete paragraph (b) to clarify that small entity status is available only when paying the application filing fees, in accordance with section 4(d) of H.R. 1613. Paragraph (b) would be reserved.

37 CFR 1.171 Application for Reissue

Section 1.171, paragraph (a), if revised as proposed, would change the reference for payment of a fee to § 1.19(b)(4).

37 CFR 1.296 Withdrawal of Request for Publication of Statutory Invention Registration

Section 1.296, if revised as proposed, would adjust the handling fee for withdrawal of a statutory invention registration as authorized by section 4(a) of H.R. 1613.

37 CFR 1.362 Time for Payment of Maintenance Fees

Section 1.362, if amended as proposed, would revise paragraphs (a) and (e) to refer to renumbered paragraphs in § 1.20, and would revise paragraph (b) to clarify that maintenance fees are not required for any plant or design patents.

37 CFR 1.366 Submission of Maintenance Fees

Section 1.366, if amended as proposed, would revise paragraph (d) to delete reference to small entity status when paying maintenance fees, in accordance with section 4(d) of H.R. 1613. There would be no reduction in any maintenance fee paid after the effective date of these rules for small entity status.

Section 1.366, if amended as proposed, would delete paragraph (f) since it refers exclusively to a change in small entity status prior to, or at the time of paying, the first maintenance fee. Section 4(d) of H.R. 1613 would eliminate the two-tier fee structure for the payment of maintenance fees. All would pay the same amounts.

Section 1.366, if amended as proposed, would renumber paragraph (g) as paragraph (f), and eliminate the reference to § 1.28(a) since the small entity provisions would no longer apply to maintenance fees.

37 CFR 1.378 Acceptance of Delayed Payment of Maintenance Fee in Expired Patent to Reinstate Patent

Section 1.378, if amended as proposed, would revise paragraphs (a)-(c) and (e) to refer to renumbered paragraphs in § 1.20.

37 CFR 1.445 International Application Filing, Processing, and Search Fees

Section 1.445, if revised as proposed, would adjust the fees authorized by 35 U.S.C. 376 for international application processing as set forth in 37 CFR 1.445(a) in accordance with section 4(a) of H.R. 1613.

37 CFR 1.482 International Preliminary Examination Fees

Section 1.482, if revised as proposed, would adjust the fees in paragraph (a) in accordance with section 4(a) of H.R. 1613.

37 CFR 1.492 National Stage Fees

Section 1.492, if revised as proposed, would adjust the fees in paragraphs (a)-(f) in accordance with section 4(a) of H.R. 1613. Section 1.492, if revised as proposed, would eliminate the two-tier fee structure in paragraphs (a)-(e).

Section 1.492, if revised as proposed, would add new subparagraph (a)(5) to set forth a fee upon entering the national stage when a search report on the international application has been prepared by the European Patent Office or the Japanese Patent Office. The

proposed fee amount includes a reduction equivalent to approximately 20 percent of the cost of conducting a search.

37 CFR 1.740 Application for Extension of Patent Term

Section 1.740, paragraph (a)(14), if revised as proposed, would change the reference to the rule for extension of a patent term to § 1.20(j).

37 CFR 1.770 Express Withdrawal of Application for Extension of Patent Term

Section 1.770, if revised as proposed, would change the reference to the rule for extension of a patent term to § 1.20(j).

37 CFR 2.6 Trademark Fees

Section 2.6, if revised as proposed, would be divided into two sections. Revised paragraph (a) would include all Trademark process fees and revised paragraph (b) would include all Trademark service fees. Paragraphs (a) and (u) would be renumbered as subparagraphs (a)(1) and (a)(2); paragraphs (v), (b), (s), (c)–(l) would be renumbered as subparagraph (a)(4)–(a)(16), respectively; and paragraph (m) would be renumbered as subparagraph (a)(18). New subparagraphs (a)(3) and (a)(17) would be added.

Paragraph (n) would be renumbered as subparagraph (b)(1); paragraphs (o), (q), (r), and (w) would be renumbered as subparagraphs (b)(5)–(b)(8), respectively; and paragraph (t) would be renumbered as subparagraph (b)–(11). New subparagraphs (b)(2)–(b)(4), (b)(9) and (b)(10) would be added.

Subparagraph (a)(1), if revised as proposed, would adjust the fee amount established pursuant to the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), in accordance with section (g) of H.R. 1613.

Subparagraph (a)(2), if revised as proposed, would delete reference to filing an amendment for a statement of use. New subparagraph (a)(3) would be established for filing a statement of use under section (1)(d)(1) of the Act, per class. This would clarify that a $100 fee amount is due for each action requested.

Subparagraph (a)(5), if revised as proposed, would delete the words "an application" from the rule.

Subparagraph (a)(6), if revised as proposed, would clarify the requirement for paying an additional fee for a renewal application made within three months of the expiration of the registration. Subparagraph (a)(6), if revised as proposed, would adjust the fee amount established pursuant to the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), in accordance with section (g) of H.R. 1613.

Subparagraphs (a)(12)–(a)(16), if revised as proposed, would adjust the fee amounts in accordance with section (g) of H.R. 1613.

Subparagraph (a)(16), if revised as proposed, would delete reference to filing a notice of opposition. New subparagraph (a)(17) would be established for filing a notice of opposition, per class. This would clarify that the proposed $400 fee amount is due for each class requested.

Subparagraph (a)(18), if revised as proposed, would adjust the fee amount in accordance with section (g) of H.R. 1613.

Section 2.6(b), if revised as proposed, would establish that the Office would sell certified or uncertified copies of documents at the same flat fee. Most requests for documents are for certified copies. Customers who need uncertified copies of documents or copies of portions of documents also would be able to make those copies themselves for a self-service copy charge, per page. The Office no longer would compare and certify documents that were not made by Office staff.

Subparagraph (b)(1), if revised as proposed, would adjust the fee amount in accordance with section (g) of H.R. 1613, and would delete reference to a copy showing title and/or status. In addition, this subparagraph would clarify the levels of service available for obtaining printed copies of trademarks. In addition to regular service provided by subparagraph (b)(1)(i), the PTO would provide, in new subparagraph (b)(1)(ii), for expedited local service to be fulfilled within one workday for orders delivered to a Public Service Window at double the fee amount for regular service. There are two Public Service Windows at the PTO: One in the Patent Search Room and another in the Trademark Search Library. Unless otherwise requested, all copies of trademarks would be delivered to the Public Service Window in the Trademark Search Library. New subparagraph (b)(1)(iii) would establish a fee for providing expedited service for a copy of a registered mark ordered by electronic ordering service and delivered to the customer within two workdays.

Under proposed new subparagraph (2), the PTO would provide a certified copy of a trademark application as filed. In addition to regular service provided under (b)(2)(i), the PTO would provide, in subparagraph (b)(2)(ii), for expedited service fulfilled within five workdays, excluding mailing time, at double the fee amount for regular service.

Under subparagraph (b)(3), the PTO would provide certified or uncertified copies of trademark file wrappers and contents at the same flat fee amount.

Subparagraph (b)(4), if revised as proposed, would adjust the fee amount in accordance with section (g) of H.R. 1613, and would provide certified copies of registered marks, showing title and/or status, as provided under the current § 2.6(n). In addition to regular service provided by (b)(4)(i) at a fee, the PTO would provide, in subparagraph (b)(4)(ii), for expedited service fulfilled within five workdays from receipt of request in the Trademark Post-Registration Division, excluding mailing time, at double the fee amount for regular service.

Subparagraph (b)(5), if revised as proposed, would adjust the fee amount in accordance with section (g) of H.R. 1613, and would provide certified or uncertified copies of trademark records, per document, except as otherwise provided in this section, at the proposed flat fee amount. The Office no longer would certify documents that are not prepared by the Office, as is provided for in existing paragraph (o). Further, expedited services are now included as subparagraphs (b)(2)(ii) and (b)(4)(ii).

Section 2.6, if revised as proposed, would delete existing paragraph (p). A self-service copy charge is provided in subparagraph (b)(9) of this section.

Subparagraph (b)(6), if revised as proposed, would adjust the fee amount in accordance with section (g) of H.R. 1613.

Subparagraph (b)(7), if revised as proposed, would adjust the fee amount in accordance with section (g) of H.R. 1613, and would clarify that the fee amount charged would cover a search of assignment records and an abstract of title and certification.

Section 2.6, if revised as proposed, would delete paragraph (x). This service would be provided under proposed subparagraph (b)(9).

Proposed new subparagraph (b)(9) would establish a self-service copy charge, per page, and would be a replacement for the services offered in paragraphs (p) and (x) which are proposed to be deleted. The self-service copy charge would be applied to the per copy amounts on CopiShare cards, and the marginal cost for each printed page generated from the Automated Trademark System, as previously provided by paragraph (x).

Proposed new subparagraph (b)(10) would establish one fee amount for each hour of service, or fraction thereof, requested from the PTO. Examples of services would be searching PTO

records, as previously provided by this paragraph, and other miscellaneous requests for services where PTO staff are providing direct labor support to customers.

Subparagraph (b)(11), if revised as proposed, would clarify that the services to be provided would be those that are not specified elsewhere in the statute or rules. Adding this language makes the wording of this rule comparable to § 1.21(k). Generally, services provided by the PTO would be charged at the $40.00 hourly rate set forth in subparagraph (b)(10) of this section. Subparagraph (b)(11) is reserved for nonlabor charges, such as computer services, special supplies, extra mailing costs, etc., that are authorized by the customer.

Other Considerations

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. There are no information collection requirements relating to patent and trademark fee rules.

The PTO has determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule change would not have a significant adverse impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354). Since 1983, PTO has relied on fee income from patent statutory, patent non-statutory, PCT and trademark fees to partially fund its operating program. As a result of the Omnibus Budget Reconciliation Act of 1990, reliance on fee income has increased to 99.9 percent. PTO will recover approximately 76 percent of its budget from statutory patent fees, which are unchanged, and from the elimination of the small entity subsidy for many patent fees, which is required by the proposed legislation. Only approximately 24 percent of PTO's total budget for fiscal years 1992 and 1993 will be obtained from non-statutory patent, PCT and trademark fees. Since non-statutory patent fees are an adjunct to patent statutory fees (e.g., surcharges which can be avoided by timely paying fees and filing papers), it is anticipated that these fees will be paid primarily by other than small entities. Under PCT, fees are paid principally by U.S. nationals or foreign nationals seeking protection on the same invention in a number of countries. PCT is an alternative to filing separate patent applications directly in other countries. Most applicants for protection under PCT appear to be large entities. Less than 10 percent of the revenue generated over the two-year period will come from the payment of trademark fees. Small entities have the option of not registering their marks under the Federal system, but can choose to use their mark under common law. While the trademark filing fee has been increased from $175 to $250, the $175 fee was originally set in 1982. PTO has attempted to keep trademark filing fees as low as practicable to encourage small entities to enter the trademark system.

The PTO has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy would be less than $100 million. There would be no major increase in costs or prices for consumers; individual industries; Federal, state, or local government agencies; or geographic regions. There would be no significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set forth in the preamble, the PTO is amending title 37 of the Code of Federal Regulations, Chapter I, as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.12 is proposed to be amended by revising paragraphs (a) and (d) to read as follows:

§ 1.12 Assignment records open to public inspection.

(a) The assignment records relating to original or reissue patents, including digests and indexes, and assignment records relating to pending or abandoned trademark applications and to trademark registrations, are open to public inspection, and copies of any instrument recorded may be obtained upon request and payment of the fee set forth in § 1.19(b)(3) and § 2.6(b)(5) of this chapter.

* * * * *

(d) An order for a copy of an assignment should give the identification of the record. If identified only by the name of the patentee and number of the patent, or in the case of a trademark registration by the name of the registrant and number of the registration, or by the name of the applicant and serial number or international application number of the application, an extra charge as set forth in § 1.21(j) and § 2.6(b)(10) of this chapter will be made for the time consumed in making a search for such assignment.

3. Section 1.13 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.13 Copies and certified copies.

* * * * *

(b) Such copies will be authenticated by the seal of the Patent and Trademark Office and certified by the Commissioner, or in his name attested by an officer of the Patent and Trademark Office authorized by the Commissioner, upon payment of the fee for requesting certified copies of Office documents.

4. Section 1.16 is proposed to be revised to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except design or plant cases:

By a small entity (§ 1.9(f)) $315.00
By other than a small entity 630.00

(b) In addition to the basic filing fee in an original application, on filing each independent claim in excess of 3 with the original application:

By a small entity (§ 1.9(f)) 30.00
By other than a small entity 60.00

(c) In addition to the basic filing fee in

an original application, on filing each claim (whether independent or dependent) in excess of 30 with the original application.

(Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a small entity (§ 1.9(f)) 10.00
By other than a small entity 20.00

(d) In addition to the basic filing fee in an original application, if the application as filed contains a multiple dependent claim(s) per application:

By a small entity (§ 1.9(f)) 200.00
By other than a small entity $100.00

(If the additional fees required by paragraphs (b), (c), and (d) are not paid on filing the claims for which the additional fees are due, they must be paid or the claims canceled by amendment, prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

(e) Surcharge for filing the basic filing fee or oath or declaration on a date later than the filing date of the application $300.00
(f) For filing each design application:
By a small entity (§ 1.9(f)) 125.00
By other than a small entity 250.00
(g) Basic fee for filing each plant application:
By a small entity (§ 1.9(f)) 210.00
By other than a small entity 420.00
(h) Basic fee for filing each reissue application:
By a small entity (§ 1.9(f)) 315.00
By other than a small entity 630.00
(i) In addition to the basic filing fee in a reissue application, on filing with the reissue application each independent claim which is in excess of the number of independent claims in the original patent:
By a small entity (§ 1.9(f)) 30.00
By other than a small entity 60.00
(j) In addition to the basic filing fee in a reissue application, on filing with the reissue application each claim (whether independent or dependent) in excess of 20 and also in excess of the number of claims in the original patent. (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):
By a small entity (§ 1.9(f)) 10.00
By other than a small entity 20.00

Note: See § 1.445 for international application filing and processing fees.)

5. Section 1.17 is proposed to be revised to read as follows:

§ 1.17 Patent application processing fees.

(a) Extension fee for response within first month pursuant to § 1.136(a) $100.00
(b) Extension fee for response within second month pursuant to § 1.136(a) 300.00
(c) Extension fee for response within third month pursuant to § 1.136(a) 730.00
(d) Extension fee for response within fourth month pursuant to § 1.136(a) 1,150.00
(e) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences 240.00
(f) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal 240.00
(g) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in appeal under 35 U.S.C. 134 ..... 200.00
(h) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph 200.00
§ 1.47—for filing by other than all the inventors or a person not the inventor.
§ 1.48—for correction of inventorship.
§ 1.182—for decision on questions not specifically provided for.
§ 1.183—to suspend the rules.
§ 1.295—for review of refusal to publish a statutory invention registration.
§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent.
§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in expired patent.
§ 1.644(e)—for petition in an interference.
§ 1.644(f)—for request for reconsideration of a decision on petition in an interference.
§ 1.666(c)—for late filing of interference settlement agreement.
§§ 5.12, 5.13, & 5.14—for expedited handling of foreign filing license.
§ 5.15—for changing the scope of a license.
§ 5.25—for retroactive license.
(i)(1) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph 200.00
§ 1.12—for access to an assignment record.
§ 1.14—for access to an application.
§ 1.53—to accord a filing date.
§ 1.55—for entry of late priority papers.
§ 1.60—to accord a filing date.
§ 1.62—to accord a filing date.
§ 1.103—to suspend action in application.
§ 1.177—for divisional reissues to issue separately.
§ 1.312—for amendment after payment of issue fee.
§ 1.313—to withdraw an application from issue.
§ 1.314—to defer issuance of a patent.
§ 1.334—for patent to issue to assignee, assignment recorded late.
§ 1.666(b)—for access to interference settlement agreement.
(2) For filing a petition to the Commissioner under § 1.102 of this part to make application special 200.00
(j) For filing a petition to institute a public use proceeding under § 1.292 ..... 1,340.00
(k) For processing an application filed with a specification in a non-English language (§ 1.52(d)) 300.00
(l) For filing a petition:
(1) For the revival of an unavoidably abandoned application under 35 U.S.C. 133 or 371, or
(2) For delayed payment of the issue fee under 35 U.S.C. 151 ..... 100.00
(m) For filing a petition:
(1) For revival of an unintentionally abandoned application, or
(2) For the unintentionally delayed payment of the fee for issuing a patent 1,050.00
(n) For requesting publication of a statutory invention registration prior to the mailing of the first examiner's action pursuant to § 1.104—$730.00 reduced by the amount of the application basic filing fee paid.
(o) For requesting publication of a statutory invention registration after the mailing of the first examiner's action pursuant to § 1.104—$1,460.00 reduced by the amount of the application basic filing fee paid.
(p) For presentation of claims in an original application later than on filing:
(1) for each independent claim in excess of 3 and in excess of the number previously paid for 60.00
(2) for each claim (whether independent or dependent) in excess of 20 and in excess of the number previously paid for (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes.) $20.00
(3) for presentation of the first multiple dependent claim in an application 200.00

(If the additional fees required by paragraph (p) are not paid on presentation of the claims for which the additional fees are due, they must be paid or the claims canceled by amendment, prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

(q) For presentation of claims in a reissue application later than on filing:

(1) for each independent claim in excess of the number of independent claims in the original patent and in excess of the number previously paid for 60.00

(2) for each claim (whether independent or dependent) in excess of 20 and in excess of the number of claims in the original patent and also in excess of the number previously paid for (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes.) 20.00

6. Section 1.18 is proposed to be revised to read as follows:

§ 1.18 Patent issue fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent $1,050.00

(b) Issue fee for issuing a design patent 370.00

(c) Issue fee for issuing a plant patent 520.00

7. Section 1.19 is revised to read as follows:

§ 1.19 Document supply fees.

The Patent and Trademark Office will supply copies of the following documents upon payment of the fees indicated:

(a) Uncertified copies of patents:

(1) Printed copy of a patent, including a design patent, statutory invention registration, or defensive publication document, except patent or statutory invention registration containing color drawing:

(i) Regular service $3.00

(ii) Expedited local service 6.00

(iii) Expedited service for copy ordered by electronic ordering service and delivered to the customer within two workdays 30.00

(2) Printed copy of a plant patent in color 15.00

(3) Copy of a utility patent or statutory invention registration containing color drawing (see § 1.84(p))

(i) Regular service 30.00

(ii) Expedited local service 60.00

(b) Certified and uncertified copies of Office documents:

(1) Certified copy of patent application as filed

(i) Regular service 20.00

(ii) Expedited local service 40.00

(2) Certified or uncertified copy of patent file wrapper and contents 150.00

(3) Certified or uncertified copies of Office records, per document, except as otherwise provided in this section 25.00

(4) For a search of assignment records, abstract of title and certification, per patent 25.00

(c) Library service (35 U.S.C. 13): For providing to libraries copies of all patents issued annually, per annum 50.00

(d) For list of all United States patents and statutory invention registrations in a subclass 10.00

(e) Uncertified statement as to status of the payment of maintenance fees due on a patent or expiration of a patent 10.00

(f) Uncertified copy of a non-United States document, per document 15.00

(g) Additional filing receipts; duplicate; or corrected due to applicant error 20.00

8. Section 1.20 is proposed to be revised to read as follows:

§ 1.20 Post issuance fees.

(a) For providing a certificate of correction for application's mistake (§ 1.323) $100.00

(b) Petition for correction of inventorship in patent (§ 1.324) 200.00

(c) For filing a request for reexamination (§ 1.510(a)) 3,000.00

(d) For filing each statutory disclaimer (§ 1.321) 100.00

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant 830.00

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant 1,670.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant 2,500.00

(h) Surcharge for paying a maintenance fee during the six-month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant of a patent based on an application filed on or after December 12, 1980 ..... 300.00

(i) Surcharge for accepting a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee where the delay in payment is shown to the satisfaction of the Commissioner to have been unavoidable 700.00

(j) For filing an application fee extension of the term of a patent (§ 1.740) 1,000.00

9. Section 1.21 is proposed to be revised to read as follows:

§ 1.21 Miscellaneous fees and charges.

The Patent and Trademark Office has established the following fees for the services indicated:

(a) Registration of attorneys and agents:

(1) For admission to examination for registration to practice, fee payable upon application $300.00

(2) On registration to practice 100.00

(3) For reinstatement to practice 25.00

(4) For certificate of good standing as an attorney or agent 10.00

Suitable for framing 20.00

(5) For review of a decision of the Director of Enrollment and Discipline under § 10.2(c) 200.00

(6) For requesting regrading of an examination under § 10.7(c) 200.00

(b) Deposit accounts:

(1) For establishing a deposit account 10.00

(2) Service charge for each month when the balance at the end of the month is below $1,000 ..... 20.00

(3) Service charge for each month when the balance at the end of the month is below $300 for restricted subscription deposit accounts used exclusively for subscription order of patent copies as issued 20.00

(c) Disclosure document: For filing a disclosure document 10.00

(d) Delivery box: Local delivery box rental, per annum 100.00

(e) International type search reports: For preparing an international type search report of an international type search made at the time of the first action on the merits in a national patent application 35.00

(f) Reserved

(g) Self-service copy charge, per page	0.25
(h) For recording each assignment, agreement or other paper relating to the property in a patent or application per property	40.00
(i) Publication in Official Gazette: For publication in the Official Gazette of a notice of the availability of an application or a patent for licensing or sale, each application or patent	20.00
(j) Labor charges for services, per hour or fraction thereof	40.00
(k) For items and services that the Commissioner finds may be supplied, for which fees are not specified by statute or by this part, such charges as may be determined by the Commissioner with respect to each such item or service	Actual Cost
(l) For processing and retaining any application abandoned pursuant to section 1.53(d) unless the required basic filing fee has been paid	300.00
(m) For processing each check returned "unpaid" by a bank	60.00
(n) For handling an incomplete or improper application under § 1.53(c), § 1.60 or § 1.62	300.00
(o) Marginal cost, paid in advance, for each hour of terminal session time, including print time, using Automated Patent System full-text search capabilities, prorated for the actual time used. The Commissioner may waive the payment by an individual for access to the Automated Patent System full-text search capability (APS-Text) upon a showing of need or hardship, and if such waiver is in the public interest	40.00

10. Section 1.24 is proposed to be revised to read as follows:

§ 1.24 Coupons.

Coupons in denominations of three dollars, for the purchase of patents, designs, defensive publications, statutory invention registrations, and trademark registrations are sold by the Patent and Trademark Office for the convenience of the general public; these coupons may not be used for any other purpose. The three-dollar coupons are sold individually and in books of 50 for $150.00. These coupons are good until used; they may be transferred but cannot be redeemed.

11. Section 1.26 is proposed to be amended by revising paragraph (c) to read as follows:

§ 1.26 Refunds.

* * * * *

(c) If the Commissioner decides not to institute a reexamination proceeding, a refund of $2,250 will be made to the requester of the proceeding. Reexamination requesters should indicate whether any refund should be made by check or by credit to a deposit account.

12. Section 1.27 is proposed to be amended by revising paragraph (a) as follows:

§ 1.27 Statement of status as small entity.

(a) Any person seeking to establish status as a small entity (§ 1.9(f) of this part) for purposes of paying filing fees in an application must file a verified statement in the application prior to or with the filing fee paid as a small entity. Such a verified statement need only be filed once in an application and remains in effect until changed.

* * * * *

13. Section 1.28 is proposed to be amended by revising paragraphs (a) and (c) and removing and reserving paragraph (b) to read as follows:

§ 1.28 Effect on fees of failure to establish status, or change status, as a small entity.

(a) The failure to establish status as a small entity (§§ 1.9(f) and 1.27 of this part) in any application prior to paying, or at the time of paying, any filing fee precludes payment of the filing fee in the amount established for small entities. A refund pursuant to § 1.26 of this part, based on establishment of small entity status, of a portion of the filing fees timely paid in full prior to establishing status as a small entity may only be obtained if a verified statement under § 1.27 and a request for a refund of the excess amount are filed within two months of the date of the timely payment of the full filing fee. The two-month time period is not extendable under § 1.136. Status as a small entity is waived for any filing fee by the failure to establish the status prior to paying, at the time of paying, or within two months of the date of payment of, the fee. Status as a small entity must be specifically established by a verified statement filed in each application in which the status is available and desired, except those applications filed under § 1.60 or § 1.62 of this part where the status as a small entity has been established in a parent application and is still proper. Once status as a small entity has been established in an application, the status remains in that application without the filing of a further verified statement pursuant to § 1.27 of this part unless the Office is notified of a change in status. Status as a small entity in one application does not affect any other application, including applications which are directly or indirectly dependent upon the application in which the status has been established, except those filed under § 1.60 or § 1.62 of this part. Applications filed under § 1.60 or § 1.62 of this part must include a reference to a verified statement in a parent application if status as a small entity is still proper and desired.

(b) [Reserved]

(c) If status as a small entity is established in good faith, and fees as a small entity are paid in good faith, in any application or patent, and it is later discovered that such status as a small entity was established in error or that through error the Office was not notified of a change in status, the error will be excused if:

(1) Any deficiency between the amount paid and the amount due is paid within three months after the date the error occurred or

(2) Any deficiency between the amount paid and the amount due is paid more than three months after the date the error occurred and the payment is accompanied by a verified statement explaining how the error occurred and how and when it was discovered.

* * * * *

14. Section 1.171 is proposed to be revised to read as follows:

§ 1.171 Application for reissue.

An application for reissue must contain the same parts required for an application for an original patent, complying with all the rules relating thereto except as otherwise provided, and, in addition, must comply with the requirements of the rules relating to reissue applications. The application must be accompanied by a certified copy of an abstract of title or an order for a title report accompanied by the fee set forth in § 1.19(b)(4) to be placed in the file, and by an offer to surrender the original patent (§ 1.178).

15. Section 1.296 is proposed to be revised to read as follows:

§ 1.296 Withdrawal of request for publication of statutory invention registration.

A request for a statutory invention registration, which has been filed, may be withdrawn prior to the date of the notice of the intent to publish a statutory invention registration issued pursuant to § 1.294(c) by filing a request to withdraw the request for publication of a statutory invention registration. The request to withdraw may also include a request for a refund of any amount paid in excess of the application filing fee and a handling fee of $300.00 which will be retained.

Any request to withdraw the request for publication of a statutory invention registration filed on or after the date of the notice of intent to publish issued pursuant to § 1.294(c) must be in the form of a petition pursuant to § 1.183 accompanied by the fee set forth in § 1.17(h).

16. Section 1.362 is proposed to be amended by revising paragraphs (a), (b) and (e) to read as follows:

§ 1.362 Time for payment of maintenance fees.

(a) Maintenance fees as set forth in § 1.20 (e) through (g) are required to be paid in all patents based on applications filed on or after December 12, 1980, except as noted in paragraph (b) of this section, to maintain a patent in force beyond 4, 8 and 12 years after the date of grant.

(b) Maintenance fees are not required for any plant patents or for any design patents. Maintenance fees are not required for a reissue patent if the patent being reissued did not require maintenance fees.

* * * * *

(e) Maintenance fees may be paid with the surcharge set forth in § 1.20(h) during the respective grace periods after:

(1) 3 years through 3 years and 6 months after grant for the first maintenance fee,

(2) 7 years through 7 years and 6 months after grant for the second maintenance fee, and

(3) 11 years through 11 years and 6 months after grant for the third maintenance fee.

* * * * *

17. Section 1.366 is proposed to be amended by revising paragraph (d), removing paragraph (f), and redesignating paragraph (g) as (f) and revising it to read as follows:

§ 1.366 Submission of maintenance fees.

* * * * *

(d) Payments of maintenance fees and any surcharges should identify the fee being paid for each patent as to whether it is the 3½, 7½ or 11½ year fee, the amount of the maintenance fee and any surcharge being paid, any assigned payor number, the patent issue date and the United States application filing date. If the maintenance fee and any necessary surcharge is being paid on a reissue patent, the payment must identify the reissue patent by reissue patent number and reissue application serial number as required by paragraph (c) of this section and should also include the original patent number, the original patent issue date and the original United States application filing date.

* * * * *

(f) Maintenance fees and surcharges relating thereto will not be refunded except in accordance with § 1.26.

18. Section 1.378 is proposed to be amended to revise paragraphs (a)–(c) and (e) to read as follows:

§ 1.378 Acceptance of delayed payment of maintenance fee in expired patent to reinstate patent.

(a) The Commissioner may accept the payment of any maintenance fee due on a patent after expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Commissioner to have been unavoidable and if the surcharge required by § 1.20(i) is paid as a condition of accepting payment of the maintenance fee. If the Commissioner accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired, but will be subject to the conditions set forth in 35 U.S.C. 41(c)(2).

(b) Any petition to accept the delayed payment of a maintenance fee filed under paragraph (a) of this section within six months of the expiration of the patent must include:

(1) The required maintenance fee set forth in § 1.20(e)–(g);

(2) The surcharge set forth in § 1.20(i); and

(3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be timely paid. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee.

(c) Any petition to accept the delayed payment of a maintenance fee filed under paragraph (a) of this section more than six months after the expiration of the patent must include:

(1) The required maintenance fee set forth in § 1.20(e)–(g),

(2) The surcharge set forth in § 1.20(i); and

* * * * *

(e) Reconsideration of a decision refusing to accept a maintenance fee upon petition filed pursuant to paragraph (a) of this section may be obtained by filing a petition for reconsideration within two months of, or such other time as set in, the decision refusing to accept the delayed payment of the maintenance fee. Any such petition for reconsideration must be accompanied by the petition fee set forth in § 1.17(h). After decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. If the delayed payment of the maintenance fee is not accepted, the maintenance fee and the surcharge set forth in § 1.20(i) will be refunded following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. The fee set forth in § 1.17(h) for filing the petition for reconsideration will not be refunded unless the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

19. Section 1.445 is proposed to be revised to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) The following fees and charges for international applications are established by the Commissioner under the authority of 35 U.S.C. 376:

(1) A transmittal fee (see 35 U.S.C. 361(d) and PCT rule 14)	$320.00
(2) A search fee (see 35 U.S.C. 361(d) and PCT rule 16) where:	
(i) No corresponding prior United States national application with basic filing fee has been filed	1,040.00
(ii) A corresponding prior United States national application with basic filing fee has been filed	720.00
(3) A supplemental search fee when required, per additional invention	280.00

(b) The basic fee and designation fee portions of the international fee shall be as prescribed in PCT rule 15.

20. Section 1.482 is proposed to be revised to read as follows:

§ 1.482 International preliminary examination fees.

(a) The following fees and charges for international preliminary examination are established by the Commissioner under the authority of 35 U.S.C. 376:

(1) A preliminary examination fee is due on filing the Demand:

(i) Where an international search fee as set forth in § 1.445(a)(2) has been paid on the international application

to the United States Patent and Trademark Office as an International Searching Authority, a preliminary examination fee of $760.00

(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office, a preliminary examination fee of 1,140.00

(2) An additional preliminary examination fee when required, per additional invention:

(i) Where a supplemental search fee as set forth in § 1.445(a)(3) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority 250.00

(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office 380.00

(b) The handling fee is due on filing the Demand. Any necessary supplement to the handling fee shall be paid directly to the International Bureau.

21. Section 1.492 is proposed to be revised to read as follows:

§ 1.492 National stage fees.

The following fees and charges for international applications entering the national stage under 35 U.S.C. 371 are established by the Commissioner under 35 U.S.C. 376:

(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office ... $560.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority 630.00

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office 850.00

(4) Where the international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office and the international preliminary examination report states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33 (1) to (4), have been satisfied for all the claims presented in the application entering the national stage (see § 1.496(b)) 80.00

(5) Where a search report on the international application has been prepared by the European Patent Office or the Japanese Patent Office 780.00

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3 ..... 60.00

(c) In addition to the basic national fee, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes) 20.00

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application 200.00

(If the additional fees required by paragraphs (b), (c), and (d) are not paid on presentation of the claims for which the additional fees are due, they must be paid or the claims cancelled by amendment prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

(e) Surcharge for filing the basic national fee or oath or declaration later than 20 months from the priority date pursuant to § 1.494(c) or later than 30 months from the priority date pursuant to § 1.495(c) 300.00

(f) For filing an English translation of an international application later than 20 months after the priority date (§ 1.494(c) or filing an English translation of the international application or of any annexes to the international preliminary examination report later than 30 months after the priority date (§ 1.495 (c) and (e)) 300.00

22. Section 1.740 is proposed to be amended by revising paragraph (a)(14) to read as follows:

§ 1.740 Application for extension of patent term.

(a) * * *

(14) The prescribed fee for receiving and acting upon the application for extension (see § 1.20(j)).

* * * * *

23. Section 1.770 is proposed to be revised to read as follows:

§ 1.770 Express withdrawal of application for extension of patent term

An application for extension of patent term may be expressly withdrawn before a determination is made pursuant to § 1 750 by filing in the Office, in duplicate, a written declaration of withdrawal signed by the owner of record of the patent or its agent. An application may not be expressly withdrawn after the date permitted for response to the final determination on the application. An express withdrawal pursuant to this section is effective when acknowledged in writing by the Office. The filing of an express withdrawal pursuant to this section and its acceptance by the Office does not entitle applicant to a refund of the filing fee. (§ 1.20(j)) or any portion thereof.

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

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

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.6 is proposed to be revised to read as follows:

§ 2.6 Trademark fees.

The following fees and charges are established by the Patent and Trademark Office for trademark cases:

(a) Trademark process fees.

(1) For filing an application, per class $250.00

(2) For filing an amendment to allege use under section 1(c) of the Act, per class 100.00

(3) For filing a statement of use under section 1(d)(1) of the Act, per class 100.00

(4) For filing a request under section 1(d)(2) of the Act for a six-month extension of time for filing a statement of use under section 1(d)(1) of the Act, per class 100.00

(5) For filing for renewal of a registration, per class 300.00

(6) Additional fee for filing a renewal application made within three months after the expiration of the registration, per class 200.00

(7) For filing to publish a mark under section 12(c), per class 100.00

(8) For issuing a new certificate of registration upon request of assignee 100.00

(9) For a certificate of correction of registrant's error 100.00
(10) For filing a disclaimer to a registration 100.00
(11) For filing an amendment to a registration 100.00
(12) For filing an affidavit under § 8 of the Act, per class 150.00
(13) For filing an affidavit under § 15 of the Act, per class 150.00
(14) For filing a combined affidavit under §§ 8 and 15 of the Act, per class 300.00
(15) For petitions to the Commissioner 200.00
(16) For filing to cancel, per class 400.00
(17) For filing a notice of opposition, per class 400.00
(18) For ex parte appeal to the Trademark Trial and Appeal Board, per class 200.00

(b) Trademark service fees.
(1) For printed copy of registered mark, copy only:
(i) Regular service $3.00
(ii) Expedited local service 6.00
(iii) Expedited service for copy ordered by electronic ordering service and delivered to the customer within two workdays 30.00
(2) Certified copy of trademark application as filed:
(i) Regular service 20.00
(ii) Expedited local service 40.00
(3) Certified or uncertified copy of a trademark file wrapper and contents 50.00
(4) Certified copy of a registered mark, showing title and/or status:
(i) Regular service 25.00
(ii) Expedited local service 50.00
(5) Certified or uncertified copy of trademark records, per document except as otherwise provided in this section 25.00
(6) For recording trademark assignments and agreements or other papers relating to the property in a registration or application, per mark 40.00
(7) For a search of assignment records, abstract of title and certification, per registration 25.00
(8) Marginal cost, paid in advance, for each hour of terminal session time, including print time, using T-Search capabilities, prorated for the actual time used. The Commissioner may waive the payment by an individual for access to T-Search upon a showing of need or hardship, and if such waiver is in the public interest 40.00
(9) Self-service copy charge, per page 0.25
(10) Labor charges for services, per hour or fraction thereof 40.00
(11) For items and services that the Commissioner finds may be supplied, for which fees are not specified by statute or by this part, such charges as may be determined by the Commissioner with respect to each such item or service ..... Actual Cost

BILLING CODE 3510-16-M

NOTE.- The following appendix will not appear in the Code of Federal Regulations.

Comparison of Existing and Proposed Fee Amounts

37 CFR Section Proposed	37 CFR Section Existing	DESCRIPTION	FEE AMOUNT Apr 17 1989	FEE AMOUNT Nov 5 1990	FEE AMOUNT Oct 1 1991
1.16(a)	1.16(a)	Basic Filing Fee	$370	$630	$630
1.16(a)	1.16(a)	Basic Filing Fee	$185	$315	$315
1.16(b)	1.16(b)	Independent Claims	$36	$60	$60
1.16(b)	1.16(b)	Independent Claims	$18	$30	$30
1.16(c)	1.16(c)	Claims in Excess of 20	$12	$20	$20
1.16(c)	1.16(c)	Claims in Excess of 20	$6	$10	$10
1.16(d)	1.16(d)	Multiple Dependent Claims	$120	$200	$200
1.16(d)	1.16(d)	Multiple Dependent Claims	$60	$100	$100
1.16(e)	1.16(e)	Surcharge - Late Filing Fee	$120	---	$300
	1.16(e)	Surcharge - Late Filing Fee (Small Entity)	$60	---	$300
1.16(f)	1.16(f)	Design Filing Fee	$150	$250	$250
1.16(f)	1.16(f)	Design Filing Fee	$75	$125	$125
1.16(g)	1.16(g)	Plant Filing Fee	$250	$420	$420
1.16(g)	1.16(g)	Plant Filing Fee	$125	$210	$210
1.16(h)	1.16(h)	Reissue Filing Fee	$370	$630	$630
1.16(h)	1.16(h)	Reissue Filing Fee	$185	$315	$315
1.16(i)	1.16(i)	Reissue Independent Claims	$36	$60	$60
1.16(i)	1.16(i)	Reissue Independent Claims	$18	$30	$30
1.16(j)	1.16(j)	Reissue Claims in Excess of 20	$12	$20	$20
1.16(j)	1.16(j)	Reissue Claims in Excess of 20	$6	$10	$10
1.17(a)	1.17(a)	Extension - First Month	$62	$100	$100
	1.17(a)	Extension - First Month (Small Entity)	$31	$50	$100
1.17(b)	1.17(b)	Extension - Second Month	$180	$300	$300
	1.17(b)	Extension - Second Month (Small Entity)	$90	$150	$300
1.17(c)	1.17(c)	Extension - Third Month	$430	$730	$730
	1.17(c)	Extension - Third Month (Small Entity)	$215	$365	$730
1.17(d)	1.17(d)	Extension - Fourth Month	$680	$1,150	$1,150
	1.17(d)	Extension - Fourth Month (Small Entity)	$340	$575	$1,150
1.17(e)	1.17(e)	Notice of Appeal	$140	$240	$240
	1.17(e)	Notice of Appeal (Small Entity)	$70	$120	$240
1.17(f)	1.17(f)	Filing a Brief	$140	$240	$240
	1.17(f)	Filing a Brief (Small Entity)	$70	$120	$240
1.17(g)	1.17(g)	Request for Oral Hearing	$120	$200	$200
	1.17(g)	Request for Oral Hearing (Small Entity)	$60	$100	$200
1.17(h)	1.17(h)	Petition - Not All Inventors	$120	---	$200
1.17(h)	1.17(h)	Petition - Correction of Inventorship	$120	---	$200
1.17(h)	1.17(h)	Petition - Decision on Questions	$120	---	$200
1.17(h)	1.17(h)	Petition - Suspend Rules	$120	---	$200
1.17(h)	1.17(h)	Petition - Expedited License	$120	---	$200
1.17(h)	1.17(h)	Petition - Scope of License	$120	---	$200
1.17(h)	1.17(h)	Petition - Retroactive License	$120	---	$200
1.17(h)	1.17(h)	Petition - Refusing Maintenance Fee	$120	---	$200
1.17(h)	1.17(h)	Petition - Refusing Maintenance Fee - Expired Patent	$120	---	$200
1.17(h)	1.17(h)	Petition - Interference	$120	---	$200
1.17(h)	1.17(h)	Petition - Reconsider Interference	$120	---	$200
1.17(h)	1.17(h)	Petition - Late Filing of Interference	$120	---	$200
1.17(h)	1.17(h)	Petition - Refusal to Publish SIR	$120	---	$200

NOTE: The November 5, 1990, column applies only to certain fee amounts.
Dashes indicate no change to the April 1989 fee amounts on November 5, 1990.

Comparison of Existing and Proposed Fee Amounts

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37 CFR Section Proposed	Existing	DESCRIPTION	FEE AMOUNT Apr 17 1989	Nov 5 1990	Oct 1 1991
1 17(i)(1)	1.17(i)(1)	Petition - For Assignment	$120	---	$200
1 17(i)(1)	1.17(i)(1)	Petition - For Application	$120	---	$200
1 17(i)(1)	1.17(i)(1)	Petition - Late Priority Papers	$120	---	$200
1 17(i)(1)	1.17(i)(1)	Petition - Suspend Action	$120	---	$200
1 17(i)(1)	1.17(i)(1)	Petition - Divisional Reissues to Issue Separately	$120	---	$200
1 17(i)(1)	1.17(i)(1)	Petition - For Interference Agreement	$120	---	$200
1 17(i)(1)	1.17(i)(1)	Petition - Amendment After Issue	$120	---	$200
1 17(i)(1)	1.17(i)(1)	Petition - Withdrawal After Issue	$120	---	$200
1 17(i)(1)	1.17(i)(1)	Petition - Defer Issue	$120	---	$200
1 17(i)(1)	1.17(i)(1)	Petition - Issue to Assignee	$120	---	$200
1 17(i)(1)	1.17(i)(1)	Petition - Accord a Filing Date Under §1.53	$120	---	$200
1 17(i)(1)	1.17(i)(1)	Petition - Accord a Filing Date Under §1.60	$120	---	$200
1.17(i)(1)	1.17(i)(1)	Petition - Accord a Filing Date Under §1.62	$120	---	$200
1.17(i)(2)	1.17(i)(2)	Petition - Make Application Special	$80	---	$200
1 17(j)	1.17(j)	Petition - Public Use Proceeding	$1,200	---	$1,340
1 17(k)	1.17(k)	Non-English Specification	$30	---	$300
1 17(l)	1.17(l)	Petition - Revive Abandoned Appl.	$62	$100	$100
	1.17(l)	Petition - Revive Abandoned Appl. (Small Entity)	$31	$50	$100
1 17(m)	1.17(m)	Petition - Revive Unintentionally Abandoned Appl.	$620	$1,050	$1,050
	1.17(m)	Petition - Revive Unintent Abandoned Appl. (Small Entity)	$310	$525	$1,050
1 17(n)	1.17(n)	SIR - Prior to Examiner's Action	$400	---	$730
1 17(o)	1.17(o)	SIR - After Examiner's Action	$800	---	$1,460
1 17(p)(1)	1.16(b)	Independent Claims - Later than on Filing	---	---	$60
1 17(p)(2)	1.16(c)	Claims in Excess of 20 - Later than on Filing	---	---	$20
1 17(p)(3)	1.16(d)	Multiple Dependent Claims - Later than on Filing	---	---	$200
1.17(q)(1)	1.16(i)	Reissue Independent Claims - Later than on Filing	---	---	$60
1 17(q)(2)	1.16(j)	Reissue Claims in Excess of 20 - Later than on Filing	---	---	$20
1 18(a)	1.18(a)	Issue Fee	$620	$1,050	$1,050
	1.18(a)	Issue Fee (Small Entity)	$310	$525	$1,050
1 18(b)	1.18(b)	Design Issue Fee	$220	$370	$370
	1.18(b)	Design Issue Fee (Small Entity)	$110	$185	$370
1 18(c)	1.18(c)	Plant Issue Fee	$310	$520	$520
	1.18(c)	Plant Issue Fee. (Small Entity)	$155	$260	$520
1 19(a)(1)(i)	1.19(a(1)	Copy of Patent	$1.50	---	$3
1 19(a)(1)(ii)	1.19(a)(5)	Patent Copy - Expedited Local Service	$3	---	$6
1 19(a)(1)(iii)	1.19(a)(6)	Patent Copy Expedited Service Via EOS	$25	---	$30
1.19(a)(2)	1.19(a)(2)	Plant Patent Copy	$10	---	$15
1 19(a)(3)(i)	1.19(a)(4)	Copy of Utility Patent or SIR in Color	$20	---	$30
1.19(a)(3)(ii)	1.19(a)(4)	Copy of Utility Patent or SIR in Color Expedited	$20	---	$60
1 19(b)(1)(i)	1.19(b)(1)	Certified Copy of Patent Application as Filed	$10	---	$20
1 19(b)(1)(i)	1.19(b)(4)	Certified Copy of Patent Application as Filed, Expedited	$20	---	$40
1.19(b)(2)	1.19(b)(2)	Cert. or Uncert. Copy of Patent File Wrapper and Contents	$170	---	$150
1.19(b)(3)	1.19(b)(5)	Cert. or Uncert. Copies of Office Records, per Document	$3	---	$25
1.19(b)(4)	1.19(b)(6)	Search of Assignment Records	$15	---	$25
1.19(c)	1.19(c)	Library Service	$50	---	$50
1.19(d)	1.19(d)	List of Patents in Subclass	$2	---	$10
1 19(e)	1.19(e)	Uncertified Statement	$5	---	$10

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Comparison of Existing and Proposed Fee Amounts

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37 CFR Section Proposed	Existing	DESCRIPTION	FEE AMOUNT Apr 17 1989	Nov 5 1990	Oct 1 1991
1 19(f)	1.19(f)	Copy of Non-US Document	$10	---	$15
1 19(g)	1.19(h)	Duplicate or Corrected Filing Receipt	$15	---	$20
1.20(a)	1.20(a)	Certificate of Correction	$60	---	$100
1.20(b)	1.20(b)	Petition - Correction of Inventorship	$120	---	$200
1.20(c)	1.20(c)	Reexamination	$2,000	---	$3,000
1 20(d)	1.20(d)	Statutory Disclaimer	$62	$100	$100
	1.20(d)	Statutory Disclaimer (Small Entity)	$31	$50	$100
1.20(e)		Maintenance Fee - 3.5 Years	*	---	$830
1.20(f)		Maintenance Fee - 7.5 Years	**	---	$1,670
1.20(g)		Maintenance Fee - 11.5 Years	***	---	$2,500
1.20(h)		Surcharge - Maintenance Fee - 6 Months	****	---	$300
1.20(i)	1.20(m)	Surcharge - Maintenance After Expiration	$550	---	$700
1.20(j)	1.20(n)	Extension of Term of Patent	$600	---	$1,000
1.21(a)(1)	1.21(a)(1)	Admission to Examination	$270	---	$300
1.21(a)(2)	1.21(a)(2)	Registration to Practice	$90	---	$100
1.21(a)(3)	1.21(a)(3)	Reinstatement to Practice	$10	---	$25
1.21(a)(4)	1.21(a)(4)	Certificate of Good Standing	$10	---	$10
1.21(a)(4)	1.21(a)(4)	Certificate of Good Standing, Suitable Framing	$100	---	$20
1.21(a)(5)	1.21(a)(5)	Review of Decision of Director, OED	$100	---	$200
1.21(a)(6)	1.21(a)(6)	Regrading of Examination	$100	---	$200
1.21(b)(1)	1.21(b)(1)	Establish Deposit Account	$10	---	$10
1.21(b)(2)	1.21(b)(2)	Service Charge Below Minimum Balance	$20	---	$20
1.21(b)(3)	1.21(b)(3)	Service Charge Below Minimum Balance	$20	---	$20
1.21(c)	1.21(c)	Filing a Disclosure Document	$6	---	$10
1.21(d)	1.21(d)	Box Rental	$50	---	$100
1.21(e)	1.21(e)	International Type Search Report	$30	---	$35
1.21(g)		Self-Service Copy Charge	$0.15	---	$0.25
1.21(h)	1.21(h)	Recording Patent Property	$8	---	$40
1.21(i)	1.21(i)	Publication in the OG	$20	---	$20
1.21(j)		Labor Charges for Services	---	---	$40
1.21(k)	1.21(k)	Unspecified Other Services	Actual Cost	---	Actual Cost
1.21(l)	1.21(l)	Retaining Abandoned Application	$120	---	$300
1.21(m)	1.21(m)	Processing Returned Checks	$50	---	$60
1.21(n)	1.21(n)	Handling Fee - Incomplete Application	$20	---	$300
1.21(o)	1.21(o)	Terminal Use APS-TEXT	$40	---	$40
1.296	1.296	Handling Fee - Withdrawal SIR	$120	---	$300

* Incorporates maintenance fees payable at 3.5 years under PL 96-517 currently set at $245, and maintenance fees set under PL 97-247 currently set at $490 for large entities and $495 for small entities.

** Incorporates maintenance fees payable at 7.5 years under PL 96-517 currently set at $495, and maintenance fees set under PL 97-247 currently set at $990 for large entities and $495 for small entities.

*** Incorporates maintenance fees payable at 11.5 years under PL 96-517 currently set at $740, and maintenance fees set under PL 97-247 currently set at $1480 for large entities and $740 for small entities.

**** Incorporates surcharge for payment of maintenance fees during the 6 months grace period under PL 96-517 currently set at $120 and surcharge set under PL 97-247 currently set at $120 for large entities and $60 for small entities.

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Comparison of Existing and Proposed Fee Amounts

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37 CFR Section Proposed	37 CFR Section Existing	DESCRIPTION	FEE AMOUNT Apr 17 1989	FEE AMOUNT Nov 5 1990	FEE AMOUNT Oct 1 1991
1.445(a)(1)	1.445(a)(1)	Transmittal Fee	$170	---	$320
1.445(a)(2)(i)	1.445(a)(2)	PCT Search Fee - No U.S. Application	$550	---	$1,040
1.445(a)(2)(ii)	1.445(a)(2)	PCT Search Fee - Prior U.S. Application	$380	---	$720
1.445(a)(3)	1.445(a)(3)	Supplemental Search	$150	---	$280
1.482(a)(1)(i)	1.482(a)(1)	Preliminary Exam Fee	$400	---	$760
1.482(a)(1)(ii)	1.482(a)(1)	Preliminary Exam Fee	$600	---	$1,140
1.482(a)(2)(i)	1.482(a)(2)	Additional Invention	$130	---	$250
1.482(a)(2)(ii)	1.482(a)(2)	Additional Invention	$200	---	$380
1.492(a)(1)	1.492(a)(1)	Preliminary Examining Authority	$330	---	$560
	1.492(a)(1)	Preliminary Examining Authority (Small Entity)	$165	---	$560
1.492(a)(2)	1.492(a)(2)	Searching Authority	$370	---	$630
	1.492(a)(2)	Searching Authority (Small Entity)	$185	---	$630
1.492(a)(3)	1.492(a)(3)	PTO Not ISA nor IPEA	$500	---	$850
	1.492(a)(3)	PTO Not ISA nor IPEA (Small Entity)	$250	---	$850
1.492(a)(4)	1.492(a)(4)	Claims - IPEA	$50	---	$80
	1.492(a)(4)	Claims - IPEA (Small Entity)	$25	---	$80
1.492(a)(5)		Filing with EPO/JPO Search Report	---	---	$780
1.492(b)	1.492(b)	Claims - Extra Individual (Over 3)	$36	---	$60
	1.492(b)	Claims - Extra Individual (Over 3) (Small Entity)	$18	---	$60
1.492(c)	1.492(c)	Claims - Extra Total (Over 20)	$12	---	$20
	1.492(c)	Claims - Extra Total (Over 20) (Small Entity)	$6	---	$20
1.492(d)	1.492(d)	Claims - Multiple Dependents	$120	---	$200
	1.492(d)	Claims - Multiple Dependents (Small Entity)	$60	---	$200
1.492(e)	1.492(e)	Surcharge	$120	---	$300
	1.492(e)	Surcharge (Small Entity)	$60	---	$300
1.492(f)	1.492(f)	English Translation - After 20 Months	$30	---	$300
2.6(a)(1)	2.6(a)	Application for Registration	$175	---	$250
2.6(a)(2)	2.6(u)	Amendment to Allege Use	$100	---	$100
2.6(a)(3)	2.6(u)	Statement of Use	$100	---	$100
2.6(a)(4)	2.6(v)	Extension for Filing Statement of Use	$100	---	$100
2.6(a)(5)	2.6(b)	Application for Renewal	$300	---	$300
2.6(a)(6)	2.6(s)	Surcharge for Late Renewal	$100	---	$200
2.6(a)(7)	2.6(c)	Publication of Mark Under§12(c)	$100	---	$100
2.6(a)(8)	2.6(d)	Issuing New Certificate of Registration	$100	---	$100
2.6(a)(9)	2.6(e)	Certificate of Correction of Registrant's Error	$100	---	$100
2.6(a)(10)	2.6(f)	Filing Disclaimer to Registration	$100	---	$100
2.6(a)(11)	2.6(g)	Filing Amendment to Registration	$100	---	$100
2.6(a)(12)	2.6(h)	Filing Affidavit Under Section 8	$100	---	$150
2.6(a)(13)	2.6(i)	Filing Affidavit Under Section 15	$100	---	$150
2.6(a)(14)	2.6(j)	Filing Affidavit Under Sections 8 & 15	$200	---	$300
2.6(a)(15)	2.6(k)	Petitions to the Commissioner	$100	---	$200
2.6(a)(16)	2.6(l)	Petition to Cancel	$200	---	$400
2.6(a)(17)	2.6(l)	Notice of Opposition	$200	---	$400
2.6(a)(18)	2.6(m)	Ex Parte Appeal to the TTAB	$100	---	$150

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BILLING CODE 3510-16-C

Comparison of Existing and Proposed Fee Amounts

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Proposed	Existing	DESCRIPTION	Apr 17 1989	Nov 5 1990	Oct 1 1991
2.6(b)(1)(i)	2.6(n)	Copy of Registered Mark	$1.50	---	$3
2.6(b)(1)(ii)		Copy of Registered Mark, Expedited	$1.50	---	$6
2.6(b)(1)(iii)		Copy of Registered Mark Expedited Service Via EOS	---	---	$30
2.6(b)(2)(i)		Certified Copy of TM Application as Filed	---	---	$20
2.6(b)(2)(ii)		Certified Copy of TM Application as Filed, Expedited	---	---	$40
2.6(b)(3)		Cert. or Uncert. Copy of TM File Wrapper and Contents	---	---	$50
2.6(b)(4)(i)	2.6(n)	Cert. Copy of Registered Mark, Title or Status	$6.50	---	$25
2.6(b)(4)(ii)		Cert. Copy of Registered Mark, Title or Status - Expedited	$6.50	---	$50
2.6(b)(5)	2.6(o)	Certified or Uncertified Copy of TM Records	$3.50	---	$25
2.6(b)(6)	2.6(q)	Recording Trademark Property	$8	---	$40
2.6(b)(7)	2.6(r)	Abstracts of Title	$12	---	$25
2.6(b)(8)	2.6(w)	Terminal Use T-SEARCH	$40	---	$40
2.6(b)(9)		Self-Service Copy Charge	---	---	$0.25
2.6(b)(10)		Labor Charges for Services	---	---	$40
2.6(b)(11)	2.6(t)	Unspecified Other Services	Actual Cost	---	Actual Cost

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Dashes indicate no change to the April 1989 fee amounts on November 5, 1990.

Dated: May 7, 1991.

Harry F. Manbeck, Jr.,
Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91-11223 Filed 5-7-91; 4:25 pm]
BILLING CODE 3510-16-M

federal register

Friday
May 10, 1991

Part VIII

The President

Presidential Determination No. 91-34—Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum of May 3, 1991—Reports Required by Sections 4 and 6 of the Federal Civil Penalties Inflation Adjustment Act of 1990

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Title 3—

The President

Presidential Determination No. 91–34 of April 25, 1991

Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(b)(2), I hereby designate refugees from Tibet and Burma as qualifying for assistance under section 2(b)(2) of that Act, and determine that such assistance will contribute to the foreign policy interests of the United States.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this determination in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, April 25, 1991.

[FR Doc. 91–11368
Filed 5–8–91; 4:47 pm]
Billing code 3195–01–M

Presidential Documents

Memorandum of May 3, 1991

Reports Required by Sections 4 and 6 of the Federal Civil Penalties Inflation Adjustment Act of 1990

Memorandum for the Director of the Office of Management and Budget

By the authority vested in me by the Constitution and laws of the United States of America, including sections 4 and 6 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–410), and section 301 of title 3 of the United States Code, I hereby delegate to you the responsibility for submitting reports on civil monetary penalties to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives and to the Congress as required by sections 4 and 6 of that Act.

You are authorized and directed to publish this memorandum in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, May 3, 1991.

[FR Doc. 91–11369
Filed 5–8–91; 4:48 pm]
Billing code 3110–01–M

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