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Thursday
June 13, 1991

Briefing on How To Use the Federal Register
For information on briefings in Washington, DC, and New Orleans, LA, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: July 2, at 9:00 am
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

NEW ORLEANS, LA

WHEN: July 23, at 9:00 am
WHERE: Federal Building, 501 Magazine St. Conference Room 1120, New Orleans, LA
RESERVATIONS: Federal Information Center 1–800–366–2998

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Presidential Documents

Title 3—

The President

Proclamation 6302 of June 10, 1991

Father's Day, 1991

By the President of the United States of America

A Proclamation

During the past few months, as the United States has welcomed home its Persian Gulf veterans, we have spoken frequently of heroes. It is a name we give to individuals of great faith and courage, to those who have inspired us by their selflessness and generosity and by their extraordinary devotion to duty. Today we honor a very special kind of hero: our Nation's dads.

Being a good father begins with unconditional love and a lifelong commitment to others. Yet it also requires virtues that we associate with more celebrated heroes—virtues such as strength, courage, and perseverance. Day after day, a father labors and sacrifices to protect and to provide for his family. Although his love might often go unspoken, it is revealed in countless other ways: in the long hours of work that are devoted to meeting the material needs of his children; in many late nights of quiet planning and worry; and in his constant efforts to teach, encourage, discipline, and guide.

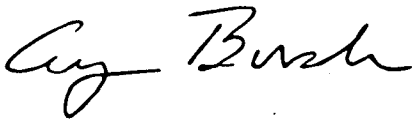
Between the daily demands and the everyday frustrations of parenting, a father might not feel like a hero, but in the eyes of his children he is very, very special. Youngsters treasure their father's attention and affection, and his presence alone gives them a warm sense of security and reassurance. In him they have a beloved champion and friend.

While many heroes of youth are forgotten over time, a loving and responsible father is a lifelong role model for his children. His lessons have great and lasting value because they center around the things that give our lives dignity and meaning: love and faith, service and self-sacrifice.

No medal could ever convey all of the honor and thanks that are due to our Nation's dads; thus, on this Father's Day, let us pray that God will reward them with His choicest blessings. And whether we do so in person, across the miles, or in loving memory, let each of us remember our own father with renewed appreciation and respect.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972 (36 U.S.C. 142a), do hereby proclaim Sunday, June 16, as Father's Day. I urge all Americans to observe that day with appropriate ceremonies as a mark of appreciation and abiding affection for their fathers. I direct government officials to display the flag of the United States on all Federal Government buildings, and I encourage all Americans to display the flag at their homes and other suitable places on that day.

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



[FR Doc. 91-14242
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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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-15]

Alteration of Airport Radar Service Area at Port Columbus International Airport, Columbus, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Port Columbus International Airport, OH, Airport Radar Service Area (ARSA). This action adjusts the lower vertical limits of the outer circle of the ARSA by removing a segment of that airspace from the regulatory status. This alteration eliminates the altitude stratification of the outer circle of the current ARSA.

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

FOR FURTHER INFORMATION CONTACT: Patricia Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

History

On November 14, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations to alter the Port Columbus International Airport ARSA (55 FR 47483). Interested parties were invited to participate in this rulemaking process by submitting comments on the proposal to the FAA. Section 71.501 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

The following written comments were received in support of the proposed action:

The Experimental Aircraft Association (EAA) submitted comments endorsing the proposal and emphasizing the need for consistency in the floor of the designated airspace. EAA stated that raising the floor of the outer ring of the ARSA will increase flight safety because pilots will have a greater amount of airspace in which to overfly the surface based obstructions in the area and will reduce the amount of aircraft noise in the area below the flight path.

The Public Utilities and Aviation Department and the Ohio Experimental Aircraft Association Sport Aviation submitted written comments which were similar to EAA's supporting the proposal. Each organization commented on the benefits of simplifying the airspace to improve navigation and providing general aviation additional airspace to transit over a densely populated area.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) alters the ARSA at the Port Columbus International Airport, Columbus, OH. This location is a public airport with an operating control tower served by a Level IV Radar Approach Control Facility. Operations in this ARSA require that pilots establish and maintain two-way radio communication with air traffic control (ATC) while in the airspace. Altering the ARSA will raise the floor 300 feet between the 127° bearing and 008° bearing and within the 5-10 mile DME radius of the airport. The modification will establish a floor of 2,500 feet throughout the designated airspace.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation that provides more detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. This Order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this final rule is not "major" as defined in the Executive Order and, therefore, a full regulatory analysis, that includes the identification and evaluation of cost reducing alternatives to the rule, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a final regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96-354) and an international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is referred to the full regulatory evaluation contained in the docket.

Costs

The FAA estimates the total monetary costs of implementing the rule to be zero, because the modification is relieving in nature and will not impose any additional administrative costs on the FAA for either personnel or equipment. Also, the rule will not impose any additional costs on general aviation users since it will require no additional avionics equipment or circumnavigation.

The rule will not result in a reduction in safety (in terms of an increased likelihood of a midair collision) due to a contraction of the subject ARSA airspace. The FAA contends that the reduction in ARSA airspace will be insignificant and of no consequence to Port Columbus ATC's ability to maintain aircraft separation.

Benefits

The rule is expected to accrue potential benefits primarily in the form of increased operating efficiency for visual flight rules (VFR) operators and aircraft noise relief for the City of Columbus, OH. These benefits are discussed below.

For VFR aircraft operators, the rule will simplify the ARSA by making the floor 2,500 feet mean sea level (MSL) throughout the outer circle. Simplifying the floor of the ARSA's outer circle will increase efficiency for VFR pilots operating below the ARSA. Affected pilots will have more airspace to maneuver in while having fewer restrictions placed on them by the constraints of the ARSA. Simplifying the outer circle of the ARSA will also establish a single standard altitude for pilot reference. The rule will also be of special benefit to transient pilots who are not familiar with the current stratification of the ARSA's outer circle.

Comparison of Costs and Benefits

The estimated monetary cost of the rule is zero. There will be no costs incurred for additional equipment or personnel for the FAA, nor any reduction in aviation safety for aircraft operators. The potential qualitative benefits will be increased efficiency for aircraft operators.

On balance, the FAA contends that this rule is cost-beneficial.

International Trade Impact Assessment

This rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. This is because the rule will neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign) that would result in a competitive disadvantage to either.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

The FAA has determined that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. This determination is based on the belief that none of the small entities, such as air taxi operators, will incur additional equipment or operating costs. Therefore, this rule requires no flexibility analysis.

Federalism Implications

The regulation adopted will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation" the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

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

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

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

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

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Port Columbus International Airport, Columbus, OH [Revised]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-nautical-mile radius of the Port Columbus International Airport and that airspace extending upward from 2,500 feet MSL to 4,800 feet MSL within a 10-nautical-mile radius of the Port Columbus Airport.

Issued in Washington, DC, on June 4, 1991.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

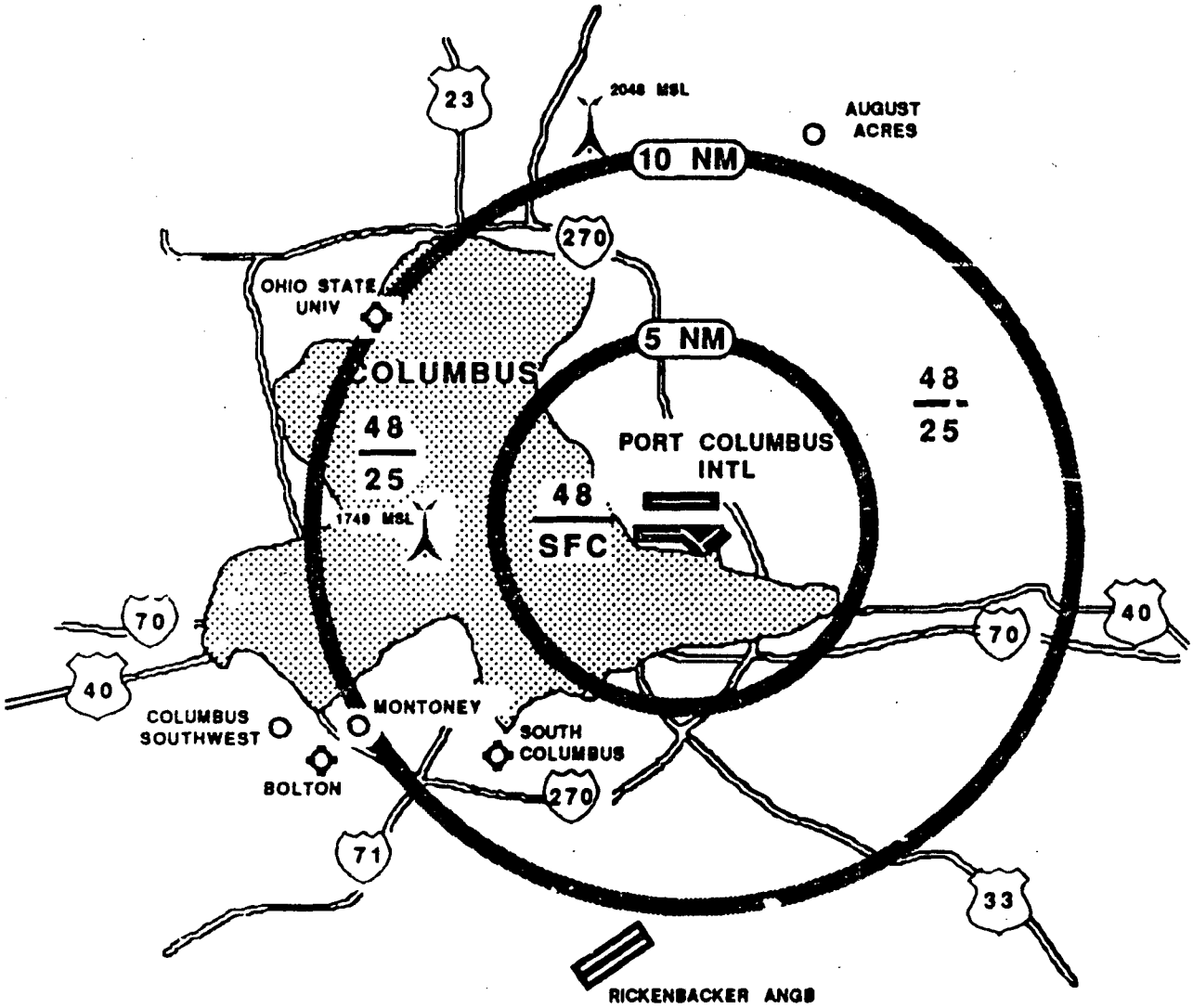
BILLING CODE 4910-13-M

AIRPORT RADAR SERVICE AREA

COLUMBUS, OHIO

FIELD ELEVATION - 814 FEET

(NOT TO BE USED FOR NAVIGATION)



Graphic prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Branch
(ATP - 220)

[FR Doc. 91-14052 Filed 6-12-91; 8:45 am]
BILLING CODE 4910-13-C

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-29279]

Delegation of Authority to Director of Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Commission is amending its regulation concerning Organization and Program Management, to delegate authority to the Director of the Division of Market Regulation to grant, pursuant to sections 17A(b) and 19(a) of the Act (15 U.S.C. 78q-1(b), 78s(a)): (1) An extension of a temporary clearing agency registration, for up to two years or such longer period as the clearing agency consents; and (2) the withdrawal of an application to become a registered clearing agency, at any time prior to final determination of such application by the Commission, upon submission of a request for such a withdrawal by the applicant. This amendment should facilitate prompt yet careful review and consideration of such temporary extensions and withdrawals of application for clearing agency registration.

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Jack Drogin, Esq., (202) 504-2542, Office of Securities Processing Regulation, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5-1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced an amendment to rule 30-3 of its regulation concerning Organization and Program Management [1] by adding to the rule new paragraph (a)(50), which authorizes the Director, pursuant to sections 17A(b) and 19(a) of the Act (15 U.S.C. 78q-1(b), 78s(a)): (1) To grant an extension to a temporary clearing agency registration, for up to two years or such longer period as the clearing agency consents; and (2) to grant the withdrawal of an application to become a registered clearing agency, at any time prior to final determination of such application by the Commission, upon submission of a request for such a withdrawal by applicant. Section 17A(b)(2) [2] of the Act provides that: "[a] clearing agency may be registered under the terms and conditions hereinafter provided in this subsection and in accordance with the provisions of section 19(a) of this title." Moreover, section 19(a) [3] provides that: "[t]he Commission shall grant such registration if it finds that the requirements of this title and the rules and regulations thereunder with respect to the applicant are satisfied. The Commission shall deny such registration if it does not make such finding." The Commission currently has the authority to grant and extend temporary registrations, pending satisfaction by the applicant of the requirements of section 17A(b) [4] of the Act. The Commission also may permit withdrawals of such an application to register as a clearing agency, pursuant to such authority.

The delegation of this authority will conserve the resources of the Commission and the Division, by providing for the more expeditious treatment of requests for such exemptions to the Commission itself for resolution.[5]

The Commission finds, in accordance with section 553(b)(A) of the Administrative Procedure Act, [6] that this amendment relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, notice, opportunity for public comment, and publication of the amendment prior to its effective date are unnecessary.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organizations and functions.

Text of Amendment

The Commission hereby amends title 17, chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for part 200, subpart A, continues to read as follows:

Authority: 15 U.S.C. 77s, 77t, 77w, 78d-1, 78d-2, 78w, 79t, 77ddd, 77eee, 77ggg, 77hhh, 77nnn, 77sss, 80a-37, and 80b-11, unless otherwise noted.

2. 17 CFR 200.30-3 is amended by adding new paragraph (a)(50) to read as follows:

§ 200.30-3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(50) Pursuant to sections 17A(b) and 19(a) of the Act (15 U.S.C. 78q-1(b) and 78s(a)):

(i) To authorize the issuance of orders granting an extension to a temporary clearing agency registration, for up to two years or such longer period as the clearing agency consents.

(ii) To authorize the issuance of orders granting the withdrawal of an application to become a registered clearing agency, at any time prior to final determination of such application by the Commission, upon submission of a request for such withdrawal by applicant.

* * * * *

By the Commission.

Dated: June 7, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14075 Filed 6-12-91; 8:45 am]

BILLING CODE 8010-01-M

[1] 17 CFR 200.30-3.

[2] 15 U.S.C. 78q-1(b)(2).

[3] 15 U.S.C. 78s(a).

[4] 15 U.S.C. 78q-1(b).

[5] In any particular case where the Director believes it appropriate, the Director still may submit a request for a temporary extension of clearing agency registration or withdrawal of application.

[6] 5 U.S.C. 553(b)(A).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Order No. 528-B; Docket No. RM91-2-006; Docket Nos. RP86-119-017, TA84-2-9-018, and TA85-1-6-006]

Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs and Tennessee Gas Pipeline Co.

Issued June 6, 1991.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is denying requests for rehearing of Order No. 528-A, 56 FR 5929 (Feb. 14, 1991), the Commission's order on rehearing of Order No. 528, 55 FR 47863 (Nov. 16, 1990), which addressed the remand of the decision of the United States Court of Appeals for the District of Columbia Circuit in *Associated Gas Distributors* v. *FERC*, 893 F.2d 349 (D.C. Cir. 1989), *cert. denied*, 111 S.Ct. 277 (1990).

The Commission reiterates its intention that the principles and guidelines set forth in Order No. 528 and

Order No. 528–A are to be treated as general statements of policy, and that, as such, they are not subject to the notice and comment requirements of the Administrative Procedure Act. The Commission states that parties remain free in individual cases to contend that the particular facts of those cases require flexibility in the application of those policies. the Commission indicates its intent to address the substantiave issues raised in the requests for rehearing of Order No. 528–A as they arise in individual proceedings on pipelines' filing under Order No. 528.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Darrell Blakeway, (202) 208–0224, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION:

Order Denying Rehearing

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

I. Introduction

On January 31, 1991, the Commission issued Order No. 528–A[1] in the above-captioned proceedings in response to various requests for rehearing of Order No. 528.[2] Order No. 528 was an order on remand and statement of policy in response to the decision by the United States Court of Appeals for the District of Columbia Circuit in *Associated Gas Distributors* v. *FERC (AGD–II)*.[3] The court concluded in *AGD–II* that the purchase deficiency method for allocating take-or-pay settlement costs in accordance with the Commission's policy statement in Order No. 500[4] violates the filed rate doctrine.[5] Order No. 528 stayed the collection of take-or-pay fixed charges based on a purchase deficiency allocation method by pipelines affected by *AGD–II*, and set forth certain general principles under which pipelines could file revised tariff provisions to replace the stayed provisions. Order No. 528–A generally denied rehearing of Order No. 528, but made several changes to the policies articulated in Order No. 528. Twenty applicants filed requests for rehearing seeking rehearing or clarification of Order No. 528–A.[6] This order denies rehearing of those requests.

II. Discussion

Certain pipelines and producers argue that Order No. 528–A, as well as Order No. 528, should not have been issued until after issuance of a notice of proposed rulemaking, and receipt and consideration of comments, in accordance with the provisions of the Administrative Procedure Act (APA).[7] They argue that Order No. 528–A is a substantive rule, and does not fall into any of the categories under APA section 553 (b) or (d) that would exempt it from the requirement of receiving comments and giving at least 30 days notice before its effective date.

The requests for rehearing that address substantive issues focus primarily on the portions of Order No. 528–A in which the Commission modified certain aspects of the policies set forth in Order No. 528: The limitations on the percentage of settlement costs that can be recovered via the volumetric surcharge, the reallocation to the fixed charges of the pipelines' larger customers of 50 percent of the take-or-pay settlement costs that would otherwise be allocated to the small customers' fixed charges, Order No. 528–A's policy on true-up mechanisms for take-or-pay volumetric surcharges and the prohibition against adjusting a volumetric surcharge to reflect underrecovery due to discounting, and the statement in Order No. 528–A encouraging pipelines and parties to consider designing mileage-sensitive volumetric surcharges. Applicants also reiterate a variety of their objections to the Commission's policies on recovering take-or-pay settlement costs that have previously been addressed in Order No. 528–A and orders in the Order No. 500 series.

The arguments that the Commission violated the APA by not providing notice of a proposed rulemaking and receiving comments on the proposal are all based on the applicants' characterizations of the Commission's statements in Order No. 528–A as "binding norms" or "regulations." However, as explained in Order No. 528–A, the Commission intended the various statements which the applicants describe as "binding" to be general statements of policy. The Commission expressly stated that:

> [it] does not intend to apply the guidelines as binding rules. Rather, it will evaluate each pipeline proposal on its merits in the pipeline's individual case and, in light of comments of the pipeline and other interested parties, determine in those cases the just and reasonable allocation method for the pipelines in question.[8]

While some of the statements of policy in Order Nos. 528 and 528–A are expressed as if they were mandatory, parties remain free in individual cases to contend that the particular facts of those cases require flexibility in the application of those policies. For example, in requiring a true-up mechanism for volumetric surcharges to recover certain new or reclassified take-or-pay costs, the Commission's concern was the pipelines not overrecover such costs. The Commission will consider any reasonable proposal for a mechanism that will accomplish that goal in the circumstances of a given pipeline system.

In Order No. 528, the Commission set forth the principles and guidelines we expected pipelines to follow in filing revised allocations of take-or-pay costs. In Order No. 528–A, we clarified our views to some extent and modified certain aspects of the policies originally set forth. However, it is not our intention to continue that process in this docket. As the Commission stated with respect to its Order No. 500 passthrough policy in Order No. 500–H, "by deciding to act through a policy statement, the Commission contemplated that its policy would be developed and refined on a case-by-case basis * * *."[9] The Commission intends to do the same with respect to our Order No. 528 policy.

Most of the issues raised in the requests for rehearing of Order No. 528–A have also been raised (or can be raised) in proceedings on pipelines' revised take-or-pay filings under Order No. 528. If the policies of Order No. 528 or 528–A, or the application of those policies, are contested in proceedings on such filings, the Commission will consider the arguments about those policies with regard to the record in those proceedings. Accordingly, all of the requests for rehearing will be denied, without prejudice to rulings on

[1] 54 FERC ¶ 61,095 (1991).

[2] 53 FERC ¶ 61,163 (1990).

[3] 893 F.2d 349 (D.C. Cir. 1989), *cert. denied sub nom. Berkshire Gas Co.* v. *Associated Gas Distributors*, 111 S.Ct. 277 (1990).

[4] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 52 FR 30,334 (Aug. 14, 1987) (Interim Rule), FERC Stats. & Regs., Regulations Preambles ¶ 30,761.

[5] Under the filed rate doctrine, a pipeline may not charge a rate for service that is different from the rate on file with the Commission for that service during the period in question. See T3Arkansas Louisiana Gas Co. v. *Hall*, 453, U.S. 571, 578 (1981); and *Columbia Gas Transmission Corp.* v. *FERC*, 831 F.2d 1135 (D.C. Cir. 1987), *modified on reh'g*, 844 F.2d 879 (D.C. Cir. 1988).

[6] The applicants for rehearing are listed in appendix A.

[7] 5 U.S.C. 551 *et seq.* and section 701 *et seq.* (1988).

[8] 54 FERC ¶ 61,095 at p. 61,294 (1991).

[9] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, FERC Stats. & Regs., Regulations Preambles ¶ 30,687 at p. 31,575 (1989) (Order No. 500–H).

issues raised in those requests that have been raised (or can be raised) in proceedings on filings under Order No. 528.

The Commission Orders

The requests for rehearing of Order No. 528–A are denied.

By the Commission. Commissioner Trabandt concurred with a separate statement to be issued later.

Lois D. Cashell,

Secretary.

Appendix A—Requests for Rehearing of Order No. 528–A

1. Pacific Gas and Electric Company
2. Enron (Transwestern, Northern Natural)
3. American Public Gas Association
4. Missouri Public Service Commission
5. National Fuel Gas Supply Corp.
6. Tennessee Small General Service Customer Group and Western Kentucky Gas Company
7. Alabama-Tennessee Natural Gas
8. Algonquin Gas Transmission Co. and Texas Eastern Transmission Corp.
9. ANR Pipeline Co. and CIG
10. Arkla Energy Resources
11. Atlantic Gas Light Company and Chattanooga Gas Co.
12. CNG Transmission Corp.
13. Indicated Customers
14. Marathon Oil Co.
15. National Association of Gas Consumers
16. Natural Gas Supply Association and Indicated Shippers
17. New England Gas Distributors
18. Panhandle Eastern Pipe Line Company and Trunkline Gas Co.
19. Tennessee Gas Pipeline Co.
20. Tennessee Valley Municipal Gas Association

[FR Doc. 91–14035 Filed 6–12–91; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for Fermenta Animal Health Co.

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Norman J. Turner, Center for Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: Fermenta Animal Health Co., 10150 North Executive Hills Blvd., P.O. Box 901350, Kansas City, MO 64190–1350, has informed FDA of changes in its corporate headquarters address that involve deleting reference to a P.O. box (i.e., 901350) and changing the zip code from 64190–1350 to 64153. FDA is amending the regulations in 21 CFR 510.600 (c)(1) and (c)(2) to reflect the new address.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) in the entry "Fermenta Animal Health Co.," and in the table in paragraph (c)(2) in the entry "054273" by revising the sponsor address to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Fermenta Animal Health Co., 10150 North Executive Hills Blvd., Kansas City, MO 64153.	054273
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
054273	Fermenta Animal Health Co., 10150 North Executive Hills Blvd., Kansas City, MO 64153.
* * * * *	

Dated: June 7, 1991.

George A. Mitchell,

Director, Office of Surveillance and Compliance, Center for Veterinary Medicine.

[FR Doc. 91–14119 Filed 6–12–91; 8:45 am]

BILLING CODE 4160–01–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 202

[Docket Nos. RM 90–2 and 89–1]

Refund of Excess Fees; Berne Implementation Act Technical Amendments

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rules; corrections.

SUMMARY: The Copyright Office is correcting an error in the authority section of the final regulation governing refunds of excess fees submitted to the Office and an error in designation of a subparagraph relating to the formalities of copyright notice after adoption of the Berne Implementation Act. Both of the rules appeared in the **Federal Register** on February 26, 1991 (56 FR 7813 and 7815).

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 707–8380.

SUPPLEMENTARY INFORMATION: The Copyright Office issued final regulations on February 26, 1991 with respect, *inter alia*, to its policy of refunds of excess fees submitted to the Office. On that same day, the Office also issued regulations governing copyright notice requirements in light of the Berne Implementation Act.

For the refund of excess fees regulation, the final clause to the authority citation for part 201 should have read "§ 201.19 is also issued under 17 U.S.C. 115" instead of "§ 210.19 is also issued under 17 U.S.C. 115." 56 FR at 7813.

For the copyright notice regulation, the reference to § 202.3(b)(5)(i)(D) should have read § 202.3(b)(6)(i)(D). 56 FR at 7813.

Accordingly, the following corrections are made:

In Docket RM 90-2, Refund of Excess Fees published in the **Federal Register** on February 26, 1991 (56 FR 7815):

PART 201—[CORRECTED]

The authority statement to part 201 on page 7813, second column, lines 49 to 50, is corrected to read "§ 210.19 is also issued under 17 U.S.C. 115," instead of "§ 201.19 is also issued under 17 U.S.C. 115."

In Docket RM 89-1, Berne Implementation Act; Technical Amendments published in the **Federal Register** on February 26, 1991 (56 FR 7815):

§ 202.3 [Corrected]

The reference to § 202.3(b)(5)(i)(D), second column, lines 57 to 63, is corrected to read "4. Section 202.3(b)(6)(i)(D) is revised to read as follows:

§ 202.3 [Amended]

* * * * *

(b) * * *

(6) * * *

(i) * * *."

Dated: June 5, 1991.

Ralph Oman,

Register of Copyrights.

[FR Doc. 91-14029 Filed 6-12-91; 8:45 am]

BILLING CODE 1410-03-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3961-4]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Revised Regulations Controlling Volatile Organic Compound Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. These revisions consist of revised volatile organic compound (VOC) emissions regulations applicable in the entire State of New Hampshire and were submitted on November 21, 1989. The intended effect of this action is to approve New Hampshire's revised VOC regulations to correct identified deficiencies in these regulations. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will be effective on July 15, 1991.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and the Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302-2033.

FOR FURTHER INFORMATION CONTACT: Joanne Knight, (617) 565-3270; FTS 835-3270.

SUPPLEMENTARY INFORMATION: On June 13, 1990 (55 FR 23950), EPA published a Notice of Proposed Rulemaking (NPR) for the State of New Hampshire. The NPR proposed approval of State Implementation Plan (SIP) revisions submitted by the State of New Hampshire through its Air Resources Division (ARD) on November 21, 1989. The revisions consist of revised volatile organic compound (VOC) emissions regulations in Chapter Env-A 1200 of New Hampshire's Administrative Rules Governing Air Pollution as well as other miscellaneous amendments to Chapters Env-A 100, 800, and 900 dealing with definitions, test methods, and recordkeeping requirements. The Technical Support Document (TSD), dated December 14, 1990, further identifies these rules.

On May 25, 1988, EPA sent a letter to John H. Sununu, then Governor of New Hampshire, pursuant to section 110(a)(2)(H) of the Clean Air Act (CAA), as amended in 1977, notifying him that the New Hampshire SIP was substantially inadequate to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the New Hampshire portion of the Boston-Lawrence-Salem Consolidated Metropolitan Statistical Area (CMSA), and in the New Hampshire portion of the Portsmouth-Dover-Rochester Metropolitan Statistical Area (MSA), plus the remaining portion of Strafford County. On November 8, 1989, EPA sent a letter to Judd Gregg, Governor of New Hampshire, pursuant to section 110(a)(2)(H) of the CAA, as amended in 1977, notifying him that the New Hampshire SIP was substantially inadequate to achieve the NAAQS for ozone in the Manchester MSA plus the remaining portion of Merrimack County and the remaining portions of Hillsboro and Rockingham Counties outside of the Boston-Lawrence-Salem CMSA.

Finally, on June 16, 1988, EPA sent a letter to the Director of New Hampshire's Department of Environmental Services' ARD outlining the corrections that needed to be made to New Hampshire's existing VOC regulations to eliminate the identified deficiencies and inconsistencies in the regulations as compared to EPA's national guidance.

In addition to the SIP call letters sent directly to the State, EPA published an information notice on the call for a SIP revision and on guidance documents, including the May 25, 1988, document: "Issues Regulating to VOC Regulation Cutpoints, Deficiencies, and Deviations" (the "Bluebook"). (See 53 FR 34500 (September 7, 1988).) The deficiencies noted in the SIP call letters were based on inconsistencies with existing Control Techniques Guideline (CTG) documents, as specified in the Bluebook.

EPA requested the State to respond to the SIP calls in two phases—the first in the near future and the second following EPA's issuance of a final policy on how the States should correct their SIPs. The first phase of the response to the SIP call consists of (1) correcting identified deficiencies in the existing SIP's VOC regulations, (2) adopting VOC regulations previously required or committed to but never adopted, and (3) updating the areas' base year emissions inventory.

The revised VOC regulations submitted by New Hampshire on November 21, 1989, are in response to EPA's May 25, 1988, June 16, 1988, and November 8, 1989 letters. This action approves the necessary revisions to New Hampshire's VOC regulations as required by the SIP call.

EPA's review of the SIP submittal indicates that New Hampshire has addressed all but one of the deficiencies and inconsistencies in the existing VOC regulations identified by EPA in its letters of May 25, 1988, June 16, 1988, and November 8, 1989. New Hampshire has not fully addressed one outstanding SIP call deficiency pertaining to single source SIP regulations applicable to nine VOC sources. EPA will publish a separate NPR in the future addressing this issue. Also, subsequent to EPA's letter to ARD specifying deficiencies in the New Hampshire ozone SIP, EPA identified additional provisions in New Hampshire's VOC regulations which may be inconsistent with EPA guidance. EPA will work with ARD to promptly

address these inconsistencies in the near future. Among these inconsistencies, the definition of paper coating in New Hampshire does not explicitly include saturation operations. However, there are no sources excluded from regulation due to this omission. In the future, as New Hampshire revises its regulations pursuant to section 182(2)(b)(2)(B) of the Clean Air Act Amendments of 1990, the State will be required to revise its definition of paper coating to include explicitly saturation operations.

New Hampshire's SIP revisions containing the amendments in Chapters Env-A 100, 800, 900 and 1200 of New Hampshire's Administrative Rules Governing Air Pollution were submitted on November 21, 1989. The specific content of the revised regulations and the rationale for EPA's action were explained in the NPR and will not be restated here. EPA received no public comments on the NPR.

Since the time EPA proposed approval of New Hampshire's correction of the identified Reasonably Available Control Technology (RACT) deficiencies, the Clean Air Act Amendments of 1990 were adopted (Pub. L. 101-549, 104 Stat. 2399). The amendments do not affect the present action nor do they require reproposal of this rule. The amended Act supports New Hampshire's submittal of these RACT rule corrections by requiring States to submit RACT corrections by May 15, 1991. (See section 182(a)(2)(A).) Moreover, the Act requires that these RACT corrections serve to establish RACT within the State SIP, as required under section 172 of the pre-amended Act, as that section has been interpreted in guidance issued by the Agency. The guidance referred to includes the CTGs and the Bluebook.

Final Action

EPA is approving the SIP revisions which contain the revised VOC regulations for the State of New Hampshire. These revisions correct deficiencies in New Hampshire's VOC regulations identified by EPA.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225).

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

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Agency has reviewed this request for revision of the federally-approved State Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 12, 1991.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 5, 1991.

Julie Belaga,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart EE—New Hampshire

2. Section 52.1520 is amended by adding paragraph (c)(43) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(43) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division on November 21, 1989.

(i) Incorporation by reference.

(A) Letter form the New Hampshire Air Resources Division dated November 21, 1989 submitting a revision to the New Hampshire State Implementation Plan.

(B) Amendments to regulations for the State of New Hampshire's Administrative Rules Governing Air Pollution in Chapters Env-A 100, 800, 900 and 1200 which were effective November 16, 1989.

(C) Letter from Robert W. Varney, Commissioner of the Department of Environmental Services of New Hampshire, to John B. Hammond, Acting Director of the New Hampshire Office of Legislative Services, dated November 15, 1989, adopting final rules.

§ 52.1525 [Amended]

3. Table 52.1525 is amended by adding the following lines. In the chart below the date approved by EPA and the **Federal Register** citation will be the publication date and citation of this document.

TABLE 52.1525—EPA-APPROVED RULES AND REGULATIONS—NEW HAMPSHIRE

Title/subject	State citation chapter	Date adopted State	Date approved EPA	Federal Register citation	52.1520	Comments
* * *	*	*	*	*	*	*
Organizational rules: Definitions	CH air 100	11/16/89	June 13, 1991	[FR citation from published date].	(c)(43)	Approved Part Air 101.791; Revision to Part Air 101.98.
* * *	*	*	*	*	*	*
Testing requirements	CH air 800	11/16/89	June 13, 1991	[FR citation from published date].	(c)(43)	Approved Part Air 804; Revision to Part Air 802.07.
* * *	*	*	*	*	*	*
Owner operator obligations	CH air 900	11/16/89	June 13, 1991	[FR citation from published date].	(c)(43)	Approved Part Air 901.021, 901.022, 901.05; Revision to Part Air 901.02.
* * *	*	*	*	*	*	*
Prevention, abatement and control of stationary source air pollution	CH air 1200	11/16/89	June 13, 1991	[FR citation from published date].	(c)(43)	Approved Part Air 1204.19; revisions to Part Air 1204.01—.16.
* * *	*	*	*	*	*	*

[FR Doc. 91-13996 Filed 6-12-91; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[GEN. Docket No. 91-1; FCC 91-119]

Closed-Caption Decoder Requirements for Television Receivers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (FCC) is adopting rules that set performance and display standards, as well as marketing regulations, for circuitry that is required to be built into television receivers in order to display closed-captioned television transmissions. These rules are being adopted in response to the provisions of the Television Decoder Circuitry Act of 1990, Public Law 101-431, which requires that most television receivers manufactured or imported for use in the United States be equipped with such circuitry by July 1, 1993. The rules should serve the needs of the deaf, hearing-impaired and others by expanding the accessibility of closed-caption technology.

EFFECTIVE DATE: This regulation is effective July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Richard B. Engelman, Chief, Technical Standards Branch, Office of Engineering and Technology (202) 653-6288.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Report and Order in General Docket No. 91-1, FCC 91-119, adopted April 12, 1991, and released April 15, 1991. The full text of this 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 also may be purchased from the FCC's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street NW., Washington, DC.

Summary of the Report and Order

1. Closed captioning is used to provide a visual depiction of information simultaneously being provided on the audio portion of a television signal. Captions are considered to be closed because they are only viewable if the viewer activates a special decoder. Under the Commission's present rules, closed captions are permitted to be transmitted on line 21 of the vertical blanking interval of the television broadcast signal. The rules do not, however, specify either the caption encoding format or the resulting display characteristics. This information has been contained instead in specifications written by the Public Broadcasting Service (PBS) and the National Captioning Institute (NCI).

2. On October 15, 1990, the Television Decoder Circuitry Act of 1990 (Decoder Act) was enacted into law. The aim of this legislation is to serve the needs of the deaf, hearing-impaired and others by expanding the accessibility of closed-caption technology. The legislation is intended to reduce significantly the cost to consumers of receiving closed captioning, make closed captioning more widely available, and create market incentives for broadcasters to invest in and provide more closed-captioned programming. Specifically, the Decoder Act amends the Communications Act of 1934, as amended, by:

(1) Requiring that television receivers with picture screens 13 inches or greater be equipped to display closed-captioned television transmissions;

(2) Making it illegal to ship in interstate commerce, manufacture, assemble, or import any television receiver that is subject to closed-caption decoder requirements, except in accordance with Commission rules;

(3) Requiring the Commission to promulgate rules providing performance and display standards for such built-in decoder circuitry;

(4) Requiring that the built-in decoder circuitry be able to receive and display closed captions that are transmitted on line 21 of the vertical blanking interval and that conform to the PBS/NCI specifications; and,

(5) Directing the Commission to take appropriate action to ensure that closed-captioning service continues to be available as new video technology is developed.

These changes become effective on July 1, 1993. The Decoder Act directs the Commission to promulgate rules implementing this legislation within 180 days of the effective date, *i.e.* by April 12, 1991.

3. In response to the Decoder Act legislation, the Television Receiver Committee of the Electronic Industries Association (EIA) established a joint task force of television receiver manufacturers and closed-caption service providers to develop a television receiver display standard for closed captioning. The EIA task force developed a proposed standard based in large measure on the existing PBS/NCI specifications. The task force did propose that some new features (such as permitting captioning anywhere on the screen) not in the present PBS/NCI specifications be added; and, at the same time, proposed that certain existing features (such as color characters and text services) be made optional or be allowed to be implemented in different ways.

4. On January 3, 1991, the Commission adopted a Notice of Proposed Rule Making (Notice) in the above-captioned proceeding. See 56 FR 1376, January 14, 1991. The Notice proposed amending part 15 of the Commission's rules to implement the provisions of the Decoder Act. The Notice requested comments on the scope of the Decoder Act and the task force's proposed standard. The Commission specifically requested comments on issues concerning new features, color characters, italic characters, lower-case characters, character background, smooth scrolling, caption size, caption channels, and text services.

5. Comments were received from 38 individuals and organizations. Reply comments were received from 10 parties. More than 65 written late-filed and *ex parte* comments were also received and made part of the record.

6. In its Report and Order, the Commission adopted standards that conform closely to the PBS/NCI specifications, and also provide improvements in closed-caption capabilities. These improvements include the ability to display captions anywhere on the television screen. Captions are currently limited to the top and bottom portions of the screen. To provide adequate flexibility for manufacturers to develop cost-effective approaches to closed captioning, the Commission allowed a few aspects of the PBS/NCI specifications to be optional or to be achieved in a different manner. The Commission generally adopted the task force's proposed standards, with certain changes, and is including the standards within Part 5 of its rules. The Commission also adopted marketing regulations necessary to implement the requirements of the Decoder Act.

7. Final Regulatory Flexibility Analysis. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and purpose of this action: The promulgation of these rules is mandated by the Television Decoder Circuitry Act of 1990, Public Law 101-431. The Commission is adopting performance and display standards for closed-caption decoder circuitry that will be required in most television receivers by July 1, 1993. It is also

adopting associated marketing regulations.

II. Summary of the issues raised by the Public Comments to Response to the Initial Regulatory Flexibility Analysis. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

III. Significant Alternatives Considered: The Notice proposed display standards that were developed by a task force composed of television manufacturers and closed-caption service providers. These standards provided manufacturers some flexibility in how closed-captions could be displayed. The new rules adopt many of these proposals.

8. Accordingly, it is ordered that, Pursuant to the authority contained in section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and sections 3 and 4 of the Television Decoder Circuitry Act of 1990, Publlic Law 101–431, title 47 of the Code of Federal Regulations, part 15, is amended as set forth below. These rules and regulations are effective 30 days after publication in the **Federal Register**. *It is further ordered*, That this proceeding is terminated.

List of Subjects in 47 CFR Part 15

Television, Communications equipment, Deaf, Bilingual education, Motion pictures.

Part 15 of title 47 of the CFR is amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: Sections 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, 304, and 307.

2. Section 15.119 is added to subpart B to read as follows:

§ 15.119 Closed Caption Decoder Requirements for Television Receivers.

(a) Effective July 1, 1993, all TV broadcast receivers with picture screens 13 inches or larger in diameter shipped in interstate commerce, manufactured, assembled, or imported from any foreign country into the United States shall comply with the provisions of this section.

(b) Transmission format. Closed-caption information is transmitted on line 21 of field 1 of the vertical blanking interval of television signals, in accordance with § 73.682(a)(22) of this chapter.

(c) Operating modes. The television receiver will employ customer-selectable modes of operation for TV and Caption. A third mode of operation, Text, may be included on an optional basis. The Caption and Text Modes may contain data in either of two operating channels, referred to in this document as C1 and C2. The television receiver must decode both C1 and C2 captioning, and must display the captioning for whichever channel the user selects. The TV Mode of operation allows the video to be viewed in its original form. The Caption and Text Modes define one or more areas (called "boxes") on the screen within which caption or text characters are displayed.

Note. For more information regarding Text mode, see "Television Captioning for the Deaf: Signal and Display Specifications", Engineering Report No. E–7709–C, Public Broadcasting Service, dated May 1980, and "TeleCaption II Decoder Module Performance Specification", National Captioning Institute, Inc., dated November 1985. These documents are available, respectively, from the Public Broadcasting Service, 1320 Braddock Place, Alexandria, VA 22314 and from the National Captioning Institute, Inc., 5203 Leesburg Pike, Falls Church, VA 22041.

(d) Screen format. The display area for captioning and text shall fall within the safe caption area as defined in paragraph (n)(12) of this section. This display area will be further divided into 15 character rows of equal height and 32 columns of equal width, to provide accurate placement of text on the screen. Vertically, the display area begins on line 43 and is 195 lines high, ending on line 237 on an interlaced display. All captioning and text shall fall within these established columns and rows. The characters must be displayed clearly separated from the video over which they are placed. In addition, the user must have the capability to select a black background over which the captioned letters are displaced.

(1) Caption mode. In the Caption Mode, text can appear on up to 4 rows simultaneously anywhere on the screen within the defined display area. In addition, a solid space equal to one column width may be placed before the first character and after the last character of each row to enhance legibility. The caption area will be transparent anywhere that either:

(i) No standard space character or other character has been addressed and no accompanying solid space is needed; or,

(ii) An accompanying solid space is used and a "transparent space" special character has been addressed which does not immediately precede or follow a displayed character.

(2) [Reserved]

(e) Presentation format. In analyzing the presentation of characters, it is convenient to think in terms of a non-visible cursor which marks the screen position at which the next event in a given mode and data channel will occur. The receiver remembers the cursor position for each mode even when data are received for a different address in an alternate mode or data channel.

(1) Screen addressing. Two kinds of control codes are used to move the cursor to specific screen locations. In Caption Mode, these addressing codes will affect both row and column positioning. In Text Mode, the codes affect only column positioning. In both modes, the addressing codes are optional. Default positions are defined for each mode and style when no addressing code is provided.

(i) The first type of addressing code is the Preamble Address Code (PAC). It assigns a row number and one of eight "indent" figures. Each successive indent moves the cursor four columns to the right (starting from the left margin). Thus, an indent of 0 places the cursor at Column 1, an indent of 4 sets it at Column 5, etc. The PAC indent is non-destructive. It will not affect the display to the left of the new cursor position on the indicated row. Note that Preamble Address Codes also set initial attributes for the displayable characters which follow. See paragraph (h) of this section and the Preamble Address Code table.

(ii) The second type of addressing code is the Tab Offset, which is one of three Miscellaneous Control Codes. Tab Offset will move the cursor one, two, or three columns to the right. The character cells skipped over will be unaffected; displayable characters in these cells, if any, will remain intact while empty cells will remain empty, in the same manner that a PAC indent is non-destructive. A Tab Offset command will be acted upon only if received immediately after a PAC and before any displayable characters or Mid-Row Codes. A Tab Offset command received after any code other than a PAC will be ignored. (If data for the alternate data channel or mode are received between the PAC and the Tab Offset, the Tab Offset will still be acted upon.)

(2) [Reserved]

(f) Caption Mode. There are three styles of presenting text in Caption Mode: roll-up, pop-on, and paint-on. Character display varies significantly with the style used, but certain rules of character erasure are common to all styles. A character, once displayed, can be erased by addressing another character to the same screen location or, in displayed memory, by backspacing

over the character from a subsequent location on the same row. The entire displayed memory will be erased instantly by receipt of an Erase Displayed Memory command. Both displayed memory and non-displayed memory will be entirely erased simultaneously by either: The user switching receiver channels or data channels (C1/C2) or fields (F1/F2) in decoders so equipped; the loss of valid data (see paragraph (j) of this section); or, selecting non-captioning receiver functions which use the display memory of the decoder. These are the only instances in which caption memory will be erased. Receipt of an End of Caption command will cause a displayed caption to become non-displayed (and vice versa) without being erased from memory. Changing the receiver to a non-captioning mode which does not require use of the decoder's display memory will leave that memory intact, and the decoder will continue to process data as if the caption display were selected.

(1) Roll-up. Roll-up style captioning is initiated by receipt of one of three Miscellaneous Control Codes that determine the maximum number of rows displayed simultaneously, either 2, 3 or 4 contiguous rows. These are the three Roll-Up Caption commands.

(i) The bottom row of the display is known as the "base row". The cursor always remains on the base row. Rows of text roll upwards into the contiguous rows immediately above the base row to create a "window" 2 to 4 rows high.

(ii) The Roll-Up command, in normal practice, will be followed (not necessarily immediately) by a Preamble Address Code indicating the base row and the horizontal indent position. If no Preamble Address Code is received, the base row will default to Row 15 or, if a roll-up caption is currently displayed, to the same base row last received, and the cursor will be placed at Column 1. If the Preamble Address Code received contains a different base row than that of a currently displayed caption, the entire window will move intact (and without erasing) to the new base row immediately.

(iii) The base row given in the Preamble Address Code takes precedence over the number of roll-up rows given in the Roll-Up Caption command. If the Preamble Address Code indicates Rows 1, 2, or 3 as the base row, any rows which would display above the window will be lost.

(iv) Each time a Carriage Return is received, the text in the top row of the window is erased from memory and from the display. The remaining rows of text are each rolled up into the next highest row in the window, leaving the base row blank and ready to accept new text. This roll-up must appear smooth to the user, and must take no more than 0.433 seconds to complete. The cursor is automatically placed at Column 1 (pending receipt of a Preamble Address Code).

(v) Increasing or decreasing the number of roll-up rows instantly changes the size of the active display window, appropriately turning on or off the display of the top one or two rows. A row which is turned off should also be erased from memory.

(vi) Characters are always displayed immediately when received by the receiver. Once the cursor reaches the 32nd column position on any row, all subsequent characters received prior to a Carriage Return, Preamble Address Code, or Backspace will be displayed in that column replacing any previous character occupying that address.

(vii) The cursor moves automatically one column to the right after each character or Mid-Row Code received. A Backspace will move the cursor one column to the left, erasing the character or Mid-Row Code occupying that location. (A Backspace received when the cursor is in Column 1 will be ignored.)

(viii) The Delete to End of Row command will erase from memory any characters or control codes starting at the current cursor location and in all columns to its right on the same row. If no displayable characters remain on the row after the Delete to End of Row is acted upon, the solid space (if any) for that row should also be erased to conform with the following provisions.

(ix) If a solid space is used for legibility, it should appear when the first displayable character (not a transparent space) or Mid-Row Code is received on a row, not when the Preamble Address Code, if any, is given. A row on which there are no displayable characters or Mid-Row Codes will not display a solid space, even when rolled up between two rows which do display a solid space.

(x) If the reception of data for a row is interrupted by data for the alternate data channel or for Text Mode, the display of caption text will resume from the same cursor position if a Roll-Up Caption command is received and no Preamble Address Code is given which would move the cursor.

(xi) Receipt of a Resume Caption Loading command (for pop-on style) or a Resume Direct Captioning command (for paint-on style) will not affect a roll-up display. Receipt of an End of Caption command will erase the roll-up caption. Receipt of a Roll-Up Caption command will cause any pop-on or paint-on caption to be erased from displayed memory and non-displayed memory.

(2) Pop-on. Pop-on style captioning is initiated by receipt of a Resume Caption Loading command. Subsequent data are loaded into a non-displayed memory and held there until an End of Caption command is received, at which point the non-displayed memory becomes the displayed memory and vice versa. (This process is often referred to as "flipping memories" and does not automatically erase memory.) An End of Caption command forces the receiver into pop-on style if no Resume Caption Loading command has been received which would do so. The display will be capable of 4 full rows, not necessarily contiguous, simultaneous anywhere on the screen.

(i) If no Preamble Address Code is received, the cursor will begin at the same screen position where it was left after the previous caption (or at Row 1, Column 1 when the receiver is first turned on or after a screen erase caused by the user switching data channels or fields or by loss of valid data). Preamble Address Codes can be used to move the cursor around the screen in random order to place captions on Rows 1 to 15. Carriage Returns and Backspaces have no effect on cursor location during caption loading.

(ii) The cursor moves automatically one column to the right after each character or Mid-Row Code received. Once the cursor reaches the 32nd column position on any row, all subsequent characters received prior to an End of Caption, or a Preamble Address Code, will replace any previous character at that location.

(iii) If a Backspace command or a Delete to End of Row command is received during caption loading, it will be ignored.

(iv) If data reception is interrupted during caption loading by data for the alternate caption channel or for Text Mode, caption loading will resume at the same cursor position if a Resume Caption Loading command is received and no Preamble Address Code is given that would move the cursor.

(v) Characters remain in non-displayed memory until an End of Caption command flips memories. The caption will be erased without being displayed upon receipt of an Erase Non-Displayed Memory command, a Roll-Up Caption command, or if the user switches receiver channels, data channels or fields, or upon the loss of valid data (see paragraph (j) of this section).

(vi) A pop-on caption, once displayed, remains displayed until one of the

standard caption erasure techniques is applied or until a Roll-Up Caption command is received. Characters within a displayed pop-on caption will be replaced by receipt of the Resume Direct Captioning command and paint-on style techniques (see below).

(3) Paint-on. Paint-on style captioning is initiated by receipt of a Resume Direct Captioning command. Subsequent data are addressed immediately to displayed memory without need for an End of Caption command.

(i) If no Preamble Address Code is received, the cursor will begin at the same screen position where it was left after the previous caption (or at Row 1, Column 1 when the receiver is first turned on or after a screen erase caused by the user switching receiver channels or data channels or fields or by loss of valid data).

(ii) Preamble Address Codes can be used to move the cursor around the screen in random order to display captions on Rows 1 to 15. Carriage Returns have no affect on cursor location during direct captioning. The cursor moves automatically one column to the right after each character or Mid-Row Code is received. Receipt of a Backspace will move the cursor one column to the left, erasing the character or Mid-Row Code occupying that location. (A Backspace received when the cursor is in Column 1 will be ignored.) Once the cursor reaches the 32nd column position on any row, all subsequent characters received prior to a Preamble Address Code or Backspace will be displayed in that column replacing any previous character occupying that location.

(iii) The Delete to End of Row command will erase from memory any characters or control codes starting at the current cursor location and in all columns to its right on the same row. If no displayable characters remain on the row after the Delete to End of Row is acted upon, the solid space (if any) for that element should also be erased.

(iv) If the reception of data is interrupted during direct captioning by data for the alternate caption channel or for Text Mode, the display of caption text will resume at the same cursor position if a Resume Direct Captioning command is received an no Preamble Address Code is given which would move the cursor.

(v) Characters remain displayed until one of the standard caption erasure techniques is applied or until a Roll-Up Caption command is received. An End of Caption command leaves a paint-on caption fully intact in non-displayed memory. In other words, a paint-on style caption behaves precisely like a pop-on style caption which has been displayed.

(g) Character format. Characters are to be displayed on the screen within a character "cell" which is the height and width of a single row and column. The following codes define the displayable character set. Television receivers manufactured prior to January 1, 1996 and having a character resolution of 5 × 7 dots, or less, may display the allowable alternate characters in the character table. A statement must be in a prominent location on the box or other package in which the receiver is to be marketed, and information must be in the owner's manual, indicating the receiver displays closed captioning in upper case only.

Character Set Table

Special Characters

These require two bytes for each symbol. Each hex code as shown will be preceded by a 11h for data channel 1 or by a 19h for data channel 2. For example: 19h 37h will place a musical note in data channel 2.

HEX	Example	Alternate	Description
30	®	See note [1]	Registered mark symbol.
31	°		Degree sign.
32	½		½.
33	¿		Inverse query.
34	™	See note [1]	Trademark symbol.
35	¢		Cents sign.
36	£		Pounds Sterling sign.
37	♪		Music note.
38	à	A	Lower-case a with grave accent.
39			Transparent space
3A	è	E	Lower-case e with grave accent.
3B	â	A	Lower-case a with circumflex.
3C	ê	E	Lower-case e with circumflex.
3D	î	I	Lower-case i with circumflex.
3E	ô	O	Lower-case o with circumflex.
3F	û	U	Lower-case u with circumflex.

[1] Note: The registered and trademark symbols are used to satisfy certain legal requirements. There are various legal ways in which these symbols may be drawn or displayed. For example, the trademark symbol may be drawn with the "T" next to the "M" or over the "M". It is perfered that the trademark symbol be superscripted, i.e., XYZ™. It is left to each individual manufacturer to interpret these symbols in any way that meets the legal needs of the user.

Standard characters

HEX	Example	Alternate	Description
20			Standard space.
21	!		Exclamation mark.
22	"		Quotation mark.
23	#		Pounds (number) sign.
24	$		Dollar sign.
25	%		Percentage sign.
26	&		Ampersand.
27	'		Apostrophe.
28	(		Open parentheses.
29	)		Close parentheses.
2A	á	A	Lower-case a with acute accent.
2B	+		Plus sign.
2C	,		Comma.
2D	-		Minus (hyphen) sign.
2E	.		Period.
2F	/		Slash.
30	0		Zero.
31	1		One.
32	2		Two.
33	3		Three.
34	4		Four.
35	5		Five.
36	6		Six.
37	7		Seven.
38	8		Eight.
39	9		Nine.
3A	:		Colon.
3B	;		Semi-colon.
3C	<		Less than sign.
3D	=		Equal sign.
3E	>		Greater than sign.
3F	?		Question mark.
40	@		At sign.
41	A		Upper-case A.
42	B		Upper-case B.
43	C		Upper-case C.
44	D		Upper-case D.
45	E		Upper-case E.
46	F		Upper-case F.
47	G		Upper-case G.
48	H		Upper-case H.
49	I		Upper-case I.
4A	J		Upper-case J.
4B	K		Upper-case K.
4C	L		Upper-case L.
4D	M		Upper-case M.
4E	N		Upper-case N.
4F	O		Upper-case O.
50	P		Upper-case P.
51	Q		Upper-case Q.
52	R		Upper-case R.
53	S		Upper-case S.
54	T		Upper-case T.
55	U		Upper-case U.
56	V		Upper-case V.
57	W		Upper-case W.
58	X		Upper-case X.
59	Y		Upper-case Y.
5A	Z		Upper-case Z.
5B	[		Open bracket.
5C	é	E	Lower-case e with acute accent.
5D	]		Close bracket.
5E	í	I	Lower-case i with acute accent.
5F	ó	O	Lower-case o with acute accent.
60	ú	U	Lower-case u with acute accent.
61	a	A	Lower-case a.
62	b	B	Lower-case b.
63	c	C	Lower-case c.
64	d	D	Lower-case d.
65	e	E	Lower-case e.
66	f	F	Lower-case f.
67	g	G	Lower-case g.
68	h	H	Lower-case h.
69	i	I	Lower-case i.
6A	j	J	Lower-case j.
6B	k	K	Lower-case k.
6C	l	L	Lower-case l.

HEX	Example	Alternate	Description
6D	m	M	Lower-case m.
6E	n	N	Lower-case n.
6F	o	O	Lower-case o.
70	p	P	Lower-case p.
71	q	Q	Lower-case q.
72	r	R	Lower-case r.
73	s	S	Lower-case s.
74	t	T	Lower-case t.
75	u	U	Lower-case u.
76	v	V	Lower-case v.
77	w	W	Lower-case w.
78	x	X	Lower-case x.
79	y	Y	Lower-case y.
7A	z	Z	Lower-case z.
7B	ç	C	Lower-case c with cedilla.
7C	÷		Division sign.
7D	Ñ		Upper-case N with tilde.
7E	ñ	Ñ	Lower-case n with tilde.
7F	■		Solid block.

(h) Character attributes.—(1) Transmission of attributes. A character may be transmitted with any or all of four attributes: color, italics, underline, and flash. All of these attributes are set by control codes included in the received data. An attribute will remain in effect until changed by another control code or until the end of the row is reached. Each row begins with a control code which sets the color and underline attributes. (White non-underlined is the default if no Preamble Address Code is received before the first character on an empty row.) Attributes are not affected by transparent spaces within a row.

(i) All Mid-Row Codes and the Flash On command are spacing attributes which appear in the display just as if a standard space (20h) had been received. Preamble Address Codes are non-spacing and will not alter any attributes when used to position the cursor in the midst of a row of characters.

(ii) The color attribute has the highest priority and can only be changed by the Mid-Row Code of another color. Italics has the next highest priority. If characters with both color and italics are desired, the italics Mid-Row Code must follow the color assignment. Any color Mid-Row Code will turn off italics. If the least significant bit of a Preamble Address Code or of a color or italics Mid-Row Code is a 1 (high), underlining is turned on. If that bit is a 0 (low), underlining is off.

(iii) The flash attribute is transmitted as a Miscellaneous Control Code. The Flash On command will not alter the status of the color, italics, or underline attributes. However, any color or italics Mid-Row Code will turn off flash.

(iv) Thus, for example, if a red, italicized, underlined, flashing character is desired, the attributes must be received in the following order: a red Mid-Row or Preamble Address Code, an italics Mid-Row Code with underline bit, and the Flash On command. The character will then be preceded by three spaces (two if red was assigned via a Preamble Address Code).

(2) Display of attributes. The underline attribute will be displayed by drawing a line beneath the character in the same color as the character. The flash attribute will be displayed by causing the character to blink from the display at least once per second. The italic attribute must be capable of being displayed by either a special italic font, or by the modification of the standard font by slanting. The user may be given the option to select other methods of italic display as well. The support of the color attributes is optional. If the color attributes are supported, they will be displayed in the color they have been assigned. If color attributes are not supported, the display may be in color, but all color changes will be ignored.

(i) Control codes. There are three different types of control codes used to identify the format, location, attributes, and display of characters: Preamble Address Codes, Mid-Row Codes, and Miscellaneous Control Codes.

(1) Each control code consists of a pair of bytes which are always transmitted together in a single field of line 21 and which are normally transmitted twice in succession to help insure correct reception of the control instructions. The first of the control code bytes is a non-printing character in the range 10h to 1Fh. The second byte is always a printing character in the range 20h to 7Fh. Any such control code pair received which has not been assigned a function is ignored. If the non-printing character in the pair is in the range 00h to 0Fh, that character alone will be ignored and the second character will be treated normally.

(2) If the second byte of a control code pair does not contain odd parity (see paragraph (j) of this section), then the pair is ignored. The redundant transmission of the pair will be the instruction upon which the receiver acts.

(3) If the first byte of the first transmission of a control code pair fails the parity check, then that byte is inserted into the currently active memory as a solid block character (7Fh) followed by whatever the second byte is. Again, the redundant transmission of the pair will be the controlling instruction.

(4) If the first transmission of a control code pair passes parity, it is acted upon immediately. If the next frame contains a perfect repeat of the same pair, the redundant code is ignored. If, however, the next frame contains a different but also valid control code pair, this pair, too, will be acted upon (and the receiver will expect a repeat of this second pair in the next frame). If the first byte of the expected redundant control code pair fails the parity check and the second byte is identical to the second byte in the immediately preceding pair, then the expected redundant code is ignored. If there are printing characters in place of the redundant code, they will be processed normally.

(5) There is provision for decoding a second data channel. The second data channel is encoded with the same control codes and procedures already described. The first byte of every control code pair indicates the data channel (C1/C2) to which the command applies. Control codes which do not match the data channel selected by the user, and all subsequent data related to that control code, are ignored by the receiver.

MID-ROW CODES

Data channel 1	Data channel 2	Attribute description
11 20	19 20	White.
11 21	19 21	White Underline.
11 22	19 22	Green.
11 23	19 23	Green Underline.
11 24	19 24	Blue.
11 25	19 25	Blue Underline.
11 26	19 26	Cyan.
11 27	19 27	Cyan Underline.
11 28	19 28	Red.
11 29	19 29	Red Underline.
11 2A	19 2A	Yellow.
11 2B	19 2B	Yellow Underline.
11 2C	19 2C	Magenta.
11 2D	19 2D	Magenta Underline.
11 2E	19 2E	Italics.
11 2F	19 2F	Italics Underline.

MISCELLANEOUS CONTROL CODES

Data channel 1	Data channel 2	Mnemonic	Command description
14 20	1C 20	RC	Resume Caption Loading.
14 21	1C 21	BS	Backspace.
14 22	1C 22	AOF	Reserved (formerly Alarm Off).
14 23	1C 23	AON	Reserved (formerly Alarm On).
14 24	1C 24	DER	Delete to End of Row.
14 25	1C 25	RU2	Roll-Up Captions-2 Rows.
14 26	1C 26	RU3	Roll-Up Captions-3 Rows.
14 27	1C 27	RU4	Roll-Up Captions-4 Rows.
14 28	1C 28	FON	Flash On.

MISCELLANEOUS CONTROL CODES—Continued

Data channel 1	Data channel 2	Mnemonic	Command description
14 29	1C 29	RDC	Resume Direct Captioning.
14 2A	1C 2A	TR	Text Restart.
14 2B	1C 2B	RTD	Resume Text Display.
14 2C	1C 2C	EDM	Erase Displayed Memory.

MISCELLANEOUS CONTROL CODES—Continued

Data channel 1	Data channel 2	Mnemonic	Command description
14 2D	1C 2D	CR	Carriage Return.
14 2E	1C 2E	ENM	Erase Non-Displayed Memory.
14 2F	1C 2F	EOC	End of Caption (Flip Memories).

MISCELLANEOUS CONTROL CODES—Continued

Data channel 1	Data channel 2	Mnemonic	Command description
17 21	1F 21	TO1	Tab Offset 1 Column.
17 22	1F 22	TO2	Tab Offset 2 Columns.
17 23	1F 23	TO3	Tab Offset 3 Columns.

PREAMBLE ADDRESS CODES

	Row 1	Row 2	Row 3	Row 4	Row 5	Row 6	Row 7	Row 8	Row 9	Row 10	Row 11	Row 12	Row 13	Row 14	Row 15
First byte of code pair:															
Data Channel 1	11	11	12	12	15	15	16	16	17	17	10	13	13	14	14
Data Channel 2	19	19	1A	1A	1D	1D	1E	1E	1F	1F	18	1B	1B	1C	1C
Second byte of code pair:															
White	40	60	40	60	40	60	40	60	40	60	40	40	60	40	60
White Underline	41	61	41	61	41	61	41	61	41	61	41	41	61	41	61
Green	42	62	42	62	42	62	42	62	42	62	42	42	62	42	62
Green Underline	43	63	43	63	43	63	43	63	43	63	43	43	63	43	63
Blue	44	64	44	64	44	64	44	64	44	64	44	44	64	44	64
Blue Underline	45	65	45	65	45	65	45	65	45	65	45	45	65	45	65
Cyan	46	66	46	66	46	66	46	66	46	66	46	46	66	46	66
Cyan Underline	47	67	47	67	47	67	47	67	47	67	47	47	67	47	67
Red	48	68	48	68	48	68	48	68	48	68	48	48	68	48	68
Red Underline	49	69	49	69	49	69	49	69	49	69	49	49	69	49	69
Yellow	4A	6A	4A	6A	4A	6A	4A	6A	4A	6A	4A	4A	6A	4A	6A
Yellow Underline	4B	6B	4B	6B	4B	6B	4B	6B	4B	6B	4B	4B	68	4B	6B
Magenta	4C	6C	4C	6C	4C	6C	4C	6C	4C	6C	4C	4C	6C	4C	6C
Magenta Underline	4D	6D	4D	6D	4D	6D	4D	6D	4D	6D	4D	4D	6D	4D	6D
White Italics	4E	6E	4E	6E	4E	6E	4E	6E	4E	6E	4E	4E	6E	4E	6E
White Italics Underline	4F	6F	4F	6F	4F	6F	4F	6F	4F	6F	4F	4F	6F	4F	6F
Indent 0	50	70	50	70	50	70	50	70	50	70	50	50	70	50	70
Indent 0 Underline	51	71	51	71	51	71	51	71	51	71	51	51	71	51	71
Indent 4	52	72	52	72	52	72	52	72	52	72	52	52	72	52	72
Indent 4 Underline	53	73	53	73	53	73	53	73	53	73	53	53	73	53	73
Indent 8	54	74	54	74	54	74	54	74	54	74	54	54	74	54	74
Indent 8 Underline	55	75	55	75	55	75	55	75	55	75	55	55	75	55	75
Indent 12	56	76	56	76	56	76	56	76	56	76	56	56	76	56	76
Indent 12 Underline	57	77	57	77	57	77	57	77	57	77	57	57	77	57	77
Indent 16	58	78	58	78	58	78	58	78	58	78	58	58	78	58	78
Indent 16 Underline	59	79	59	79	59	79	59	79	59	79	59	59	79	59	79
Indent 20	5A	7A	5A	7A	5A	7A	5A	7A	5A	7A	5A	5A	7A	5A	7A
Indent 20 Underline	5B	7B	5B	7B	5B	7B	5B	7B	5B	7B	5B	5B	7B	5B	7B
Indent 24	5C	7C	5C	7C	5C	7C	5C	7C	5C	7C	5C	5C	7C	5C	7C
Indent 24 Underline	5DF	7D	5D	7D	5D	7D	5D	7D	5D	7D	5D	5D	7D	5D	7D
Indent 28	5E	7E	5E	7E	5E	7E	5E	7E	5E	7E	5E	5E	7E	5E	7E
Indent 28 Underline	5F	7F	5F	7F	5F	7F	5F	7F	5F	7F	5F	5F	7F	5F	7F

Note.—All indent codes (second byte equals 50h-5fh, 70th-7fh) assign white as the color attribute.

(j) Data rejection. The receiver should provide an effective procedure to verify data. A receiver will reject data if the data is invalid, or if the data is directed to the data channel or field not selected by the user. Invalid data is any data that fails to pass a check for odd parity, or which, having passed the parity check, is assigned no function.

(1) If a print character fails to pass a check for parity, a solid block (7Fh) should be displayed in place of the failed character. In addition, valid data can be corrupted in many ways and may not be suitable for display. For example, repeated fields, skipped fields and altered field sequences are all possible from consumer video equipment and might present meaningless captions.

(2) The receiver will ignore data rejected due to being directed to a deselected field or channel. However, this will not cause the display to be disabled.

(k) Automatic display enable/disable. The receiver shall provide an automatic enable/disable capability to prevent the display of invalid or incomplete data, when the user selects the Caption Mode. The display should automatically become enable after the receiver verifies the data as described in paragraph (j) of this section. The display will be automatically disabled when there is a sustained detection of invalid data. The display will be re-enabled when the data verification process has been satisfied once again.

(l) Compatibility with cable security systems. Certain cable television security techniques, such as signal encryption and copy protection, can alter the television signal so that some methods of finding line 21 will not work. In particular, counting of lines or timing from the start of the vertical blanking interval may cause problems. Caption decoding circuitry must function properly when receiving signals from any cable security system that was designed and marketed prior to April 5,

1991. Further information concerning such systems is available from the National Cable Television Association, Inc., Washington, DC, and from the Electronic Industries Association, Washington, DC.

(m) Labelling and consumer information requirements. The box or other package in which the individual television receiver is to be marketed shall carry a statement in a prominent location, visible to the buyer before purchase, which reads as follows:

This television receiver provides display of television closed captioning in accordance with § 15.119 of the FCC rules.

Receivers that do not support color attributes or text mode, as well as receivers that display only upper-case characters pursuant to paragraph (g) of this section, must include with the statement, and in the owner's manual, language indicating that those features are not supported.

(n) Glossary of terms. The following terms are used to describe caption decoder specifications:

(1) Base row: The bottom row of a roll-up display. The cursor always remains on the base row. Rows of text roll upwards into the contiguous rows immediately above the base row.

(2) Box: The area surrounding the active character display. In Text Mode, the box is the entire screen area defined for display, whether or not displayable characters appear. In Caption Mode, the box is dynamically redefined by each caption and each element of displayable characters within a caption. The box (or boxes, in the case of a multiple-element caption) includes all the cells of the displayed characters, the non-transparent spaces between them, and one cell at the beginning and end of each row within a caption element in those decoders that use a solid space to improve legibility.

(3) Caption window: The invisible rectangle which defines the top and bottom limits of a roll-up caption. The window can be 2 to 4 rows high. The lowest row of the window is called the base row.

(4) Cell: The discrete screen area in which each displayable character or space may appear. A cell is one row high and one column wide.

(5) Column: One of 32 vertical divisions of the screen, each of equal width, extending approximately across the full width of the safe caption area as defined in paragraph (n)(12) of this section. Two additional columns, one at the left of the screen and one at the right, may be defined for the appearance of a box in those decoders which use a solid space to improve legibility, but no displayable characters may appear in those additional columns. For reference, columns may be numbered 0 to 33, with columns 1 to 32 reserved for displayable characters.

(6) Displayable character: Any letter, number or symbol which is defined for on-screen display.

(7) Display disable: To turn off the display of captions or text (and accompanying background) at the receiver, rather than through codes transmitted on line 21 which unconditionally erase the display. The receiver may disable the display because the user selects an alternate mode, e.g., TV Mode, or because no valid line 21 data is present.

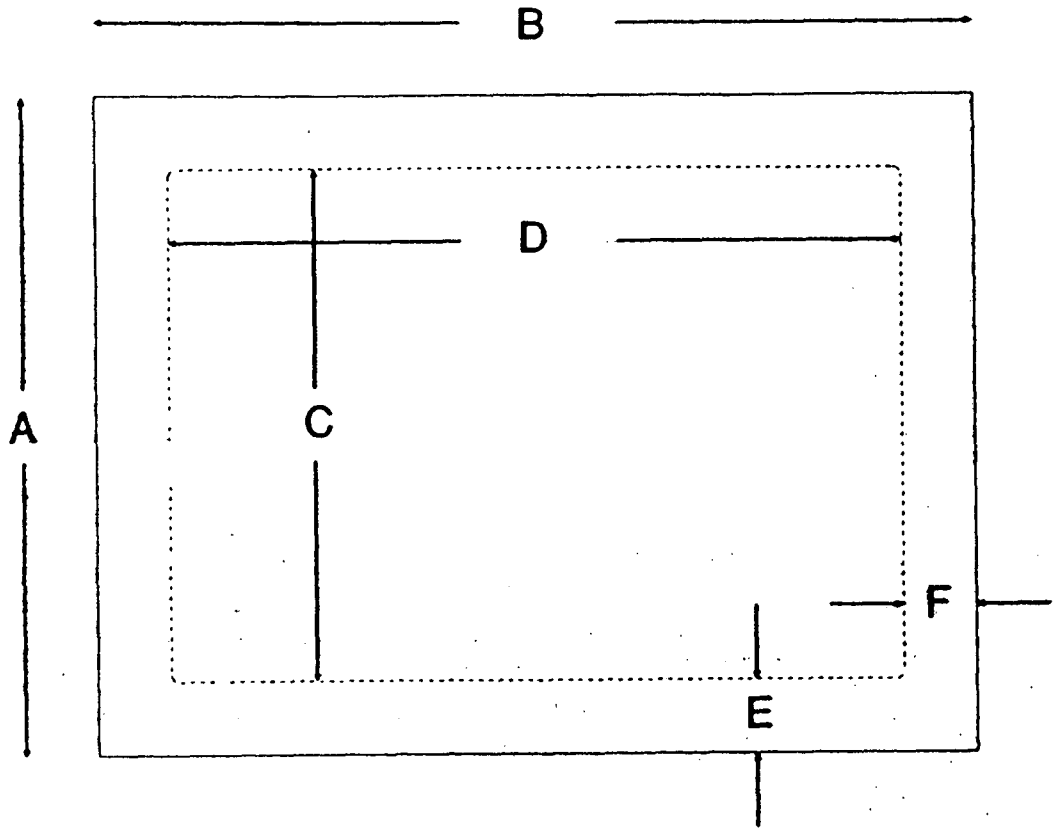
(8) Display enable: To allow the display of captions or text when they are transmitted on line 21 and received as valid data. For display to be enabled, the user must have selected Caption Mode or Text Mode, and valid data for the selected mode must be present on line 21.

(9) Element: In a pop-on or paint-on style caption, each contiguous area of cells containing displayable characters and non-transparent spaces between those characters. A single caption may have multiple elements. An element is not necessarily a perfect rectangle, but may include rows of differing widths.

(10) Erase Display: In Caption Mode, to clear the screen of all characters (and accompanying background) in response to codes transmitted on line 21. (The caption service provider can accomplish the erasure either by sending an Erase Displayed Memory command or by sending an Erase Non-Displayed Memory command followed by an End of Caption command, effectively making a blank caption "appear".) Display can also be erased by the receiver when the caption memory erasure conditions are met, such as the user changing TV channels.

(11) Row: One of 15 horizontal divisions of the screen, extending across the full height of the safe caption area as defined in paragraph (n)(12) of this section.

(12) Safe caption area: The area of the television picture within which captioning and text shall be displayed to ensure visibility of the information on the majority of home television receivers. The safe caption area is specified as shown in the following figure:



The dimensions of the above figure shall be as follows:

Label	Dimensions	Percent of television picture height
A	Television picture height	100.0
B	Television picture width	133.33
C	Height of safe caption area	80.0
D	Width of safe caption area	106.67
E	Vertical position of safe caption area.	10.0
F	Horizontal position of safe caption area.	13.33

(13) Special characters: Displayable characters (except for "transparent space") which require a two-byte sequence of one non-printing and one printing character. The non-printing byte varies depending on the data channel. Regular characters require unique one-byte codes which are the same in either data channel.

(14) Text: When written with an upper-case "T", refers to the Text Mode. When written with a lower-case "t", refers to any combination of displayable characters.

(15) Transparent space: Transmitted as a special character, it is a one-column-wide space behind which program video is always visible (except when a transparent space immediately precedes or follows a displayable character and solid box is needed to make that character legible).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[40 FR Doc. 91-13904 Filed 6-12-91; 8:45 am]

BILLING CODE 6712-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 705, 706, 719, 726, and 752

[AIDAR Notice 91-4]

Disadvantaged Enterprises

AGENCY: Agency for International Development, IDCA.

ACTION: Interim rule with request for comments.

SUMMARY: The AID Acquisition Regulation (AIDAR) is being amended to implement the requirements of section 567 of the FY 1991 Foreign Operations, Export Financing, and Related Programs Appropriations Act concerning requirements for contracting and subcontracting with disadvantaged enterprises.

DATES: Effective Date: Interim rule is effective on May 9, 1991; comments must be received on or before July 15, 1991.

ADDRESSES: Comments should be sent to Kathleen O'Hara, MS/PPE, room 1600I SA-14, Agency for International Development, Washington, DC 20523-1435.

FOR FURTHER INFORMATION CONTACT: Kathleen O'Hara, MS/PPE, telephone (703) 875-1534.

SUPPLEMENTARY INFORMATION: The Agency is implementing legislative changes in the provisions concerning contracting with disadvantaged enterprises.

The changes to tthe limitation of applicability to FY 1990 funds. The provisions will be applicable to funds from FY 1991 and later as long as the Agency's appropriation acts continue to provide authority.

Previously, the less than full and open competitive procedures in AIDAR 706.302-71 were applicable only to small disadvantaged business concerns. Under the new legislation, AID is now authorized to use less than full and open competition under the circumstances set forth in AIDAR 706.302-71 for contracts with small disadvantaged business concerns, colleges and universities which are historically black or which have a student body of more than 40 percent Hispanic Americans, and disadvantaged private voluntary organizations. This procedure now requires the contracting officer to obtain competition to the maximum practicable extent, but no longer requires the contracting officer to certify that two or more responsible offers can reasonably be anticipated.

The definitions of economically disadvantaged individuals and socially disadvantaged individuals are amended to conform with the FAR definition, except that they specifically include women. The previous asset test used to determine economic disadvantage is dropped in accordance with a legislative change which defines such individuals by reference to section 8(d) of the Small Business Act, instead of section 133 of the 1977 International Development and Food Assistance Act which required an asset test.

The disadvantaged enterprise representation is amended to include the additional categories of organizations eligible under the procedures covering other than full and open competition.

The changes being made by this notice are not considered significant rules under FAR section 1.301 and subpart 1.5. This notice will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act. It is not considered a major rule under Executive Order 12291, and has been submitted to OMB for review. This notice does not establish any information collection as contemplated by the Paperwork Reduction Act.

Accordingly, for the reasons set out in the Preamble, 48 CFR chapter 7 is amended as follows:

1. The authority citations in parts 705, 706, 719, 726 and 752 continue to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

PART 705—PUBLICIZING CONTRACT ACTIONS

Subpart 705.2—Synopsis of Proposed Contract Actions

2. Section 705.202(c) is revised to read as follows:

705.202 Exceptions.

* * * * *

(c) Advance notice is not required for contract actions undertaken in accordance with § 706.302-71.

3. Section 705.207 is revised to read as follows:

705.207 Preparation and transmittal of certain synopses.

The responsible contracting officer shall notify AID's Office of Small and Disadvantaged Business Utilization (OSDBU) at least seven business days before publicizing a solicitation in the Commerce Business Daily for an acquisition:

(a) Which is to be funded from amounts made available for development assistance or for assistance for famine recovery and development in Africa; and

(b) Which is expected to exceed $100,000.

For exceptions, see 726.104.

PART 706—COMPETITION REQUIREMENTS

Subpart 706.3—Other Than Full and Open Competition

4. Section 706.302-5 is revised to read as follows:

706.302-5 Authorized or required by statute.

Sec. 567 of the fiscal year 1991 Foreign Operations, Export Financing, and Related Programs Appropriations Act authorizes AID to contract with certain disadvantaged enterprises using other than full and open competition. The provisions implementing this authority are set forth in 706.302-71 and part 726.

5. Section 706.302-71 is revised to read as follows:

706.302-71 Small disadvantaged businesses.

(a) *Authority.* (1) Citation: fiscal year 1991 Foreign Operations, Export Financing, and Related Programs Appropriations Act, Sec. 567.

(2) Except to the extent otherwise determined by the Administrator, not less than ten percent of amounts made available for development assistance and for assistance for famine recovery and development in Africa shall be used only for activities of disadvantaged enterprises (as defined in 726.101). In order to achieve this goal, AID is authorized to use other than full and open competition to award contracts to small business concerns owned and controlled by socially and economically disadvantaged individuals (small disadvantaged businesses as defined in 726.101), historically black colleges and universities, colleges and universities having a student body of which more than 40 percent of the students are Hispanic Americans, and private voluntary organizations which are controlled by individuals who are socially and economically disadvantaged, as the terms are defined in 726.101.

(b) *Application.* This authority may be used only if the Agency determines in accordance with 726.103 that:

(1) The acquisition is to be funded from amounts referred to in paragraph (a)(2) of this section;

(2) Award of the acquisition to an eligible organization is appropriate to meet the requirement in paragraph (a)(2) of this section; and

(3) After considering whether the acquisition can be made under the authority of section 8(a), award under section 8(a) is not practicable.

(c) *Limitations.* (1) Offers shall be requested from as many potential offerors as is practicable under the circumstances.

(2) Use of this authority is not subject to the requirements in FAR 6.303 and FAR 6.304, provided that the contract file includes a certification by the contracting officer stating that the procurement is being awarded pursuant to 706.302-71 and that the application requirements and limitations of 706.302-71 (b) and (c) have been complied with.

PART 719—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 719.2—Policies

6. Section 719.272 is revised to read as follows:

719.272 Small disadvantaged business policies.

In addition to the requirements in FAR part 19, part 726 provides for contracting and subcontracting with small disadvantaged businesses and other disadvantaged enterprises based on section 567 of the fiscal year 1991 Foreign Operations, Export Financing, and Related Programs Appropriations Act.

PART 726—OTHER SOCIOECONOMIC PROGRAMS

7. Section 726.000 is revised to read as follows:

726.000 Scope of part.

This Part supplements FAR part 19 and implements section 567 of the fiscal year 1991 Foreign Operations, Export Financing, and Related Programs Appropriations Act concerning disadvantaged enterprises which requires in general that not less than ten percent of the aggregate amount made available for development assistance and for assistance for famine recovery and development in Africa shall be made available to disadvantaged enterprises. See part 705 and part 706 for additional provisions on publicizing contract actions and using other than full and open competition.

Subpart 726.1—General

8. Section 726.101 is revised to read as follows:

726.101 Definitions.

(a) *Controlled by socially and economically disadvantaged individuals* means management and daily business are controlled by one or more such individuals.

(b) *Disadvantaged enterprises* means U.S. organizations or individuals that are:

(1) Business concerns (as defined in FAR 19.001) owned and controlled by socially and economically disadvantaged individuals;

(2) Institutions designated by the Secretary of Education, pursuant to 34 CFR 608.2, as historically black colleges and universities;

(3) Colleges or universities having a student body in which more than 40 percent of the students are Hispanic American; or

(4) Private voluntary organizations which are controlled by individuals who are socially and economically disadvantaged.

(c) *Economically disadvantaged individuals* has the same meaning as in FAR 19.001, except that the term includes women.

(d) *Owned by socially and economically disadvantaged individuals* means at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals.

(e) *Small disadvantaged business* has the same meaning as in FAR 19.001.

(f) *Socially disadvantaged individuals* has the same meaning as in FAR 19.001, except that the term includes women.

9. Section 726.102 is revised to read as follows:

726.102 Policy.

AID promotes participation in its projects by disadvantaged enterprises. In order to achieve the goals in foreign assistance appropriation acts, contracts which are to be funded from amounts made available for development assistance and for famine recovery and development in Africa are subject to the following policies:

(a) Authority in section 8(a) of the Small Business Act (15 U.S.C. 637(a)) shall be used to the maximum practicable extent;

(b) Other than full and open competition in contracting with certain disadvantaged enterprises shall be authorized in accordance with 706.302-71;

(c) Subcontracting with disadvantaged enterprises shall be carried out in accordance with subpart 726.3;

(d) In accordance with 705.207, the Office of Small and Disadvantaged Business Utilization (OSDBU) shall be notified at least seven business days before publicizing a proposed procurement in excess of $100,000.

10. Section 726.104 is amended by removing the phrase "Section 579(b) of Pub. L. 101-167" from the second sentence and adding the phrase "Sec. 567 of the fiscal year 1991 Foreign Operations, Export Financing, and Related Programs Appropriations Act" in its place.

Subpart 726.2—Determination of Status

11. Section 726.201 is amended by revising the section heading and paragraph (a) to read as follows:

726.201 Determination of status as a disadvantaged enterprise.

(a) To be eligible for an award under AIDAR 706.302-71 providing for other than full and open competition, the contractor must qualify, as of both the date of submission of its offer and the date of contract award, as a small disadvantaged business (as defined in 726.101), an historically black college or university, a college or university in which more than 40 percent of the students are Hispanic Americans, or a private voluntary organization controlled by individuals who are socially and economically disadvantaged. The contracting officer shall insert the provision at 752.226-1 in any solicitation or contract to be awarded under the provisions of 706.302-71.

* * * * *

Subpart 726.3—Subcontracting Requirement

12. Section 726.301(a) is revised to read as follows:

726.301 Subcontracting with disadvantaged enterprises.

(a) In addition to the requirements in FAR subpart 19.7, any new contract or modification which constitutes new procurement (except for a contract or modification with a disadvantaged enterprise as defined in 726.101) with respect to which more than $500,000 is to be funded with amounts made available for development assistance or for assistance for famine recovery and development in Africa shall contain a provision requiring that not less than ten percent of the dollar value of the contract must be subcontracted to disadvantaged entities.

* * * * *

PART 752—TEXTS OF PROVISIONS AND CLAUSES

13. Section 752.226-1 is revised to read as follows:

752.226-1 Determination of status as disadvantaged enterprise.

As prescribed in 726.201, insert the following provision:

Disadvantaged Enterprise Representation

(April 1991)

The offeror/contractor shall submit a representation in the following form to the contracting officer:

(a) *Representation.* The offeror represents that:

(1) It ☐ is, ☐ is not a small disadvantaged business.

(2) It ☐ is, ☐ is not an historically black college or university, as designated by the Secretary of Education pursuant to 34 CFR 608.2.

(3) It ☐ is, ☐ is not a college or university having a student body in which more than 40 percent of the students are Hispanic American.

(4) It ☐ is, ☐ is not a private voluntary organization which is controlled by individuals who are socially and economically disadvantaged.

(b) *Definitions.* (1) *Asian Pacific Americans*, as used in this provision means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei,

Republic of the Marshall Islands, or the Federated States of Micronesia.

(2) *Controlled by socially and economically disadvantaged individuals* means management and daily business are controlled by one or more such individuals.

(3) *Native Americans*, as used in this provision means American Indians, Eskimos, Aleuts, and native Hawaiians.

(4) *Owned by socially and economically disadvantaged individuals* means at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals.

(5) *Small business concern*, as used in this provision, means a U.S. concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualifies as a small business under the criteria and size standards in 13 CFR part 121.

(6) *Small disadvantaged business*, as used in this provision, means a small business concern that:

(i) Is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals; and

(ii) Has its management and daily business controlled by one or more such individuals.

(7) *Subcontinent Asian Americans*, as used in this provision, means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal.

(c) *Qualified groups*. The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and women.

(End of Provision)

14. Section 752.226–2 is revised to read as follows:

752.226–2 Subcontracting with disadvantaged enterprises.

As prescribed in 726.301, insert the following clause:

Subcontracting With Disadvantaged Enterprises

(April 1991)

Note: This clause does not apply to prime contractors that qualify as disadvantaged enterprises as described below.

(a) Not less than ten (10) percent of the dollar value of this contract shall be subcontracted to disadvantaged enterprises as described in paragraph (b) of this clause.

(b) Disadvantaged enterprises are U.S. organizations or individuals that are:

(1) Business concerns (as defined in FAR 19.001) owned and controlled by socially and economically disadvantaged individuals;

(2) Institutions designated by the Secretary of Education, pursuant to 34 CFR 608.2, as historically black colleges and universities:

(3) Colleges and universities having a student body in which more than 40 percent of the students are Hispanic American; or

(4) Private voluntary organizations which are controlled by individuals who are socially and economically disadvantaged.

(c) *Definitions*. (1) *Controlled by socially and economically disadvantaged individuals* means management and daily business are controlled by one or more such individuals.

(2) *Owned by socially and economically disadvantaged individuals* means at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals.

(3) *Socially and economically disadvantaged individuals* has the same meaning as in FAR 19.001, except that the term also includes women. Any individual who certifies that he or she is a Black American, Hispanic American, Native American (as defined in FAR 19.001), Asian-Pacific American (as defined in FAR 19.001), Subcontinent-Asian American (as defined in FAR 19.001), or a woman shall be presumed to be socially and economically disadvantaged individual.

(d) Contractors should require representations from their subcontractors regarding their status as a disadvantaged enterprise. Contractors acting in good faith may rely on such representations by their subcontractors.

(End of Clause)

Dated: May 9, 1991.

John F. Owens,

Procurement Executive.

[FR Doc. 91–13742 Filed 6–12–91; 8:45 am]

BILLING CODE 6116–01–M

Proposed Rules

Federal Register
Vol. 56, No. 114
Thursday, June 13, 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 JUSTICE

Immigration and Naturalization Service

8 CFR Parts 214 and 274a

[INS No. 1403-91]

Nonimmigrant Classes; Students, F Classification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: Section 221(a) of the Immigration Act of 1990 (IMMACT 90), provides a three-year off-campus employment program for F-1 students. To implement this off-campus employment provision and to clarify and streamline the current procedures for F-1 student employment authorization and extension of stay, the Immigration and Naturalization Service is proposing rule changes. The proposed changes would significantly simplify the F-1 student regulation and improve efficiency in the administration of the student-school program.

DATES: Written comments must be received on or before July 15, 1991.

ADDRESSES: Please submit written comments in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5304, Washington, DC 20536. Please include INS number 1403-91 on the mailing envelope to ensure proper handling.

FOR FURTHER INFORMATION CONTACT: Pearl B. Chang, Senior Immigration Examiner, Immigration and Naturalization Service, Examinations Division, 425 I Street, NW., room 7122, Washington, DC 20536, telephone (202) 514-3240.

SUPPLEMENTARY INFORMATION:

Background

1. Pilot Off-Campus Employment Program

Section 221(a) of the Immigration Act of 1990 (IMMACT 90), establishes a three-year off-campus employment program for F-1 students. Beginning October 1, 1991, F-1 students in good academic standing are authorized to work, part-time and off-campus for a specific employer after having been in F-1 nonimmigrant student status for one year, if the employer provides the educational institution and the Secretary of Labor with an attestation that it has recruited for at least 60 days for the position, and that it will pay wages comparable to those paid to domestic workers.

The Department of Labor (DOL) will set forth regulations that employers must follow in their recruitment efforts. If the Secretary of Labor determines that an employer has falsified information on the attestation, the employer will be disqualified from employing foreign students under this program. The Congress has also directed that the INS Commissioner submit, before April 1, 1994, a report on the impact of the pilot program on prevailing wages and a recommendation on whether to extend the program

The labor-and-wage attestation requirement is intended to "ensure that businesses across the country can find the employees they need without displacing American workers". (101 Cong. Rec. 8674, daily ed. Oct. 2, 1990.) The attestation-requirement will supersede the current procedure which requires that the students show unforeseen economic necessity. The Congress has made it clear that the purpose of this provision is to "strengthen the protection against abuse which could occur under current law as interpreted by the INS". ibid.

2. Student Employment Authorization Procedures

(i) The Current Procedure

Under current student regulations, a designated school official at the institution where an F-1 student is enrolled is delegated the authority to grant employment authorization. After verifying a student's eligibility for an initial period of practical training, a DSO may authorize employment on the student's Form I-20 ID copy. An F-1 student must apply to the Service for employment authorization when he or she seeks approval for off-campus employment or the second period of practical training after completion of studies.

(ii) The Proposed Employment Authorization Document (EAD) Rule of July 13, 1990

On July 13, 1990, the Service published a proposed rule in the **Federal Register** at 55 FR 28767 to amend the student employment regulation to require the use of the standard employment authorization application, Form I-765. Under the proposed rule of July 13, 1990, all students seeking off-campus employment or practical training would have had to apply to the Service in person for work authorization. Those who were granted work authorization would have been issued an employment authorization document (EAD). To apply for the EAD for practical training, an F-1 student would first have been required to obtain a recommendation from the DSO and a job-offer letter. The proposed rule of July 13, 1990, was not finalized because the Service wanted to revise its original proposal to incorporate the pilot off-campus employment provision of IMMACT 90.

(iii) Comments to the Proposed Rule of July 13, 1990

The educational community expressed great concern about the proposed rule change. The commenters almost unanimously urged the Service to maintain the "status quo;" they wanted the DSOs to retain the authority to approve practical training and requested that F-1 students be exempt from the EAD requirement. However, recognizing the Service's interest in developing a uniform document that the employers can easily recognize, a large number of commenters also stated that they would support the EAD if the proposed changes could be modified to ease the logistical burden on students.

The Service has adopted many of the educational community's suggestions in this new issue of proposed procedures, such as hiring additional staff, streamlining the student employment authorization process, and giving students more flexibility in selecting the time and location for EAD applications. In the new proposed rule, only students seeking post-completion practical

training would be required to apply for an EAD.

Proposed Change

In its effort to implement the pilot off-campus employment provision for F-1 students, the Service is also proposing to simplify the procedures for F-1 student employment authorization and extension of stay. The proposed changes would reduce the paperwork burden for the students and schools and improve the F-1 student program's operational efficiency.

1. Extension of Stay

The current procedures for extension of stay have been characterized as burdensome and difficult to follow. School officials and Service officers have made repeated requests that these procedures be simplified. To streamline the process, the Service is proposing to eliminate the requirement for extension of stay. An F-1 student would be admitted for the time during which he or she is pursuing a full course of study at an educational institution approved by INS for attendance by foreign students, or engaging in authorized practical training following completion of studies, plus sixty days. As long as the student maintains status and completes a full course of study within the time period given by the designated school official (DSO) on the Form I-20 A-B/I-20 ID (Certificate of Eligibility for Nonimmigrant Student Status), no extension of stay is required.

To allow a student sufficient time to complete a full course of study, the DSO should make a reasonable estimate based on the time an average foreign student would need to complete a similar program in the same discipline. The DSO may add onto the estimated completion time a grace period of not more than one year to allow for family emergency, illness, or any academically-related adjustment problem.

Since an F-1 student who maintains a full-time course load and makes normal progress in a full course of study should be able to complete the program in a timely fashion, any F-1 student who fails to meet the expected completion date as indicated on the Form I-20 A-B/I-20 ID would be considered out of status. An F-1 student who fails to complete a full course of study in a timely manner must apply to the Service for reinstatement to regain F-1 status. The request for reinstatement would be approved if the student can establish valid reasons for exceeding the completion date.

It is the Service's belief that the purpose of the extension of stay requirement can be effectively served by other elements of the F-1 student program, such as the requirements for full-time enrollment, normal progress toward completion, and bona fide student-status as the condition for employment benefits. With the DSOs acting as the gate-keepers, the Service can successfully monitor the F-1 students through the automated student-school information system.

2. On and Off-Campus Employment

The current student employment program has five major components: on-campus employment, off-campus employment, curricular practical training, pre-completion practical training, and post-completion practical training. The procedures have been characterized as unduly complicated and not enforceable. Calls for reform have been heard in both the private and public sectors.

The proposed rule would revise the current employment program to incorporate the new off-campus employment provision of IMMACT 90, eliminating pre-completion practical training, and authorizing off-campus employment with a specific employer incident to status. Students seeking on or off-campus employment are exempt from the requirement for an INS-issued EAD.

3. Practical Training

Under the proposed rule, an F-1 student seeking practical training would not have to prove that a similar employment opportunity is not available in his or her home country. Because practical training is intended to give the students the opportunity to round off their academic studies, the DSO would only have to certify that the employment was commensurate with the student's educational level and related directly to the student's major area of study.

(i) Curricular Practical Training

Curricular practical training, internships, work-study programs, and cooperative programs, for which students are awarded academic credits, would still be authorized by the DSO. Curricular practical training is offered by sponsoring employers through cooperative agreements with the schools. Participants in such programs do not have to look for employment in the open market, and the sponsoring employers can rely on the schools for verification of the student's employment eligibility. Consequently, the proposed rule acknowledges that curricular practical training is offered as an integral part of the curriculum and that participation in these programs is incident to F-1 status. No EAD is required of students seeking this type of training. A student who has received one year or more of full-time curricular practical training is ineligible for practical training after completion of studies.

(ii) Post-Completion Practical Training

Practical training after completion of studies is limited to no more than twelve months in the aggregate. Only those students who have been enrolled lawfully and full-time in an INS-approved institution for at least nine months may be authorized employment for practical training. Students seeking employment authorization for post-completion practical training must apply to the Service for an EAD. The application for employment authorization must be made on Form I-765 with the required fee and a recommendation for post-completion practical training by the DSO. The Service will adjudicate the Form I-765 and issue an EAD on the basis of the DSO's recommendation unless the student is found otherwise ineligible.

4. Revision of Form I-538

Form I-538, Application by Nonimmigrant Student for Extension of Stay, School Transfer, and Permission to Accept or Continue Employment or Practical Training, will be revised to serve the sole purpose of school certification, and may be used by the DSOs for reporting employment authorization or by the students as a supporting document to Form I-765. Since the employment application function of Form I-538 will be assumed by Form I-765, the revised Form I-538 will only be a school certification. Certification made by a DSO on a photocopied Form I-538 is acceptable. Students seeking reinstatement (F-1) or extension of stay (M-1 only) after October 1, 1991, will be required to use the revised Form I-539, Application to Extend Time of Temporary Stay.

Revisions to Form I-538 have been forwarded to the Office of Management and Budget (OMB) for review and clearance.

5. Effective Date

Employment authorizations granted on I-20 ID (Student) Copies prior to October 1, 1991, will remain valid until they expire. F-1 students granted only the first-period of post-completion practical training by the DSO before October 1, 1991, and who wish to continue employment for the second six-month period, must apply to the Service for authorization under the new

procedure. Those who choose before October 1, 1991, to split the two periods of post-completion practical training will be required to apply to the Service for the remaining six months upon completion of a new course of study. (The application on Form I-765 must be supported by a certified statement to that effect from the DSO.) Under the proposal, students will no longer be allowed to split post-completion practical training into two periods after October 1, 1991.

Copies of the final rule and a notice to employers, which can be shown to employers by the students, will be distributed to all schools authorized to accept foreign students.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

New information collection requirements contained in this regulation are being submitted to OMB for review and approval under the provisions of the Paperwork Reduction Act. Control numbers for previously approved information collections are contained in 8 CFR 299.5 Display of Control Numbers.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Authority delegation, Employment, Organization and functions, Passports and visas.

8 CFR Part 274a

Administrative practice and procedures, Aliens.

Accordingly, INS is proposing to amend chapter I of title 8 of the Code of Federal Regulations as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, and 1184, 1186a, 1187, and 8 CFR part 2.

2. Section 214.2 is amended by revising paragraph (f), the first two sentences of the introductory text of paragraph (m)(14)(ii), and paragraph (m)(14)(iii) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(f) *Students in colleges, universities, seminaries, conservatories, academic high schools, elementary schools, other academic institutions, and in language training programs*—(1) *Admission of student*—(i) *Eligibility for admission.* A nonimmigrant student and his or her accompanying spouse and minor children may be admitted into the United States in F-1 and F-2 classifications for duration of status under section 101(a)(15)(F)(i) of the Act, if the student:

(A) Presents a properly completed Certificate of Eligibility for Nonimmigrant (F-1) Student Status, Form I-20 A-B/I-20 ID, which is issued by a school approved by INS for attendance by foreign students;

(B) Has documentary evidence of financial support in the amount indicated on the I-20 A-B/I-20 ID form; and

(C) Intends to attend the school specified in the student's visa except where the student is exempt from the requriement for a visa, in which case the student must intend to attend the school indicated on the I-20 A-B/I-20 ID.

(ii) *Disposition of Form I-20 A-B/I-20 ID.* Form I-20 A-B/I-20 ID contains two copies, the I-20 School Copy and the I-20 ID (Student) Copy. For purposes of clarity, the entire Form I-20 A-B/I-20 ID shall be referred to as Form I-20 A-B and the I-20 ID (student) copy shall be referred to as I-20 ID. When an F-1 student applies for admission with a new Form I-20 A-B, the inspecting officer shall:

(A) Transcribe the student's admission number on Form I-94 onto his or her Form I-20 A-B (for students seeking initial admission only);

(B) Endorse all copies of the I-20 A-B form;

(C) Return the I-20 ID to the student; and

(D) Forward the I-20 School Copy to the Service's processing center for data entry. (The school copy of Form I-20 A-B will be sent back to the school as a notice of the student's admission after data entry.)

(2) *I-20 ID.* An F-1 student is expected to safekeep the initial I-20 ID bearing the admission number and any subsequent copies which have been issued to him or her. Should the student lose his or her current I-20 ID, a replacement copy bearing the same information as the lost copy, including any endorsement for employment and notations, may be issued by the designated school official (DSO).

(3) *Spouse and minor children following to join student.* The spouse and minor children following to join an F-1 student are eligible for admission to the United States if the F-1 student is or will be within sixty days, enrolled in a full course of study or is engaged in approved practical training following completion of studies. The eligible spouse and minor children of an F-1 student may be admitted in F-2 status if they present the F-1 student's current I-20 ID with proper endorsement by the DSO. A new Form I-20 A-B is required where there has been any substantive change in the information on the student's current I-20 ID.

(4) *Temporary absence.* An F-1 student returning to the United States from a temporary absence of five months or less may be readmitted for attendance at an INS-approved educational institution, if the student presents:

(i) A current I-20 ID properly endorsed by the DOS for reentry if there s no substantive change ont he most recent I-20 ID; or

(ii) A new Form I-20 A-B if there has been any substantive change in the information on the student's most recent I-20 ID, such as in the case of a student who has changed the educational program or intends to transfer to another INS-approved institution, or advance to a higher level of study.

(5) *Duration of status*—(i) *General.* An F-1 student is admitted for the time during which he or she is pursuing a full course of study at an educational institution approved by INS for attendance by foreign students, or engaging in authorized practical training following completion of studies, plus sixty days to prepare for departure from the United States. The student is considered to be maintaining status if he or she is making normal progress toward completing a full course of study.

(ii) *Advance in educational levels.* An F-1 student who continues from one educational level to another is considered to be maintaining status, provided that the transition to the new educational program is accomplished according to transfer procedures outlined in paragraph (f)(8) of this section.

(iii) *Annual vacation.* An F-1 student at an academic institution is considered to be in status during the annual (or summer) vacation if the student is eligible and intends to register for the next term. A student attending a school on a quarter or trimester calendar who takes only one vacation a year during any one of the quarters or trimesters instead of during the summer is

considered to be in status during that vacation, if the student has completed the equivalent of an academic year prior to taking the vacation.

(vi) *Illness or medical conditions.* A student who is compelled by illness or other medical conditions to interrupt or reduce a full course of study is considered to be in status during the illness or other medical condition. The student must resume a full course of study upon recovery.

(6) *Full course of study*—(i) *General.* Sucessful completion of the full course of study must lead to the attainment of a specific educational or professional objective. A "full course of study" as requried by section 101(a)(15)(F)(i) of the Act means:

(A) Postgraduate study or postdoctoral study at a college or university, or undergraduate or postgraduate study at a conservatory or religious seminary, certified by a DSO as a full course of study;

(B) Undergraduate study at a college or university, certified by a school official to consist of at least twelve semester or quarter hours of instruction per academic term in those institutions using standard semester, trimester, or quarter hour systems, where all udnergraduate students who are enrolled for a minimum of twelve semester or quarter hours are charged full-time tuition or are considered full-time for other administrative purposes, or its equivalent (as determined by the district director in the school approval process), except when the student needs a lesser course load to complete the course of study during the current term;

(C) Study in a post-secondary language, liberal arts, fine arts or other non-vocational program at a school which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning within paragraph (c)(1) or (c)(2) of § 214.3, and which has been certified by a designated school official to consist of at least twelve clock hours of instruction a week, or its equivalent as determined by the district director in the school approval process;

(D) Study in any other language, liberal arts, fine arts, or other nonvocational training program, certified by a designated school official to consist of at least eighteen clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or to consist of at lease twenty two clock hours a week if the dominant part of the course of study consists of laboratory work; or

(E) Study in a primary or academic high school curriculum certified by a designated school official to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress towards graduation.

(ii) *Institution of higher learning.* For purposes of this paragraph, a college or university is an institution of higher learning which awards recognized associate, bachelor's, master's, doctorate, or professional degrees. Schools which devote themselves exclusively or primarily to vocational, business, or language instruction are classifiable as M-1 schools and therefore are not covered by the F-1 visa program.

(iii) *Reduced course load.* The designated school official may advise an F-1 student to engage in less than a full course of study due to initial English language difficulties, unfamiliarity with American teaching methods, reading requirements, or improper course level placement. An F-1 student authorized to reduce course load by the DSO in accordance with the provisions of this paragraph is considered to be maintaining status.

(7) *Extension of stay*—(i) *General.* An F-1 student is admitted for duration of status. The student is not required to apply for extension of stay as long as the student is maintaining status and making normal progress toward completing his or her educational objective. An F-1 student who completes a full course of study within the time period indicated on the Form I-20 A-B may progress to a higher level of study without requesting extension of stay from the Service.

(ii) *Completion date on Form I-20 A-B.* When determining the program completion date on Form I-20 A-B, the DSO should make a reasonable estimate based on the time an average foreign student would need to complete a similar program in the same discipline. A grace period of no more than one year may be added onto the DSO's estimate.

(iii) *Failure to complete the educational program in a timely manner.* An F-1 student who is unable to complete the educational program within the time period written on the Form I-20 A-B is considered to be out of status and must apply for reinstatement under the provisions of paragraph (f)(16) of this section. The applicant must establish that there are valid reasons for exceeding the projected completion date.

(8) *School transfer*—(i) *Eligibility.* An F-1 student who is maintaining status may transfer to a different school by following the notification procedure prescribed in paragraph (f)(8)(ii) of this section. An F-1 student who was not pursuing a full course of study at the school he or she was last authorized to attend is ineligible for school-transfer and must apply for reinstatement under the provisions of paragraph (f)(16) of this section.

(ii) *Transfer procedure.* To transfer schools, an F-1 student must first notify the school he or she is attending of the intent to transfer, then obtain a Form I-20 A-B, issued in accordance with the provisions of 8 CFR 214.3(k), from the school to which he or she intends to transfer. The transfer will be effected only if the F-1 student completes the Student Certification portion of the Form I-20 A-B and returns the form to a designated school official on campus within 15 days of beginning attendance at the new school.

(iii) *Notification.* Upon receipt of the student's Form I-20 A-B, the DSO must:

(A) Note "transfer completed on (date)" on the student's I-20 ID in the space provided for the DSO's remarks, thereby acknowledging the student's attendance;

(B) Return the I-20 ID to the student;

(C) Submit the I-20 School copy to the Service's Data Processing Center within 30 days of receipt from the student; and

(D) Forward a photo-copy of the Form I-20 A-B to the school from which the student transferred.

(9) *Employment*—(i) *On-campus employment.* On-campus employment must either be performed on the school's premises (including on-location commercial firms which provide services for students on campus, such as the school bookstore or cafeteria), or at an off-campus location which is educationally affiliated with the school. In the case of off-campus locations, the educational affiliation must be associated with the school's established curriculum and the employment must be an integral part of the student's educational program. Employment authorized under this paragraph must not exceed twenty hours a week while school is in session. An F-1 student authorized to work under this paragraph may, however, work full-time when school is not in session. The student may not engage in on-campus employment after completion of the student's course or courses of study, except employment for practical training as authorized under paragraph (f)(10) of this section.

(ii) *Off-campus employment*—(A) *General.* An F-1 student is authorized to work off-campus on a part-time basis after having been in F-1 status for one full year provided that he or she is in

good academic standing as determined by the DSO and that the employer has filed a labor-and-wage attestation as required by section 221(a)(2) of IMMACT 90. Part-time off-campus employment authorized under this section is limited to no more than twenty hours a week when school is in session. A student who is granted off-campus employment authorization may work full-time only when school is not in session. A student may accept off-campus employment only after his or her I-20 ID has been endorsed to that effect by that DSO. The employment authorization is terminated when the student transfers schools or fails to maintain status. A temporary absence of less than five months from the United States during the annual vacation may be counted as part of the one-year in status requirement.

(B) *Procedure for off-campus employment authorization.* An eligible F-1 student may make a request for off-campus employment authorization to the DSO on Form I-538, Certification by Designated School Official. By certifying on Form I-538 that the student is eligible for off-campus employment in accordance with paragraph (f)(9)(i) of this section, the DSO may authorize off-campus employment for the period of validity of the labor attestation as determined by the Secretary of Labor. The DSO must forward the school certification to the INS processing center with a copy of the labor attestation attached. The authorization on the student's I-20 ID should read "employment with (name of employer) at (location) recommended from (date) to (date)." Off-campus employment authorized by the DSO under this provision is incident to the student's status and employer-specific and, therefore, exempt from the EAD requirement.

(C) *Attestation.* Section 221(a) of IMMACT 90 provides that an F-1 student may be authorized to accept employment off-campus only if the prospective employer provides the educational institution with an attestation following the procedures set forth by the Secretary of Labor. The employer must attest to the effect that it has actively recruited domestic labor for at least 60 days for the position and will accord the student worker the same wages and working conditions as domestic workers similarly employed.

(iii) *Internship with an international organization.* A bona fide F-1 student who has been offered employment by a recognized international organization within the meaning of the International Organization Immunities Act (59 Stat. 669) must apply for employment authorization, in person, to the INS district office having jurisdiction over his or her residence. A student seeking employment authorization under this provision is required to present a written certification from the international organization that the proposed employment is within the scope of the organization's sponsorship, an I-20 ID endorsed by the DSO within the last 30 days, and a completed Form I-765, Application for Employment Authorization, with the fee fixed by § 103.7(b).

(10) *Practical training.* Practical training is available to F-1 students who have been lawfully enrolled on a full-time basis in an INS-approved college, university, conservatory, or seminary for at least nine consecutive months. An eligible F-1 student may request employment authorization for practical training in a position which is directly related to his or her major area of study. There are two types of practical training available:

(i) *Curricular practical training programs.* An F-1 student may be authorized, by the DSO, to participate in a curricular practical training program which is an integral part of an established curriculum, such as alternate work/study, internship, or cooperative education. Students who have received one year or more of full-time curricular practical training are ineligible for post-completion practical training. A request for authorization for curricular practical training must be made to the DSO on Form I-538. Upon approving the request for authorization, the DSO shall:

(A) Certify the Form I-538 and send the form to the Service's data processing center;

(B) Endorse the student's I-20 ID with "full-time (or part-time) curricular practical training authorized from (date) to (date)"; and

(C) Sign and date the I-20 ID before returning it to the student. A student may begin curricular practical training only after receiving his or her I-20 ID with the DSO endorsement.

(ii) *Post-completion practical training*—(A) *General.* An F-1 student may apply to INS for authorization for temporary employment for practical training after completion of studies. Post-completion practical training generally will be authorized on recommendation of the DSO, whether or not the student intends to continue another full-course of study after completing the authorized practical training. Authorization for post-completion practical training may be granted for a maximum of 12 months and takes effect only after the student has completed the course of study. In any event, a student must complete practical training within a 13-month period following the completion of studies. An F-1 student may be authorized to engage in post-completion practical training only once for the duration of student status. Students in English language training programs are ineligible for practical training after completion of studies.

(B) *Request for recommendation for post-completion practical training.* A student may request recommendation for practical training during a 90-day period which begins 60 days before and ends 30 days after the completion of the course of study. A student must make the request for recommendation for post-completion practical training to the DSO on Form I-538, accompanied by his or her current I-20 ID.

(C) *Action on request for recommendation for practical training.* If approving a request for recommendation for post-completion practical training, a designated school official must:

(*1*) Certify on Form I-538 that the proposed employment is directly related to the student's major area of study and commensurate with the student's educational level;

(*2*) Endorse and date the I-20 ID to show that post-completion practical training in the student's major field of study is recommended beginning on (date of completion of the course of study); and

(*3*) Return to the student the I-20 ID and send to the INS data processing center the school certification on Form I-538.

(11) *Employment authorization.* As required by the regulations at 8 CFR 274a, an F-1 student seeking practical training (excluding curricular practical training) under paragraph (f)(10) of this section may not accept employment until he or she has been issued an Employment Authorization Document (EAD) by the Service. An F-1 student must apply in person for the EAD on Form I-765 at the Service office having jurisdiction over his or her residence, during the same 90-day period when the DSOs are authorized to recommend practical training. The application for employment authorization must include the following documents:

(i) A completed Form I-765, with the fee set by § 103.7(b); and

(ii) A DSO's recommendation for practical training on I-20 ID.

(12) *Decision on application for employment authorization.* The Service

shall adjudicate the Form I-765 and issue an EAD on the basis of the DSO's recommendation unless the student is found otherwise ineligible. The district director shall notify the applicant of the decision and, if the application is denied, of the reason or reasons for the denial. The applicant may not appeal the decision.

(13) *Temporary absence from the United States of F-1 student granted employment authorization.* (i). A student returning from a temporary trip abroad with an unexpired off-campus employment authorization on his or her I-20 ID may resume employment only if the student is readmitted to attend the same school which granted the employment authorization.

(ii) An F-1 student who has an unexpired EAD issued for post-completion practical training and who is otherwise admissible may return to the United States to resume employment after a period of temporary absence. An I-20 ID is not required.

(14) *Effect of strike or other labor dispute.* Any employment authorization, whether or not part of an academic program, is automatically suspended upon certification by the Secretary of Labor or the Secretary's designee to the Commissioner of the Immigration and Naturalization Service or the Commissioner's designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place of employment. As used in this paragraph, "place of employment" means wherever the employer or a joint employer does business.

(15) *Spouse and children of F-1 student.* The F-2 spouse and children of an F-1 student may not accept employment.

(16) *Reinstatement to student status*—(i) *General.* A district director may consider reinstating an F-1 student who makes a request for reinstatement on Form I-539, the Application to Extend Time of Temporary Stay, accompanied by a properly completed Form I-20 A-B from the school the student is attending or intends to attend, if the student:

(A) Establishes to the satisfaction of the district director that the violation of status resulted from circumstances beyond the student's control or that failure to receive reinstatement to lawful F-1 status would result in extreme hardship to the student;

(B) Is currently pursuing, or intending to pursue, a full course of study at the school which issued the Form I-20 A-B;

(C) Has not engaged in unauthorized employment; and

(D) Is not deportable on any ground other than section 241(a)(1)(B) or (c)(i) of the Act.

(ii) *Decision.* If the district director reinstates the student, the district director shall endorse Form I-20 A-B to indicate that the student has been reinstated, return the I-20 ID to the student, and forward the school copy of the form to the Service's processing center for data entry. If the district director does not reinstate the student, the student may not appeal that decision.

* * * * *

(m) * * *

(14) * * *

(ii) *Application.* An M-1 student must apply for permission to accept employment for practical training on Form I-765, with the fee set by § 103.7(b), accompanied by his or her I-20 ID. The student must submit the application in person to the Service office having jurisdiction over the student's residence.* * *

(iii) *Duration of practical training.* When the student is authorized to engage in employment for practical training, he or she will be issued an employment authorization document. The M-1 student may not begin employment until he or she has been issued an employment authorization document by the Service. One month of employment authorization will be granted for each four months of full-time study that the M-1 student has completed. However, an M-1 student may not engage in more than six months of practical training in the aggregate. The student will not be granted employment authorization if he or she cannot complete the requested practical training within six months.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

3. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

4. Section 274a.12 is amended by revising paragraphs (b)(6), (c)(3), and (c)(6) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(6) A nonimmigrant (F-1) student who is in valid nonimmigrant student status and pursuant to 8 CFR 214.2(f) is seeking:

(i) On-campus employment for not more than twenty hours per week when school is in session or full-time employment when school is not in session if the student intends and is eligible to register for the next term or session. Part-time on-campus employment is authorized by the school and no specific endorsement by a school official or Service officer is necessary;

(ii) Part-time off-campus employment authorization based on an approved attestation from the employer pursuant to 8 CFR 214.2(f) and who presents an I-20 ID endorsed by the designated school official; or

(iii) Curricular practical training (internships, cooperative training programs, or work-study programs which are part of an established curriculum) after having been enrolled full-time in an INS-approved institution for at least nine months. Curricular practical training (part-time or full-time) is authorized by the Designated School on the student's I-20 ID; no Service endorsement is necessary.

* * * * *

(c) * * *

(3) A nonimmigrant (F-1) student who:

(i) Is seeking employment for purposes of practical training (excluding curricular practical training) pursuant to 8 CFR 214.2(f), provided the alien will be employed only in an occupation which is directly related to his or her area of studies and that he or she presents a school certification on Form I-538 and an I-20 ID endorsed by the designated school official; or

(ii) Has been offered employment under the sponsorship of an international organization within the meaning of the International Organization Immunities Act (59 Stat. 669) and who presents a written certification from the international organization that the proposed employment is within the scope of the organization's sponsorship (the F-1 student must also present an I-20 ID endorsed by the DSO in the last 30 days);

* * * * *

(6) A nonimmigrant (M-1) student seeking employment for practical training pursuant to 8 CFR 214.2(m) following completion of studies. The alien may be employed only in an occupation or vocation directly related to his or her course of study as recommended by the endorsement of the designated school official on I-20 ID;

* * * * *

Dated: May 30, 1991.

Gene McNary,

Commissioner, Immigration and Natualization Service.

[FR Doc. 91-13821 Filed 6-12-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-ANM-5]

Proposed Alteration of VOR Federal Airway V-524

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of VOR Federal Airway V-524 located between Hayden, CO, and Laramie, WY. The establishment of this route is necessary to provide a more direct route between Hayden and Laramie. This action would improve traffic flow and reduce flying time. This action would also reduce controller workload.

DATES: Comments must be received on or before July 29, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM-500, Docket No. 91-ANM-5, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055-4056.

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

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

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of VOR Federal Airway V-524 located between Hayden, CO, and Laramie, WY. This route would be established to improve the flow of traffic by providing a direct route between Hayden, CO, and Laramie, WY. The airport is experiencing considerable increases in air traffic especially during ski seasons. As this trend is projected to continue, the demand for adequate navigable airspace mandates this change. This action would improve existing routes within this region while providing additional routes to accommodate increasing air traffic. This route would also reduce fuel cost and flying time by providing a more direct route. This proposal would reduce pilot/controller communications. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

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

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-524 [Amended]

By removing the words "From Laramie, WY," and substituting the words "From Hayden, CO; Laramie, WY;"

Issued in Washington, DC, on May 29, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-14053 Filed 6-12-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 241

Proposal To Amend Regulations for Flood Control and Agricultural Water Supply Cost Sharing Requirements Under the Ability To Pay Provision

AGENCY: U.S. Army, Corps of Engineers, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army is proposing to amend procedures for flood control projects, and to establish initial guidelines for agricultural water supply projects for "ability to pay" determinations. This amendment will fully implement legislation mandating the determination of the eligibility of sponsors of flood control and agricultural water supply projects to receive reductions in non-Federal cost share requirements.

DATES: Written comments must be received by August 13, 1991.

ADDRESSES: Submit comments to HQUSACE, Director of Civil Works, attn: CECW-PA, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Donald L. Barnes (202)272-0120.

SUPPLEMENTARY INFORMATION: A final rule for flood control projects implementing section 103(m) of Public Law 99-662 was published in the **Federal Register** (54 FR 40578, October 2, 1989). This proposal will amend these guidelines in accordance with the directive language in section 305 of Public Law 101-640, and eliminate application of the ability to pay test to certain projects built under the Corps' continuing authorities program. The proposed rule makes two major changes for flood control projects. First, the rule will modify the income test to eliminate reference to state income. Second, the benefits test will be replaced with a new floor for cost share reduction equalling the value for lands, easements, rights-of-way, relocations, and dredged material disposal areas (LERRD), plus five percent cash. This new floor, which section 305 directs, will not permit deferred payments for any of the non-Federal cost-share, allowed under previous guidelines. This proposed rule will also establish procedures for ability to pay determinations for agricultural water supply projects, as directed in section 305. This determination will be made by comparing the change in net farm income resulting from the project to the annualized non-Federal share of project costs, during the early years of project life, to determine if relief should be provided by permitting deferred payments of the standard non-Federal share.

The Use of Per Capita Income To Determine Project Eligibility for Flood Control Projects

The proposed amendment will establish eligibility for reductions in the non-Federal share using the per capita personal income of the project area (with county income as the surrogate for project area income). In making these revisions to the existing rule two of our guiding principles continue to be: (a) That the rule should not be any more complex than is necessary; and, (b) that it should be based on easily accessible, publically available data. We conclude that a standard measure of income is the appropriate statistic to use. We recognize that by keeping the formula relatively simple, there is a possibility that a subtle aspect of a single project may be missed. At the same time, we have proposed an approach which can be easily understood and uniformly applied. This advantage far outweighs any disadvantages. We have maintained our decisions from the previous rule that projects built for the protection of Indian tribes or reservations can be evaluated for ability to pay considerations based on estimated average income for the Indian tribe or reservation, and that projects in all U.S. Territories will be eligible for the full amount of cost-share reduction.

The Eligibility Factors for Flood Control

To be eligible for any cost-share reduction, a project must have an Eligibility Factor that exceeds zero. This factor is determined by an income test which compares the per capita income of people in the project area (as measured by county income data) to the national average. If the county per capita income value is significantly lower than the national average, a project will be eligible for a full or partial reduction in the standard cost share. In no case, however, will the non-Federal cost-share be less than the value of lands, easements, rights-of-way, relocations, and disposal areas (LERRD) plus five percent of the total project cost in cash. The maximum non-Federal cost-share is 50 percent of the total project cost, pursuant to section 103(a)(3) of Public Law 99-662.

Eligibility Factors for all U.S. counties will be published annually in an Engineering Circular. These factors will range from one, for counties fully eligible under the ability to pay criteria, fractional amounts for counties subject to partial eligibility, to zero for counties without eligibility. The degree of eligibility is based on the county per capita income ranking relative to other counties nationwide. Counties with a per capita income less than the per capita income of two-thirds of the counties in the United States are eligible for consideration for full or partial reduction in traditional cost share. This reflects our view that the ability to pay provision should only apply in exceptional circumstances. This is also consistent with section 322 of Public Law 101-640, which defines a low income community as one which is located in a county with a per capita income less than the per capita income of two-thirds of the counties in the United States. The proposed rule will continue to allow eligibility for full application of relief to 20 percent of all counties (eligibility factor of 1.0), and eligibility for partial application to 13⅓ percent of all counties (fractional eligibility, factors ranging from zero to 1.0). The factors will be based on the three latest years of available information on per capita income. We believe that this represents the most up-to-date economic profile on a project area which can be applied uniformly to all projects.

For purposes of illustration, assuming that a project includes LERRD with a value equaling 10 percent of total project costs, the standard cost share for a flood control project (that is, without regard to an ability to pay determination) would be 25 percent. Under the ability to pay provision outlined in this proposed rule, if this project were eligible for a full reduction under the income test, the non-Federal share would be reduced to 15 percent (10 percent LERRD plus 5 percent cash). If the project were eligible for a partial reduction (the project in a county with a fractional Eligibility Factor, for example 0.80) the reduction for this project would be computed as follows: The reduced non-Federal share=25-0.80x(25-15)=17 percent. If a project is located in more than one county (benefits accrue to residents and business in more than one county), the Eligibility Factor for the project will be a weighted average of the factors for the project, with the weights equalling the percentage of benefits in each county. For example, if the benefits are equally distributed in counties having factors of 1.00 and 0.80, the project factor is 0.90.

Maximum Cost Share Reductions Under the Ability to Pay Provision for Flood Control Projects

Section 305 of Public Law 101-640 specifies procedures that limit the

maximum reduction in the non-Federal cost share for structural flood control projects. In accordance with this statute, the minimum non-Federal cost share is 5 percent of the total project cost in cash plus all LERRD. Any reduction in cost share is therefore limited to any cash requirement to bring the non-Federal share up to 25 percent of the total project cost, which is the standard (minimum) non-Federal cost share for structural flood control projects pursuant to section 103 of Public Law 99-662. Although section 305 is silent on procedures for nonstructural flood control, previous rules were consistently applied to all flood control projects, structural and nonstructural, and we believe that still good policy. Accordingly, there will be no reduction below the 25 percent non-Federal share of nonstructural projects (or nonstructural components of projects), for any project where the associated LERRD exceeds 20 percent of total project costs.

Other Flood Control Issues

In order to apply the ability to pay procedures for nonstructural projects, project features need to be appropriately classified as construction or LERRD. For example, the costs of raising structures for floodproofing purposes, are construction costs and not part of relocations. Any real estate costs associated with the raising of structures would be part of LERRD. Costs for LERRD also include actual amounts expended for relocation assistance provided under the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, Public Law 91-646. Further definitions of LERRD are contained in Corps of Engineers Regulations: "Real Estate Handbook", ER 405-1-12; and, "Local Cooperation Agreements for New Start Construction Projects", ER 1165-2-131.

In cases where a project is eligible for both credits under the provisions of section 104 of Public Law 99-662, and a cost share reduction under ability to pay, the ability to pay calculation should be made first. Credits would then be applied against the non-Federal share as adjusted. The application of credits is subject to a separate regulation, ER 1165-2-29, published in the **Federal Register**, Nov. 18, 1987 (33 CFR 240).

Ability to pay determinations for projects in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands, require a separate analysis to apply the cost sharing waiver, called for by section 1156 of Public Law 99-662. For these projects, the non-Federal share is computed using the ability to pay formula with an Eligibility Factor equal to 1.0, and using the section 1156 calculation described in Engineering Regulation, "Local Cooperation Agreements for New Start Construction Projects" (ER 1165-2-131). The non-Federal share will be the lower of the two calculations.

Ability to pay rules will apply to small flood control projects constructed under the following authorities: Section 205 of the 1948 Flood Control Act, (33 U.S.C. 701s), and section 208 of the 1954 Flood Control Act, (33 U.S.C. 701g). The proposed rule will not apply to emergency bank protection projects constructed under section 14 of the 1946 Flood Control Act, (33 U.S.C. 701r).

Applicability of Ability to Pay Procedures to Projects for Agricultural Water Supply

Section 8 of the Flood Control Act of 1944, Public Law 78-534, provides that Corps reservoirs may include the agricultural water supply purpose, upon the recommendation of the Secretary of the Interior. Section 8 applies only to the 17 western states to which Reclamation Law applies, and repayment schedules for construction costs and determinations of the ability of non-Federal interests to repay, are made in accordance with Reclamation Law. Agricultural water supply may be included as part of a multiple-purpose Corps reservoirs outside the 17 western states, with non-Federal interests bearing 35 percent of reservoir costs allocated to this purpose. The 35 percent non-Federal share is paid during construction, and the sponsor receives credit for any LERRD costs assigned to agricultural water supply. The proposed ability to pay rule applies to the projects implemented outside of Reclamation Law. The costs of distribution and delivery systems necessary to utilize the water from Corps multiple-purpose reservoirs, are entirely a non-Federal responsibility, and do not enter into ability to pay determinations.

The Eligibility Factors for Agricultural Water Supply

A project providing agricultural water has a direct and relatively immediate effect on net farm income. Irrigation provides an increase in both the quantity of water which can be applied to crops and opportunities to improve the timing of its application. National Economic Development (NED) benefits for agricultural water supply are estimated as the change in net farm income. The estimated change in net farm income is based on representative farm budgets in combination with data concerning farming practices and productivities. Agricultural water provides opportunities to increase productivity, which translates into increases in net farm income. The ability to pay test for agricultural water supply consists of a calculation of the expected change in aggregate net farm income, representing the sum of all farm incomes for farms using project supplied water. Under the proposed ability to pay procedures, if projections of expected annual aggregate net farm income for the first five calendar years following project construction, are less than 35 percent of the annualized project costs allocated to the agricultural water supply purpose in any year, the non-Federal sponsor is eligible for relief through deferred payments of the cost share. Farm income is one indicator of ability to pay. Comments are solicited on the adequacy of this criteria.

Maximum Cost Share Relief Under the Ability to Pay Provision for Agricultural Water Supply Projects

Unlike flood control projects which depend on future occurrence of prevented or reduced flooding, agricultural water supply projects are forecast to have a direct and relatively immediate effect on net farm income. Project benefits will be an important source of income available for project funding, no matter how poor the project area is before implementation. The increase in farm income should be sufficient to cover 100 percent of the cost of any justified project, over the project life. If, however, during the first five years of project operation for agricultural water supply purposes, the projected annual benefits are less than 35 percent of the annualized project cost, non-Federal interests will be allowed to defer with interest the non-Federal share of costs allocated to agricultural water supply, under section 103(k) of Public Law 99-662. This provision allows payments over a period not to exceed thirty years, with interest at a rate determined pursuant to section 106 of Public Law 99-662.

E.O. 12291 and Regulatory Flexibility Act

This rule is not a major rule within the meaning of Executive Order 12291, because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, 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 5 U.S.C. section 605(b) I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Furthermore, the number of entities affected by this rule is small, and it imposes few, if any, administrative burdens of any sort on small entities.

List of Subjects in 33 CFR Part 241

Agricultural water supply, Community facilities, Flood control, Intergovernmental relations, Water resources.

For reasons set out in the preamble, 33 CFR part 241 is proposed to be revised as follows:

PART 241—FLOOD CONTROL AND AGRICULTURAL WATER SUPPLY COST SHARING REQUIREMENTS UNDER THE ABILITY TO PAY PROVISION

Sec.
241.1 Purpose.
241.2 Applicability.
241.3 References.
241.4 General Policy.
241.5 Procedures for estimating the alternative cost share for flood control.
241.6 Procedures for estimating the alternative cost share for agricultural water supply.
241.7 Application for test.

Authority: 33 U.S.C. 2201, *et seq.*

§ 241.1 Purpose.

This regulation gives general instructions on the implementation of section 103(m) of Public Law 99–662, as amended by section 305 of Public Law 101–640, for application to flood control and agricultural water supply projects.

§ 241.2 Applicability.

This regulation applies to all U.S. Army Corps of Engineers Headquarters (HQUSACE) elements and Major Subordinate Commands and District Commands of the Corps of Engineers having Civil Works responsibilities.

§ 241.3 References.

(a) Water Resources Development Act, 1986, Public Law 99–662, 100 Stat. 4082, 33 U.S.C. 2201 *et seq.*

(b) Water Resources Development Act, 1990, Public Law 101–640, 104 Stat. 4604, 33 U.S.C. 2201 *et seq.*

(c) U.S. Water Resources Council, Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies, March 10, 1983.

(d) Office of Personnel Management, FPM Bulletin 591–30.

(e) Office of Personnel Management, FPM Bulletin 591–32.

(f) U.S. Army Corps of Engineers, Engineer Regulation 1165–2–29.

(g) U.S. Army Corps of Engineers, Engineer Regulation 1165–2–131.

(h) U.S. Army Corps of Engineers, Engineer Regulation 405–1–12.

§ 241.4 General policy.

(a) Procedures described herein propose an "ability to pay" test which will be applied to all flood control and agricultural water supply projects. As a result of the application of the test, some projects will be cost shared by non-Federal interests at a lower level than would be required under the provisions of section 103 of Public Law 99–662, 33 U.S.C. 2213, as amended by section 305 of Public Law 101–640, 33 U.S.C. 2201. The "standard share", as used herein, refers to the non-Federal share that would apply to the project before any ability to pay consideration.

(b) Section 103(m), as amended, requires that all cost sharing agreements for flood control and agricultural water supply covered by the terms of section 103(a), 103(b), or 103(c)(3) be subject to the ability to pay test. The test must therefore by applied not only to projects specifically authorized by Congress, but to the continuing authority projects for flood control, constructed under section 205 of the 1948 Flood Control Act, as amended (33 U.S.C. 701s), and section 208 of the 1954 Flood Control Act, as amended (33 U.S.C. 701g).

(c) The proposed rule will not be applied to projects constructed for agricultural water supply in the 17 western states where Reclamation Law governs the repayment of construction costs. The proposed rule is applicable to new projects providing agricultural water supply storage outside the 17 western states, but not to the reallocation of storage at existing projects.

(d) The ability to pay test will be conducted independently of any analysis of a project sponsor's ability to finance its ultimate share of proposed project costs. The ability to finance is addressed in a statement of financial capability which considers current borrowing constraints, alternative sources of liquidity, etc. It is therefore much more narrowly defined than the ability to pay test, which considers the underlying resource base of the community as a whole. The ability to pay test shall not be used to affect project scope, or to change budgetary priorities among projects competing for scarce Federal funds.

(e) Any reductions in the level of non-Federal cost sharing as a result of the application of this test will be applied to construction costs only. Operations, maintenance, replacement, and rehabilitation responsibilities are unaffected by the ability to pay test.

(f) When projects are eligible for credits as outlined in Engineer Regulation 1165–2–29, reference § 241.3(f), the ability to pay test will be applied before any adjustments are made for credits. If the ability to pay test results in a lower non-Federal share, the allowable amount of credits will be limited by the lower share.

(g) Projects in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands require a separate analysis to apply the cost sharing waiver called for by section 1156 of Public Law 99–662. The ability to pay calculation is computed separately from the section 1156 calculation, and the reduction in the non-Federal share will be the lesser of the two computations.

(h) The test is based on the following principles:

(1) Since the standard non-Federal cost share is substantially less than full costs in every case, the ability to pay test is proposed to be structured so that reductions in the level of cost sharing, or the deferral of payments will be granted in only a limited number of cases of severe economic hardship.

(2) The test will depend on the economic circumstances within the project area in which the project is located.

(i) The non-Federal interests may, at their discretion, waive the application of the ability to pay test. In this case, the non-Federal interest shall be considered to have the ability to pay the standard cost share and no further economic inquiry will be required.

§ 241.5 Procedures for Estimating the Alternative Cost Share for Flood Control.

(a) *Income test.* (1) Projects may qualify for the full amount of the reduction in cost sharing or for a partial amount, depending on eligibility factors based on the current economic resources of the project area.

(2) Calculations of eligibility factors will be performed by HQUSACE and distributed annually to all Major Subordinate Commands and District Commands via Engineering Circulars, as soon as new data is available. The factors are based on county per capita personal income for each of the three latest calendar years for which the information is available, in the county or counties where the project beneficiaries are located (the project area). Source: Dept. of Commerce, Bureau of Economic

Analysis, as published yearly in the April Survey of Current Business. (If the project beneficiaries are located in Alaska or Hawaii, the per capita income of the county is divided by one plus the percentage used in the Federal Governments's cost of living pay differential for Federal workers who purchase local retail and who use private housing, employed in Anchorage, AK or Oahu, HI.). The indices for the county per capita incomes are compared to the national average (U.S. average=100).

(3) When the project area, as determined by the location of the project's beneficiaries, includes more than one county, a composite project area index is calculated taking a weighted average of the county index numbers, the weights being equal to the relative levels of benefits received in each county. For example, if the benefits are equally distributed in counties having factors of 1.00 and 0.80, the project factor is 0.90.

(4) Projects will be eligible for a full reduction in cost share when the project eligibility factor is 1.00. The eligibility factors will be selected so that 20 percent of all the U.S. counties have a factor of 1.00. Projects will be eligible for a partial reduction in cost share when the project area eligibility factor is a fractional amount between zero and 1.00. Nationwide, 13.33 percent of all counties have been selected to have fractional eligibility factors. The remaining 66.67 percent of all U.S. counties, having an eligibility factor of zero, are not eligible for any reduction in the standard cost share prescribed by section 103 of Public Law 99-662.

(5) Since estimates of per capita income for Puerto Rico, Guam, and other U.S. Territories are well below the national average, the eligibility factors for projects in these areas is administratively established to be equal to 1.00.

(6) For flood control projects sponsored by Native American tribes or villages, the EF will be calculated using tribe or village per capita income as a percentage of the national average per capita income. It is acceptable, but not required that the data be obtained from the Bureau of the Census, American Indians, Eskimos and Aleuts on Identified Reservations and in Historic Areas of Oklahoma (Excluding Urbanized Areas), part 1, table 10, or General Social and Economic Characteristics—United States Summary (1980), table 252. Since both sources contain information for Native Americans living on reservations, rather than all Tribe or Village members, the sources should be used only when appropriate, or when no better information is available.

(b) Application of the Ability to Pay Formula to the Basic Cost Sharing Provisions of Section 103, Public Law 99-662. (1) The actual reduction for both structural and nonstructural flood control projects is determined by applying the ability to pay Eligibility Factors to the standard flood control cost sharing provisions of section 103 of Public Law 99-662, 33 U.S.C. 2213. Any reduction is limited to the difference between the standard cost share, and the sum of 5 percent of the total project cost plus the value of LERRD requirements. The following examples are provided for illustrative purposes:

Example 1

—Assume the EF is 1.00 (eligible for full reduction)
—Assume value of LERRD is 10 percent of total project cost

The standard non-Federal cost share is 25 percent (5 percent, plus LERRD, plus 10 percent additional cash).

The revised non-Federal cost share is 15 percent (5 percent, plus LERRD).

Example 2

—Assume EF is 0.50 (eligible for partial reduction)
—Assume LERRD is 10 percent of total project cost

The standard non-Federal cost share is 25 percent (5 percent, plus LERRD, plus 10 percent additional cash).

The revised non-Federal cost share is 20 percent (5 percent, plus LERRD, plus 5 percent additional cash (0.50×10 percent)).

Example 3

—Assume an EF of 1.0 (eligible for full reduction)
—Assume a value for LERRD of 30 percent of total project cost

The non-Federal cost share under ability to pay is 35 percent (non-Federal share cannot be less than 5 percent cash plus LERRD).

(2) The maximum share of project costs assignable to non-Federal interests is limited to 50 percent for structural flood control and 25 percent for nonstructural flood control, pursuant to section 103 of Public Law 99-662.

§ 241.6 Procedures for Estimating the Alternative Cost Share for Agricultural Water Supply.

(a) A project providing agricultural water supply has a direct and relatively immediate effect on net farm income. This effect differs from flood control projects which depend on the future occurrence of (prevented or reduced) flooding. Thus, both the nature of the ability to pay test and the form of relief for agricultural water supply will differ from that of flood control.

(b) The National Economic Development (NED) benefits for agricultural water supply projects are estimated as the change in net farm income resulting from the project. The estimated change in net farm income is based on representative farm budgets in combination with the data concerning farming practices and productivities. The same farm budget analyses used in estimating NED benefits will be used for the ability to pay determinations.

(c) The ability to pay test consists of a calculation of the expected change in aggregate net farm income, representing the sum of all farm incomes for farms using project supplied water. If projections of average annual aggregate net farm income, for the first 5 calendar years of project operation, do not exceed 35 percent of the annualized project costs allocated to the agricultural water supply purpose in any one year, the non-Federal sponsor is eligible for relief through deferred payments of its cost share, under section 103(k) of Public Law 99-662.

§ 241.7 Application of Test.

(a) A preliminary ability to pay test will be applied during the study phase of any proposed project. If the ability to pay cost share is lower than the standard share, the revised estimated cost share will be used for budgetary and other planning purposes.

(b) The official application of the ability to pay test will be made at the time the Local Cooperation Agreement (LCA) between the Corps of Engineers and the non-Federal sponsor is signed. Since the standard level of cost sharing will not be known until the end of project, the ability to pay determination will be made using estimated costs.

(c) The LCA for all projects subject to the ability to pay test will include a clause indicating the results of the test. If the project is eligible for a lower non-Federal share:

(1) The revised share will be specified in the LCA (there will be no recalculation of this share once the LCA is signed).

(2) An exhibit will be attached to the LCA giving the project calculations supporting the reduction in cost share.

(d) If at the time of project completion, the standard non-Federal share based on actual costs is less than the ability to pay share specified in the LCA, the standard share will apply.

Approved

Dennis C. Cochrane,

Colonel, GS, Executive, OASA(CW).

[FR Doc. 91-14009 Filed 6-12-91; 8:45 am]

BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 744

[OPTS-62100A; FRL 3927-9]

Proposed Land Application of Sludge from Pulp and Paper Mills Using Chlorine Derivative Bleaching Processes; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule, correction.

SUMMARY: EPA issued a proposed rule on land application of sludge from pulp and paper mills using chlorine derivative bleaching processes in the **Federal Register** of May 10, 1991 (51 FR 21802). Under unit XIV.C—the discussion on the Paperwork Reduction Act, the paragraph estimating the public burden for information collection was inadvertently omitted. This document corrects that omission.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

In FR Doc. 91-11105 (EPA Docket OPTS-62100), published in the **Federal Register** of May 10, 1991 (51 FR 21802), unit XIV.C. is corrected to read as follows:

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 be calling (202) 382-2740.

Public burden for collecting the information required by this proposed rule is estimated to average 516 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding 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.

Dated: June 6,1991.

Mark A. Greenwood,
Director, Office of Toxic Substances.

[FR Doc. 91-14100 Filed 6-12-91; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 212

[FRA Docket No. RSSP-3, Notice No. 4]

RIN 2130-AA65

Revision of State Safety Participation Regulations

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes to revise its regulations on state participation in safety inspections and investigations (49 CFR part 212) to respond to the expanded state participation authority contained in the Hazardous Materials Transportation Uniform Safety Act of 1990. The proposed rule would permit the participation of state hazardous materials inspectors in FRA's safety program and make other minor changes in the regulations designed to facilitate expanded state participation while assuring proper coordination of Federal and state inspection activities.

DATES: (1) Written comments (three copies) must be received no later than August 12, 1991. Comments received after that date will be considered so far as possible without incurring additional expense or delay.

(2) An informal public hearing will be held at 10 a.m. on August 21, 1991, in room 2230, 400 Seventh Street, SW., Washington, DC. Any person who desires to make an oral statement should notify the Docket Clerk before August 12, 1991, by phone or mail. Prepared statements (five copies) must be received no later than August 12, 1991.

ADDRESSES: (1) Written comments should identify the docket number and should be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, room 8209, 400 Seventh Street, SW., Washington, DC 20590. Written comments will be available for examination, both before and after the closing date for written comments, during regular business hours in room 8209 of the Nassif Building at the above address. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date the comments were received and return the postcard to the addressee.

FOR FURTHER INFORMATION CONTACT: Phil Olekszyk, Office of Safety, Federal Railroad Administration, Washington, DC 20590. Telephone: (202) 366-0510. Arnold Gross, Office of Safety, Federal Railroad Administration, Washington, DC 20590. Telephone: (202) 366-0536. Christine Beyer, Trial Attorney, Office of Chief Counsel, FRA, Washington, DC 20590. Telephone: (202) 366-0635 or (202) 366-0628.

SUPPLEMENTARY INFORMATION: Section 206 of the Federal Railroad Safety Act of 1970 (Safety Act), 45 U.S.C. 435, provides for a state role in investigation and surveillance activities with respect to safety regulations issued by FRA. Regulations implementing section 206 of the Safety Act, referred to as the State Participation Program, were published on December 18, 1973 (38 FR 34748), amended on November 28, 1974 (40 FR 55508) and now are found at 40 CFR part 212. The 1970 Safety Act, however, initially did not permit state participation with respect to the older Federal railroad safety laws, such as the Safety Appliance Acts (45 U.S.C. 1-16), the Hours of Service Act (45 U.S.C. 61-64b), the Signal Inspection Act (49 U.S.C. 26), and the Locomotive Inspection Act (45 U.S.C. 22-34), and FRA's state participation regulations reflected this limitation.

Section 4 of the Federal Railroad Safety Authorization Act of 1980, Public Law No. 96-423, 94 Stat 1812 (October 10, 1980), authorized FRA to expand the state program to include participation in investigative and surveillance activities under the older Federal railroad safety statutes. Regulations implementing this expansion and revising 49 CFR part 212 were published on September 16, 1982 (47 FR 41048). However, because the Hazardous Materials Transportation Act ("HMTA"), 49 App. U.S.C. 1801 *et seq.*, was not among the statutes referred to in the 1980 amendment, states were not yet authorized to enforce the Federal regulations issued under that statute.

Section 28 of the Hazardous Materials Transportation Uniform Safety Act of 1990, Public Law 101-615, 104 Stat. 3244 (November 16, 1990) amended section 206 of the Safety Act to permit state inspection and surveillance under any Federal regulation "related to railroad safety." The legislative history makes clear that the amendment was expressly intended to make the hazardous materials regulations issued under the HMTA is one of the Federal railroad safety laws covered by FRA's state participation program. 136 Cong. Rec. S16867 (daily ed. October 23, 1990) (statement of Sen. Exon). Pursuant to that authority, FRA now proposes to revise part 212 to include qualification requirements for state personnel engaged in the inspection of railroads, shippers, and manufacturers who transport hazardous materials by railroad, offer such materials for transportation by railroad, offer such materials for transportation by railroad, or manufacture bulk containers for the transport of such materials by railroad. Also, this proposal makes minor changes, where necessary, to include shippers and manufacturers as regulated entities.

Participation Requested

Interested parties are encouraged to participate on this proposal by submitting written data, views or comments. Those who submit comments in writing must do so in triplicate and should identify the regulatory docket number and notice number. All comments received will be available for examination by interested parties at any time during regular working hours in room 8209, Nassif Building, 400 Seventh Street SW., Washington, DC.

In addition, FRA will conduct a public hearing on August 21, 1991 at 10 a.m. The hearing will be informal, and not a judicial or evidentiary hearing. Interested persons may present oral or written statements at the hearing. All statements will be made a part of the record and will be a matter of public record. Any person who wishes to make an oral statement at the hearing should notify the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration (202-366-0635) before August 12, 1991, stating the amount of time required for presentation. FRA will consider fully all submissions, and may make changes to this proposal in the final rule where warranted by the comments received.

Section-by-Section Analysis

Subpart A—General

Section 212.3

Section 212.3(d) would be amended to include The Hazardous Materials Transportation Act as one of the Federal railroad safety laws that are subject to the state participation program. This amendment reflects the expanded authority granted FRA and the states in the new hazardous material transportation legislation. Also, a definition for "manufacturer" has been added in § 212.3(e) to clarify those entities who will be subject to the regulations.

Subpart B—State/Federal Roles

Section 212.101

Section 212.101(b)(1) and (c) would be amended to include shippers and manufacturers who offer hazardous materials for transportation by railroad, or manufacture bulk containers for the transport of such materials by railroad.

Section 212.105

Section 212.105(e)(1)(i) would be amended to require that the State Request for Agreement contain an assertion that it maintains jurisdiction over safety practices applicable to shippers and manufactuers, as the Agreement currently must assert with respect to railroad facilities within state boundaries.

Section 212.109

Section 212.109 would be amended to include shippers and manufactuers as subjects of joint planning inspections, as this section currently requires with respect to railroads.

Subpart C—State Inspection Personnel

Section 212.201

Section 212.201(d)(5) would be amended to require that State personnel possess basic knowledge of the organization of shippers and manufactuers who are subject to the Federal hazardous materials transportation regulations, as is currently required with respect to railroads. Section 212.201(f) is a technical amendment incorporating numeric changes that occur with the addition of §§ 212.229 and 212.231.

Section 212.227

The new §212.227 prescribes qualification standards for state hazardous materials inspectors. These standards are intended to insure that, at a minimum, state inspection personnel are (1) fully competent to measure conditions and practices observed with respect to railroads, shippers, and manufacturers against applicable Federal requirements; (2) capable of understanding the safety consequences of conditions and practices observed; and (3) able to communicate effectively in conversation and in written reports.

Section 212.229

Section 212.229 would permit the creation of an "apprentice" hazardous materials inspector. This trainee position is similar to those permitted in other safety disciplines, and through the use of a structured training curriculum, would allow the development of an apprentice to the status of a qualified inspector.

Section 212.231

Section 212.231 in this proposal is the former §212.227. Only the section number would be changed to allow for the addition of §§212.227 and 212.229.

Regulatory Impact

E. O. 12291 and DOT Regulatory Policies and Procedures

This proposal has been evaluated in accordance with existing regulatory policies and procedures and is considered to be nonmajor under Executive Order 12291. Also, it is not considered to be significant under DOT policies and procedures (44 FR 11304, February 26, 1979) since it would merely conform the provisions of the existing regulatory program to the new statutory authorization.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed rules to assess their impact on small entities. This proposal will only affect state governments and will not have an adverse economic impact on any entity because it does not place any new requirements or burdens on the public. Therefore, it is certified that the proposal will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

There are no information collection requirements in these proposed FRA regulations. Consequently, no estimate of a public reporting burden is required.

Environmental Impact

FRA has evaluated these proposed regulations in accordance with its procedures for ensuring full consideration of the environmental

impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. These proposed regulations meet criteria establishing this as a non-major action for environmental purposes.

Federalism Implications

FRA's state participation program permits the states to join in existing Federal railroad safety inspection activities. Participation by the states is entirely voluntary, and the addition of state hazardous materials inspectors that is contemplated by this proposal will not change the voluntary nature of the program in any way.

This proposed rule does not directly regulate the States, does not in any way interfere with functions essential to the States' separate and independent existence, and does not displace the States' freedom to structure integral operations in areas of traditional governmental functions. Also, the proposal does not affect the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 212

Hazardous materials transportation, Railroad safety.

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend part 212, title 49, Code of Federal Regulations as follows:

1. The authority citation for part 212 is revised to read as follows:

Authority: Secs. 202, 205, 206, and 207 of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 431, 434, 435, and 436); and section 28 of the Hazardous Materials Transportation Uniform Safety Act of 1990, Public Law 101-615, 104 Stat. 3244 (November 16, 1990), and 49 CFR 1.49.

2. By amending the table of contents to redesignate § 212.227 as § 212.231 and to add the following sections to subpart C—State Inspection Personnel, as follows:

Subpart C—State Inspection Personnel

* * * * *

212.227 Hazardous materials inspector.
212.229 Apprentice hazardous materials inspector.
212.231 Inapplicable qualification requirements.

3. By amending §212.3 to revise paragraphs (d)(5) and (d)(6); redesignate paragraph (e) as paragraph (f); and add a new paragraph (e) to read as follows:

§ 212.3 Definitions.

* * * * *

(d) * * *

(5) The Accident Reports Act, as amended (45 U.S.C. 38–42);

(6) The Hours of Service Act, as amended (45 U.S.C. 61–64b); and

(7) The Hazardous Materials Transportation Act, 49 App. U.S.C. 1801 *et seq.*, as it pertains to shipment or transportation by railroad.

(e) *Manufacturer* means a person that manufacturers, fabricates, marks, maintains, reconditions, repairs, or tests containers which are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by railroad.

* * * * *

4. By amending § 212.101 to revise paragraphs (b)(1) and (c) to read as follows:

§ 212.101 Program principals.

* * * * *

(b)(1) The national railroad safety program is carried out in part through the issuance of mandatory Federal safety requirements and through inspection efforts designed to monitor compliance with those requirements. FRA and State inspections determine the extent to which the railroads, shippers, and manufacturers have fulfilled their obligations with respect to inspection, maintenance, training, and supervision. The FRA and participating States do not conduct inspections, of track, equipment, signal systems, operating practices, and hazardous materials handling for the railroads, shippers, and manufacturers.

* * * * *

(c) It is the policy of the FRA to maintain direct oversight of railroad, shipper, and manufacturer conditions and practices relevant to safety by conducting inspections and investigations in concert with participating State agencies.

5. By amending §212.105 to revise paragraph (e)(l)(i) to read as follows:

§ 212.105 Agreements.

* * * * *

(e) * * *

(l) * * *

(i) The agency has jurisdiction over safety practices applicable to railroad, shipper, and manufacturer facilities, equipment, rolling stock, and operations in that State;

* * * * *

6. By revising § 212.109 to read as follows:

§ 212.109 Joint planning of inspections.

Prior to the beginning of each calendar year, each participating State applying for grant assistance under subpart D of this part shall develop, in conjunction with the FRA Regional Director of Railroad Safety of the region in which the State is located, an annual work plan for the conduct of investigative and surveillance activities by the State agency. The plan shall include a program of inspections designed to monitor the compliance of the railroads, shippers, and manufacturers operating within the State (or portion thereof) with applicable Federal railroad safety laws and regulations. In the event the participating State and the FRA Regional Director of Railroad Safety cannot agree on an annual work plan, the Associate Administrator shall review the matter.

7. By amending § 212.201 to revise paragraph (d)(5) and paragraph (f) as follows:

§ 212.201 General qualifications of State inspection personnel.

* * * * *

(d) * * *

(5) Basic knowledge of rail transportation functions, the organization of railroad, shipper, and manufacturer companies, and standard industry rules for personal safety.

* * * * *

(f) In addition to meeting the requirements of this section, each inspector, and apprentice inspector shall meet the applicable requirements of §§ 212.203 through 212.229 of this subpart.

8. By redesignating existing § 212.227 as §212.231 without any change in text as follows:

§ 212.231 Inapplicable qualifications requirements.

* * * * *

9. By adding new §§ 212.227 and 212.229 to read as follows:

§ 212.227 Hazardous materials inspector.

(a) The hazardous materials inspector is required, at a minimum, to be able to conduct independent inspections to determine compliance with all pertinent sections of the Federal hazardous materials regulations (49 CFR parts 171 through 174 and 179), to make reports of those inspections and findings, and to recommend the institution of enforcement actions when appropriate to promote compliance.

(b) The hazardous materials inspector is required, at a minimum, to have at least four years of recent experience in

developing, administering, or performing managerial functions in connection with the hazardous materials regulations. Successful completion of the apprentice training program may be substituted for this four year experience requirement.

(c) The hazardous materials inspector shall demonstrate the following specific qualifications:

(1) A comprehensive knowledge of the transportation and operating procedures employed in the railroad, shipping, and manufacturing industries associated with the transportation of hazardous materials by railroad, and the responsibilities and duties of industry personnel in executing those procedures;

(2) Knowledge and ability to understand and detect deviations from the Department of Transportation's Hazardous Materials Regulations, including Federal requirements and industry standards for the manufacturing of bulk packaging used in the transportation of hazardous materials by railroads;

(3) Knowledge of the physical and chemical properties and chemical hazards associated with hazardous materials that are transported by railroad;

(4) Knowledge of the proper remedial actions required to bring railroad, shipper, and manufacturing facilities into compliance with the Federal regulations; and

(5) Knowledge of the proper remedial actions required when a hazardous materials transportation accident or incident occurs.

§ 212.229 Apprentice hazardous materials inspector.

(a) The apprentice hazardous materials inspector must be enrolled in a program of training prescribed by the Associate Administrator leading to qualification as a hazardous materials inspector. The apprentice may not participate in investigative and surveillance activities, except as an assistant to a qualified State or FRA inspector while accompanying that qualified inspector.

(b) An apprentice hazardous materials inspector shall demonstrate a basic knowledge of the chemical hazards associated with hazardous materials that are transported by railroad, including requirements such as shipping papers, marking, labeling, placarding, and the manufacturing and maintenance of packaging associated with these shipments.

Issued in Washington, DC, on June 7, 1991.

Gilbert E. Carmichael,

Federal Railroad Administrator.

[FR Doc. 91-14037 Filed 6-12-91; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Atlantic Sea Scallop Fishery; Public Hearing

50 CFR Part 650

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

ACTION: Temporary adjustment of standards; notice of a public hearing and request for comments.

SUMMARY: NMFS will hold a public hearing, in conjunction with a meeting of the New England Fishery Management Council (Council), to solicit public input on a temporary adjustment of the meat count/shell height standards for Atlantic sea scallops.

DATES: The public hearing will be held on June 25, 1991, beginning at 11 a.m. Written comments will also be accepted and must be received by June 25, 1991, at the address given below.

ADDRESSES: The hearing will be held at the King's Grant Inn, Route 128 at Trask Lane, Danvers, Massachusetts. Written comments should be addressed to Richard Roe, Director, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, Massachusetts 01930.

FOR FURTHER INFORMATION CONTACT: Patricia A. Kurkul, Senior Resource Policy Analyst, Fishery Management Operations, NMFS Northeast Region, 508-281-9331.

SUPPLEMENTARY INFORMATION: Section 650.22 of the regulations implementing the Fishery Management Plan for Atlantic Sea Scallops (FMP) (50 CFR 650) provides authority to the Regional Director to adjust temporarily the meat count/shell height standards upon finding that specific criteria are met. The standards can be adjusted within a range from 25 to 40 meats per pound and may be adjusted no more than 5 meats by any one adjustment. The Regional Director has considered the criteria specified in § 650.22(c) and has decided to recommend an adjustment to the standards from 30 to 33 meats per pound (shell height from 3½ inches to 3 7/16 inches) for the period July 1, 1991, through September 30, 1991.

The regulations require the Regional Director to hold a public hearing on this recommendation in conjunction with the Council meeting during which the recommendation is discussed. A public hearing has been scheduled in conjunction with the June 25, 1991, meeting of the Council. This public hearing is to provide opportunity for public comment on this recommendation. The Regional Director may modify this recommendation based on comments from the Council or the public. After consideration of the full record, a final determination will be made by the Regional Director whether or not to adjust the standards. If the Regional Director determines that the standards should be adjusted, notice will be published in the **Federal Register.**

Dated: June 7, 1991.

Richard H. Schaefer,

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

[FR Doc. 91-13984 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 114
Thursday, June 13, 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

Forms Under Review by Office of Management and Budget

June 7, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) an estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Revision

- National Agricultural Statistics Service, Water Quality/Food Safety Survey Program, On occasion, Farms; 5,750 responses; 1,925 hours, Larry Gambrell (202) 447-7737.

New Collection

- Food and Nutrition Service, School Nutrition Dietary Assessment Study, One time surveys, Individuals or households; State or local governments; 9,649 responses; 6,558 hours, Leslie Christovich (703) 756-3133.

Extension

- Food and Nutrition Service, Food Coupon Accountability Report, FNS-250, Monthly, State or local governments; 26,796 responses; 80,388 hours David Walters (703) 756-3385.

Reinstatement

- Office of International Cooperation and Development Automated Skills Inventory System (ASIST), OICD Form 73, Annually, Individuals or households; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 1,000 responses; 1,000 hours Allen Wilder or Nancy Croft (202) 245-5717.
- Farmers Home Administration, 7 CFR 1942-J, Technical Assistance and Training Grants, On occasion; Monthly; Quarterly, Non-profit institutions; 995 responses; 1,005 hours, Jack Holston (202) 382-9736.

Donald E. Hulcher,
Deputy Departmental Clearance Officer.

[FR Doc. 91-14073 Filed 6-12-91; 8:45 am]
BILLING CODE 3410-01-M

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.
Date: June 27, 1991.
Place: Capitol Holiday Inn, 550 C Street, SW., Washington, DC 20024.
Time: 8:30 a.m.
Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service with respect to the implementation of the U.S. Grain Standards Act.

The agenda includes: (1) Status of financial matters, (2) cost reductions and fees, (3) status of standards and regulations, (4) spring wheat protein calibration report, (5) sprout damage in wheat, (6) wheat classification (2163), (7) international monitoring report, (8) implementation of the "Grain Quality Title" of the Food, Agricutlural, Trade, and Conservation Act of 1990, (9) status of research programs, (10) dust recombination research, (11) type approval and equipment calibration, and (12) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting, should contact John C. Foltz, Administrator, FGIS, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090-6454, telephone (202) 382-0219.

Dated: June 7, 1991.

John C. Foltz,
Administrator.

[FR Doc. 91-14240 Filed 6-12-91; 8:45 am]
BILLING CODE 3410-EN-M

Forest Service

Oil and Gas Leasing Analysis, Ochoco National Forest and Crooked River National Grassland, Crook, Grant, Harney, Jefferson, and Wheeler Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) on a proposal to identify Ochoco National Forest and Crooked River National Grassland lands that would be available for oil and gas leasing. Under the Federal Onshore Oil and Gas Leasing Reform Act of 1987 and 36 CFR part 228 regulations, the Forest Service authorizes the Bureau of Land Management (BLM) to offer National Forest System lands for oil and gas leasing. The decision to authorize leasing will be made in a two-stage analysis process. The first stage identifies the lands that are available. This EIS will accomplish the first stage. The second stage authorizes the BLM to offer leases for land previously identified as available. Before the Forest Service authorizes the BLM to offer leases, a separate analysis will be conducted and disclosed in an appropriate NEPA analysis.

DATES: Comments concerning the scope of the analysis should be received in writing by July 15, 1991.

ADDRESSES: Send written comments to Ochoco National Forest, P.O. Box 490, Prineville, OR 97754.

FOR FURTHER INFORMATION CONTACT: Deborah Tout, Lands and Minerals Assistant (503) 447-9506, Ochoco National Forest, 3000 E. 3rd St. Prineville, OR 97754.

SUPPLEMENTARY INFORMATION:

The Ochoco National Forest proposes to identify lands under its jurisdiction that are available for oil and gas leasing. The decision reached through this analysis may result in an amendment to the Ochoco National Forest and Crooked River National Grassland Land and Resource Management Plans. The Regional Forester will then notify the BLM as to which lands are available for leasing.

The EIS will address the environmental effects of leasing in various management areas defined in the Ochoco National Forest and Crooked River National Grassland Land and Resource Management Plans that were approved on August 1, 1989. The scope of the EIS will be confined to those issues of oil and gas leasing and will not address the land allocations that were made in the Forest and Grassland Plans.

Each Management Area will be placed in one of the following categories: (1) Lands which are legally unavailable for leasing; (2) Lands which are administratively unavailable for leasing; (3) Lands which are open to oil and gas leasing subject to the terms and conditions of the standard oil and gas lease form; and (4) Lands which are open to oil and gas leasing but subject to constraints that will require the use of lease stipulations. In addition, the conditions under which waivers, exceptions and modifications of lease stipulations may be granted will be identified.

Riparian area disturbance, visual impacts, and social and economic impacts have been identified as preliminary issues. This list of issues will be verified, expanded or modified based on public scoping for this proposal.

This analysis will be based on the type and amount of post-leasing activity that is reasonably foreseeable within the next 10 years. Under an interagency agreement between the Forest Service and the BLM, the BLM has assessed the potential for oil and gas occurrence and established a reasonably foreseeable development scenario for the Ochoco National Forest and Crooked River National Grassland. The BLM estimates that one to three exploratory wells will be drilled during the next ten years. Each exploratory well would require two to six acres for a well pad and a maximum of one-quarter mile of access road. The extimated success rate for these wells would be no more than ten percent. No field development is expected to occur in the next ten years.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information from Federal, State, and local agencies, Tribes, and other individuals or organizations who may be interested in or affected by the proposed action. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues;
2. Identifying issues to be analyzed in depth;
3. Eliminating insignificant issues or those which have been covered by the Land and Resource Management Plans FEIS;
4. Developing alternatives;
5. Identifying potential environmental effects of the alternatives (i.e. direct, indirect and cumulative effects and connected actions); and
6. Determining potential cooperating agencies and task assignments.

The following alternatives have been identified: (1) No action alternative (No leasing); (2) Alternative which authorizes leasing with the stipulations listed in the Plan; and (3) Identify all lands which are not legally unavailable for leasing as open to oil and gas leasing subject to the terms and conditions of the standard oil and gas lease form. Additional alternatives may be developed during the scoping or analysis processes.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by October, 1991. At that time, copies of the draft EIS will be distributed by interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days frm 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 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 competition 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 EIS 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 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 EIS is scheduled to be completed by April, 1992. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period. Thomas A. Schmidt, Forest Supervisor, Ochoco National Forest, is the responsible official. As the responsible official, he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR part 217).

Dated: June 4, 1991.

Thomas A. Schmidt,

Forest Supervisor.

[FR Doc. 91-14049 Filed 6-12-91; 8:45 am]

BILLING CODE 3410-11-M

Granite Mountain Timber Sales, Okanogan National Forest, Okanogan County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA will prepare an environmental impact statement (EIS) for a set of proposals to implement there timber sales scheduled to sell in

Fiscal Year 1992: Little Granite, Pebble, and Baldy Timber Sales. The purpose of the EIS will be to develop and evaluate a range of alternatives for timber harvest and road construction levels. The proposed action is preliminary, and detailed alternatives will be developed. The alternatives will include a no action alternative, involving no timber harvest or road construction, and additional alternatives to respond to issues generated during the scoping process. The proposed projects are in compliance with the direction in the 1989 Okanogan National Forest Land and Resource Management Plan (Forest Plan) which provides the overall guidance for management of the area and the proposed projects. Portions of the proposed projects lie within the Granite Mountain Roadless Area, and would be implemented in Fiscal Year 1993 on both the Tonasket and Winthrop Ranger Districts. The Granite Mountain Roadless Area is located approximately 10 miles southwest of Conconully, Washington. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of this proposal must be received by July 1, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Craig Bobzien, Project Coordinator, Winthrop Ranger District, P.O. Box 579, Winthrop, WA 98862.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Craig Bobzien, Project Coordinator, Winthrop Ranger District, P.O. Box 579, Winthrop, WA 98862 (telephone: (509) 996-2266).

SUPPLEMENTARY INFORMATION: The proposed action is listed below:

Fiscal year	Sale name	Legal desc.	Acres	Net MMBF	Road cons	Miles recon	Harvest method	Yarding system	Management area
93	Little Granite.	T35N,R24E, Secs 7,8,17-20 and 28-33; T34N, R24E, Secs 4-9,16,17 T35N, R23E, Secs 13, 23-25.	7000	11.5	9.0	2.0	Various	Tractor & Cable	25
93	Pebble	T35N,R22E, Secs 1-5,9-13; T36N, R22E, Secs 22,26,28, 32-36.	1700	12.0	26.0	1.0	Various	Tractor, Cable & Helicopter.	25/5
93	Baldy	T36N,R23E, Secs 19,20,28,29,31-33; T35N,R23E, Secs 4,5,8,9.	350	3.0	8.0	1.0	Shelter-wood, clearcut, sanitation/ salvage.	Tractor & Cable	12

Because of geographic proximity, similarity of issues, and the schedule of the proposed timber sales, the environmental analysis for the three sales will be documented in one EIS.

A number of issues have been identified to date. The major issues focus on health and growth of forest stands, management of the roadless area, effects on lynx habitat, and effects on the visible areas along the Midddle Salmon Boulder Creek Road. Public meetings will be held in Okanogan, Washington and the Methow Valley to review existing information and facilitate public scoping.

This EIS will tier to the Forest Plan. The Forest Plan provides forest-wide standards and guidelines, management area standards and guidelines, and desired future conditions for the various lands on the Forest. This direction is provided for management practices that will be utilized during the implementation of the Forest Plan.

The Granite Mountain Analysis Area contains about 40,000 acres. Approximately 27,700 acres of this is in the Granite Mountain Roadless Area. The Analysis Area is allocated to the following Management Areas (MA):

—Approximately 63 percent is in Management Area 25 which is designed to intensively manage the timber and range resources.

—Approximately 22 percent is in Management Area 12 which is designed to provide habitat to support a stable lynx population over the long term while accessing the area for the purpose of growing and producing merchantable wood fiber.

—Approximately 13 percent is in Management Area 5 which is designed to provide opportunities for recreation and viewing scenery in a roaded natural setting. Approximately 2500 acres will be managed with a visual quality objective of retention, and the remaining 2,816 acres will be managed with a visual quality objective of partial retention.

—Approximately 2 percent is in Management Area 14 which is designed to provide a diversity of wildlife habitat, including deer winter range, while growing and producing merchantable wood fiber.

The analysis will evaluate a range of alternatives. Alternatives to be evaluated range from no-action, with no timber harvest or road construction to alternatives that may propose timber harvest up to 26.5 MMBF and 43 miles of road construction.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, Native American Tribes, and other individuals or organizations who may be interested in or affected by the proposed project. This input will be used in preparation of the Draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying issues which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.
7. Notifying interested members of the public of opportunities to participate through meetings, personal contacts, or written comment. Keeping the public informed through the media and/or written material (e.g. newsletters, correspondence, etc.).

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by April, 1992. Your comments and suggestions are encouraged and should be in writing.

The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS must structure their participation in the environmental review 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 have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully considered and responded to in the final EIS.

The final EIS is scheduled to be completed by July, 1992. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. Sam Gehr, Forest Supervisor, Okanogan National Forest, is the responsible official. As the responsible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR part 217).

Dated: June 6, 1991.

John R. Hook,

Acting Forest Supervisor.

[FR Doc. 91-14048 Filed 6-12-91; 8.45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1991 Annual Survey of Manufactures.

Form Number(s): MA-1000(S), (L), (B).

Agency Approval Number: 0607-0449.

Type of Request: Revision of a currently approved collection.

Burden: 197,000 hours.

Number of Respondents: 63,000.

Avg Hours Per Response: 3 hours and 8 minutes.

Needs and Uses: The Census Bureau conducts the Annual Survey of Manufactures (ASM) to provide key measures on manufacturing activity during intercensal periods. Federal agencies use the ASM's results as benchmarks for their statistical programs, including the Federal Reserve Board's Index of Industrial Production, the Bureau of Economic Analysis estimates of the gross national product, and the International Trade Administration's Industrial Outlook publication.

Affected Public: Businesses or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 7, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-14043 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-07-F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: National Clearinghouse for Federal Audit Reports – Institutions of Higher Education and Other Non-profit Organizations.

Form Number(s): SAC-4.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 23,000 hours.

Number of Respondents: 92,000.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Single Audit Act of 1984 (Pub.L. 98-502) requires state and local governments that receive $100,000 or more in Federal financial assistance during their fiscal year to have an annual audit of their financial operations. Newly issued OMB Circular A-133 requires institutions of higher education and other non-profit institutions receiving $25,000 or more in Federal financial assistance during their fiscal year to have audits of their financial operations. The OMB has directed the Census Bureau to identify those institutions that received $25,000 or more in Federal financial assistance during the fiscal year that began on or after January 1, 1990. We will survey institutions of higher education and non-profit institutions reporting $100,000 or more in total revenue to request information on the type and extent of Federal assistance they receive and to require that recipients of $100,000 or more in Federal financial assistance forward an audit report to the Census Bureau.

Affected Public: Non-profit institutions.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 7, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organizdtion.

[FR Doc. 91-14044 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-07-F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: 1992 Census of Retail Trade.
Form Number(s): Various.
Agency Approval Number: None.
Type of Request: New collection.
Burden: 1,016,900 hours.
Number of Respondents: 1,145,000.
Avg Hours Per Response: 54 minutes.
Needs and Uses: The Bureau of the Census will conduct the 1992 Census of Retail Trade to measure the economic activity of more than 2.5 million retail establishments. This census will produce basic statistics by kind of business for number of establishments, sales, payroll, and employment. It also will yield a variety of subject statistics, including sales by merchandise line, sales by class of customer, and other industry-specific measures. The Federal government uses information from the economic censuses in its computation of the national income and product accounts, input-output tables, economic indexes, and other composite measures that serve as the factual basis for economic policy-making, planning, and program administration. State and local governments use the information for policy-making, planning, and program administration. Industry, business, schools, and the general public use information from the economic censuses for evaluating markets, preparing business plans, making business decisions, developing economic models and forecasts, conducting economic research, and establishing benchmarks for their own sample surveys.
Affected Public: State or local governments; Businesses or other for-profit organizations; Small businesses or organizations.
Frequency: Every five years.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 7, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-14045 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-07-F

Foreign-Trade Zones Board

[Docket No. 32-91]

Foreign-Trade Zone 142—Salem, NJ

Application for Subzone; Lignotock Auto Interior Components Plant, Westampton Township, NJ

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Salem Port Authority, grantee of FTZ 142, requesting special-purpose subzone status for the automotive interior door trim panel assembly plant of Lignotock Corporation (Lignotock) (subsidiary of Lignotock Technische Formiteile GmbH, Germany), located in Westampton Township, Burlington County, New Jersey. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 30, 1991.

The Lignotock plant (105,000 sq. ft. on 10 acres) is located on Oxmead Road in the Township of Westampton, Burlington County, New Jersey, some 25 miles form Philadelphia. The facility (150 employees) is used to produce finished automobile door trim panels for auto assembly plants using foreign, prefabricated, wood-fiber panels manufactured by its parent company in Germany. Foreign subcomponents account for approximately 50 percent of the material value of the finished panels, and they include fiber board mats, steel retainers, and door panels.

Zone procedures would exempt Lignotock from Customs duty payments on foreign materials used in products that are exported. On door panels shipped to domestic auto assembly plants with subzone status, Customs duties would be paid when finished autos leave the assembly plants and the duty rate for complete autos (2.5%) could be applied. On aftermarket sales, Lignotock could chose the duty rate that applies to door trim panels (3.1%). The duty rates for door panel materials range from zero to 5.7 percent. The application indicates that zone savings would help improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 10 Causeway Street, suite 801, Boston, MA 02222-1056; and, Colonel Kenneth Clow, District Engineer, U.S. Army Engineer District Philadelphia, U.S. Custom House, 2nd and Chestnut Streets, Philadelphia, PA 19106-2991.

Comments concerning the proposed foreign-trade subzone are invited from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July 26, 1991.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

City of Salem Municipal Port Authority, 465 East Broadway, Salem, New Jersey 08079.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 4, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-14109 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Sanctions for Violations of an Administrative Protective Order

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of status of investigations into charges of violation of administrative protective orders in antidumping and countervailing duty proceedings.

SUMMARY: This is a notice of the status of investigations into charges of violation of administrative protective orders in antidumping and countervailing duty proceedings.

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Chief Counsel for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-8916.

SUPPLEMENTARY INFORMATION: The International Trade Administration, U.S. Department of Commerce (ITA) wishes to remind those members of the bar who appear before it in antidumping and countervailing duty proceedings of the extreme importance of protecting the confidentiality of business proprietary information obtained pursuant to administrative protective order ("APO")

during the course of those proceedings. In order that the gravity with which the ITA views APO violations might be better appreciated, the ITA is publishing the following report on recent allegations that the provisions of an APO have been violated. The investigation consisted of a situation where one or more of the individuals failed to take adequate precautions to ensure the security of business proprietary materials and failed to return or destroy such materials at the completion of the proceeding. In this case, however, the APO violations were found to be inadvertent, there was no disclosure of confidential information, and therefore, the violations caused no harm to the submitter of the information.

The specific charges that we investigated, and actions that we would regard as APO violations, include the following:

1. Failure to mark the data released under APO "Confidential Information Subject to Protective Order" in red to reflect its status;

2. Failure to maintain a log to indicate who received each document subject to APO;

3. Providing erroneous certification regarding the destruction of APO materials and subsequently returning such materials in untimely fashion.

In this case, (1) the individuals involved were required to attend a seminar on the proper procedures for protecting proprietary data; (2) the individuals were required to submit to the ITA office procedures for law firm implementation to ensure the protection of business proprietary information received pursuant to administrative protective order and (3) the individuals involved were issued private reprimands which warned that future violations by them or others associated with their law firm could be treated more severely.

Serious harm can result from inadvertent or other disclosures of proprietary information obtained under APO. The ITA will continue to investigate vigorously allegations that the provisions of its APOs have not been observed faithfully, and is prepared to impose sanctions commensurate with the nature of the violations, including letters of reprimand, denial of access to proprietary information, and debarment from practice before the ITA.

This notice is published pursuant to 19 CFR 354.15(e) (1990).

Dated: May 15, 1991.

Roger W. Wallace,

Deputy Under Secretary for International Trade.

[FR Doc. 91-14115 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-423-801]

Preliminary Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From Belgium

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that coated groundwood paper (CGP) from Belgium is being or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of CGP from Belgium, as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by August 20, 1991.

EFFECTIVE DATES: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Kate Johnson, Steve Alley or John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone (202) 377-8830, (202) 377-1766 or (202) 377-2778, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

The Department preliminarily determines that CGP from Belgium is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspenison of Liquidation" section of this notice.

Case History

Since the notice of initiation on January 25, 1991 (56 FR 2900), the following events have occurred. On February 21, 1991, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports of CGP from Belgium (56 FR 7059).

On February 22, 1991, the Department presented its questionnaire to K.N.P. Belgie N.V. (KNP) which accounted for more than 60 percent of exports by volume to the United States during the period of investigation, in accordance with 19 CFR 353.42(b). On March 15, 1991, we received a response to Section A of the questionnaire. On April 10, 1991, we received a response to Sections B and C of the questionnaire. We issued a deficiency letter to KNP on April 29, 1991, and received a response to it on May 13, 1991. On May 28, 1991, petitioner alleged that critical circumstances exist with respect to CGP from Belgium. We are currently considering the sufficiency of this allegation.

Scope of Investigation

The product covered by this investigation is coated groundwood paper. For purposes of this investigation, coated groundwood paper is paper coated on both sides with kaolin (China clay) or other inorganic substances (*e.g.*, calcium carbonate), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes, regardless of 1) basis weight (*e.g.*, pounds per ream or grams per one square meter sheet); 2) GE brightness; or 3) the form in which it is sold (*e.g.*, reels, sheets, or other forms). "Paperboard" is specifically excluded from the scope of this investigation. For purposes of this investigation, paperboard is defined to be coated groundwood paper 12 points (0.012 inch) or more in thickness.

This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 4810.21.00.00, 4810.29.00.00, and 4823.59.40.40. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1990, through December 31, 1990.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of CGP from Belgium to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and

"Foreign Market Value" sections of this notice. We compared U.S. sales of CGP to sales of identical and similar CGP sold in Belgium.

United States Price

We based United States price on purchase price, in accordance with section 772(b) of the Act, as all U.S. sales were made to an unrelated party prior to importation into the United States. Exporters sales price methodology is inappropriate because the subject merchandise was not introduced into the inventory of KNP's related U.S. selling agent, KNP's related U.S. selling agent acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. customer, and this was the customary commercial channel for sales of this merchandise between the parties involved.

We have denied KNP's request that we exclude from our analysis certain sales made on a trial basis to a U.S. customer because the total quantity of these sales constituted a significant portion of total U.S. sales.

We calculated purchase price based on packed, f.o.b. port and delivered prices. We made deductions, where appropriate, for containerization expenses, foreign inland freight, ocean freight, foreign inland and marine insurance. U.S. duty, U.S. and foreign brokerage, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the Belgian value-added tax that would have been collected if the merchandise had not been exported.

Foreign Market Value

In order to determine whether there were sufficient sales of CGP in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of CGP to the volume of third country sales of CGP, in accordance with section 773(a)(1) of the Act. KNP had a viable home market with respect to sales of CGP during the POI.

We calculated FMV based on delivered prices to related and unrelated customers in the home market. For purposes of this preliminary determination, we included sales to a related customer, pursuant to 19 CFR 353.45 of the Department's regulations, since we preliminarily determine that the prices paid by this related customer were comparable to the prices paid by unrelated customers. We made deductions, where appropriate, for containerization expenses, foreign inland freight and insurance, discounts and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Pursuant to 19 CFR 353.56 of the Department's regulations, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, warranty expenses, and direct advertising expenses. We allowed an adjustment for direct advertising expenses only for home market sales of CGP in sheet form because the advertising was directed at second-level customers (*i.e.*, printers) rather than at the original purchaser. In the case of sales of CGP in roll form, the merchant acts only as a sales agent, and the first customer is the printer. Therefore, we have reclassified direct advertising expenses related to these sales as an indirect adjustment. We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

We recalculated KNP's imputed credit expenses incurred on home market and U.S. sales net of discounts. We recalculated credit expenses for those U.S. sales which had not been shipped prior to receipt of the deficiency response, using the average credit period reported for all sales for which payment had been received. For the U.S. imputed credit calculation, we used KNP's home market interest rate because KNP does not borrow funds in the U.S. market. We also recalculated KNP's direct advertising expenses by allocating the total expense over total value as opposed to total weight of sales during the POI.

We made adjustments, where appropriate, for differences in commissions when incurred in both markets, in accordance with 19 CFR 353.56(a)(2). Where commissions were paid in one market and not the other, we allowed an adjustment for indirect selling expenses in the second market to offset commissions paid in the first market, in accordance with 19 CFR 353.56(b).

We recalculated KNP's home market and U.S. indirect advertising and selling expenses by allocating these expenses over the total value as opposed to total weight of sales during the POI. We also recalculated KNP's home market and U.S. inventory carrying costs by backing out all charges and adjustments from the gross unit price used in the calculation of these expenses.

Lastly, we made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57. In accordance with section 776(c) of the Act, we have used best information available for the difference in merchandise adjustments because KNP failed to properly match three U.S. products to similar home market products. As best information available, we used the highest calculated difference in merchandise adjustment contained in KNP's revised response.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of CGP from Belgium, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
K.N.P. Belgie	41.67
All Others	41.67

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine

whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than July 26, 1991, and rebuttal briefs no later than July 31, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on August 5, 1991, at 9:30 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: June 6, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-14110 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-405-801]

Preliminary Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From Finland

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that coated groundwood paper (CGP) from Finland is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of CGP from Finland, as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by August 20, 1991.

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Bill Crow, or Kate Johnson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1776 (202) 377-0116, or (202) 377-8830, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

The Department preliminarily determines that CGP from Finland is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on January 25, 1991 (56 FR 2900), the following events have occurred. On February 21, 1991, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports of CGP from Finland (56 FR 7059).

On February 22, 1991, the Department presented its questionnaire to Kymmene Corporation (Kymmene) and Veitsiluoto Oy (Veitsiluoto). The Department also presented its questionnaire to United Paper Mills Ltd./Repola Oy (United-Repola), which refers to the corporate entity which resulted from the December 31, 1990, merger of Rauma-Repola Oy and United Paper Mills Ltd. These companies together accounted for more than 60 percent of exports by volume to the United States during the period of investigation, in accordance with 19 CFR 353.42(b).

On March 11, 1991, we received responses to Section A of the questionnaire from the three named respondents. In addition, we received a response to section A of the questionnaire from Metsä-Serla Oy (Metsä-Serla), a voluntary respondent. On April 10, 1991, we received responses to sections B and C of the questionnaire from all four respondents. We issued deficiency letters to Kymmene, United/Repola, and Veitsiluoto on April 29, 1991, and to Metsä-Serla on May 2, 1991. We received responses to these letters from Kymmene, United/Repola, and Veitsiluoto on May 13, 1991, and from Metsä-Serla on May 15, 1991. On May 22, 1991, we issued a request to Kymmene for further clarification of sales data. On May 24, 1991, Kymmene submitted a response to the May 22, 1991, letter.

On May 28, 1991, petitioner alleged that critical circumstances exist with respect to CGP from Finland. We are currently considering the sufficiency of this allegation.

On May 31, 1991, United/Repola and Veitsiluoto submitted new computer tapes of their U.S. and home market sales. Due to the late date on which these tapes were received, however, we did not rely on them in making our preliminary determination.

Scope of Investigation

The product covered by this investigation, coated groundwood paper is paper coated on both sides with kaolin (China clay) or other inorganic substances (*e.g., calcium carbonate*), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes, regardless of 1) basis weight (*e.g.*, pounds per ream or grams per one square meter sheet); 2) GE brightness; or 3) the form in which it is sold (*e.g.*, reels, sheets, or other forms). "Paperboard" is specifically excluded from the scope of this investigation. For purposes of this investigation, paperboard is defined to be coated groundwood paper 12 points (0.012 inch) or more in thickness.

This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 4810.21.00.00, 4810.29.00.00, and 4823.59.40.40. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1990, through December 31, 1990.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Use of a Single Weighted-Average Margin for Two Respondents

Although not expressly required by the Act, the Department has a long-standing practice of calculating a separate dumping margin for each manufacturer or exporter investigated. However, when the Department determines that two companies are sufficiently related for purposes of an investigation, it calculates a single weighted-average margin for those companies. See Certain Granite Products from Spain, 53 FR 24337 (1988), Steel Wheels from Brazil, 54 FR 8780 (1989), and Gray Portland Cement and Clinker from Japan, 56 FR 12156 (1991). Based on the administrative record, we preliminarily determine that, for purposes of this investigation, it is appropriate to calculate a single weighted-average margin for United-Repola and Metsä-Serla.

The administrative record documents the existence of a close and intertwined relationship between Metsä-Serla and United/Repola. First, the two companies have the same principle shareholder, Osuuskunta Metsäliitto, which is a cooperative whose members own 49% of Finland's privately-held forests. In addition, of the United/Repola shares held by Osuuskunta Metsäliitto, the majority is held in Metsä-Serla's name. United/Repola also has direct ownership and voting rights in Metsä-Serla. Furthermore, in March 1991, Oy Metsä-Botnia Ab, a subsidiary of Metsä-Serla which produces paper pulp, was reorganized with new ownership as follows: Metsä-Serla Oy (approx. 30%), Osuuskunta Metsäliitto (23%), United/Repola (approx. 45%), and others (2%).

Second, the two companies share common members of their boards of directors. The chairman of Metsä-Serla's board of directors, is a director of Repola Oy, the parent company of United Paper Mills, Ltd. Metsä-Serla's President and board member serves on the board of directors of Osuuskunta Metsäliitto, and the president of Osuuskunta Metsäliitto serves on the board of directors of Repola Oy. Such relationships indicate that there is common access to pertinent sales and manufacturing information.

Third, even though each company currently maintains separate manufacturing facilities for the production of CGP, the production facilities at both companies consist of similar types of equipment. Therefore, it would not be necessary to retool extensively either plant's facilities before implementing a decision to restructure either company's manufacturing priorities. In addition, the administrative record establishes that Metsä-Serla and United Paper Mills Ltd./Repola Oy are beginning to merge vital manufacturing operations. Rauma-Repola's 1990 annual report states that in "November (1990), Rauma-Repola, United Paper Mills, Osuuskunta Metsäliitto and Metsä-Serla Oy agreed that the project to build a new pulp mill approved by Rauma-Repola at the end of 1989 would be implemented by Oy Metsä-Botnia Ab. At the same time, it was decided to build a higher capacity mill than originally planned, and also to defer the start of construction for two years." (Annual Report at page 7.)

Fourth, the companies are on record as striving for broad-based cooperation. According to the 1990 Annual Report of Rauma-Repola, the degree of intercompany ownership and management has a specific purpose: "In June (1990), the principal shareholders of Rauma-Repola Oy and United Paper Mills Ltd. entered into an agreement providing, among other things, for cooperation between the new Repola Corporation and the Metsä-Serla Group, one of the parties to that agreement. Under the terms of the shareholders' agreement, the Metsä-Serla Group and its main shareholder Osuuskunta Metsäliitto have the opportunity to increase their combined interest in Repola Corporation to 25%." (Annual Report at page 7.) Metsä-Serla's 1990 annual report echoes the importance of collaboration with United/Repola: "As a result of Metsä-Serla's significant shareholding in Repola Ltd., cooperation with United Paper Mills, which is owned by Repola, got under way. One concrete result was the decision to implement pulp mill investments on a joint basis." Annual Report at page 8. The annual report goes on to note that "Metsä-Serla acquired a significant holding in United Paper Mills Ltd. with the aim of increasing collaboration between forest industry companies in western Finland. Following signature of the shareholder agreement in June and the exchange of shares by the signing parties, there is now significant cross-share ownership." (Annual Report at page 11.)

Based on the fact that Metsä-Serla and United/Repola (1) recognize their substantial cross-ownership and co-investments as "significant" in operational decisions, (2) share company officials with access to pertinent sales and manufacturing information, (3) have similar CGP production facilities, and (4) have established a protocol for increased collaboration at the behest of their shareholders, which has resulted in cooperation in vital production decisions, we have preliminarily concluded that it is appropriate to give these companies a single, weighted-average margin.

Fair Value Comparisons

To determine whether sales of CGP from Finland to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. For Kymmene, United/Repola, and Veitsiluoto, we compared U.S. sales of CGP to sales of CGP in Finland. For Metsä-Serla, we compared U.S. sales of CGP to sales of CGP in the United Kingdom.

United States Price

We based United States price on purchase price for all companies, in accordance with section 772(b) of the Act because all U.S. sales were made to unrelated parties prior to importation into the United States. Exporters sales price methodology is not appropriate because the subject merchandise was not introduced into the inventory of the respondents' related U.S. selling agent(s) acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. customer, and this was the customary commercial channel for sales of this merchandise between the parties involved.

Kymmene

We excluded from our analysis certain sales which respondent claimed were sales of defective merchandise which could not be sold in normal commerce because these sales were made in small quantities. We also excluded resales from our analysis because the sales subject to examination under the antidumping statute occurred outside the POI.

We calculated purchase price based on packed, delivered prices. We adjusted purchase price for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage, foreign handling, foreign port charges, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. brokerage, U.S. handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts and rebates. For two customers, Kymmene's narrative response for rebates did not correspond to the amounts reported on the computer tape. Accordingly, we calculated rebate

amounts for these customers based on Kymmene's narrative response. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the Finnish value-added tax that would have been collected if the merchandise had not been exported.

Metsä-Serla

We excluded trial sales from our analysis because these were made in small quantities at prices that did not reflect normal pricing practices. We also excluded from our analysis resales of damaged or "obsolete" merchandise because the sales subject to examination under the antidumping statute occurred outside the POI.

We calculated purchase price based on packed, delivered prices. We adjusted purchase price for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. brokerage and handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. For certain sales, Metsä-Serla reported no charge for U.S. inland freight. As best information available (BIA), we used the weighted-average charge for those sales for which Metsä-Serla reported a U.S. inland freight charge. In addition, we made deductions, where appropriate, for discounts and rebates. For one sale, we were unable to determine the value of the rebate reported by Metsä-Serla. As BIA, we used the weighted-average rebate amount of those sales for which Metsä-Serla reported this rebate. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the Finnish value-added tax that would have been collected if the merchandise had not been exported.

United/Repola

We excluded trial sales from our analysis because these were sales made in small quantities at prices that did not reflect normal pricing practices. We also excluded from our analysis a resale of merchandise because the sale subject to examination under the antidumping statute occurred outside the POI.

We calculated purchase price based on packed, delivered prices. We adjusted purchase price for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. brokerage and handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts and rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the Finnish value-added tax that would have been collected if the merchandise had not been exported.

Veitsiluoto

We excluded trial sales from our analysis because these were made in small quantities at prices that did not reflect normal pricing practices. We also excluded from our analysis certain sales of inferior "Grade-B" merchandise because these sales were made in small quantities. We excluded resales of damaged or "obsolete" merchandise from our analysis because the sales subject to examination under the antidumping statute occurred outside the POI.

We calculated purchase price based on packed, delivered prices. We adjusted purchase price for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. brokerage and handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. For certain sales, Veitsiluoto reported no charge for U.S. inland freight. As BIA, we used the weighted-average charge for those sales for which Veitsiluoto reported a U.S. inland freight charge. Also, for certain sales, Veitsiluoto also reported no marine insurance charge. As BIA, we used the weighted-average charge for those sales for which Veitsiluoto reported a marine insurance charge. In addition, we made deductions, where appropriate, for discounts and rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the Finnish value-added tax that would have been collected if the merchandise had not been exported.

Foreign Market Value

In order to determine whether there were sufficient sales of CGP in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of CGP to the volume of third country sales of CGP, in accordance with section 773(a)(1) of the Act. Kymmene, United/Repola and Veitsiluoto had viable home markets with respect to sales of CGP during the POI. For Metsä-Serla, the volume of home market sales was less than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales did not constitute a viable basis for calculating FMV, in accordance with section 353.48 of the Department's regulations. Because Metsä-Serla volume of sales of similar CGP to its largest third country, the United Kingdom, were adequate, within the meaning of 19 CFR 353.49(b)(1), we based FMV on sales to the United Kingdom.

Kymmene

We excluded two sales from our analysis which respondent claimed were shipments of trial reels delivered to the customer free of charge. We also excluded from our analysis certain sales of damaged merchandise because these sales were made in small quantities.

We calculated FMV based on delivered prices to unrelated customers in the home market. We made adjustments to the reported prices for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, warranty expenses, and after-sale storage expenses. For home market sales, we recalculated the interest rate reported by Kymmene to reflect the weighted-average cost of funds for the POI. For the preliminary determination, we also recalculated credit expenses in both markets for those sales which had been shipped prior to receipt of the deficiency response, but for which payment had not been received by Kymmene. For those sales, we used the number of days between shipment of the merchandise from the mill and the date of the deficiency response as date of payment, since this was the last date known for which credit was outstanding. In addition, we recalculated credit expenses in both markets for those sales which had not been shipped prior to receipt of the deficiency response, using the average credit period reported for all sales for which payment had been received. For purposes of the final determination, we anticipate that we will have actual dates of shipment and payment for all sales.

We made adjustments, where appropriate, for differences in commissions, in accordance with 19 CFR 353.56(a)(2), when we determined that such commissions were paid at arms-length prices. Where commissions were paid in one market and not the other, we

allowed an adjustment for indirect selling expenses in the second market to offset commissions paid in the first market, in accordance with 19 CFR 353.56(b). We recalculated home market indirect selling expenses reported for a related distributor to reflect the percentage shown in the narrative response. We also recalculated U.S. indirect selling expenses reported as per ton amounts to reflect a percentage of sales value. We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

We made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57.

Metsä-Serla

We excluded trial sales from our analysis because these were made in small quantities at prices that did not reflect normal pricing practices. We also excluded from our analysis certain sales of damaged merchandise because the sales subject to examination under the antidumping statute occurred outside the POI.

We calculated FMV based on delivered prices to related and unrelated customers in the United Kingdom. For the purposes of this preliminary determination, we included sales to related customers, pursuant to 19 CFR 353.45, since we preliminarily determine that the prices paid by those customers were comparable to the prices paid by unrelated customers.

We made adjustments for billing errors, where appropriate. We made deductions, where appropriate, for discounts, rebates, foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.K. brokerage and handling, and U.K. inland freight charges. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, warranty expenses and after-sale storage expenses. We Metsä-Serla's imputed credit expenses incurred in both markets by adjusting gross unit price for billing errors and discounts, where appropriate. For U.S. sales through the Madden Corporation (Madden), we recalculated imputed credit expenses using Madden's short-term borrowing rate. For the preliminary determination, we also recalculated credit expenses in both markets for those sales which had been shipped prior to receipt of the deficiency response, but for which payment had not been received by Metsä-Serla. For those sales, we used the number of days between shipment of the merchandise from the mill and the date of the deficiency response as date of payment, since this was the last date known for which credit was outstanding. For purposes of the final determination, we anticipate that we will have actual dates of shipment and payment for all sales.

We made adjustments, where appropriate, for differences in commissions, in accordance with 19 CFR 353.56(a)(2), when we determined that such commissions were paid at arms-length prices. We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

We made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57. In one instance, we determined that Metsä-Serla had not followed the Department's matching criteria listed in appendix V of the questionnaire in making its product comparisons. In this case, we rematched this U.S. product to its most similar third country comparison product. Becuase there was not sufficient information on the record to calculate the actual difference in merchandise adjustment for this comparison, we used the largest difference in merchandise adjustment on record for Metsä-Serla as BIA.

United/Repola

We calculated FMV based on delivered prices to related and unrelated customers in the home market. For the purposes of this preliminary determination, we included sales to related customers, pursuant to 19 CFR 353.45, since we preliminarily determine that the prices paid by those customers were comparable to the prices paid by unrelated customers.

We made adjustments for billing errors, where appropriate. We made deductions, where appropriate, for foreign inland freight, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, warranty expenses, and after-sale storage expenses. We recalculated United/Repola's imputed credit expenses incurred on U.S. and home market sales by adjusting gross price for billing errors and discounts, where appropriate. For U.S. sales through Madden, we recalculated imputed credit expenses using Madden's short-term borrowing rate. For the preliminary determination, we also recalculated credit expenses in both markets for those sales which had been shipped prior to receipt of the deficiency response, but for which payment had not been received by United/Repola. For those sales, we used the number of days between shipment of the merchandise from the mill and the date of the deficiency response as date of payment, since this was the last date known for which credit was outstanding. For purposes of the final determination, we anticipate that we will have actual dates of shipment and payment for all sales. We also recalculated warranty expenses using United/Repola's revised information on the value of its sales during the POI.

We made adjustments, where appropriate, for differences in commissions, in accordance with 19 CFR 353.56(a)(2), when we determined that such commissions were paid at arms-length prices. We also made a circumstance of sale adjustment for differences in the amount of value-added taxes.

Finally, we made an adjustment for physical differences in merchandise, where appropriate, in accordance with CFR 353.57.

Veitsiluoto

We excluded from our analysis certain sales of damaged merchandise because the sales subject to examination under the antidumping statute occurred outside the POI.

We calculated FMV based on delivered prices to unrelated customers in the home market. We made adjustments for billing errors, where appropriate. We made deductions, where appropriate, for foreign inland freight, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act. For those sales where no packing costs were reported, we applied the same charge as reported for sales of identical merchandise.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, warranty expenses and after-sale storage expenses. We recalculated Veitsiluoto's imputed credit expenses incurred on U.S. and home market sales by adjusting gross price for billing errors and discounts, where appropriate. For U.S. sales through Madden , we recalculated imputed credit expenses using Madden's short-term borrowing rate. For the preliminary determination, we also recalculated credit expenses in both markets for those sales which had

been shipped prior to receipt of the deficiency response, but for which payment had not been received by Veitsiluoto. For those sales, we used the number of days between shipment of the merchandise from the mill and the date of the deficiency response as date of payment, since this was the last date known for which credit was outstanding. For purposes of the final determination, we anticipate that we will have actual dates of shipment and payment for all sales. We also recalculated warranty expenses using Veitsiluoto's revised information on the value of its sales during the POI.

We made adjustments, where appropriate, for differences in commissions, in accordance with 19 CFR 353.56(a)(2), when we determined that such commissions were paid at arms-length prices. We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

We made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

On May 28, 1991, the respondents requested that the Department adjust for temporary fluctuations in the U.S. dollar and the Finnish markka under 19 CFR 353.60(b). We were unable to consider the currency conversion issue in our preliminary determination due to the late date on which the claim was made. However, we will consider this claim for our final determination.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of CGP from Finland, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Kymmene Corporation	27.92
Metsä-Serla Oy	25.92
United Paper Mills Ltd./Repola Oy	25.92
Veitsiluoto Oy	30.41
All Others	27.58

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determiantion. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all priviledge and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than July 26, 1991, and rebuttal briefs no later than July 31, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on August 6, 1991, at 2 p.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice in the **Federal Register.** Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: June 6, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-14111 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-803]

Preliminary Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From France

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that coated groundwood paper (CGP) from France is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of CGP from France, as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by August 20, 1991.

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Kate Johnson, Steve Alley or John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-8830 (202) 377-1766 or (202) 377-2778, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

The Department preliminarily determines that CGP from France is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on January 25, 1991 (56 FR 2900), the following events have occurred. On

February 21, 1991, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports of CGP from France (56 FR 7059).

On February 22, 1991, the Department presented its questionnaire to Feldmuehle Beghin, S.A. (Feldmuehle), which accounted for more than 60 percent of exports by volume to the United States during the period of investigation (POI), in accordance with 19 CFR 353.42(b). On March 15, 1991, we received the response to section A of the questionnaire. On April 10, 1991, we received responses to sections B and C of the questionnaire. We issued a deficiency letter to Feldmuehle on April 29, 1991, and received responses to it on May 13 and 14, 1991.

On May 28, 1991, petitioner alleged that critical circumstances exist with respect to imports of CGP from France. Since we determine that petitioner's allegation is sufficient, we are requesting shipment data from Feldmuehle, and will preliminarily determine whether critical circumstances exist by June 27, 1991.

Scope of Investigation

The product covered by this investigation is coated groundwood paper. For purposes of this investigation, coated groundwood paper is paper coated on both sides with kaolin (China clay) or other inorganic substances (*e.g.*, calcium carbonate), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes, regardless of 1) basis weight (*e.g.*, pounds per ream or grams per one square meter sheet); 2) GE brightness; or 3) the form in which it is sold (*e.g.*, reels, sheets, or other forms). "Paperboard" is specifically excluded from the scope of this investigation. For purposes of this investigation, paperboard is defined to be coated groundwood paper 12 points (0.012 inch) or more in thickness.

This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 4810.21.00.00, 4810.29.00.00, and 4823.59.40.40. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Period of Investigation

The POI is July 1, 1990, through December 31, 1990.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of CGP from France to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of CGP to sales of identical CGP in France.

United States Price

We based United States price on purchase price, in accordance with section 772(b) of the Act, because all U.S. sales were made to an unrelated party prior to importation into the United States. Exporter's sales price methodology is not appropriate since the subject merchandise was not introduced into the inventory of Feldmuehle's related U.S. selling agent, Feldmuehle's related U.S. selling agent acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. customer, and this was the customary commercial channel for sales of this merchandise between the parties involved.

We disregarded trial and sample sales made during the POI because these accounted for a very small percentage of U.S. sales by volume. We calculated purchase price based on packed, delivered prices. We made deductions, where appropriate, for loading, foreign inland freight, freight forwarding, movement insurance, ocean freight, U.S. duty, U.S. brokerage, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts and rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the French value-added and parafiscal sales taxes that would have been collected had the French government taxed the exports.

Foreign Market Value

In order to determine whether there were sufficient sales of CGP in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of CGP to the volume of third country sales of CGP, in accordance with section 773(a)(1) of the Act. Feldmuehle had a viable home market with respect to sales of CGP during the POI.

We calculated FMV based on f.o.b. factory and delivered prices to unrelated customers in the home market. We disregarded sales made through a related party in the home market because these accounted for a very small percentage by volume of home market sales. We made deductions, where appropriate, for loading, foreign inland freight, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, post-sale warehousing, third party payments, and warranty expenses. We recalculated Feldmuehle's imputed credit expenses incurred on home market sales by deducting VAT and discounts from the gross unit price. We recalculated Feldmuehle's imputed credit expenses incurred on U.S. sales by using the home market interest rate to calculate these expenses. We also made circumstance of sale adjustments, where appropriate, for differences in the amounts of value-added and sales taxes.

We made adjustments, where appropriate, for differences in commissions when incurred in both markets, in accordance with 19 CFR 353.56(a)(2). Where commissons were paid in one market and not the other, we allowed an adjustment for indirect selling expenses in the second market to offset commissions paid in the first market, in accordandce with 19 CFR 353.56(b), We did not make an adjustment for commissions paid to related parties in the home market because Feldmuehle did not claim that these were at arm's length.

We recalculated Feldmuehle's inventory carrying costs incurred on its home market sales by backing out all charges and adjustments from gross unit price.

Currency Conversion

We made currency conversions bases on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

On May 13, 1991, Feldmuehle requested that the Department adjust for fluctuations in the exchange rate between the U.S. dollar and the French franc under 19 CFR 353.60(b). We were unable to consider Feldmuehle's request in our preliminary determination due to the late date on which the claim was made. However, we will verify information submitted by Feldmuehhle in support of this claim and consider it for our final determination.

Verification

As provided in section 776(b) of the Act, we will verify the information that

we use in making our final determination.

Suspension of Liquidation

In accordance with section 773(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of CGP from France, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin Percentage
Feldmuehle Beghin, S.A.	31.49
All Others	31.49

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the DeputyAssistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than July 26, 1991, and rebuttal briefs no later than July 31, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in a case or rebuttal briefs. Tentatively, the hearing will be held on August 2, 1991, at 9:30 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice in the **Federal Register.** Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: June 6, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-14112 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-808]

Preliminary Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From Germany

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that coated groundwood paper (CGP) from Germany is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. customs Service to suspend liquidation of all entries of CGP from Germany, as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by August 20, 1991.

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Kate Johnson, Steve Alley or John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-8830, (202) 377-1766 or (202) 377-2778, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

The Department preliminarily determines that CGP from Germany is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on January 25, 1991 (56 FR 2900), the following events have occurred. On February 21, 1991, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports of CGP from Germany (56 FR 7059).

On February 22, 1991, the Department presented its questionnaire to Haindl Papier GmbH (Haindl) and MD Papier GmbH (MD) which together accounted for more than 60 percent of exports by volume to the United States during the period of investigation (POI), in accordance with 19 CFR 353.42(b). On March 15, 1991, we received responses to section A of the questionnaire. On April 10, 1991, we received responses to sections B and C of the questionnaire. We issued deficiency letters to Haindl and MD on April 29, 1991, and received responses to them on May 13 and May 14, 1991. On May 28 and May 30, 1991, we received revised section B responses from Haindl and MD. Due to the late date on which these responses were received, however, we did not rely on them in making our preliminary determination.

Scope of Investigation

The product covered by this investigation is coated groundwood paper. For purposes of this investigation, coated groundwood paper is paper coated on both sides with kaolin (China clay) or other inorganic substances (*e.g.*, calcium carbonate), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes, regardless of (1) basis weight (*e.g.*, pounds per ream or grams per one square meter sheet); (2) GE brightness; or (3) the form in which it is sold (*e.g.*, reels sheets, or other forms). "Paperboard" is specifically excluded from the scope of this investigation. For purposes of this investigation, paperboard is defined to be coated

groundwood paper 12 points (0.012 inch) or more in thickness.

This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 4810.21.00.00, 4810.29.00.00, and 4823.59.40.40. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Period of Investigation

The POI is July 1, 1990, through December 31, 1990.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of CGP from Germany to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of CGP to sales of identical and similar CGP sold in Germany.

United States Price

We based United States price on purchase price, in accordance with section 772(b) of the Act, because all U.S. sales were made to an unrelated party prior to importation into the United States. Exporter's sales price methodology is not appropriate because the subject merchandise was not introduced into the inventories of related U.S. selling agents, these selling agents acted only as processors of sales-related documentation and communication links with the unrelated U.S. customers, and these were the customary commercial channels for sales of this merchandise between the parties involved.

Haindl Papier GmbH

We calculated purchase price based on packed, delivered prices. We excluded trial sales from our analysis because these sales were made in very small quantities. We made deductions, where appropriate, for loading charges, foreign inland freight, freight forwarding, ocean freight, marine insurance, U.S. duty, U.S. brokerage, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions where appropriate, for discounts and rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the German value-added tax that would have been collected had the German government taxed the exports.

MD Papier GmbH

We calculated purchase price based on packed, delivered prices. We made deductions, where appropriate, for containerization expenses, handling charges, foreign inland freight, ocean freight, transportation insurance, U.S. duty, U.S. brokerage, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts and rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the German value-added tax that would have been collected had the German government taxed the exports.

Foreign Market Value

In order to determine whether there were sufficient sales of CGP in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of CGP to the volume of third country sales of CGP, in accordance with section 773(a)(1) of the Act. Both Haindl and MD had viable home markets with respect to sales of CGP during the POI.

Haindl Papier GmbH

We calculated FMV based on f.o.b. factory and delivered prices to unrelated customers in the home market. We excluded all home market sales to related parties in our analysis because they constituted a very small percentage by volume of home market sales made during the POI. We made deductions, where appropriate, for loading charges, foreign inland freight, freight forwarding, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act. We recalculated packing costs for both U.S. and home market sales because we did not consider machinery costs to be part of packing costs.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, warranty expenses, and technical service expenses. We recalculated Haindl's imputed credit expenses incurred on home market sales by deducting both discounts and rebates from the gross unit price used in the calculation of imputed credit expenses to be consistent with Haindl's narrative response. We allowed imputed credit expenses incurred on U.S. sales to be calculated using a home market interest rate.

We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes in the two markets.

We allowed an adjustment for home market indirect selling expenses to offset commissions paid to unrelated parties in the U.S. market, in accordance with 19 CFR 353.56(b). We did not consider related party commissions paid on U.S. sales to be commissions because Haindl claimed that these were intracompany transfers of funds. We recalculated Haindl's inventory carrying costs incurred in the home market by backing out all charges and adjustments from the gross unit price used in the calculation of these expenses. In addition, we reclassified credit insurance, reported as a direct selling expense by Haindl, as an indirect selling expense used as part of the offset to commissions paid in the U.S. market.

Lastly, we made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57.

MD Papier GmbH

We calculated FMV based on f.o.b. factory and delivered prices to related and unrelated customers in the home market. For purposes of this preliminary determination, we included sales to a related customer, pursuant to 19 CFR 353.22(b), since we preliminarily determine that the prices paid by this customer were at arm's length. We excluded from FMV sales made in U.S. dollars because they were made in very small quantities. We made deductions, where appropriate, for foreign inland freight, transportation insurance, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit, factoring fees and expenses, and warranty expenses. We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

We recalculated MD's imputed credit expenses incurred on home market sales by deducting discounts from the gross unit price used in the calculation of these expenses. For purposes of the preliminary determination, we recalculated credit expenses for those sales which had been shipped prior to the date of the deficiency response, but for which payment had not yet been received by MD. For these sales, we used the date of receipt of the deficiency response as the date of payment since

this was the last known date for which credit was outstanding. For purposes of the final determination, we anticipate that we will have actual dates of shipment and payment for all sales. We also recalculated MD's home market warranty expenses based on actual 1990 warranty expenses.

We also allowed an adjustment for home market indirect selling expenses to offset commissions paid in the U.S. market, in accordance with 19 CFR 353.56(b). We recalculated MD's inventory carrying costs incurred in the home market by backing out all charges and adjustments from the gross unit price used in the calculation of these expenses. In addition, we reclassified credit insurance, reported by MD as direct selling expenses, as indirect selling expenses used as part of the offset to commissions paid in the U.S. market.

Lastly, we made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

On May 29, 1991, and on June 4, 1991, Haindl and MD respectively requested that the Department adjust for temporary fluctuations in the exchange rate between the U.S. dollar and the German mark under 19 CFR 353.60(b). We were unable to consider the currency conversion issued in our preliminary determination due to the late date on which the claims were made. However, we will consider these claims for our final determination.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 773(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of CGP from Germany, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin Percentage
Haindl Papier GmbH	31.13
MD Papier GmbH	32.12
All Others	31.74

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than July 26, 1991, and rebuttal briefs no later than July 31, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on August 2, 1991, at 2 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Intrested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: June 6, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-14113 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-807]

Preliminary Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From the United Kingdom

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that coated groundwood paper (CGP) from the United Kingdom is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of CGP from the United Kingdom, as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by August 20, 1991.

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Bill Crow, or Kate Johnson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1776 (202) 377-0116, or (202) 377-8830, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

The Department preliminarily determines that CGP from the United Kingdom is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on January 25, 1991 (56 FR 2900), the following events have occurred. On February 21, 1991, the ITC preliminarily

determined that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports of CGP from the United Kingdom (56 FR 7059).

On February 22, 1991, the Department presented its questionnaire to Caledonian Paper plc (Caledonian), which accounted for more than 60 percent of exports by volume to the United States during the period of investigation, in accordance with 19 CFR 353.42(b). On March 11, 1991, we received the response to Section A of the questionnaire. On April 10, 1991, we received the response to sections B and C of the questionnaire. We issued a deficiency letter to Caledonian on April 29, 1991, and received a response to it on May 13, 1991.

Scope of Investigation

The product covered by this investigation is coated groundwood paper. For purposes of this investigation, coated groundwood paper is paper coated on both sides with kaolin (China clay) or other inorganic substances (*e.g.*, calcium carbonate), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes, regardless of: (1) basic weight (*e.g.*, pounds per ream or grams per one square meter sheet); (2) GE brightness; or (3) the form in which it is sold (*e.g.*, reels, sheets, or other forms). "Paperboard" is specifically excluded from the scope of this investigation. For purposes of this investigation, paperboard is defined to be coated groundwood paper 12 points (0.012 inch) or more in thickness.

This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 4810.21.00.00, 4810.29.00.00, and 4823.59.40.40. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1990, through December 31, 1990.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of CGP from the United Kingdom to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of CGP to sales of identical or similar CGP in the United Kingdom.

United States Price

We based United States price on purchase price, in accordance with section 772(b) of the Act, where U.S. sales were made to an unrelated party prior to importation into the United States. Exporter's sales price (ESP) methodology is not appropriate because the subject merchandise was not introduced into the inventory of Caledonian's related U.S. selling agent, Caledonian's related U.S. selling agent acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. customer, and this was the customary commercial channel for sales of this merchandise between the parties involved. Where sales to the first unrelated purchaser took place after importation into the United States, we based United States price on ESP, in accordance with section 773(c) of the Act. We excluded from our analysis a resale of merchandise imported prior to the POI and rejected by the original purchaser because the sale subject to examination under the antidumping statute occurred outside the POI.

We calculated purchase price based on packed, delivered prices. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, foreign port charges, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. port charges, U.S. brokerage and handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the United Kingdom value-added tax that would have been collected if the merchandise had not been exported.

We calculated ESP based on packed, delivered prices. We made deductions, where appropriate, for foreign brokerage, foreign port charges, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. port charges, U.S. brokerage and handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In accordance with section 772(e)(2) of the Act, we made additional deductions for discounts, credit expenses, warranty expenses, post-sale warehousing expenses, indirect selling expenses, and inventory carrying costs. We recalculated credit expenses for shipments to a bankrupt customer, based on the average payment period for all other ESP sales. We recalculated U.S. indirect selling expenses reported as per ton amounts to reflect a percentage of sales value. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the United Kingdom value-added tax that would have been collected if the merchandise had not been exported.

Foreign Market Value

In order to determine whether there were sufficient sales of CGP in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of CGP to the volume of third country sales of CGP, in accordance with section 773(a)(1) of the Act. Caldeonian had a viable home market with respect to sales of CGP during the POI, and thus we calculated FMV based on delivered prices to unrelated customers in the home market, in accordance with section 773(a)(1)(A) of the Act.

For comparison to purchase price sales, we made deductions, where appropriate, for billing errors. We also made deductions, where appropriate, for foreign inland freight, foreign loading charges, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act. Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, post-sale warehousing, and warranty expenses. For purposes of the preliminary determination, we recalculated credit expenses for those sales which had been shipped prior to receipt of the deficiency response, but for which payment had not yet been received by Caledonian. For those sales, we used the number of days between shipment of the merchandise from the mill and the date of the receipt of the deficiency response as date of payment, since this was the last date known for which credit was outstanding. In addition, we recalculated credit expenses for those sales which had not been shipped prior to receipt of the deficiency response, using the average credit period reported for all sales for which payment had been received. For purposes of the final determination, we anticipate that we will have actual dates of shipment and payment for all sales. We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

For comparison to ESP sales, we made deductions, where appropriate, for billing errors. We also made deductions,

where appropriate, for foreign inland freight, foreign loading charges, credit expenses, warranty expenses, discounts, and rebates. For purposes of the preliminary determination, we recalculated credit expenses for those sales which had been shipped prior to receipt of the deficiency response, but for which payment had not yet been received by Caledonian. For those sales, we used the number of days between shipment of the merchandise from the mill and the date of the receipt of the deficiency response as date of payment, since this was the last date known for which credit was outstanding. In addition, we recalculated credit expenses for those sales which had not been shipped prior to receipt of the deficiency response, using the average credit period reported for all sales for which payment had been received. For purposes of the final determination, we anticipate that we will have actual dates for shipment and payment for all sales.

We also deducted home market indirect selling expenses, which included inventory carrying expenses and other indirect selling expenses. This deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses incurred in the U.S. market, in accordance with 19 CFR 353.56(b). We deducted home market packing costs and added U.S. packing costs. We made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

Where appropriate, we made further adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

On May 29, 1991, respondent requested that the Department apply the provisions of 19 CFR 353.60(b) to account for the effect of temporary fluctuations in the exchange rate between the British pound and the U.S. dollar during the POI. This request was not submitted in time to be considered for purposes of this preliminary determination. The Department, will, however, consider respondent's request for purposes of the final determination.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 773(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of CGP from the United Kingdom, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until futher notice. The weighted-average dumping margins are as follows:

	Margin percentage
Manufacturer/producer/exporter	
Caledonian Paper plc	33.90
All Others	33.90

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than July 26, 1991, and rebuttal briefs no later than July 31, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on August 5, 1991, at 2 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice in the **Federal Register.** Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: June 6, 1991.

Eric L. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-14114 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-503]

Lamb Meat From New Zealand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on lamb meat from New Zeland for the period April 1, 1989 through March 31, 1990. We preliminarily determine the total bounty or grant to be 10.17 percent *ad valorem* for Melville Developments Ltd. (Lamb Gourmet), 0.41 percent *ad valorem* for Fortex, 0.30 percent *ad valorem* for Weddel New Zealand, 0.26 percent *ad valorem* for Alive Exports, 0.26 percent *ad valorem* for Lowe Walker, and 1.48 percent *ad valorem* for all other firms. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 5, 1990, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 36300) of the countervailing duty order on lamb meat from New Zealand (50 FR 37708; September 17, 1985). On September 6, 1990, the New Zealand Meat Producers Board requested an administrative review of the order. We initiated the review, covering the period April 1, 1989 through March 31, 1990, on October 26, 1990 (55 FR 43153). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The Department published the final results of its last administrative review on October 23, 1990 (55 FR 42750).

Scope of Review

Imports covered by this review are shipments of lamb meat, other than prepared, preserved or processed, from New Zealand. This merchandise is currently classifiable under item numbers 0204.10.0000, 0204.22.2000, 0204.23.2000, 0204.30.0000, 0204.42.2000 and 0204.43.2000 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period April 1, 1989 through March 31, 1990, and two programs.

Analysis of Programs

(1) *Export Market Development Taxation Incentive (EMDTI)*

Under the EMDTI, established in the 1979 Amendment to the Income Tax Act of 1976, exporters may receive tax credits for a certain percentage of their export market development expenditures. Qualifying expenditures include those incurred principally for seeking and developing new markets, retaining existing markets and obtaining market information. An exporter who takes advantage of this tax credit may not deduct the qualifying expenditures as ordinary business expenses in calculating taxable income. The tax credit for tax returns filed during the review period was 40 percent of the total qualifying expenditures, and the normal corporate tax rate in New Zealand was 33 percent. Because the program is limited to exporters, we preliminarily determine that it confers an export bounty or grant. Five exporters claimed EMDTI tax credits for lamb meat exports to the United States on their tax returns filed during the review period.

Since exporters may claim a tax credit equal to 40 percent of the qualifying expenditures but may not deduct these expenditures from income, which is taxable at 33 percent, the net benefit to the exporters is 7 percent of the qualifying expenditures. To calculate the benefit, we took 7 percent of each exporter's qualifying expenditures relating to lamb meat exports to the United States and divided that amount by its total sales of lamb meat exports to the United States during the review period. We then weight-averaged the resulting benefits by each company's proportion of total lamb meat exports to the United States during the review period, excluding those companies with significantly different aggregate benefits. On this basis, we preliminarily determine the benefit from this program during the review period to be 9.91 percent *ad valorem* for Melville, 0.15 percent *ad valorem* for Fortex, 0.04 percent *ad valorem* for Weddel New Zealand, zero for Alive Exports, zero for Lowe Walker, and 1.22 percent *ad valorem* for all other firms.

Effective with the government fiscal year beginning April 1, 1990, the Government of New Zealand eliminated the EMDTI tax credit, and all formerly eligible expenditures are subject to the rules for ordinary business expenses in calculating taxable income. Therefore, for purposes of cash deposits of estimated countervailing duties, we preliminarily determine the benefit from this program to be zero for all firms.

(2) *Livestock Incentive Scheme*

The Livestock Incentive Scheme (LIS) was introduced in 1976 in order to encourage farmers to increase permanently their number of livestock. Under the scheme, a farmer engaged in a stock increase program, for a minimum of one and a maximum of three years, could opt for one of two incentives: (1) An interest-free suspensory loan of NZ$12 for each additional stock unit carried; or (2) a deduction of NZ$24 from taxable income for each additional stock unit carried. If the livestock increase was met, farmers who elected to take out loans wrote the loans off as tax-free grants. For farmers electing the tax option, the provisional tax deduction could be applied toward tax liability in any of the three years after completion of the development program. Applications to participate in the LIS program was accepted until March 31, 1982. No new loans have been given under this program since 1983, and no tax credits have been authorized since the 1983/84 government fiscal year. During the 1989/90 government fiscal year (the review period), there were no outstanding loans that had not been converted to grants and no tax credits remaining to be claimed by lamb producers.

Because benefits under this program are available only to farmers with livestock herds, we preliminarily determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and therefore confers a bounty or grant.

To calculate the benefit, we treated the loan amounts forgiven in prior years as grants and allocated those benefits over five years, the average useful life of breeding stock. The discount rate chosen was the average interest rate on overdrafts during the year in which the loans were forgiven. We added the value of the benefits from the grants and multiplied the result by a factor determined to represent the value of lamb as a percentage of total livestock production. We then divided that result by the total value of lamb products sold during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.26 percent *ad valorem* for all firms.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant during the period April 1, 1989 through March 31, 1990 to be 10.17 percent *ad valorem* for Melville, 0.41 percent *ad valorem* for Fortex, 0.30 percent *ad valorem* for Weddel New Zealand, 0.26 percent *ad valorem* for Alive Exports, 0.26 percent *ad valorem* for Lowe Walker, and 1.48 percent *ad valorem* for all other firms. In accordance with 19 CFR 355.7, any rate less than 0.50 percent is *de minimis*.

Therefore, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported by Alive Exports, Fortex, Lowe Walker, and Weddel New Zealand, and to assess countervailing duties of 10.17 percent of the f.o.b. invoice price for Melville and 1.48 percent of the f.o.b. invoice price on shipments of this merchandise from all other firms exported on or after April 1, 1989 and on or before March 31, 1990.

The termination of the EMDTI program reduces the total estimated bounty or grant to 0.26 percent *ad valorem*, a rate which is *de minimis*. Therefore, the Department intends to instruct the Customs Service not to collect cash deposits of estimated countervailing duties on any shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of

publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculations methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 5, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-14116 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications; Little Rock, AR

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under statutory authority (15 U.S.C. 1512) and Executive Order 11625 its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a three-year period, subject to availability of funds. The cost of performance for the first 12 months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period of October 1, 1991 to September 30, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contribution, or combinations thereof. The MBDC will operate in the Little Rock Standard Metropolitan Statistical Area (SMSA).

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for profit organizations, local and state 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 operations 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: 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 Department for final processing and approval if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDC's 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 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 two (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 a MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is July 15, 1991. Applicants should mail the completed application to the office specified in the project announcement. MBDA will accept only those applications (1) which are received by the closing date or (2) which show acceptable evidence of mailing on or before the closing date. Acceptable evidence consists of (1) a legible U.S. Postal Service postmark or (2) a legible mail or courier service receipt dated on or before July 15, 1991. Anticipated processing time of this award is 120 days.

Note: Please mail completed application to the following address: San Francisco Regional Office, 221 Main Street, room 1280, San Francisco, California 94105.

FOR APPLICATION KIT OR OTHER INFORMATION CONTACT: Dallas Regional Office, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, Attn: Yvonne Guevara.

SUPPLEMENTARY INFORMATION: 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 through the Dallas Regional Office. A pre-bid conference will be held on June 21, 1991, in the Federal Building, 700 West Capitol Avenue, room 2503, Little Rock, Arkansas 72201 at 1 p.m.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Notice: 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.

Notice: 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 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.

Notice: 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.

Notice: Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

Notice: A false statement on the application may be grounds for denial or termination for funds and grounds for possible punishment by a fine or imprisonment.

Dated: June 7, 1991.

Melda Cabrera,

Regional Director.

[FR Doc. 91-14051 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants; Finding on a Petition To List all Species of Seahorses

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

ACTION: Notice of finding on petition.

SUMMARY: NMFS announces a 90-day petition finding on a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petitioner did not present substantial information that listing of any of the species in the genus *Hippocampus* may be warranted.

DATES: Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions should be sent to Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dean Wilkinson, Office of Protected Resources, NMFS, (301) 427-2322.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) requires that NMFS make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register.** If the finding is positive, NMFS is required to commence promptly a review of the status of the involved species.

NMFS has received and made a finding on a petition by Marie C. Peronne to list all species of seahorses, Genus *Hippocampus,* on the list of endangered and threatened wildlife and plants. The petition contained no supporting documentation. NMFS wrote to the petitioner and asked whether she had additional information. Having received no response, NMFS has determined that the petition did not contain substantial information indicating that the action requested may be warranted.

Dated: June 3, 1991.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 91-14034 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public hearings to allow for input on Amendment 4 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries.

DATES: Written comments will be accepted until July 15, 1991. The hearings are scheduled as follows: 1. June 19, 1991, 7 p.m., Cape May, New Jersey. 2. June 24, 1991, 7 p.m., Galilee, Rhode Island.

ADDRESSES: Comments should be addressed to John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 South New Street, Dover, Delaware 19901.

The hearings will be held at the following locations: 1. Cape May—Cape May Extension Office, Dennisville Road, Cape May Court House, Cape May, New Jersey. 2. Galilee—Dutch Inn, Great Island Road, Galilee, Rhode Island.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council (302) 674-2331.

SUPPLEMENTARY INFORMATION: The amendment to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) is intended to revise the specification setting process for Atlantic mackerel, the time and area restrictions of foreign fishing, and the procedures for recommending conditions applicable to joint ventures and directed foreign fishing.

The management unit is all Atlantic mackerel, *Loligo pealei, Illex illecebrosus,* and butterfish under U.S. jurisdiction, excluding the Gulf of Mexico and the Caribbean Sea.

The objectives of the FMP are:

1. Enhance the probability of successful (i.e., the historical average) recruitment to the fisheries.
2. Promote the growth of the U.S commerical fishery, including the fishery for export.
3. Provide the greatest degree of freedom and flexibility to all harvesters of these resources consistent with the attainment of the other objectives of this FMP.
4. Provide marine recreational fishing opportunities, recognizing the contribution of recreational fishing to the national economy.
5. Increase understanding of the conditions of the stocks and fisheries.
6. Minimize harvesting conflicts among U.S. commercial, U.S. recreational, and foreign fishermen.

Alternative considered but not Adopted

The council considered taking no action at this time, which would mean that the FMP would continue in effect unchanged. Adoption of this alternative would mean that the improvements to the process of Americanization of the fishery incorporated in the amendment would not be implemented.

Joe P. Clem,

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

[FR Doc. 91-14097 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; NMFS, Southwest Fisheries Science Center, (P77#50)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine

Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the regulations governing endangered fish and wildlife permit (50 CFR parts 217–222).

1. Applicant

Dr. Izadore Barrett, Director, Science and Research Director, Southwest Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, CA 92038.

2. Type of Permit

Scientific research under MMPA and scientific purposes under ESA.

3. Name and Number of Marine Mammals

1500 Bottlenose dolphin (*Tursiops truncatus*),
1500 Risso's dolphin (*grampus griseus*),
100 Short-finned pilot whales, (*Globicephala macrorhynchus*),
5000 Common dolphin (*Delphinus delphis*),
5000 Pacific white-sided dolphin (*Lagenorhynchus obliquidens*),
5000 Northern right-whale dolphin (*Lissodelphis borealis*),
100 Harbor porpoise (*Phocoena phocoena*),
100 Dall's porpoise (*Phocoenoides dalli*),
100 Killer whales (*Orcinus orca*),
100 Baird's beaked whales (*Berardius bairdii*),
100 Sperm whales (*Physeter macrocephalus*),
300 Humpback whales (*Megaptera novaeangliae*),
300 Blue whales (*Balaenoptera usculus*),
100 Fin whales (*B. physalus*),
100 Minke whales (*B. acutorostrata*),
1000 Gray whales (*Eschrichtius robustus*),
6 North Pacific right whales (*Eubalaena glacialis*).

4. Type of Take

The species listed above will be taken by harassment during the course of vessel-based photographic identification studies. Data collected by researchers will enhance existing research programs as well as provide detailed, supportive information for scheduled aerial surveys. Photographs will be added to various catalogues maintained by the researchers and other principal investigators. Additionally, information gained will be used to identify animals to determine patterns of movement and association among individuals. This will be used to define and verify stock structure of various cetacean species off California.

5. Location of Activity

Field work is planned to begin spring, 1991. Permit coverage is for coastal California for a 3-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/427–2289);

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731 (213/514–6196); and

Director, National Marine Mammal Laboratory, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Seattle, Washington 98115 (206/516–4020).

Dated: June 6, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–14025 Filed 6–12–91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Charges for Certain Textile Products Produced or Manufactured in Korea

June 7, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting charges for certain textile products exported in 1990.

EFFECTIVE DATE: June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In accordance with a Memorandum of Understanding dated June 4, 1991 between the Governments of the United States and the Republic of Korea, the Chairman for the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to deduct, for goods exported in 1990, charges made to the 1991 limit for Category 604, charging this same amount to the 1990 limit for Category 604. These charges shall remain charged to the 1991 Group I limit.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 1706, published on January 18, 1990; and 55 FR 51754, published on December 17, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 7, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Memorandum of Understanding dated June 4, 1991 between the Governments of the United States and the Republic of Korea, I request that, effective on June 10, 1991, for goods exported in 1990, you deduct 1,344,524 square meters equivalent from the charges made to the 1990 Group I limit and charge 176,911 kilograms to the 1990 limit for Category 604 (see directive dated January 11, 1990). Also for goods exported in 1990, you are directed to deduct 176,911 kilograms from the charges made to the 1991 limit for Category 604 and charge 1,344,524 square meters equivalent to the 1991 Group I limit (see directive dated December 5, 1990).

This letter will be published in the **Federal Register**.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-14042 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Air Force Academy Request for Secondary School Transcript; USAFA Form 148; OMB No. 0701-0066.

Type of Request: Revision.

Average Burden Hours/Minutes per Response: 13.5 minutes.

Responses per Respondent: 1.

Number of Respondents: 22,900.

Annual Burden Hours: 5,152.5.

Annual Responses: 22,900.

Needs and Uses: This form is used to collect data on U.S. Air Force Academy candidate's high school academic performance for use in determining eligibility. Information is used to select appointees to the Academy.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: June 7, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liasion Officer, Department of Defense.

[FR Doc. 91-14023 Filed 6-12-91; 8:45am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Base Closure and Realignment Commission; Meeting

ACTION: Announcement of public deliberation meetings 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, or to be determined and published subsequently in the **Federal Register:** Thursday/Friday, June 13-14, 9:30 a.m. General Services Adminnistration Auditorium, 18th & L Streets, NW.; Saturday, June 15, 9:30 a.m. location to be determined: Monday/Tuesday, June 17-18, 9:30 a.m., location to be determined; Saturday and Sunday, 9:30 a.m. location to be determined. At these meetings, the Commission will conduct deliberation hearings on closure/realignment candidates.

In certain instances, less than 15 days notice is being given due to the nature of the deliberative process, which is proceeding more slowly than anticipated. The necessity to make informed decisions dictates the requirement for additional hearing dates.

FOR FUTHER INFORMATION: Defense Base Closure and Realignment Commission, Mr. Cary Walker, Director of Communications and Public Affairs, 202-653-0823.

Dated: June 7, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liasion Officer, Department of Defense.

[FR Doc. 91-14021 Filed 6-12-91; 8:45am]

BILLING CODE 3810-01-M

Defense Base Closure and Realignment Commission; Meeting

ACTION: Announcement of public deliberation meetings of the Defense Base Closure and Realignment Commission.

SUMMARY: Additional open public meetings of the Defense Base Closure and Realignment Commission will be held in Washington, DC and other locations in accordance with the following dates and times, and at specific meeting locations as shown, or to be determined and published subsequently in the **Federal Register:** Washington, DC: Monday, June 17, 9:30 a.m., specific location to be determined, to receive congressional testimony and have public hearings on bases/installations newly added to the base closure and realignment list as follows: Staten Island Naval Station, Corps of Engineers, Fort Totten, Fort Hamilton, Fort Pickett, Fort A.P. Hill, Fort Buchanan, Indiantown Gap, Fort McCov and MacDill Air Force Base; Monday, June 17, 1:30 p.m., Marines Recruit Training Depot, San Diego, CA, to receive testimony on the proposed realignment or closure of the Naval Training Center, San Diego, Marine Training Depot, San Diego, Long Beach Naval Shipyard, and Naval Station Treasure Island; Tuesday, June 18, 3:30 p.m., Chamber of Commerce, San Angelo, Texas, to receive testimony on the proposed closure or realignment of Goodfellow Air Force Base; Thursday, June 20, 1 p.m., Plattsburgh Air Force Base, NY, to receive testimony on the proposed closure or realignment of Plattsburgh Air Force Base; Friday, June 21, 3 p.m., Naval Air Station, Meridian, to receive testimony on the proposed closure or realignment of Naval Air Station, Meridian; Friday, June 21, 9 a.m., Naval Air Station, Kingsville, to receive testimony on the proposed closure or realignment of Naval Air Station, Kingsville; Friday, Saturday and Sunday, June 28, 29 and 30, times to be determined, Washington, DC, specific location to be determined, to conduct deliberations on base closures and realignments.

Less than 15 days notice is being given in some instances due to the inclusion on June 7 of additional installations and/or organizations for possible closure and realignment and the decision to hold public hearings on these additions prior to the statutorily mandated deadline.

FOR FURTHER INFORMATION: Defense Base Closure and Realignment Commission, Mr. Cary Walker, Director of Communications and Public Affairs, 202-653-0823.

Dated: June 11, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-14249 Filed 6-12-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Advisory Board; Meeting

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meetings.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92-463, as amended by section 5 of

Public Law 94–409, notice is hereby given that closed meetings of a panel of the DIA Advisory Board have been scheduled as follows:

DATES: Thursday, July 18, 1991 (9 a.m. to 5 p.m.). Thursday, August 29, 1991 (9 a.m. to 5 p.m.).

ADDRESSES: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John G. Sutay, USAF, Chief, DIA Advisory Board, Washington, DC. 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Advanced Air Defense.

Dated: June 7, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–14022 Filed 6–12–91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Environmental Statement, Availability; Cameron Station VA

AGENCY: U.S. Army, Department of Defense.

ACTION: Notice of Availability of the Draft Environmental Impact Statement for the Comprehensive Base Realignment/Closure and Fort Belvoir Development.

SUMMARY: On December 29, 1988, the Defense Secretary's Commission on Base Realignment and Closure recommended that Cameron Station be closed and the major activities relocated to Fort Belvoir, Virginia; elements of the Criminal Investigation Command at Fort Holabird and Fort Meade, Maryland, be consolidated at Fort Belvoir; the corrosion prevention and control related research at the Army Materials Technology Laboratory (AMTL), Massachusetts, be relocated to Fort Belvoir; and the Information Systems Command activity at Fort Belvoir be realigned to Fort Devens, Massachusetts.

This Draft Environmental Impact Statement (EIS) considers the impact of the commission's recommendations on Cameron Station and Fort Belvoir and the associated impacts of minor relocations to Fort Myer and Fort McNair. The impact of the Fort Belvoir Engineer Proving Grounds public/private development is also mentioned in this Draft EIS; however, separate National Environmental Policy Act (NEPA) analysis is being developed for that action. Actions proposed in the initial announcement of this EIS which are no longer under consideration include new construction for Headquarters, U.S. Army Materiel Command and Headquarters, U.S. Army Corps of Engineers at Fort Belvoir, and redevelopment by General Services Administration of a 70-acre parcel of land in Franconia near Springfield, Virginia. The impacts of the Commission's recommendation at Fort Holabird, Fort Meade, AMTL, and Fort Devens are being addressed in other NEPA analysis.

No significant environmental or human health effects are expected from actions at Cameron Station, Fort Myer and Fort McNair. Socioeconomic effects are minimal because the majority of the realigned personnel are neither entering nor leaving the study region.

The most significant effects on Fort Belvoir are an increase in traffic volumes and potential changes in commuter patterns. The Department of the Army is working with the local community to develop a plan to lessen these impacts.

The public is encouraged to comment on the Draft EIS. Public notices requesting input will be issued. A copy of the Draft EIS may be obtained by contacting Mr. Keith Harris (301) 962–4999, or writing to Commander, U.S. Army Corps of Engineers, Baltimore District, P.O. Box 1715, Baltimore, Maryland 21203.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 91–13997 Filed 6–12–91; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 28 June 1991.

Time: 1030–1530 hours.

Place: Fort Monmouth, New Jersey.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Improving the Quality of Science and Engineering in the Army will meet the PEO and CECOM RD&E Center representatives to discuss their views relative to the impact of establishing an Army Acquisition Corps on the recruitment, development and retention of professional engineering and scientific personnel. The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–14078 Filed 6–12–91; 8:45 am]

BILLING CODE 3710-8-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 9 July 1991.

Time: 0830–1600 hours.

Place: U.S. Army Tank-Automotive Command RD&E Center, Warren, MI.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Improving the Quality of Science and Engineering in the Army will meet with TACOM RD&E Center managers to discuss their efforts to capture indicators of quality of R&D work and personnel. The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–14082 Filed 6–12–91; 8:45 am]

BILLING CODE 3710-8-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 8 July 1991.

Time: 1130–1600 hours.

Place: General Motors, Warren, MI.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Improving the Quality of Science and Engineering in the Army will meet with GM representatives to discuss their initiatives for measuring and furthering the vitality of their professional R&D workforce. The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be

contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-14083 Filed 6-12-91; 8:45 am]

BILLING CODE 3710-8-M

Corps of Engineers, Department of the Army

Lake Greeson, Lake Ouchita, and DeGray Lake, AR; Intent To Prepare a Draft Supplemental Impact Statement

AGENCY: U.S. Army Corps of Engineers, Vicksburg District, DOD.

ACTION: Notice of intent to prepare a draft supplemental impact statement (DEIS) to the final EIS, operation and maintenance, Lake Greeson, Lake Ouchita, and DeGray Lake, Arkansas.

SUMMARY: The proposed action is to improve water quality and enhance the fishery in Lake Greeson, Arkansas, in addition to improving water quality and enhancing the fisheries on the little Missouri River below Narrows Dam.

FOR FURTHER INFORMATION CONTACT: Ms. Julie B. Marcy, telephone (601) 631-5302. CELMK-OD-M, Post Office Box 60, Vicksburg, Mississippi 39181-0060.

SUPPLEMENTARY INFORMATION: 1. The proposed Lake Greeson/Little Missouri River Environmental Enhancement Project is part of the Narrows Dam/Lake Greeson project authorized by the Flood Control Act Law No. 228, approved 18 August 1941, as amended by the Flood Control Act of 22 December 1944. The final EIS for the Operation and Maintenance of Lake Greeson, Lake Ouachita, and DeGray Lake Arkansas was filed with the Council on Environmental Quality on 27 January 1978. The proposed Lake Greeson/Little Missouri River Environmental Enhancement Project was authorized by the Water Resources Development Act of 1990, section 1135(b), Public Law 99-662, approved 28 November 1990.

2. The proposed Lake Greeson/Little Missouri River Environmental Enhancement Project provides for improved water quality and enhanced fisheries in Lake Greeson, and the Little Missouri River below Lake Greeson. This will be accomplished placing solid steel plates on the trash racks to elevation 519 feet in front of two of the hydroelectric turbines in Narrows Dam. In addition, three lowhead weirs will be constructed, and random boulders will be placed in the Little Missouri River below Narrows Dam. The project would be cost-related with 75% of the costs incurred by the Corps of Engineers, and 25% by the Arkansas Game and Fish Commission.

3. Alternatives to be evaluated include the proposed project, no action, alternate trash rack platings, and construction of downstream features only. Environmental design will be incorporated into each of the structural alternatives.

4. a. Various scoping meetings and activities have been conducted to date. Additional meetings will be held throughout the evaluation process. All affected Federal, state, and local agencies and other parties are invited to participate in various scoping activities.

b. Significant issues tentatively identified include water quality, coldwater, warmwater and lake fisheries, cultural resources, and socioeconomic conditions. Additional environmental review and consultation requirements could be identified during the scoping process.

c. The following will be invited to participate as cooperating agencies: Environmental Protection Agency, U.S. Fish and Wildlife Service, Arkansas Game and Fish Commission.

5. A DEIS will be available for review by the public during Fiscal Year 1991.

John Roach,

Department of the Army Liaison with the Federal Register

[FR Doc. 91-14010 Filed 6-12-91; 8:45 am]

BILLING CODE 3710-GX-M

Federal Facilities at Sault Ste. Marie, MI; Intent to Prepare a Draft Environmental Impact Statement

AGENCY: U.S. Army, Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: This is a notice of intent to prepare a Draft Environmental Impact Statement Supplement III to the Final Environmental Impact Statement, Operation Maintenance, and Minor Improvements of the Federal Facilities at Sault Ste. Marie, Michigan; Operation of the Lock Facilities Prior to 1 April.

By regulation, at least one lock at Sault Ste. Marie, Michigan, must be in operation by 1 April of each year to accommodate commercial vessel traffic transuding the St. Marys River between Lakes Huron and Superior. Historically the locks have been opened as early as 15 March of each year given the reasonable demands of commerce. A proposal is being reviewed to fix the opening date between 15 March and 1 April of each year to make the shipping season predictable. An EIS supplement will be prepared to address this proposal.

FOR FURTHER INFORMATION CONTACT: Mr. Donald C. Williams, U.S. Army Engineer District, Detroit Environmental Analysis Branch, P.O. Box 1027, Detroit, Michigan 48231-1027, Telephone: Commercial: 313-226-6753, FTS: 226-6753.

SUPPLEMENTARY INFORMATION:

Previous Documents

The FEIS for Operations, Maintenance, and Minor Improvements of the Federal Facilities at Sault Ste. Marie, Michigan, was filed with CEQ in November 1977. Supplement I to this EIS, addressing Operation of the Locks to 8 January ± 1 week, was filed with the EPA in October 1979. Supplement II, addressing operation of the Locks to 31 January ± 2 weeks, was filed with the EPA in November 1989.

Alternatives

The alternatives to be considered are:

a. Fixing the opening date at 1 April of each year.

b. Basing an opening date between 15 March and 1 April on ice and weather criteria;

c. Fixing the opening date between 15 March and 1 April based on the findings of the economic and environmental studies.

Scoping Process

a. *Public involvement.* The Council on Environmental Quality Regulations for Implementing in Procedural Provisions of National Environmental Policy Act do not require scoping for supplemental EISes. No formal scoping meeting will be held. During and since the first and second Supplements (1979 and 1989) were issued, the Corps of Engineers has maintained coordination with various State and Federal Agencies and environmental groups including:

U.S. Department of Interior, Fish and Wildlife Service
U.S. Coast Guard
U.S. Department of Commerce, National Oceanic and Atmospheric Administration
Michigan Department of Natural Resources
Michigan Department of Transportation
Great Lakes Commission
Michigan United Conservation Clubs
Great Lakes United

Affected Federal, State and local agencies, affected Indian tribes, and other interested private organizations and parties are invited to participate.

b. *Significant issues.* Operation of the Locks prior to 1 April benefits industry and commercial navigation by allowing for reduced transportation rates and reduction of stockpiling costs. Specific environmental issues that will be addressed include the impacts on winter

vessel transits, potential impacts from transit of oil through the Locks, effects on fish reproduction, and potential effects on formation of ice jams.

c. *Environmental review and consultation requirements.* The following laws will be addressed in the draft Supplement EIS: Archeological and Historic Preservation Act, as amended, 16 U.S.C. 469, *et seq.*; Clean Air Act, as amended, 42 U.S.C. 1857h-7, *et seq.*; Clean Water Act, as amended, 33 U.S.C. 1251, *et seq.*; Coastal Zone Management Act, as amended, 16 U.S.C. 1451, *et seq.*; Endangered Species Act, as amended, 16 U.S.C. 1531, *et seq.*; Estuary Protection Act, 16 U.S.C. 1221, *et seq.*; Federal Water Project Recreation Act, as amended, 16 U.S.C. 460-1(12), *et seq.*; Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661, *et seq.*; Land and Water Conservation Fund Act, as amended, 16 U.S.C. 1601-11, *et seq.*; Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1401, *et seq.*; National Historic Preservation Act, as amended, 16 U.S.C. 470a, *et seq.*; National Environmental Policy Act, as amended, 42 U.S.C. 4321, *et seq.*; Rivers and Harbors Act, as amended, 33 U.S.C. 401, *et seq.*; Watershed Protection and Flood Prevention Act, 16 U.S.C. 1001, *et seq.*; and Wild and Scenic Rivers Act, as amended, 16 U.S.C. 1271, *et seq.*; The following Executive Orders and Memoranda will be addressed: Flood Plain Management (E.O. 11988); Protection of Wetlands (E.O. 11990); Environmental Effects Abroad of Major Federal Actions (E.O. 12114); Analysis of Impacts on Prime and Unique Farmlands (CEQ Memorandum, 11 Aug 1980); and Intergovernmental Review of Federal Programs (E.O. 12372).

Estimated Date of Draft EIS Supplement Release

It is anticipated that the draft Supplement will be available to the public in December 1992.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-14059 Filed 6-12-91; 8:45 am]

BILLING CODE 3710-GA-M

Inland Waterways User Board; Meeting

AGENCY: Department of the Army, COE, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. (92-463), announcement is made of the Following committee meeting:

Name of Committee: Inland Waterways Users Board.

Date of Meeting: July 16, 1991.

Place: Pittsburgh Vista Hotel, 1000 Penn Avenue, Pittsburgh, PA 15222-3873 (Tel. (800)—FOR VISTA).

Time: 8:30 a.m. to 4 p.m.

Proposed Agenda:

AM Session

8:30 Registration.

Business Session

—Administrative Announcements
—Chairman's Call to Order
—Executive Director's Comments
—Approval of Prior Meeting Minutes

Presentation of Information to the Board

9:20 Trust Fund Analysis.
10:15 Break.
10:30 Construction Projects Update.
11 Sargent Beach-Update and Status.
11:30 Lunch.

PM Session

Ohio River Division Presentations

1.—Lower Monongahela River Projects.
2.—Winfield Lock and Dam—Hazardous and Toxic Waste.
2:30 Break.
2:45 Public Comment Period.
3:45 Instructions to Board Staff.
4.—Adjourn.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

For further information, contact: Mr. David B. Sanford, Jr., Headquarters, U.S. Army Corps of Engineers, CECW-P, Washington, DC 220314-1000 at (202) 272-0146.

Hugh F. Boyd III,

Colonel, Corps of Engineers Executive Director of Civil Works.

[FR Doc. 91-14061 Filed 6-12-91; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 15, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement;
(2) Title;
(3) Frequency of collection;
(4) The affected public;
(5) Reporting burden; and/or
(6) Recordkeeping burden; and
(7) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: June 7, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Application for State Grants under the Foreign Languages Assistance Act.
Frequency: Every Three Years.
Affected Public: State or local governments.

Reporting Burden:
Responses: 53
Burden Hours: 742
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State or local governments to apply for funding under the Foreign Languages Assistance Program. The Department uses the information to make grant awards.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement
Title: RSA-636-Supported Employment: Annual Caseload Report
Frequency: Annually
Affected Public: State or local government agencies.
Reporting Burden:
Responses: 84
Burden Hours: 84
Recordkeeping Burden:
Recordkeepers: 84
Burden Hours: 84
Abstract: This report is used by State Vocational Rehabilitation agencies to provide caseload data. The Department uses the information collected to assess the accomplishments of effective program management.

Office of Postsecondary Education

Type of Review: Extension
Title: Application for Grants to Institutions to Encourage Minority Participants in Graduate Education
Frequency:
Affected Public: Non-profit businesses
Reporting Burden:
Responses: 125
Burden Hours: 500
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State Educational Agencies to apply for funding under the Institutions to Encourage Minority Participants program. The Department uses the information to make grant awards.

[FR Doc. 91-14017 Filed 6-12-91; 8:45 am]

BILLING CODE 4000-1-M

Fund for the Improvement and Reform of Schools and Teaching; Board Meeting

AGENCY: Fund for the Improvement and Reform of Schools and Teaching Board, Education.

ACTION: Notice of a partially closed meeting.

SUMMARY: This notice sets forth the schedule and agenda of a partially closed meeting of the Fund for the Improvement and Reform of Schools and Teaching Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: June 26, 1991, 9 a.m.-5 p.m. (closed); June 27, 1991, 9 a.m.-12:30 p.m. (open).

PLACE: Quality Hotel, Capitol Hill, Lobby Conference room, 415 New Jersey Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Hill, Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue NW., room 522, Washington, DC 20208-5524, (202) 219-1496.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement and Reform of Schools and Teaching (FIRST) Board was established under section 3231 of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297). The Board was established to advise the Secretary concerning developments in education that merit his attention; identify promising initiatives to be supported under the authorizing legislation; and advise the Secretary and the Director of FIRST on the selection of projects under consideration for support, and on planning documents, guidelines and procedures for grant competitions carried out by FIRST.

The FIRST Board Meeting will be closed to the public on June 26, from 9 a.m.-5 p.m. allowing time for the Board to read and discuss Schools and Teachers—School Level projects for funding. The meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. appendix 2) and under exemptions (4) and (6) of section 552b(c) (4 and 6) of the Government in the Sunshine Act (Pub. L. 94-409; 5 U.S.C. 552b). Discussion during the closed portion of the meeting will involve disclosure of sensitive information about: (a) Applicants, (b) funding levels and requests, and (c) the names and comments of expert reviewers. Any such discussion would disclose commercial or financial information obtained from a person and privileged or confidential; and, would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (c) (4) and (6) of section 552b of title 5 U.S.C.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b(c) will be available to the public within fourteen days of the meeting.

The meeting will be open to the public on June 27 from 9 a.m. to 12:30 p.m. The agenda for the open portion of the meeting will include the presentation of a report on the National Board for Professional Teaching Standards forum, a discussion on the Board's Mission Statement, nominations/renominations of five (5) members, and a discussion and Q&A session on AMERICA 2000.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement and Reform of Schools and Teaching from the hours of 8:30 a.m. to 5 p.m.

Dated: June 7, 1991.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91-14013 Filed 6-12-91; 8:45 am]

BILLING CODE 4000-01

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER91-469-000, et al.]

Tucson Electric Power Company et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 6, 1991.

Take notice that the following filings have been made with the Commission:

1. Tucson Electric Power Co.

[Docket No. ER91-469-000]

Take notice that on May 31, 1991 Tucson Electric Power Company (Tucson) tendered for filing an agreement entitled "1991 Short Term Power Sale Agreement Between Tucson Electric Power Company And San Diego Gas & Electric Company."

The parties request an effective date of July 1, 1991, and therefore request waiver of the Commission's regulations regarding filing.

Copies of the filing have been served upon all parties affected by this proceeding.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Pennsylvania Power & Light Co.

[Docket No. ER91-467-000]

Take notice that Pennsylvania Power & Light Company (PP&L) on May 31,

1991, tendered for filing a Supplement, dated as of May 31, 1991 ("First Supplemental Agreement"), to the Capacity and Energy Sales Agreement, dated December 21, 1989, between PP&L and GPU Service Corporation, as agent for Jersey Central Power & Light Company and Metropolitan Edison Company, which is on file with the Commission as PP&L's Rate Schedule FERC No. 100. The First Supplemental Agreement provides for an increase in the Installed Capacity Rate under the Agreement to reflect the increase in the rate for contract capacity under the Pennsylvania-New Jersey-Maryland Interconnection Agreement which was accepted for filing by the Commission on May 10, 1991 in Docket No. ER91-339-000, and which will become effective on June 1, 1991.

PP&L requests waiver of the notice requirements of section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1991.

PP&L states that a copy of its filing was served on GPU Service Corporation, the Pennsylvania Public Utility Commission, and the New Jersey Board of Public Utilities.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Central Vermont Public Service Corp.

[Docket No. ER91-473-000]

Take notice that Central Vermont Public Service Corporation on June 3, 1991, tendered for filing as an initial rate schedule a contract under which CVPS had agreed to sell capacity and energy associated with CVPS peaking system to Vermont Public Power Supply Authority (VPPSA).

CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedule that was filed in this docket to become effective May 1, 1991.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Pennsylvania Power & Light Co.

[Docket No. ER91-464-000]

Take notice that Pennsylvania Power & Light Company (PP&L) on May 31, 1991, tendered for filing a Supplement, dated as of May 28, 1991 ("First Supplement Agreement"), to the Capacity and Energy Sales Agreement, dated February 23, 1990, between PP&L and Atlantic City Electric Company, which is on file with the Commission as PP&L's Rate Schedule FERC No. 99. The First Supplemental Agreement provides for an increase in the Installed Capacity Rate under the Agreement to reflect the increase in the rate for contract capacity under the Pennsylvania-New Jersey-Maryland Interconnection Agreement which was accepted for filing by the Commission on May 10, 1991 in Docket No. ER91-339-000, and which will become effective on June 1, 1991.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1991.

PP&L states that a copy of its filing was served on ACE, the Pennsylvania Public Utility Commission, and the New Jersey Board of Public Utilities.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Electric Power Co.

[Docket No. ER91-470-000]

Take notice that on May 31, 1991, Southwestern Electric Power Company (SWEPCO) tendered for filing a Second Amendment, dated April 23, 1991, to the Letter Agreement, dated September 2, 1987, between SWEPCO and Empire District Electric Company (Empire). Under the Agreement, SWEPCO presently provides capacity to Empire, without reserves, and associated energy from time to time. The Second Amendment provides for a fixed monthly purchase by Empire of 5 MW of capacity without reserves for the period June 1, 1991 to November 30, 1991.

SWEPCO requests an effective date of June 1, 1991 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served upon Empire and the Missouri Public Service Commission. Copies are also available for inspection at SWEPCO's offices in Shreveport, Louisiana.

Comment date: June 21, 1991, in accordance with Standard Paragraph E end of this notice.

6. Pennsylvania Power & Light Co.

[Docket No. ER91-468-000]

Take notice that Pennsylvania Power & Light Company (PP&L) on May 31, 1991, tendered for filing a Supplement, dated as of May 31, 1991 (First Supplemental Agreement), to the Capacity Credit Sales Agreement, dated February 15, 1991, between PP&L and GPU Service Corporation, as agent for Jersey Central Power & Light Company, Pennsylvania Electric Company and Metropolitan Edison Company, which is on file with the Commission as PP&L's Rate Schedule FERC No. 102. The First Supplemental Agreement provides for an increase in the Installed Capacity Rate under the Agreement to reflect the increase in the rate for contract capacity under the Pennsylvania-New Jersey-Maryland Interconnection Agreement which was accepted for filing by the Commission on May 10, 1991 in Docket No. ER91-339-000, and which will become effective on June 1, 1991.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1991.

PP&L states that a copy of its filing was served on GPU Service Corporation, the Pennsylvania Public Utility Commission, and the New Jersey Board Public Utilities.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. UtiliCorp United Inc.

[Docket No. ES91-34-000]

Take notice that on June 4, 1991, UtiliCorp United Inc. ("Applicant") filed and application with the Federal Energy Regulatory Commission pursuant to § 204 of the Federal Power Act seeking authorization to issue not more than one million shares of common stock, par value $1.00 per share, pursuant to the UtiliCorp United Inc. Employee Stock Option Plan and for exemption from the Commission's competitive bidding regulations.

Comment date: July 3, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Pennsylvania Power & Light Co.

[Docket No. ER91-465-000]

Take notice that on May 31, 1991, Pennsylvania Power & Light Company (PP&L) tendered for filing a Capacity Credit Sales Agreement (Agreement) between PP&L and Atlantic City Electric Company (ACE), which complements the Capacity Credit Sales Agreement, dated February 23, 1990, between PP&L and ACE on file with the Commission as the Company's Rate Schedule FERC No. 99. The Agreement provides for the sale by PP&L to ACE of Daily Generating Capacity Megawatts solely for ACE's use in the Pennsylvania-New Jersey-Maryland (PJM) Interconnection's planned and/or accounted-for installed capacity accounting.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1991. Service

under the Agreement is expected to commence on June 1, 1991.

PP&L states that a copy of its filing was served on ACE, the Pennsylvania Public Utility Commission, and the New Jersey Board of Public Utilities.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Cogeneration Partners of America

[Docket No. QF90-176-001]

On May 30, 1991, Cogeneration Partners of America tendered for filing an amendment to their filing in this docket.

The amendment provides the Agreement of Limited Partnership for Vineland Cogeneration Limited Partnership.

Comment date: 21 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14036 Filed 6-12-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-29-NG]

North American Resources Co.; Application for Blanket Authorization To Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Canada and Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on April 10, 1991, of an application filed by North American Resources Company (NARCo), requesting blanket authorization to export up to a total of 73 Bcf of natural gas from the United States to Canada and/or Mexico over a two-year period beginning on the date of first delivery. NARCo intends to use existing pipeline facilities at the international borders the U.S. shares with Canada and Mexico. The company states that it will notify DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in Washington, DC, at the address listed below no later than 4:30 p.m. Eastern time, July 15, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

John Boyd, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, FE-53, 1000 Independence Avenue SW., Washington, DC 20485, (202) 586-4523.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-6667.

SUPPLEMENTARY INFORMATION: NARCo is a Montana corporation with its principal place of business in Butte, Montana. The company requests authorization to make short-term and spot market sales with terms of up to two years. NARCo proposes to export for its own account or act as agent for the purchase or sale of gas owned by others. The company states that the terms of each transaction will be negotiated at arms-length and will reflect competitive market conditions.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file

additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of NARCo's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 7, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-14087 Filed 6-12-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3964-8]

Region 6; Approval of PSD Permits and the Extension of a PSD Permit

Notice is hereby given that the Environmental Protection Agency (EPA), region 6, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. PSD-TX-500M-4—Shall Western E&P, Inc.—PSD-TX-500M-4 modifies PSD-TX-500M-3 to authorize: (1) The installation of a new sulfur recovery unit to replace a 3-stage Claus and tail gas incinerator; and (2) the debottlenecking of the facility to allow an increase in gas throughput from 180 to 290 MM SCFD. The existing CO_2 recovery plant is located off FM Road 1939, approximately 1.5 miles north of Denver City, Yoakum County Texas. This modified permit was issued on July 3, 1990.

2. PSD-TX-328M-3—Amerada Hess Corporation—PSD-TX-328M-3 modifies PSD-TX-328M-2 to authorize: (1) The installation of low emission combustors on the three Rolls-Royce Avon refrigeration compressor turbines; and (2) the reduction of inlet/treated gas compressor turbines from eleven to six and the refrigeration turbines from five to three. The existing gas processing plant is located on State Highway 214, approximately four miles northwest of Seminole, Gaines County, Texas. This modified permit was issued on July 3, 1990.

3. PSD-TX-118M-3—Union Carbide Chemicals and Plastics Company—PSD-TX-118M-3 modifies PSD-TX-118M-2 to authorize: (1) The production of the company's current product mix in one reactor, or operate both reactors to produce a single product; (2) the conversion of an existing isopentene storage tank to a crude n-hexane storage tank; (3) the installation of a new molecular sieve dryer, promoter supply system, catalyst blow tank and transfer system, product purge bin and moist purge bin filter; (4) replacement of a product discharge system on the G-2 Reactor with an "improved product discharge system;" and (5) a revision of the Intermittent Particulate Emission Table to increase the number of occurrences per year in order to allow production of new polyethylene resins. The existing Seadrift polyethylene plant is located on State Highway 185, approximately 14 miles south of Port Lavaca, Calhoun County, Texas. This modified permit was issued on July 17, 1990.

4. PSD-TX-752M-1—Quantum Chemical Corporation—PSD-TX-752M-1 modifies PSD-TX-752 to authorize: (1) The shipment of pyrolysis gasoline and vinyl acetate monomer by barges from an existing loading dock; and (2) changes in the Special Provisions to allow regeneration of the methyl acetate propadiene converter for 24 hours per year instead of 2 hours per year, and allow the decoking drum to operate 4352 hours per year instead of 2400 hours per year at the existing chemical plant located at 11603 Strang Road, La Porte, Harris County, Texas. This modified permit was issued on August 1, 1990.

5. PSD-TX-720M-2—Power Resources, Inc.—PSD-TX-720M-2 modifies PSD-TX-720M-1 to authorize the installation of a smaller diesel electric generator for gas turbine start-up and emergency stand-by use at the existing cogeneration facility located on Interstate 20, approximately one mile east of Big Spring, Howard County, Texas. This modified permit was issued on August 1, 1990.

6. PSD-TX-226M-6—Formosa Plastics Corporation Texas—PSD-TX-226M-6 modifies PSD-TX-226M-5 to authorize: (1) The operation of all 4 EDC crackers simultaneously, each limited to 8240 hours per year performance; and (2) the addition of Specific Conditions Numbers 7 and 13 for NESHAPS (subpart V) and NSPS (subpart W) for fugitive emissions. The existing chemical plant is located at 101 Formosa Drive, Point Comfort, Calhoun County, Texas. This modified permit was issued on August 3, 1990.

7. PSD-TX-334M-2—Oasis Pipeline Company—PSD-TX-334M-2 modifies PSD-TX-334M-1 to authorize the elimination of the RAC correction from the MEP-6 engines which are two-stroke, blower scavenged and intercooled. The RAC correction applies only to four-stroke naturally aspirated engines. The Winchester Compressor station is located on FM Road 448, approximately 11 miles southwest of Giddings, Fayette County, Texas. This modified permit was issued on September 10, 1990.

8. PSD-TX-493-1—CoGen Lyondell, Inc.—PSD-TX-493-1 modifies PSD-TX-493 to authorize the use of an ethane-propane fuel as an alternate to natural gas at the cogeneration facility located at 2330 Sheldon Road, Channelview, Harris County, Texas. This modified permit was issued on September 17, 1990.

9. PSD-TX-346M-2—Diamond Shamrock Refining and Marketing Company—PSD-TX-346M-2 modifies PSD-TX-346M-1 to authorize the removal of the continuous carbon monoxide monitor from the 20-P FCCU regenerator stack by meeting the waiver criteria in 40 CFR 60.105(2). The existing petroleum refinery is located on Highway 119, approximately seven miles southwest of Sunray, Moore County, Texas. This modified permit was issued on September 21, 1990.

10. PSD-TX-102M-4—Phillips Petroleum Company—PSD-TX-102M-4 modifies PSD-TX-102M-3 to authorize the CO boilers 409 and 410 to emit 393.3 lb/hr and 414 lb/hr of carbon monoxide, respectively. These emissions reflect the results of stack tests and satisfy BACT. The CO boilers were installed voluntarily in 1983, resulting in a 199,380 TPY decrease in CO. The refinery is located on State Highway 119, approximately three miles northeast of Borger, Hutchinson County, Texas. This modified permit was issued on September 26, 1990.

11. PSD-TX-771—Air Products Manufacturing Corporation—This permit, issued on October 9, 1990, authorizes the construction of a 210 MM

Btu/hr boiler at the existing chemical facility located at 1423 Highway 225, Pasadena, Harris County, Texas.

12. PSD-TX-661M-1—Texas Utilities Electric Company—PSD-TX-661M-1 modifies PSD-TX-661 to authorize: (1) An increase of the allowable emission rate for particulate matter (PM10) from 5 lbs/hr to 20.6 lbs/hr while firing natural gas for each of the six turbines; and (2) an increase in the allowable annual electrical production for ech turbine from 163,00 MW-hrs/yr to 840,960 MW-hrs/yr, while requesting that the total annual electrical production of the six turbines be decreased from 961,000 MW-hrs/yr to 864,000 MM-hrs/yr. The existing power plant is located on Highway 163, approximately four miles southwest of Colorado City, Mitchell County, Texas. This modified permit was issued on October 10, 1990.

13. PSD-TX-459M-1—Amoco Chemical Company—PSD-TX-459M-1 modifies PSD-TX-459 to authorize the retrofit of the existing steam superheater and hot oil heater with low-nitrogen oxide burners at the Plant B Styrene Unit No. 2. The existing chemical plant is located at 2800 FM Road 519 East, Texas City, Galveston County, Texas. This modified permit was issued on October 30, 1990.

14. PSD-TX-453M-3—Fina Oil & Chemical Company—PSD-TX-453M-3 modifies PSD-TX-453M-2 to authorize the modification of the Claus Recovery Unit to allow for oxygen enrichment of the air feed to the portion of this unit known as Sulfur Recovery Unit No. 1. The existing refinery is located on Highway 366, Port Arthur, Jefferson County, Texas. This modified permit was issued on October 31, 1990.

15. PSD-TX-761M-1—Oxy Petrochemical, Inc. (Formerly CCPC Chemical)—PSD-TX-761M-1 modifies PSD-TX-761 to authorize the changes in: (1) Special Provision 8 to indicate applicability; (2) Special Provisions 6 and 7 from Rule 111.21 of Regulation I to rule 111.111(9)(1)(E); (3) Special Provision 12 to allow for an initial compliance determination of opacity of the decoking cyclones with the opportunity to request stack testing should opacity exceed 10% as identified in Special Provision No. 19 of State Permit R-4862A; and (4) Special Provision 9 to reflect a two year limit of maintenance of production records. The existing olefins plant is located at 1501 McKenzie Road, Corpus Christi, Nueces County, Texas. This modified permit was issued on October 31, 1990.

16. PSD-TX-732M-1—Oxy Petrochemical, Inc. (Formerly Cain Chemical)—PSD-TX-732M-1 modifies PSD-TX-732 to authorize: (1) The deletion of the air contaminants which are either unregulated specifically by the Federal Clean Air Act or permitted by the State permit at levels less than the significance levels at 40 CFR 52.21(b)(23)(i); (2) the requirement of fuel oil sampling for sulfur, beryllium, arsenic and mercury; and (3) the clarification that the particulate matter limit is measured by EPA Method 5. The existing chemical plant is located at 1 CCPC Boulevard, Corpus Christi, Nueces County, Texas. This modified permit was issued on October 31, 1990.

17. PSD-TX-768—Mobil Oil Corporation—This permit, issued on October 31, 1990, authorizes the construction of a new reformer, amine regeneration unit and two new sulfur recovery units. In addition, a crude unit, hydrocracker and coker will be modified. The existing refinery is located at the end of Burt Street, Beaumont, Jefferson County, Texas.

18. PSD-TX-702M-3—Mobil Producing Texas and New Mexico, Incorporated—PSD-TX-702M-3 modifies PSD-TX-702M-2 to authorize the replacement of the existing flare tip with a more efficient flare tip. The existing Salt Creek Gas Plant is located approximately seven miles northwest of Clairemont, Kent County, Texas. This modified permit was issued on November 23, 1990.

19. PSD-TX-776—Occidental Chemical Company—This permit, issued on December 5, 1990, authorizes the construction of a 245 MM Btu boiler at the existing chemical plant located on State Highway 361, approximately two miles northwest of Ingleside, San Patricio County, Texas.

20. PSD-TX-716M-4—Encogen One Partners, Ltd—PSD-TX-716M-4 modifies PSD-TX-716M-3 to authorize an increase in the currently allowed 10 pounds per hour particulate matter emission rate for the three combustion turbines when firing fuel oil. The cogeneration facility is located at the U.S. Gypsum plant in Sweetwater, Nolan County, Texas. This modified permit was issued on December 27, 1990.

These permits have been issued under EPA's Prevention of Significant Air Quality Deterioration Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been filed with the Administrator.

Notice is hereby given that region 6, has extended the expiration date of the following PSD permit:

1. PSD-TX-32—Texas Utilities Services, Inc.—This permit, issued on September 22, 1977, authorized the construction of the Twin Oaks Steam Electric Station, which includes Units 1 and 2, auxiliary boilers and associated lignite, limestone and fly ash handling equipment. The Twin Oaks station is located on FM Road 979, approximately eleven miles east of Bremond, Robertson County, Texas. Construction was halted because the commercial operating date was deferred due to continued slow load growth in the commercial service area. On November 30, 1990, EPA region 6 extended the expiration date to May 30, 1992.

The PSD regulation at 40 CFR 52.21(r)(2) states that the Administrator may extend the 18-month period in which construction must commence if the company shows that an extension is justified.

A notice of EPA's proposed action to extend this PSD permit was published in a newspaper in the affected area of the facility.

Documents relevant to the above actions are available for public inspection during normal business hours at the Air, Pesticides and Toxics Division, U.S. Environmental Protection Agency, region 6, 1445 Ross Avenue, Dallas, Texas 75202.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of these actions is available, if at all, only by the filing of a petition for a review in the United States Fifth Circuit Court of Appeals within 60 days of June 13, 1991. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

This notice will have no effect on the National Ambient Air Quality Standards.

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

Dated: May 28, 1991.

Robert E. Layton, Jr.,

Regional Administrator, Region 6.

[FR Doc. 91-14102 Filed 6-12-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3965-4]

General Preamble for Title I of the Clean Air Act Amendments of 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft document availability and of public meeting.

SUMMARY: The EPA is planning to publish a General Preamble that describes EPA's policy and technical judgements related to implementing Title I of the Clean Air Act Amendments of 1990 (the Amendments), primarily those concerning State implementation plan (SIP) submittals for nonattainment areas. The General Preamble provides advice to States and other interested parties concerning what would be acceptable plan submittals. This Preamble also serves as the basis for subsequent EPA approval or disapproval action on the SIP submittals.

The General Preamble will cover moderate area requirements for particulate matter, all submittals due in the first 6-year period from enactment of the Amendments (November 15, 1990—November 15, 1996) for ozone and carbon monoxide, and all submittal requirements for sulfur dioxide and lead. Supplements to the General Preamble addressing future or additional SIP submittals and related State or EPA actions will be issued at a later date.

The General Preamble will not be a regulation, but rather a notice of Agency policy. The Preamble does not supersede existing State regulations or approved SIP's and does not constitute final EPA action, The public will have an opportunity to comment on the SIP's developed by the States and the issues addressed in the General Preamble as reflected in the SIP's.

Because of the broad interest in the General Preamble and the complexities of the issues it will address, EPA believes the many parties potentially affected by the Preamble should have an opportunity to discuss its content with EPA before preparation of a final document. This notice announces the public availability of a staff working draft of the General Preamble and EPA's intent to conduct a 2-day public meeting to discuss the ozone and carbon monoxide issues of particular concern to the parties affected by the Title I provisions. The staff work products for sulfur dioxide, particulate matter below 10 microns (PM-10), and lead are also available for public review and comment. However, given the very narrow range of issues raised by these pollutants, EPA does not presently plan to focus the discussion on the staff work products at this meeting. The public docket will remain open for 30 days after the meeting for receipt of written comments on the staff working draft of the Preamble. The Agency plans to use this process to obtain public comment on the staff working draft before developing final policies and issuing the final General Preamble.

DATES: The public meeting will be held June 25 from 9 a.m. to 3 p.m.

ADDRESSES: The public meeting will be held at the Sheraton Reston at 11810 Sunrise Valley Drive, Reston, Virginia 22091 [Phone No. (703) 620-9000] Participants should advise the hotel that they are attending the EPA meetings on the General Preamble.

To assist EPA in Planning the public meeting, persons interested in attending should contact Ms. MaryLou Leonard at (703) 824-8240, telefax (703) 998-3333, Scientific and Commercial Systems Corporation, 4651 King Street suite 200, Alexandria, Virginia 22302, to give their name and affiliation. Registration closes on June 19, 1991.

Comments: Written comments are due on or before July 26, 1991. Comments should be submitted (in duplicate, if possible) to: Air Docket section (A-131), Attention: (Docket No. A-91-35, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Availability of Staff Working Draft of the General Preamble: The staff working draft of the General Preamble for ozone and carbon monoxide and staff work products on sulfur dioxide, PM-10, and lead are available for copying from the docket (address below), and single copies are available from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Draft General Preamble for Title I of the Clean Air Act Amendments of 1990." A reasonable fee may be charged for copying multiple copies.

Docket: Docket No. A-91-35 is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room 1500, 1st Floor, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Sheila C. Holman at (919) 541-0861 or Mr. Brock Nicholson at (919) 541-5517, Policy Development Section, Ozone/CO Programs Branch (MD-15), for issues related to ozone or carbon monoxide; Ms. Gwen Jacobs at (919) 541-5295 or Mr. Eric Ginsburg at (919) 541-0877, Sulfur Dioxide/Particulate Matter Programs Branch (MD-15), for issues related to sulfur dioxide, particulate matter, or lead; U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The General Preamble is a guidance document which will address many of the issues expected to arise in implementing title I of the Amendments. The EPA believes most of these issues stem from the new provisions for major stationary sources of oxides of nitrogen (NOx), modeling requirements, specific control requirements, procedures for tracking progress, and the interface between title V and title I requirements. The major issues associated with these elements of title I of the Amendments are briefly described below under "Agenda and Schedule for the Public Meeting."

The EPA is interested in obtaining input from the public and affected parties on these and other issues that will be addressed in the General Preamble. EPA solicits input on these issues through the process of this public meeting and associated comment period. In particular EPA is interested in the public's thoughts regarding the approach the staff draft has taken in addressing these issues. In formulating the Preamble, EPA will carefully consider the input generated from this process. The EPA will produce a summary report which will include the points, suggestions, and recommendations received as part of this public input process and EPA's decisions on the various issues to support the final preamble. The report will be included in the docket and made available to the public as a supporting document.

The purpose of the June 25-26 meeting is to provide an opportunity for the public to discuss, comment on, and ask questions about all topics pertaining to ozone and carbon monoxide. Because the requirements of sulfur dioxide, PM-10, and lead have not changed as significantly under the Amendments as for ozone and carbon monoxide, staff work products for these pollutants are more direct in their treatment of key statutory provisions. In the course of developing the staff work products, EPA consulted a variety of experts within the Agency, as well as officials in several State air pollution control agencies. Therefore, EPA does not intend to discuss these work products at this meeting, but will reconsider this approach if a significant number of requests are received by June 19. The public is specifically encouraged, however, to review these products and to submit written comments and views during the comment period.

The emphasis at the June 25–26 meeting will be on gathering comments and questions rather than on presenting informational materials about the new requirements under the Amendments, except to the extent necessary to support discussion of the issues. In order to foster open discussion, the schedule for the meeting is structured around several recurring sessions that will provide different groups of participants the chance to discuss and comment on the issues under each of the different topics. In the interest of adhering to the schedule and ensuring that all topics are covered, EPA may find it necessary to limit the discussion on a given topic. Attendees are encouraged to come prepared to participate actively in the discussion of issues. The EPA requests that parties refrain from making formal oral presentations so as to permit more time for general discussion.

However, formal written presentations will be accepted at the meeting and during the comment period following the meeting.

The General Preamble will cover all criteria pollutants, but the current draft specifically addresses ozone and carbon monoxide and refers to final staff work products on sulfur dioxide, PM–10, and lead (contained in the docket and attached to the draft document). The final General Preamble document will integrate requirements for nonattainment area SIP's for all of the criteria pollutants.

General Agenda and Schedule for the Public Meeting

The topics to be covered at the meeting include, but are not limited to the following:

Ozone/Carbon Monoxide

Requirements for Sources of Oxides of Nitrogen. The Amendments established important new requirements for major sources of nitrogen oxides (NOx) which are located in ozone nonattainment areas. The requirements that apply to major sources of volatile organic compounds (VOC's) also apply to major NOx sources except in certain circumstances where the NOx reductions would not be beneficial overall in attaining the ozone national ambient air quality standard (NAAQS). These requirements are primarily (1) the adoption of State rules representing reasonably available control technology (RACT) on existing major NOx sources and (2) the review of new major NOx sources under the nonattainment new source review (NSR) provisions of section 173. The NSR provisions generally require sources to obtain offsets for their emissions and to install controls representing the lowest achievable emission rate.

Because of the implications for a large number of sources, it is important for the States and EPA to develop and apply appropriate and timely procedures for determining whether NOx control is needed. Issues arise in determining whether "air quality benefits" would be greater without NOx control, whether NOx controls would contribute to attainment, and whether "excess reductions" would result from the NOx controls. The EPA is considering simplified procedures that can be used to provide an early indication of the cases in which NOx control is warranted. These decisions could be verified later in more comprehensive demonstrations of attainment using photochemical dispersion modeling.

Additional issues arise in determining NOx RACT for affected sources and the relation of this requirement to the Title IV (acid rain) provisions.

Modeling. The Amendments specifically require serious and above ozone nonattainment areas to use photochemical grid modeling in preparing their demonstrations of attainment. Furthermore, the 4-year schedule provided to States for developing and submitting these modeling demonstrations reflects the difficulty and complexity of using these models.

The Amendments also require moderate and above ozone nonattainment areas to demonstrate that their plans, due within three years, will be sufficient to attain by the appropriate date. The following issues arise: (1) What type of model or other technique can be used within the three-year period to provide adequate assurance that the plan will provide for attainment, and (2) given that serious and above areas will be submitting photochemical grid modeling results in their demonstrations that are due four years after enactment, can this "4-year" demonstration also satisfy the requirement for moderate and above areas to demonstrate attainment in the "3-year" submittal?

Control Measures. The Amendments contain a number of specific control requirements for ozone nonattainment areas. Implementation of some of these controls raises certain issues (as described below) that need to be addressed in the General Preamble.

Certain RACT Rules: States are required to submit RACT rules within 2 years after enactment. The EPA, however, is required to issue Control Technique Guidelines (CTG's) for a number of significant stationary source categories within 3 years after enactment. The CTG's generally become the basis for State RACT rules for those specific source categories. Since the State RACT rules are required to cover all major VOC sources and some of EPA's CTG's will be for sources covered by the State rules, should the State be allowed to delay the development and adoption of certain RACT rules until EPA publishes those CTG's?

Requirements for "Nonconventional" Areas. The Amendments establish a classification system that was intended to cover all ozone and carbon monoxide nonattainment areas. However, there are several areas which have limited air quality data or "borderline" circumstances that are not addressed by the classification system. How should EPA establish requirements for these areas? What should be the attainment date for these areas?

Other Control Requirements. There are also issues of applicability and other specifications for NSR programs, motor vehicle inspection and maintenance programs, clean-fuel fleet programs, transportation control measures for ozone and carbon monoxide nonattainment areas, and gasoline vapor recovery programs for motor vehicle refueling (Stage II).

Tracking Progress. The Amendments contain important provisions directed at ensuring that States achieve the required progress toward attainment. In most cases this progress is based on reductions in the base emission inventory at a rate prescribed in the Amendments. When EPA finds these reductions are not occurring or when they have not been sufficient to provide for attainment in an area, the area becomes subject to additional control and planning requirements. Therefore, the methods used to calculate, project, and periodically update the emission inventory become of critical importance to an area and its sources.

Several questions arise regarding calculating and tracking emission reductions. Can, for example, emission reductions which result from improvements in the enforcement and monitoring of current regulations be counted toward the emission reduction requirements? Can NOx reductions which occur within the first 6 years after enactment be used to "offset" part of the VOC reduction requirements after that period? What steps should the State take every year (2 years, 3 years) to show that the planned emission reductions are occurring? What should be the requirements of the milestone demonstrations (due after the 6-year milestone and the 3-year periodic milestones)? What is the role of the

emission statements (that are required of sources in ozone nonattainment areas) in tracking progress toward attainment and reasonable further progress (RFP)?

Issues also arise with respect to the actions that occur when adequate progress is not achieved. The Amendments contain two general types of provisions to address situations where an area does not attain the standard by the applicable date or where RFP requirements are not met. Areas that do not attain are "bumped up" to a higher classification and subject to the control and planning requirements of the new classification. Timing issues arise particularly with marginal ozone areas that do not attain by their deadline (3 years after enactment). These marginal areas would have difficulty adopting and implementing the required controls for moderate areas and achieving the mandated emission reductions quickly enough to avoid missing the attainment deadline for moderate areas. As a result, such marginal areas could eventually be "bumped up" to the serious classification and subject to even more stringent controls. What steps should these marginal areas be required to take early to avoid this situation? What modeling activities and rule development steps can be taken to expedite implementation of mesures that will achieve sufficient emission reductions to ensure attainment by the deadline for moderate areas?

The Amendments also require SIP's to include contingency measures to address cases where the attainment date is not met or RFP is not achieved. In general, States must submit measures that can be implemented without further action by the State or EPA in the event the area does not attain the NAAQs or RFP is not achieved. But how many such measures are needed? How much emission reduction should the measures be capable of achieving? What does it mean to implement the measures "without further action by the State or EPA"?

Title V Interface with Title I/ Economic Incentive Program. The EPA's proposed regulations for State operating permit programs (56 FR 21712, May 10, 1991) raised several questions concerning the relationship of SIP's under title I to permits under title V. The title I staff working draft of the Preamble discusses ways to resolve these questions and asks for comment on the approach presented.

First (in the operating permit preamble) is the question of how to account for growth that is not a title I modification. Two options are presented in the staff working draft, both of which account for this growth up front in the SIP demonstration and then track the growth actually occurring. The second question concerns how to avoid unnecessary SIP revisions for minor changes at a source. The staff working draft suggests several SIP elements that could be handled solely by permits and others that could be shared by SIP's and by permits. The third question relates to development of RACT "protocols," or ways of more flexibly determining compliance with RACT limits. The EPA is developing protocols for two source categories and studying others and expects to produce the protocols by late 1991. The last question concerns the use of marketable permits or allowance trading. The draft proposes some basic principles that should govern these measures and that, when developed further, should help answer some of the practical questions, such as how to measure and account for trades in ozone nonattainment areas.

The public meeting will begin on June 25 at 9 a.m. with a plenary session which will conclude at 10:30 a.m. The agenda will be divided into four 2.5 hours blocks over the 2-day period and will cover the topic areas listed above.

Dated: June 10, 1991.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 91-14203 Filed 6-12-91; 10:42 am]

BILLING CODE 6560-50-M

[FRL-3964-5]

Custom Industrial Services, Inc. Site; Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122 (g) and (h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Custom Industrial Services, Inc. Site, Shelbyville, Kentucky with one hundred ninety nine (199) de minimis parties. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or consideration which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement and a list naming the de minimis parties are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE, Atlanta, Georgia 30365, 404-347-5059.

Written comment may be submitted to the person above by 30 days from the date of publication.

Dated: May 16, 1991.

H. Kirk Lucius,

Acting Director, Waste Management Division.

[FR Doc. 91-14103 Filed 6-12-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[GEN Docket No. 90-394; DA 91-649]

Albany Region Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The FCC is accepting the Albany area's (Region 30's) plan for public safety. By accepting this plan, the FCC enables the licensing of the 821-824/866-869 MHz spectrum for public safety to begin.

EFFECTIVE DATE: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, Washington, DC 20554 (202) 632-6497.

SUPPLEMENTARY INFORMATION:

1. On June 1, 1990, Region 30 (Albany) submitted its Public Safety Plan to the Commission for review. Region 30 is comprised of Albany, Broome, Cayuga, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Ostego, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Tioga, Tompkins, Warren, and Washington counties. The plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in its region. On August 20, 1990, Region 30 filed revisions to the plan, based on conversations with the Commission's staff and on April 22, 1991, the Region furnished the Commission with a list of vacant channels.

2. The Region 30 Plan was placed on Public Notice for comments, 55 FR 36701 (Sept. 6, 1990). The Commission received no comments in this proceeding.

3. We have reviewed the plan submitted for Region 30 and find that it conforms with the National Public

Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87-112, 3 FCC Rcd 905 (1987) 53 FR 1022, January 15, 1988, and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in the Albany area. We note, however, that the channel allotments contained in the Albany Plan may need to be modified to conform to the Arrangements between the United States and Canada, effective October 22, 1990, concerning use of the 821-824/866-869 MHz bands. 5 FCC Rcd 5793 (1990).

4. Accordingly, *It Is Ordered*, That the Public Safety Radio Plan for Region 30 Is Accepted, subject to the provisions of paragraph 3 above. Furthermore, licensing of the 821-824/866-869 MHz band in Region 30 may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 91-14117 Filed 6-12-91; 8:45 am]

BILLING CODE 6712-01-M

Beaver Springs Broadcasting Ltd. et al., Applications for New FM Stations

1. The Commission has before it the following mutually exclusive applications for four new FM stations:

Applicant, City and state	File No.	MM docket No.
A. Beaver Springs Broadcasting Limited; Beaver Springs PA.	BPH-900503MC	91-144
B. Sunbury Broadcasting Corporation; Beaver Springs, PA.	BPH-900503MF	
C. Mary Ann Fleisher; Beaver Springs, PA.	BPH-900503ML	
Issue heading and Applicants 1. Multiple Ownership, B 2. Comparative, A, C 3. Ultimate, A,C		
II		
A. Roy William Mayhugh; Big Pine, CA.	BPH-891228MF	91-146
B. David A. and Mary Ann Digerness; Big Pine, CA.	BPH-891228MI	
C. Janice D. and Jonathan Levin; Big Pine, CA.	BPH-891228ML	
Issue heading and Applicants 1. Comparative, All 2. Ultimate, All		
III		
A. Riley M. Murphy; Buena Vista, CO.	BPH-891214MW	91-147
B. Alpine Broadcasting Corporation; Buena Vista, CO.	BPH-891214MX	
Issue heading and Applicant(s) 1. Comparative, A,B 2. Ultimate, A,B		
IV		
A. Radio Lumpkin, Inc.; Lumpkin, GA.	BPH-891214MI	91-145
B. Dixie Broadcasting Corporation; Lumpkin, GA.	BPH-891214MK	
C. Georgia Women in Broadcasting, Limited Partnership; Lumpkin, GA.	BPH891214MO	
D. Patricia C. Cannington; Lumpkin, GA.	BPH-891214MP	
E. Lumpkin Broadcasting Partners; Lumpkin, GA.	BPH-891214NC	
Issue heading and applicant(s) 1. Air Hazard, C 2. Comparative, A,B,C,D,E 3. Ultimate, A,B,C,D,E		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth above. The text of each of these issues has been standarized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant

3. A copy of the complete HDO in this proceeding 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 may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (telephone (202)-452-1422).

W. Jan Gay, Assistant Chief,

Audio Services Division, Mass Media Bureau.

[FR Doc. 91-14118 Filed 6-12-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 91-27]

American President Lines, Ltd. v. Cyprus Mines Corporation and Cyprus Minerals Co.; Filing of Complaint and Assignment

Notice is given that a complaint filed by American President Lines, Ltd. ("Complainant") against Cyprus Mines Corporation and Cyprus Minerals Company ("Respondents") was served June 7, 1991. Complainant alleges the Respondents engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by obtaining ocean transportation at less than the applicable rates and charges by misdescribing cargo.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examiniation in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by June 8, 1992, and the final decision of the Commission shall be issued by October 6, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14038 Filed 6-12-91; 8:45am]

BILLING CODE 6730-01-M

[Docket No. 91-25]

Transportation Services, Inc. as Agent for Seaboard Marine, Ltd., et al. v. Frutech International; Filing of Complaint and Assignment

Notice is given that a complaint filed by Transportation Services, Incorporated as agent for Seaboard Marine, Ltd., Crowley Caribbean Transport, Inc. and Empresa Naviera Santa, Ltd. ("Complainants") against Frutech International ("Respondent") was served June 7, 1991. Complainants allege that Respondent engaged in

violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by failing and refusing to pay ocean freight and other charges lawfully assessed pursuant to the applicable tariffs or service contracts on thirty-two shipments of watermelons, cantaloupes and honey dew melons from Puerto Cortes, Honduras to Miami, Florida between December 1990 and February 1991.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by June 8, 1992, and the final decision of the Commission shall be issued by October 6, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14039 Filed 6-12-91; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 91-26]

Transportation Services, Inc. as Agent for Seaboard Marine, Ltd., et al. v. Prevor Marketing International, Filing of Complaint and Assignment

Notice is given that a complaint filed by Transportation Services, Incorporated as Agent for Seaboard Marine, Ltd., Crowley Caribbean Transport, Inc., and Empresa Naviera Santa, Ltd. ("Complainants") against Prevor Marketing International ("Respondent") was served June 7, 1991. Complainants allege that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by failing and refusing to pay ocean freight and other charges lawfully assessed pursuant to the applicable tariff or service contracts for thirty shipments of watermelons, cantaloupes and honey dew melons from Puerto Cores, Honduras to Miami, Florida between December 1990 and February 1991.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by June 8, 1992, and the final decision of the Commission shall be issued by October 6, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14040 Filed 6-12-91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-37]

Availability of Final Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR); Public Health Service (PHS); Department of Health and Human Services(DHHS).

ACTION: Notice.

SUMMARY: This notice announces the availability of the final versions of each of the third set of 30 final toxicological profiles prepared by ATSDR.

The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99-499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 et seq.) by establishing certain requirements for the ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These listes identified the 200 hazardous substances determined by both Agencies to pose the most significant potential threat to human health. The lists were published in the **Federal Register** on April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43615; and October 17, 1990 (55 FR 42067).

Notice of the availability of drafts of the third set (30) of toxicological profiles for public review and comment was published in the **Federal Register** on October 17, 1989 (54 FR 42568), with notice that a 90-day public comment period would be provided for each profile, starting from the actual release date. Following the close of each comment period, chemical-specific comments were addressed, and where appropriate, changes were incorporated into each profile. The public comments, the classification of and response to those comments, and other data submitted in response to the **Federal Register** notice bear the docket control number ATSDR-16. This material is available for public inspection at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia, between 8 a.m. and 4:30 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Susie Tucker, Agency for Toxic Substances and Disease Registry, Division of Toxicology (E-29), 1600 Clifton Road NE., Atlanta, Georgia 30333, Telephone: (404-639-6000).

SUPPLEMENTARY INFORMATION: Availability. This notice announces the availability of each of the third set (30) of ATSDR's final toxicological profiles as mandated by CERCLA. Additional final profiles will be announced in the **Federal Register** as they become available. The following toxicological profiles are available through the U.S. Department of Commerce, National Technical Information Service (NTIS), Springfield, Virginia 22161, Telephone: (1-800-336-4700).

Toxicological profile	NTIS order No.	CAS No.
1. Acrolein	PB/91/180307/AS	107-02-8
2. Acrylonitrile	PB/91/180489/AS	107-13-1

Toxicological profile	NTIS order No.	CAS No.
3. Ammonia	PB/91/180315/AS	7664-41-7
4 Asbestos	PB/91/180497/AS	1332-21-4
5. Bromoform	PB/91/180323/AS	75-25-2
Chlorodibromomethane		124-48-1
6. Chlorobenzene	PB/91/180505/AS	108-90-7
7. Chloromethane	PB/91/180331/AS	74-87-3
8. Copper	PB/91/180513/AS	7440-50-8
9. Creosote	PB/91/180349/AS	8001-58-9
10. Di-n-butylphthalate	PB/91/180521/AS	84-74-2
11. 1,2-Diphenylhydrazine	PB/91/180356/AS	122-66-7
12. 1,1-Dichloroethane	PB/91/180539/AS	75-34-3
13. cis-1,2-Dichloroethene	PB/91/180364/AS	156-59-2
trans-1,2-Dichloroethene		540-59-0
14. Endrin	PB/91/180547/AS	72-20-8
Endrin Aldehyde		7421-93-4
15. Ethylbenzene	PB/91/180372/AS	100-41-4
16. Ethylene Oxide	PB/91/180554/AS	75-21-8
17. Hexachlorobenzene	PB/91/180380/AS	118-74-1
18. Naphthalene	PB/91/180562/AS	91-20-3
2-Methylnaphthalene		91-57-6
19. Nitrobenzene	PB/91/180398/AS	91-20-3
20. Polycyclic Aromatic Hydrocarbons (PAHs) PB/91/181537/AS		
Acenaphthene		83-32-9
Acenaphthylene		208-96-8
Anthracene		120-12-7
Benzo(a)anthracene		56-55-3
Benzo(a)pyrene		50-32-8
Benzo(b)fluoranthene		205-99-2
Benzo(g,h,i)perylene		191-24-2
Benzo(k)fluoranthene		207-08-9
Chrysene		218-01-9
Dibenzo(a,h)anthracene		53-70-3
Fluoranthene		206-44-0
Fluorene		86-73-7
Indeno(1,2,3-cd)pyrene		193-39-5
Phenanthrene		85-01-8
Pyrene		129-00-0
21. Plutonium	PB/91/180406/AS	7440-07-5
22. Radium	PB/91/180414/AS	7440-14-4
23. Radon	PB/91/180422/AS	10043-92-2
24. Silver	PB/91/180430/AS	7440-22-4
25. Thorium	PB/91/18180448/AS	7440-29-1
26. Toxaphene	PB/91/180455/AS	8001-35-2
27. 1,1,1-Trichloroethane	PB/91/180463/AS	71-55-6
28. 2,4,6-Trichlorophenol	PB/91/181545/AS	88-06-2
29. Uranium	PB/91/180471/AS	7440-61-1
30. Total Xylenes	PB/91/181552/AS	1330-20-7

Dated: June 7, 1991.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 91-14176 Filed 6-12-91; 8:45 am]

BILLING CODE 4160-70-M

Administration for Children and Families

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) for approval an existing information collection, Final Rule for the Child Abuse Prevention and Treatment Act.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Angela Antonelli, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Final Rule for the Child Abuse Prevention and Treatment Act.

OMB No.: 0980-0165.

Description: In order to receive a Basic State Grant under the Child Abuse and Neglect program, the Child Abuse Amendments of 1984 (Pub. L. 98-457) added a new section 4(b)(2)(K) to the Child Abuse Prevention and Treatment Act (the Act). This section requires States to establish programs and/or procedures within the Child Protective Services (CPS) system to respond to reports of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions (medical neglect).

Regulations were promulgated at 45 CFR 1340.15. Paragraph (d) of that section requires States to document compliance with the requirements of paragraph (c) by submitting a copy of the written programs and/or procedures developed, accompanied by documentation that the State has authority under State law for the CPS system to pursue any legal remedies as required.

The documentation submitted by the States will be used by the Department to determine whether the State has met the statutory requirements established in order to be eligible to receive Child Abuse and Neglect Basic State Grant funds. The award of Child Abuse and

Neglect Basic State Grant funds is contingent upon State compliance with the eligibility requirements specified in the Act. The Department would be unable to determine State compliance without the documentation requested from the States.

Annual Number of Respondents: (approximately) 52.

Annual Frequency: 1.

Average Burden Hours Per Response: (varies) 4 to 760.

Total Burden Hours: 4,240.

Dated: June 6, 1991.

Donna N. Givens,

Deputy Assistant Secretary for Children and Families.

[FR Doc. 91-14062 Filed 6-12-91; 8:45 am]

BILLING CODE 4130-01-M

Centers for Disease Control

The Division of Tuberculosis Elimination (DTE), Center for Prevention Services (CPS), Centers for Disease Control (CDC); Meeting

Name: Adherence and Tuberculosis Elimination: Workshop on Research and Evaluation for the 1990s.

Time and Date: 8 a.m.-5 p.m., July 8-9, 1991.

Place: Holiday Inn Atlanta-Decatur Conference Plaza, 130 Clairemont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of the workshop is to review current research and to discuss and define future research needs.

Matters to be Discussed: State and local representatives of tuberculosis treatment centers and academic researchers in the areas of tuberculosis treatment, preventive therapy for tuberculosis, and patient adherence or compliance will discuss the current status of research on adherence both generically and as it relates to tuberculosis.

Contact Person for Additional Information: Esther Sumartojo, Ph.D., Behavioral Scientist, Clinical Research Branch, DTE, CPS, CDC, Mailstop E-10, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/639-2544 or FTS 236-2544.

Dated: June 7, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91-14047 Filed 6-12-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 91M-0184]

Cardiac Pacemakers, Inc.; Premarket Approval of the Ventak® P Model 1600 AICD™ and the Model 2830 Software Module

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Cardiac Pacemakers, Inc., St. Paul, MN, for premarket approval, under the Medical Device Amendments of 1976, of the Ventak® P Model 1600 AICD™ and the Model 2830 Software Module. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 2, 1991, of the approval of the application.

DATES: Petitions for administrative review by July 15, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mark D. Kramer, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1194.

SUPPLEMENTARY INFORMATION: On November 27, 1989, Cardiac Pacemakers, Inc., St. Paul, MN 55112-5798, submitted to CDRH an application for premarket approval of the Ventak® P Model 1600 AICD™ and the Model 2830 Software Module. The Ventak® P Model 1600 Automatic Implantable Cardioverter Defibrillator (AICD™) is indicated for the treatment of ventricular tachyarrhythmias in patients who are at high risk of sudden cardiac death. Such patients are defined as having experienced one or both of the following situations:

(1) Survived at least one episode of cardiac arrest presumably due to hemodynamically unstable ventricular tachyarrhythmia unassociated with acute myocardial infarction; and

(2) Experienced recurrent ventricular tachyarrhythmias in the absence of such previous arrest and are inducible into sustained hypotensive ventricular tachycardia or fibrillation despite conventional antiarrhythmia drug therapy.

On August 21, 1990, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On May 2, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Mark D. Kramer (HFZ-450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) 21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 15, 1991, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 31, 1991.

Elizabeth D. Jacobson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 91-14055 Filed 6-12-91; 8:45 am]

BILLING CODE 4160-01-M

Indian Health Service

Tribal Management Program for American Indians/Alaska Natives Grants Application Announcement

AGENCY: Indian Health Service, HHS.

ACTION: Notice of final funding priorities for competitive grant applications for Tribal Management Grants for American Indians/Alaska Natives.

SUMMARY: The Indian Health Service (IHS) announces the final funding priorities for fiscal year (FY) 1991 Tribal Management Grants for American Indians/Alaska Natives, under the authority of section 103(b)(2) of the Indian Self-Determination and Education Assistance Act, Public Law 93-628, as amended by Public Law 100-472, 25 U.S.C. 450h(b)(2).

Program Purpose: To improve the management capacity of a tribal organization to enter into a contract under Public Law 93-638.

Tribal management grants assist tribal organizations to assume operation of all or part of an existing IHS direct operation health care program by enabling them to develop and maintain their management capabilities.

Tribal Management grants are also available for tribal organizations under the authority of Public Law 93-638 section 103(e) for obtaining technical assistance from providers designated by the tribal organization, including tribal organizations that operate mature contracts, for the purposes of (1) program planning and evaluation, including the development of any management systems necessary for contract management, and the development of cost allocation plans for indirect cost rates, and (2) the planning, designing, monitoring, and evaluation of Federal health programs serving the tribe, including Federal administrative functions.

Tribal management grants may not be used to support operational programs or to supplant existing public and private resources. The grants may, however, be used as matching shares for other Federal grant programs that develop tribal capabilities to contract for the administration and operation of health programs.

These grants will be awarded and administered in accordance with the published program announcement in the **Federal Register** of March 19, 1991 (56 FR 11562); Department of Health and Human Services regulations governing Public Law 93-638 grants at 42 CFR 36.101 et seq. and 45 CFR part 92, Department of Health and Human Services Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or 45 CFR part 74, Administration of Grants to Non-Profit recipients; the Public Health Service Grants Policy Statement; and applicable Office of Management and Budget circulars.

Program Funding Priorities: Only one tribal management grant will be awarded and funded to a tribe or tribal organization per funding cycle. Proposed funding priorities were published in the **Federal Register** of March 19, 1991 (56 FR 11562) for public comment. No comments were received during the 30-day comment period. Therefore, as proposed the following funding authorities will be retained as listed below.

Priority I

An Indian tribe that has received Federal recognition (new, restored, unterminated, funded or unfunded) within the past three (3) years and is in the process of establishing health care services. (Verification of documents is required, i.e.: Letter of Acknowledgment, **Federal Register** notice.)

Priority II

An Indian tribe or Indian tribal organization stating an interest in contracting IHS health programs for the first time. The feasibility study will address requirements for assumption of currently operated IHS health programs.

Priority III

An Indian tribe or Indian tribal organization planning to develop/update their health plan, develop tribal health management structure, human resource development, and evaluation studies to expand their operation of health programs.

Priority IV

An Indian tribe or Indian tribal organization currently operating all health programs previously provided by IHS, which plans to update its health plan, enhance its tribal health management structure, facilitate human resources development, and conduct evaluation studies.

Objective Review

Applications meeting eligibility requirements that are complete and conform to the published program announcement in the **Federal Register** of March 19, 1991 (56 FR 11562) will be reviewed by a centralized Ad Hoc Objective Review Committee (ORC) conducted at the IHS Headquarters and in accordance with PHS objective review procedures. The objective review process ensures nationwide competition for limited funding. The ORC will be comprised of IHS staff (40% or less) and other Federal or non-Federal individuals (60% or more) with appropriate expertise. The ORC will review each application against established criteria. Based upon the evaluation criteria, the reviewers assign a numerical score to each application, which will be used in making the final funding decision.

Evaluation Criteria

1. Introduction

—Does the Introduction have the funding priority identified and justified?
—Is only one project type selected?
—Is a specific/blanket tribal resolution attached to the application?
—Is the approved tribal resolution (specific/blanket) current?

2. Need for Assistance

—Is there an explanation of the reason for the project?
—Is the precise location of the project or area to be served by the proposed project including a map provided?
—Does it describe the overall and specific need for assistance by explaining the current situation or demand and unmet requirements (i.e., resources, staffing, equipment, training, etc.)?
—Are relevant statistical/historical data included?
—Is data collection, analysis and maintenance addressed?
—State impact of previous or current tribal management grant on this application.

3. Objective(s), Result and Benefit Expected

—Principal and subordinate objectives of the project are stated in realistic and measurable terms?
—The population, number of participants and personnel to benefit from the project are defined?

—The expected results, benefits and outcome or product to be derived from this project are identified?
—The relationship between this project and other work planned, anticipated, or underway which are supported by other Federal funds are identified?

4. Approach

—An outline of the plan of action and program activities to achieve each objective is provided? Activities need to be grouped under the objective they are designed to achieve. Indicate staff position responsible for each activity. Identifies IHS staff used for technical assistance, if any?
—Provides a workplan including start and completion calendar of activities?
—Identifies data collection, analysis and maintenance.
—If required, identifies the scope of work for a consultant or contractor?
—Describes any unusual features of the project, if any which may affect the project (i.e.: design, uniqueness, reduction in cost or time, or special social and community involvement)?
—Identifies the accomplishments, deliverables/outcomes to be achieved?
—Describes the evaluation component of the project to determine the achievement of the projected accomplishments (deliverables/outcomes)?
—Identifies who will conduct the evaluation to determine the achievements of the projected deliverables/outcomes?
—Identifies who in the tribal/organization structure will receive the final results of the grant?

5. Key Personnel

—Provides a position description and resume for professional staff.
—Are qualifications and experience of consultants or contractors identified where applicable?

6. Adequacy of Management Controls

—Prepares a budget and descriptive narrative. The budget narrative provides a rationale/justification of cost and purchasing of equipment (i.e., computer hardware/software).
—Describes adequacy of facilities and equipment for the project?
—Lists equipment purchases necessary for implementation of the project, include a narrative rationale and justification (i.e., computer hardware/software)? Identifies the IHS Area Office contact used to determine compatibility of any ADP equipment purchases with IHS systems?

FOR FURTHER INFORMATION CONTACT: Ms. Bea Bowman, Division of Community Services, Indian Health Service, Parklawn Building, room 6A-05, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-6840.

This program is described at 93.228 in the Catalog of Federal Domestic Assistance (previously at 13.228). Executive order 12372, requiring intergovernmental review is not applicable to this program.

Dated: June 7, 1991.

Everett R. Rhoades,

Assistant Surgeon General, Director.

[FR Doc. 91-14041 Filed 6-12-91; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Wind River Irrigation Project; Proposed 1991 Guidelines

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Public notice.

PURPOSE: Proposed 1991 Irrigation Season Procedural Guidelines for the Operation and Maintenance of the Wind River Irrigation Project (Project).

SUMMARY: The Code of Federal Regulations (25 CFR 171.1(c)) provides as follows: "The Officer in Charge is responsible for performing such work and taking any action which in his judgement is necessary for the proper operation, maintenance and administration of the irrigation project or unit."

Pursuant to this authority, the following operational procedures will be used to direct daily operations of the Bureau of Indian Affairs' Wind River Indian Irrigation Project (Project), for the 1991 irrigation season. These procedures will provide guidelines for irrigators to use in planning their irrigation requirements.

Our intent is to provide fair and equitable distribution of water in accordance with the Code of Federal Regulations and the Big Horn Water Decree (*In re: The General Adjudication of All Rights to Use Water in the Big Horn river System and All Other Sources*, State of Wyoming, Civil No. 4993)

These are interim procedures. They will be effective immediately and remain in effect while written data, views and arguments are received and evaluated, after which final procedures will be published.

Wind River Irrigation Project

Water Delivery Procedures

1. Under normal conditions water will be delivered at a base rate of 2 cubic feet per second (cfs) per 70 acres to Project lands with a decreed 1868 "reserved" water right, and 1 cfs per 70 acres to all other project lands.

2. Under drought conditions, all lands with a decreed 1868 "reserved" water right will be delivered water first at a base rate of 2 cfs per 70 acres. Any additional available water will be divided evenly among junior water users, unless voluntary rotation is requested, at a base rate of 1 cfs per 70 acres. For this purpose, drought will be determined on a unit by unit basis and is defined as water shortage which prevents water delivery to Project lands with a decreed 1868 "reserved" water right at a base rate of 2 cfs per 70 acres and to all other Project lands at a base rate of 1 cfs per 70 acres in any Project unit.

3. When water is available in any Project unit above the amount sufficient to fulfill water user needs under normal conditions, water will be delivered to Project lands without a decreed 1868 "reserved" water right to the extent that such lands are delivered water up to a base rate of 2 cfs per 70 acres. Water available after all water demands have been met at a base rate of 2 cfs per 70 acres will be deemed surplus water and will be apportioned pro rata among all water users in a Project unit.

4. In all cases, beneficial use is the limit and measure of water delivery to Project lands.

5. Drought, Normal and Surplus conditions will be determined under authority of the Officer in Charge of the Project in accordance with all applicable laws and regulations.

6. "Walton Right" claimants will receive water for their Project lands on a priority basis during drought conditions as all other Project lands having a decreed 1868 "reserved" water right, but only after such claimants have their Project lands decreed as being entitled to such priority by the District Court of the State of Wyoming.

7. The service or farm ditches into which water is delivered from project laterals must have ample capacity and be maintained by the water user in proper condition to receive water and convey it to the place of use with a minimum of loss. Water delivery will be refused to such ditches not satisfactorily maintained.

8. All fences, installations, or any other infringements on or across Project rights-of-way shall be approved by the Officer in Charge of the Project. In no event, however, shall any fence, installation or infringement interfere with the flow of water, passage of Project employees or equipment, or any

other right and entitlement to the full use of the right-of-way by the Project.

9. Any person who without authority, interferes with the flow of water, opens or closes a headgate, changes a water control structure, cuts a ditch bank to divert water, or places an obstruction in such facilities to change the flow of water, as described in 25 CFR 171.6(b), shall be subject to a civil penalty not to exceed five hundred dollars ($500.00) and shall be subject to prosecution for criminal violations pursuant to Title 18 of the United States Code. The possession or use of water, lawfully denied by the Officer in Charge of the Project, is prima facie evidence of guilt.

Alleged violations will be investigated by irrigation personnel and law enforcement officials of the Wind River Agency. If such investigation substantiates that a violation has occurred, the violator will be charged in the court of proper jurisdiction or appropriate administrative action will be taken.

This notice will be published and posted at the following locations:

U.S. Post Office	Newspaper
Riverton, WY 82501	Riverton Ranger.
Lander, WY 82520	Riverton, WY 82501.
Bureau of Indian Affairs: Wind River Agency, Fort Washakie, WY 82514.	Wyoming State Journal, Lander, WY 82520.

COMMENTS: Written comments must be submitted to the Superintendent of the Wind River Agency, Fort Washakie, Wyoming 82514 within 30 days after the publication of this notice in the **Federal Register** and before the close of business on the 30th day.

SUPPLEMENTARY INFORMATION: This notice is issued pursuant to the code of Federal Regulations, Chapter 25, part 171, under the authority delegated to the Area director, by the Assistant Secretary of Indian Affairs and the Deputy Assistant Secretary of the Interior (Departmental Manual, chapter 3, part 230, (3.1 & 3.2)).

Norris M. Cole,

Acting Billings Area Director.

[FR Doc. 91-14011 Filed 6-12-91; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Land Management

[AK-963-4230-15; AA-70150]

Alaska Native Claims Selection

In accordance with Departmental regulations 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), will be issued to Calista Corporation for approximately 43,895 acres. The lands involved are in the vicinity of Nyac, Alaska.

Seward Meridian, Alaska

(Unserveyed)

T. 11 N., R. 59 W.,
Secs. 3, 4 and 5;
Secs. 7 to 10, inclusive;
Secs. 15 to 22, inclusive;
Secs. 30.
Containing approximately 10,136 acres.

T. 12 N., R. 59 W.,
Secs. 27, 28 and 29;
Secs. 32, 33 and 34.
Containing approximately 3,840 acres.

T. 10 N., R. 60 W.,
Secs. 4 to 8, inclusive;
Secs. 17 and 18.
Containig approximately 4,426 acres.

T. 11 N., R. 60 W.,
Secs. 2 to 6, inclusive;
Secs. 9, 10 and 11;
Sec. 16;
Sec. 21;
Secs. 24 to 33, inclusive.
Containing approximately 12, 725 acres.

T. 12 N., R. 60 W.
Secs. 31 to 35, inclusive.
Containing approximately 3,168 acres.

T. 10 N., R. 61 W.,
Secs. 1 to 4, inclusive;
Secs. 9 to 12, inclusive;
Sec. 15.
Containing approximately 5,760 acres.

T. 11 N., R. 61 W.
Secs. 27, 28 and 29;
Secs. 32, 33 and 34.
Containing approximately 3,840 acres.
Aggregating approximately 43,895 acres.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Tundra Drums. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 15, 1991, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Joan Biggs,

Land Law Examiner, Branch of Calista Adjudication

[FR Doc. 91-14054 Filed 6-12-91; 8:45 am]

BILLING CODE 4310-JA-M

[AK-919-01-4830-02-ADVB]

Northern Alaska Advisory Council; Meeting

The Northern Alaska Advisory Council will conduct a field trip to the Seward Peninsula July 18 through July 21, 1991. There will be both on-the-ground visits and aerial over-flights of BLM-managed lands during the trip.

Two public meetings will be held in conjunction with the trip. Topics of discussion for both meetings will be:

(1) Seward Peninsula Resource Management Plan Issues,

(2) Fisheries, Wildlife and Recreation Opportunities,

(3) Cultural Resource Projects, and

(4) Reindeer Grazing Program and Caribou Habitat Management.

The Council will hold a public meeting Thursday, July 18, 1991, at the NANA Conference Room at the Drift Inn in Kotzebue, Alaska. The meeting will begin at 7 p.m., public comment will be taken from 7:30 to 8:30 p.m., and the meeting will end at 9 p.m.

The Council will hold a second public meeting Friday, July 19, 1991, at the Nome City Council Chambers in Nome, Alaska. The meeting will begin at 7 p.m., public comment will be taken from 7:30 to 8:30 p.m., and the meeting will end at 9 p.m.

For information, contact the Public Affairs Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709, telephone (907) 474-2231.

Dated: June 3, 1991.

Dee Ritchie,

Designated District Manager.

[FR Doc. 91-14015 Filed 6-12-91; 8:45 am]

BILLING CODE 4310-JA-M

[UT-050-01-4320-14]

Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District Grazing Advisory Board meeting.

SUMMARY: The Richfield District Grazing Board will hold a meeting on August 6, 1991. The meeting will start at 10 a.m. in

the District Office, 1s50 East 900 North, Richfield Utah. The agenda will be:

1. Election of Officers.
2. Program priorities F.Y. 93.
3. South Narrows Otter Creek Multiple Use Plan.
4. Change in class of livestock.
5. Update on Bison/Livestock Management.
6. Status of Henry Mountain Resource Area Planning.
7. Wild Horse and Burro program.
8. District forage condition.
9. Allotment Management Plan Development.

Interested persons may make oral statements to the Board between 1:15 p.m. and 2:15 p.m. or file written comments for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701 (801-896-8221). For further information contact: Sheril Slack, District Range Conservationist at the above address.

Dated: June 6, 1991.

Sam Rowley,

Assistant District Manager, Resources.

[FR Doc. 91-14084 Filed 6-12-91; 8:45 am]

BILLING CODE 4310-DQ-M

[NM-010-5101-09-YGKJ/GI-0111; NMNM80900]

Right-of-Way Application for 30 Inch Diameter Pipeline; Correction

In notice document 91-11604, page 22734 in the Thursday, May 16, 1991 issue, the legal description should be corrected to read as follows:

New Mexico Principal Meridian

T. 16 N., R. 17 W.,
Sec. 26, NW¼SW¼.
T. 24 N., R. 13 W.,
Sec. 30, lot 7, E½SW¼.
T. 28 N., R. 11 W.,
Sec. 7, SE¼SE¼;
Sec. 10, lot 3, SW¼SW¼;
Sec. 16, NE¼, W½SW¼, NW¼SE¼;
Sec. 20, SE¼NE¼, SE¼SW¼, SE¼;
Sec. 21, W½NW¼;
Sec. 29, N½SW¼.
T. 29 N., R. 11 W.
Sec. 26, SE¼SW¼;
Sec. 33, lot 1;
Sec. 34, lot 1, E½SW¼, N½SE¼, S½NE¼;
Sec. 35, N½NW¼.

Dated: June 7, 1991.

Patricia E. McLean,

Associate District Manager.

[FR Doc. 91-14094 Filed 6-12-91; 8:45 am]

BILLING CODE 4310-FB-M

[CA-010-4212-13; CACA 28305]

Realty Action; Exchange of Public Land in Placer County, CA

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: The following described public land is being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Selected Public Land

Placer County, California
T. 15 N., R. 10 E., MDM,
Sec. 8: W½ SE¼
Containing 80 acres, more or less.

This is an isolated tract surrounded on all four sides by private property. Located within BLM's Folsom Resource Area, the tract is being considered for a possible transfer to a nonprofit conservation organization such as the Nature Conservancy or the Trust for Public Land. In exchange the United States proposes to acquire important wetlands and waterfowl habitat located in the Central Valley of California.

The Central Valley was identified in 1986 by the International North American Waterfowl Management Plan as an area critically in need of waterfowl habitat development and protection. Approximately 60 percent of the waterfowl populations in the Pacific Flyway winter in the Central Valley were 93 percent of the marshlands have been destroyed during the past century. This proposal is consistent with the North American Waterfowl Management Plan and with the Central Valley Habitat Joint Venture. The proposal is also in conformance with the Bureau's land use plans.

The Federal land described above (surface and mineral estate) would be transferred subject to certain reservations, terms and conditions. There would be reserved to the United States a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 945); also rights-of-way of record would be identified as prior existing rights. All necessary clearances including clearances for archeology, rare plants and animals would be completed prior to any conveyance of title by the United States.

ADDRESSES: In or before July 29, 1991, interested parties may submit comments to the BLM District Manager, c/o Folsom Resource Area Office, 63 Natoma St., Folsom, CA 95630.

FOR FURTHER INFORMATION: Contact Mike Kelley at (916) 985-4474 or at the address listed above.

D.K. Swickard,

Area Manager.

[FR Doc. 91-14081 Filed 6-12-91; 8:45 am]

BILLING CODE 4310-40-M

[CO-050-4212-13]

Realty Action; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to notice of realty action, COC-51086, addressing addition of public land to exchange proposal in Chaffee County, Colorado.

SUMMARY: The following described public land has been selected by the exchange proponent to allow for equalization of appraised values:

Sixth Principal Meridian

T.14S., R.79W.
Sec. 13, SW¼SE¼
Sec. 23, N½SE¼
Sec. 24, N½SW¼, N½NE¼

The above is 280 acres and brings the total public land in the exchange proposal to 600 acres in Chaffee County. This amendment supplements the notice published in **Federal Register** dated November 28, 1990, Vol. 55 No. 229; 49431.

The purpose of the exchange is to acquire recreational land for the Arkansas Headwaters Recreational Area on the Arkansas River for rafting and fishing below Brown's Canyon.

The public land parcels are isolated and identified for disposal in the Royal Gorge MFP.

DATES: Comments will be accepted on or before July 29, 1991.

ADDRESSES: Known interested parties will be mailed a notice on this proposal.

All persons must submit comments to the District Manager, Bureau of Land Management, P.O. Box 2200, Canon City, Colorado 81215-2200. Please refer to case file COC-51086 for any comments submitted.

FOR FURTHER INFORMATION CONTACT: Mark Pyle, Realty Specialist, Bureau of Land Management, Royal Gorge Resource Area, P.O. Box 2200, Canon City, Colorado 81215-2200; Phone: (719) 275-0631.

SUPPLEMENTARY INFORMATION: The 160 acres west of Buena Vista is south of Highway 306 and divided by Chaffee County Road No. 339, and is open, flat grass land. The 120 acres is bordered by

Chaffee County Road No. 328 and also open, flat grassland.

The publication of this notice segregates the public lands described above from the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, for a period of 2 years from the date of first publication.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 91-14095 Filed 6-12-91; 8:45 am]

BILLING CODE 4310-JB-M

[NM-060-01-4333-10-603]

Intent To Prepare Resource Management Plan; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare resource management plan amendment and invitation to participate in the identification of the issues and planning criteria.

SUMMARY: The BLM, Carlsbad Resource Area, Carlsbad, New Mexico, is initiating the preparation of an amendment to the Carlsbad Resource Management Plan (RMP) which was completed in 1988. The amendment will be prepared along with the Roswell Resource Management Plan (RMP), announced in the **Federal Register** on August 25, 1989, Vol. 54, No. 164, page 35403.

The RMP Amendment will provide direction for future oil and gas exploration and development on federal mineral estate in the Carlsbad Resource Area, as well as analyzing the cumulative impacts associated with such exploration and development on approximately 2.2 million surface and 2.7 million subsurface acres. Resource programs which were not addressed in the 1988 Carlsbad RMP or which have undergone significant policy changes since its completion will also be addressed. The Code of Federal Regulations, title 43, subpart 1600, will be followed for this planning effort. The public is invited to participate in the planning process, beginning with the identification of issues and planning criteria in June 1991.

DATES: Comments relating to the Carlsbad Resource Area RMP amendment, or the scope of and the issues and planning criteria for the Roswell Resource Area's RMP will be accepted until August 16, 1991.

ADDRESSES: Send comments to Pat Kelley, RMP Team Leader, Bureau of Land Management, Roswell Resource Area, P.O. Drawer 1857, Roswell, New Mexico 88202.

FOR FURTHER INFORMATION CONTACT: Dick Manus, Carlsbad Area Manager, 505-887-6544, or Saundra L. Allen, Roswell Area Manager, 505-624-1790.

SUPPLEMENTARY INFORMATION: The planning area, covered by the RMPA, includes the public land and Federal mineral ownership in Lea and Eddy Counties, and a portion of Chaves County in southeastern New Mexico. The RMPA will address the exploration for, and the development of the oil and gas resources, as well as those resource programs which were not addressed in the RMP or which have had significant policy changes since its development. Examples of other programs which will be addressed are fire management and hazardous materials. These programs will be addressed as district-wide issues or concerns. The RMPA will be developed by an Interdisciplinary Team which will include specialists representing Range, Oil & Gas, Wildlife, Recreation, Archaeology, Lands, Surface Protection, Soils & Watershed, Fire Management, and Non-Energy Minerals. A comprehensive public participation plan has been prepared. Its goal is to involve interested or affected parties early and continuously throughout the planning process with localized one-on-one contacts, media coverage, direct mailings, and continued coordination with local, State, and other Federal agencies. Public meetings to receive input on the RMPA for the Carlsbad Resource Area, and to determine the scope of and to obtain input on the issues for the Roswell Resource Area's RMP will be held in the following locations: July 17, 1991, Roswell Public Library, Bondurant Room, 301 North Pennsylvania, Roswell, New Mexico; July 18, 1991, Hobbs City Hall, Meeting Room A, 300 North Turner, Hobbs, New Mexico; July 24, 1991, Fletcher Hall, Lincoln County Fairgrounds, Capitan, New Mexico; and July 25, 1991, Carlsbad Municipal Library Annex, Halagueno Park, Carlsbad, New Mexico. All of the meetings will be held from 1-4 p.m. in the afternoon and from 6-8 p.m. in the evening. A scoping package will be issued in June 1991. Complete records of the planning process will be available for public review at the following locations: For the Carlsbad RMPA, Carlsbad Resource Area, 101 East Mermod, Carlsbad, New Mexico; for the Roswell RMP, Roswell Resource Area, Federal Building, 5th and Richardson, Roswell, New Mexico. A Draft and Proposed Plan including a Draft and Final EIS will be published. Upon completion of this project a Record of Decision and Approved Plan will be published as separate documents for both the Roswell Resource Area and the Carlsbad Resource Area.

Dated: June 4, 1991.

Monte G. Jordan,

Associate State Director.

[FR Doc. 91-14080 Filed 6-12-91; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-01-4730-12]

Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on May 30, 1991.

New Mexico Principal Meridian, New Mexico

T. 26 N., R. 18 W., Accepted March 8, 1991, for Group 870 NM.

T. 26 N., R. 17 W., Accepted March 8, 1991, for Group 870 NM.

T. 5 S., R. 16 W., Accepted April 19, 1991, for Group 880 NM.

T. 5 S., R. 1 E., Accepted April 19, 1991, for Group 768 NM.,

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

The plats will be in the files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504-1449. Copies may be obtained from this office upon payment of $2.50 per sheet.

John P. Bennett,

Chief, Cadastral Survey.

[FR Doc. 91 14012 Filed 6-12-91; 8:45 am]

BILLING CODE 4310-FB-M

[OR-943-4214-11; GP1-241; OR-19227A]

Proposed Continuation of Withdrawal; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Air Force proposes that the land withdrawal for the Coos Head Air National Guard Station continue for an additional 25 years and requests that the land involved remain closed to surface entry and mining.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

The Department of the Air Force proposes that the existing land withdrawal made by the Executive Order dated July 14, 1884, be continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714.

The 43.38 acres involved are located in Secs. 2 and 3, T. 26 S., R. 14 W., in Coos County, approximately one mile northwest of Charleston on the Oregon coast.

The purpose of the withdrawal is to protect the Coos Head Air National Guard Station. The withdrawal currently segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. The Department of the Air Force requests no changes in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: May 28, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-14014 Filed 6-12-91; 8:45 am]

BILLING CODE 4310-33-M

DEPARTMENT OF JUSTICE

Community Relations Service

Prejudice and Bigotry Related Crimes

AGENCY: Community Relations Service, DOJ.

ACTION: Notice of availability of funds.

SUMMARY: The Community Relations Service (CRS) announces availability of approximately $400,000 in Fiscal Year (FY) 1991 funds under title X of the Civil Rights Act of 1964, 42 U.S.C. section 2000(g) *et seq.* which established CRS to provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin. This announcement governs the award of one or more Cooperative Agreements to private non-profit organizations or agencies, and under certain conditions, to for-profit organizations or agencies for projects to combat and respond to prejudice and bigotry-related crimes arising out of race, color or national origin. Substantial involvement of the Federal Government is anticipated during the conduct of this project.

DATES: The deadline for receipt of applications is July 29, 1991. Applications Postmarked on or before 5 p.m. (Eastern Daylight Time), shall be considered as timely applications.

ADDRESSES: Cooperative Agreement Application Form (SF 424), guidelines, and additional information regarding business management, administrative, or fiscal issues relating to the awarding of cooperative agreements under this Notice may be obtained from: Grants Management Office, United States Department of Justice, Community Relations Service, suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815; Attention: Cynthia A. Bowie, Grants Officer.

Proposal Application Packages may be obtained by contacting the Community Relations Service at (301) 492-5900.

Applicants should submit a completed signed original application and two (2) copies of the proposal and supporting documentation to the office indicated above.

FOR FURTHER INFORMATION CONTACT: Additional information relating to technical and program issues may be obtained from Barbara Huie, Chief, Planning Section, Office of Planning, Budget, and Evaluation, at the address given above; telephone 301/492-5900.

SUPPLEMENTARY INFORMATION:

Eligible Applicants

Eligible applicants are private non-profit organizations which are solely devoted to work in the area of prejudice and bigotry-related crime. They must compile data relative to such crimes; must provide training to law enforcement officers and other community workers concerning how best to respond to this type of conduct; must provide outreach and counseling to communities threatened by such activity; and must be conducting research related to various components of this activity.

For-profit organizations, incorporated under State law, which (a) can meet eligibility requirements indicated above and (b) can clearly demonstrate that only costs and not profits, fees, or other elements above costs have been budgeted, are also eligible to apply.

Consortiums or joint ventures between or among unrelated agencies or organizations, i.e., those where no formal affiliation or membership relationship exists, will not be considered for funding under the terms of this Notice.

Applicants must be able to start the proposed project by September 30, 1991.

Program Background and Objectives

Prejudice-related crimes in the United States are countinuing at an alarming rate. The incidents in Howard Beach and Bensonhurst are only two of the more highly publicized examples. Countless individual Americans are acting out their prejudices in a variety of ways, in settings ranging from the neighborhood, to the campus, to places of employment and business. Perpetrators include not only members of organized white hate groups, but members of racial and ethnic minority groups as well.

The impact of a prejudice-related hate crime or act may extend far beyond the immediate victim. Such incidents of hate, whether rising to the level of crime or not, tear through the fabric of a community, endangering the network of human relations that constitutes the civil society. While the need for a law enforcement response to hate crime is a given, there is a comparable need for a community response to bring the pieces of the community back together and to strengthen it so that the potential for future hate incidents is diminished. An organized, broad-based community response also can mitigate the rise in racial tensions that often follows a hate incident.

There are a number of public and private sector organizations that collect

information on hate incidents, usually against specific victim groups, and/or provide information on how to respond to such incidents. The Community Relations Service (CRS), U.S. Department of Justice, operates a national 800 number telephone hotline through which any individual can report hate incidents and provides direct assistance to communities in which racial tensions result from hate incidents.

In order to enhance the results achieved with the most efficient use of limited resources, CRS has established an initiative to pursue collaborative efforts in collection of data on hate incidents and documentation of community response models. The desired outcomes of the initiative are:

1. A series of materials (training curricula, guidelines, videotapes, bibliography, etc.) that assist groups such as law enforcement, human relations groups, neighborhood groups, church and other civic groups, and school groups, repond to the community-wide impact of hate incidents; and

2. Identification of minimum common data elements that agencies which collect data on hate incidents can use for development of a joint annual report on hate incidents. Note: As used herein, the term hate incident includes hate acts that might not be reportable under the Hate Crime Statistics Act of 1990.

In order to accomplish the outcomes outlined above, the Cooperative Agreement Recipient (hereinafter referred to as the Recipient) shall: (1) Administer a series of no less than four workshops of groups involved in combatting hate incidents (for example: educators, lawyers, law enforcement, civil rights organizations, etc.) to foster the collaborative process; (2) develop material for the initiative's deliverables based upon the collaborative process identified in the preceding clause; and (3) administer a national conference of no less than 100 persons for three to four days to introduce the materials developed. The Cooperative Agreement will cover the administrative costs for the workshops and conference, as well as travel costs for the participants, all development, printing, and production costs for the deliverables.

Application Contents

Applicants are required to set forth in detail a proposal that meets the program requirements described in this Notice. Applicants are required to submit a detailed program narrative addressing each of the following points:

1. Summary

A clear and concise overview, not exceeding four pages, of the proposed effort/project, summarizing the problem statement, project results, project methodology, and evaluation plan.

2. Applicant Qualifications

Detailed background information about the applicant organization reflecting its capabilities, experience, and accomplishments relevant to prejudice and bigotry-related crime:

(a) Work in the area;

(b) Compilation of data relative to such crimes;

(c) Provision of training to law enforcement officers and other community workers concerning how best to respond;

(d) Provision of outreach and counseling to communities threatened by such activity;

(e) Conduct of research related to various components of this activity; and

(f) Materials and literature relevant and related to the desired outcomes of this initiative.

3. Problem Statement

A brief description of the problem to be addressed by the proposed effort/project, including:

(a) Observations supported by statistical data, as appropriate; and

(b) Statements by authorities and other knowledgeable individuals, and comments by intended beneficiaries.

4. Project Results

Description of project objectives which are time-phased and measurable, reflecting results of the proposed effort/project.

This shall include identification of product deliverables—purpose, format, number of copies, and how deliverables from this initiative will contribute to the existing body of knowledge.

5. Project Methodology

Clear description of project activities and explanation of how and why they were selected. A plan reflecting tasks to be performed by period of performance shall be outlined, and a proposed milestone chart included. (Should award be made for conduct of the proposed project/effort, the milestone chart shall be updated and ratified at time of such award.) Narrative should reflect sequence of events and staffing pattern of the proposed effort/project.

This shall include:

(1) Proposal for each workshop—objectives, participants, agenda, materials to be used, and site;

(2) Proposal for national conference—objective, participants, agenda, materials to be used, and site; and

(3) Description of how deliverables will be developed.

6. Evaluation

A plan for on-going monitoring and evaluation of project activities and description of the criteria that will be used in measuring results.

7. Management Plan

A plan which identifies the agency/organization which will have overall fiscal and program responsibility, as applicable, and which:

a. Identifies the organizational structure and lines of authority;

b. Describes the overall staffing plan and staff qualifications for the program;

c. Includes a comprehensive plan for cooperation of activities between the various program components, if appropriate;

d. Includes proposed staff schedule (s);

e. Describes the role of consultants, if any, and the rationale for their use; and

f. Detailed narrative describing administrative program controls, records, and accountability.

8. Proposed Budget

Applicants are required to submit a comprehensive line item budget, and calculate as appropriate each of the following points:

a. Personnel;

b. Fringe Benefits;

c. Travel Costs;

d. Equipment;

e. Supplies;

f. Contractual Obligations;

Other; and

Indirect Costs.

9. Budget Narrative

A narrative explanation for each line item in each budget category must accompany the proposed budget.

10. Supportive Addenda Material

Applicants are required to submit the following material as addenda to the program proposal:

a. Organization/Agency Administration

(1) A copy of the Organization/Agency's Articles of Incorporation;

(2) A copy of the document verifying IRS status as a non-profit organization/agency, if applicable;

(3) A comprehensive organizational chart of the proposing agency and the proposed program;

(4) A list of officers and board members, if applicable;

(5) A list of professional affiliations and certifications; and

(6) Certification of the following requirements as a pre-condition of award:

(a) Certification of a Drug-Free Workplace;

(b) Certification of regarding lobbying restrictions; and

(c) Certification regarding debarment, suspension, and other responsibility matters.

b. Organizational/Agency Standards and Policies

(1) Personnel handbook and statement of standards of conduct; and

(2) Statement regarding professional and agency liability.

c. Staff

(1) Position descriptions and resumes for all existing staff who will be assigned to the proposed effort;

(2) Position descriptions for all personnel to be hired who will be assigned to the proposed effort; and

(3) Resumes of program consultants.

d. Finance and Budget

(1) A description of the financial management system of the applicant;

(2) A copy of the latest financial audit of the applicant; and

(3) A listing of other Federal, State, local or foundation grants or contracts administered by the applicant from 1989 to date.

This material should include information regarding the funding source, grant or contract number, level of financial support, propose of grant or contract, grant or contract performance period, and name, address, and telephone number of the grant or contract officer from the relevant agency.

e. Subcontracts

Subcontracts shall be governed by the provisions of OMB Circular A-110, attachment O, Procurement Standards.

Application Screening Criteria

The Community Relations Service will screen all applications submitted pursuant to this Notice. Screening shall be done to determine whether an application is sufficiently complete to warrant consideration and review by the independent Community Relations Service Review Panel.

An application may be rejected if:

1. The application is from an ineligible applicant;

2. The application is received after the announced closing time and date; or

3. The application omits a comprehensive line item budget with appropriate narrative description, or a copy of the latest financial audit of the applicant.

Proposal Review

Proposals will be reviewed, evaluated, and competitively ranked by an independent review panel on the basis of weighted criteria listed in this Notice. All funding decisions are at the discretion of the Associate Director, Office of Policy, Budget and Evaluation. Awards will be subject to the availability of funds.

Review Criteria

Applicants must provide documentation of their ability or potential for working in collaboration with other groups involved in documenting or combatting hate incidents.

Applications will be competitively reviewed, evaluated and ranked by an independent review panel, according to the following weighted criteria:

1. The qualifications of the applicant organization or agency with respect to:

a. Demonstrated experience in working in collaboration with other groups involved in documenting or combatting hate incidents;

b. Demonstrated capacity for effective programmatic, fiscal management and accountability, including ability to produce quality print and video documents. (25 points)

2. The adequacy and coherency of the proposed program plan in terms of project results, project methodology, and collaboration with other organizations and agencies. (40 points)

3. The reasonableness of the proposed budget and the completeness of the budget narrative. (15 points)

4. The adequacy of the program evaluation plan. (5 points)

5. The degree to which the applicant provides for effective program management and accountability as demonstrated by administrative and programmatic controls and staffing structure. (15 points)

Award Instrument

The Community Relations Service will negotiate cooperative agreements with those applicants approved by the Associate Director, Office of Policy, Budget and Evaluation (OPBE). During these negotiations, the CRS will also conduct a site visit to the applicants' program facilities. The award is subject to the requirements of Office of Management and Budget (OMB) Circulars A-110 and A-122.

Awards normally will not exceed a 12 month project period. Funding will be for a 12 month budget period.

The estimated amount of available funds and the anticipated ranges of funding contained in this Notice are intended to serve as bench marks only. These estimates and ranges do not bind the Community Relations Service to any specific number of Cooperative Agreements or to any specific level of funding.

The Community Relations Service does not anticipate continuation of this program beyond the initial project and budget periods.

Post Assistance Requirements

1. Reporting Requirements

A successful applicant under this Notice will submit reports in accordance with the provisions of the general regulations which apply under OMB Circulars of A-110 and A-122. Recipients must submit quarterly and final progress reports. Expenditure reports are required 30 days after each quarter and 90 days after the budget period.

2. Audit

The recipient is subject to the audit provisions of OMB Circular A-133. The Applicant may budget audit costs.

3. Records

All financial and program records must be retained for three years after the end of the program and budget period.

Applications Delivered by Mail

Applicants must show proof of mailing:

1. A legible dated U.S. Postal Service postmark;

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service; or

3. A dated shipping label, invoice, or receipt from a commercial carrier.

Private metered postmarks or mail receipts that are not dated by the U.S. Postal Service are not acceptable as proof of timely mailing.

Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the applicant should check with its local Post Office.

Applicants are encouraged to use registered or at least First Class mail. Applications received or postmarked after the announced closing date will not be considered and will be returned to the applicant.

Applications Delivered by Hand

Applications that are hand delivered must be taken to the United States Department of Justice, Community

Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815. The Grants Management Office will accept hand delivered applications between 9 a.m.–5 p.m., Eastern Standard Time, daily, except Saturdays, Sundays and Federal holdiays. Applications that are hand delivered will not be accepted after 5 p.m., Eastern Standard Time, on the closing date.

Catalogue of Federal Domestic Assistance Number: 16.200

Dated: June 3, 1991.

Barbara Huie,

Chief, Planning Section, Office of Planning, Budget & Evaluation.

[FR Doc. 91–13998 Filed 6–12–91; 8:45 am]

BILLING CODE 4410–17–M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that on June 3, 1991, a proposed Consent Decree in *United States* v. *Northern Aroostook Regional Incinerator Facility,* C.A. No. 89–0–115–B, was lodged with the United States District Court for the District of Maine. The United States filed the Complaint in this action on May 5, 1989 pursuant to section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), alleging that three municipalities in Maine (Madawaska, Ft. Kent, and Frenchville) and a corporation owned by these municipalities (Northern Aroostook Regional Incinerator Facility) have violated the particulate emissions limits contained in the New Source Performance Standards for Incinerators, 40 CFR part 60, subpart E, and in section 104.2.C of the regulations of the Maine Department of Environmental Protections.

Under the proposed Consent Decree, the four defendants agree to cease operation of the incinerator no later than July 31, 1992, after initiating a waste recycling program. The defendants also agree that until the incinerator is closed they will adopt specified interim operating practices to reduce particulate emissions. Finally, the Consent Decree requires the defendants to pay a civil penalty of $125,000.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Northern Aroostock Regional Incinerator Facility;* DOJ No. 90–5–2–1–1301.

The proposed Consent Decree may be examined at the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02202, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building NW., Washington, DC 20004 (202–347–2072).

A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building NW., Box 1097, Washington, DC 20004. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.75 (25 cents per page reproduction cost).

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–14008 Filed 6–12–91; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree

Notice is hereby given that on May 29, 1991 a proposed Consent Decree was ledged with the United States District Court for the Northern District of Indiana, Hammond Division in *United States* versus *United States Smelting Lead Corporation,* Civil Action No. H 85–469 (N.D Ind.), an action brought pursuant to section 309 of the Clean Water Act, 33 U.S.C. 1319. The proposed Consent Decree would resolve certain Clean Water Act claims which the United States has asserted against United States Smelting Lead Corporation ("U.S.S. Lead") in connection with operations at its facility in East Chicago, Illinois.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* versus *United States Smelting Lead Corp.,* D.J. Ref. No.90–5–1–1–2319. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Indiana, Civil Division at 1001 Main Street, suite A, Dyer, Indiana 46311, and at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004 (202–347–2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $6.50 (25 cents per page reproduction costs) payable to Aspen Systems Corporation.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–14007 Filed 6–12–91; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Purusant to the National Cooperative Research Act of 1984; Gas Utilization Research Forum

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. § 4301 *et. seq.* ("the Act"), Gas Utilization Research forum ("GURF") filed written notifications simultaneously with the Attorney General and the Federal Trade commission on May 13, 1991 concerning the identity of an additional member of GURF. The written notifications were filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstance.

The following is an additional party which has become a member of GURF: Gaz de France, 361, Ave. du President Wilson, B.P. 33, 93211 La Plaine Saint-Denis Cedex, France.

No other changes have been made in either the membership or planned activity of GURF.

On December 19, 1990, GURF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 16, 1991, 56 FR 1655. A notice of additional members to GURF was published on April 24, 1991, 56 FR 18837.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–14003 Filed 6–12–91; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984; Hydrocyclone Development Consortium

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Hydrocyclone Development Consortium (HDC) filed written notifications with

the Attorney General and the Federal Trade Commission on May 15, 1991, concerning the identities of additional members of the HDC. The written notifications were filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following are additional parties which have become members of the HDC:

Texaco Inc, P.O. Box 425, Bellaire, Texas 77401.

Chevron Oil Field Research Company (a subsidiary of the Chevron Corporation), 1300 Beach Blvd., La Habra, CA 90631.

No other changes have been made in either the membership or planned activity of the HDC.

On January 17, 1991 the HDC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 14, 1991. 56 FR 6035.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-14004 Filed 6-12-91; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, pursuant to Section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center For Manufacturing Sciences, Inc. ("NCMS"), on April 29, 1991, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership and in its bylaws and policies and procedures and describing the status of its research activities. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies recently were accepted as active members of NCMS: Cargill Detroit Corporation, Concord Communications, Inc., Dynetics Corporation, Electro Scientific Industries, Inc., Parametric Technology Corporation.

The following organizations recently were accepted as affiliate members of NCMS: National Machine Tool Builders Association, University of Kentucky Center for Robotics and Manufacturing Systems.

On February 13, 1991, the NCMS Board of Directors enacted changes to NCMS's bylaws and policies and procedures.

Currently, NCMS has awarded contracts directed toward its objectives in the general areas of manufacturing data and factory control; manufacturing operations; manufacturing processes and materials; production equipment design, analysis, testing, and control; and technology transfer. Other projects directed toward those objectives are under consideration.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act, notice of which the Department of Justice published in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375). NCMS filed additional notifications on April 15, 1988, and May 5, 1988, notice of which the Department published in the **Federal Register** on June 2, 1988 (53 FR 20194). NCMS also filed additional notifications on July 11, 1988, September 13, 1988, December 8, 1988, March 9, 1989, August 10, 1989, November 3, 1989, January 29, 1990, April 27, 1990, July 31, 1990, November 7, 1990, February 5, 1991, and March 18, 1991, notices of which the Department published on August 19, 1988 (53 FR 31771), November 4, 1988 (53 FR 44680), January 18, 1989 (54 FR 2006), April 13, 1989 (54 FR 14878), September 18, 1989 (54 FR 38461), November 29, 1989 (54 FR 49122), February 28, 1990 (55 FR 7045), June 5, 1990 (55 FR 22964), August 28, 1990 (55 FR 35194), December 10, 1990 (55 FR 50786), and March 12, 1991 (56 FR 10444), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-14005 Filed 6-12-91; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Open Software Foundation, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Open Software Foundation, Inc. ("OSF") on April 25, 1991, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional notification was filed for the purpose of extending the protections of section 4 of the Act limiting recovery of antitrust plaintiffs to actual damages under specific circumstances.

On August 8, 1988, OSF and the Open Software Foundation Research Institute, Inc. (the "Institute") filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 7, 1988 (53 FR 34594). On November 4, 1988, February 2, 1989, May 3, 1989, July 28, 1989, October 26, 1989, January 22, 1990, April 19, 1990, July 24, 1990, October 22, 1990, and January 28, 1991, OSF filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on November 25, 1988 (53 FR 47773), February 23, 1989 (54 FR 7893), August 25, 1989 (54 FR 35407), August 25, 1989 (54 FR 35408), November 29, 1989 (54 FR 49123), April 18, 1990 (55 FR 14493), May 21, 1990 (55 FR 20861), September 27, 1990 (55 FR 39528), December 28, 1990 (55 FR 53368), and April 3, 1991 (56 FR 13655), respectively.

The identities of the new, non-voting members of OSF are as follows:

Member	Date
Virginia Polytech Institute/State University Computing Center	01/15/91
Clarkson University	01/18/91
Hal Computer Systems, Inc.	01/23/91
University of Twente	01/25/91
University of Illinois at Chicago	01/29/91
Royal College Maria Cristina el Escorial	01/30/91
Prime Computer, Inc.	01/31/91
ASTEM of KYOTO	01/31/91
NEC Computer Systems, Ltd.	02/01/91
CRIM	02/01/91
Cranfield Institute of Tech-Post Grad	02/13/91
JC Penney	02/15/91
Centre for Development of Advanced Computing	02/18/91
Software Technologies Research Center	02/28/91
Hong Kong University of Science of Technology	03/01/91
The Chinese University of Hong Kong	03/13/91
Petrotechnical Open Software Corp.	03/15/91
Brigham Young University	03/20/91
Universitat Politecnica De Catalunya	03/26/91
Baylor College of Medicine	04/01/91
JUST System Corp.	04/11/91
University of Wisconsin-Milwaukee	04/16/91
National Central University	04/18/91

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-14006 Filed 6-12-91; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

NOTICE [91-52]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's, supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by July 15, 1991. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D. A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0050), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (703) 271–5542.

Reports

Title: Patent Waiver Report.
OMB Number: 2700–0050.
Type of Request: Extension.
Frequency of Report: Annually.
Type of Respondent: Businesses or other for-profit.
Number of Respondents: 95.
Responses per Respondent: 1.
Hours per Response: 2.
Annual Responses: 190.
Annual Hours per Recordkeeper: 15.
Annual Burden Hours: 205.
Abstract-Need/Uses: The NASA Patent Waiver form which is completed by NASA contractors is designed to elicit information that is deemed necessary for the NASA Inventions and Contributions Board to evaluate the progress of development and commercialization for waived inventions. The NASA Patent Waiver Regulations require the waiver recipient to report on the utilization of waived inventions.

Dated: June 5, 1991.

D. A. Gerstner,

Director IRM Policy Division.

[FR Doc. 91–14058 Filed 6–12–91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreement to Enhance the Ability of U.S. Visual and Performing Artists and Arts Organizations to Participate at International Festivals and Exhibitions

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a cooperative agreement to carry out a project to enhance the ability of U.S. visual and performing artists and arts organizations to participate at international festivals and exhibitions and other events abroad. The tasks will include the administration of a process for the review of applications and awarding of grants to performing artists and arts organizations invited to international festivals, the administration of funds to represent the United States at significant international exhibitions, and the administration of a travel fund to assist performing and visual artists to participate in international conferences, residencies, or other international activities outside the framework of festivals and exhibitions. Eligibility is to apply for the cooperative agreement is limited to nonprofit organizations. Those interested in receiving the solicitation package should reference Program Solicitation PS 91–10 in their written request and include two (2) self-addressed labels. Verbal requests for the solicitation will not be honored.

DATES: Program Solicitation PS 91–10 is scheduled for release approximately July 2, 1991 with proposals due August 5, 1991.

ADDRESS: Requests for the solicitation should be addressed to the National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 91–14002 Filed 6–12–91; 8:45 am]

BILLING CODE 7537-01-M

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

FOR FURTHER INFORMATION CONTACT: Catherine Wolhowe, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings 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 discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of title 5, United States Code.

1. *Date:* July 9, 1991.
   Time: 9 a.m. to 5 p.m.
   Room: 430.
   Program: This meeting will review applications for Museums and Historical Organizations, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1990.

2. *Date:* July 11, 1991.
   Time: 9 a.m. to 5 p.m.
   Room: 430.
   Program: This meeting will review applications for Undergraduate Education, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1990.

3. *Date:* July 16, 1991.
   Time: 9 a.m. to 5 p.m.
   Room: 430.

Program: This meeting will review applications for Public Outreach, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1990.

4. *Date:* July 23, 1991.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Museums and Historical Organizations, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1990.

5. *Date:* July 25, 1991.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Scholarship/Research, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1990.

6. *Date:* July 11–12, 1991.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs, for projects beginning after January 1, 1992.

7. *Date:* July 18–19, 1991.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs, for projects beginning after January 1, 1992.

8. *Date:* July 25–26, 1991.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs, for projects beginning after January 1, 1992.

9. *Date:* July 30, 1991.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications in Museums and Historical Organizations, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1990.

Catherine Wolhowe,
Advisory Committee, Management Officer.
[FR Doc. 91–14093 Filed 6–12–91; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

GPU Nuclear Corp. and Jersey Central Power & Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 152 to Facility Operating License No. DPR–16, issued to GPU Nuclear Corporation (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey. The amendment is effective as of the date of issuance to be implemented within 30 days.

The amendment modified the Technical Specifications (TS) surveillance intervals for Table 4.1.1: Item 1—High Reactor Pressure; Item 3—Low Reactor Water Level; Item 4—Low-Low Reactor Water Level; Item 5—High Water Level in the Scram Discharge Volume Analog Scram; Item 27a—Scram Discharge Volume Water Level High Analog Rod Block; and Item 5a—High Water Level in the Scram Discharge Volume Digital Scram. A change correcting the bases for the control functions of the High Drywell Pressure Trip System, referenced in TS section 3.1, was also included.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing in connection with this action was published in the **Federal Register** on December 19, 1990 (55 FR 52112). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated December 19, 1990, (2) Amendment No. 152 to License No. DPR–16, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. A copy of items (2), and (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—I/II.

Dated at Rockville, Maryland this 5th day of June 1991.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,
Senior Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.
[FR Doc. 91–14089 Filed 6–12–91; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–331]

Iowa Electric Light and Power Co., et al.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–49, issued to the Iowa Electric Light and Power Company, the Central Iowa Power Cooperative and the Corn Belt Power Cooperative (the licensee), for operation of the Duane Arnold Energy Center, located in Linn County, Iowa.

The amendment would revise the Technical Specifications (TSs) to eliminate conditional surveillances for the Emergency Core Cooling (ECCS), Reactor Core Isolation Cooling, (RCIC), Standby Liquid Control, (SLCS) and Standby Gas Treatment Systems (SGTS). Alternate methods of verifying operability of redundant trains of those systems would be included in revised surveillance requirements. The proposed changes would also extend the allowed out-of-service times (AOTs) for the RCIC and HPCI systems from 7 days to 14 days and would revise the LCOs pertaining to instances when the TSs require an orderly reactor shutdown to read "hot shutdown in 12 hours and cold shutdown within the following 24 hours," instead of "cold shutdown in 24 hours." These proposed changes are

consistent with the Standard Technical Specifications for General Electric Boiling Water Reactors (NUREG–0123, Revision 3). In addition, a new LCO is proposed for the suppression pool spray subsystem, along with increased surveillances for ECCS keep-filled system pressure switches and HPCI suction transfer logic. Several minor editorial changes are also proposed.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated because the requested revisions do not impact any FSAR safety analysis involving these systems.

Although the proposed amendment would reduce the amount of testing of the ECCSs, SLCS, SGTS, RCIC, and their auxiliaries, reliability of these systems would not be decreased and the necessary assurance that the alternate systems/subsystems/components will operate when needed is provided by the ASME Section XI IST Program, which is currently required by the DAEC TSs.

The probability of human error will decrease with reduced testing. Human error such as misalignment of valves after the system is returned to its normal configuration following testing and the misdirection of the operators attention from monitoring and directing plant operations is less likely to occur if this testing is eliminated. Reducing the scope and frequency of surveillance testing, much of which is now required on a daily basis during LCOs, will decrease the probability of equipment failure which could require plant shutdown.

We have determined the allowed out-of-service time (AOT) for the HPCI and RCIC systems and for the low pressure ECCSs, utilizing the same methodology as was used to determine the LCOs presently in the DAEC TSs. Our analyses show that the AOTs for the HPCI and RCIC systems are greater than 14 days. Thus, allowing HPCI or RCIC to be out of service for 14 days prior to plant shutdown is conservative. These changes have no adverse effect on our present accident analyses.

Revising the shutdown LCO requirement from requiring the plant to be in cold shutdown in 24 hours to requiring hot shutdown in 12 hours and cold shutdown (or other condition not requiring equipment operability) in the following 24 hours is consistent with NRC guidance provided in the BWR Standard Technical Specifications (NUREG–0123, Revision 3). The new requirement will allow the reactor to be shutdown in a more controlled manner.

The additional surveillance and operability requirements for ECCS and support systems (*e.g.*, Maintenance of Filled Discharge Piping) provide additional assurance that equipment assumed to be operable in our accident analyses will be operable upon demand. Requiring operability of suppression pool sprays will ensure this function will be available if needed.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated for the following reasons.

Testing under our ASME section XI IST Program has demonstrated a high degree of reliability for the equipment tested. Therefore, those systems required to mitigate accidents evaluated in the DAEC FSAR will still be assured as operable and available. The reduction of surveillance testing on redundant systems when the ECCSs, SGTS, SLCS or RCIC systems are in an LCO will reduce the probability of equipment failure and human error. The deletion of this additional surveillance testing will not reduce the ability of redundant systems to mitigate a design basis accident.

All proposed changes revise only surveillance and administrative requirements. No change alters the plant design or its transient response. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident is not created. (sic)

(3) The proposed amendment will not involve a significant reduction in a margin of safety.

Removal of the existing operability testing requirements eliminates redundant testing which serves to degrade temporarily the alternative systems ability to perform or renders the systems out-of-service for the duration of the testing. These changes will not reduce the minimum required equipment operability requirements during an LCO or normal operating conditions given in the basis section of technical specifications for the ECCSs, SLCs, SGTS or RCIC system. The reduction in testing will decrease the possibility of equipment failure and human error. Therefore, the proposed amendment results in an increase in the plant safety margin compared to the existing testing requirements contained in the Technical Specifications.

Extending the AOTs for certain equipment is within the original licensing basis assumptions and will not invalidate any assumptions or input parameters for any DAEC event analysis. Extending the time period within which the DAEC must achieve cold conditions will allow for increased operator attention and minimal distractions for operators during shutdown, thus minimizing the risks of an unexpected operational transient.

Added surveillance testing for certain instrumentation and logic and the new LCO for suppression pool sprays will increase the margin of safety by assuring these systems will be available when needed.

Therefore, the margin of safety for the systems and the equipment contained in these systems will not be significantly reduced.

The NRC staff has reviewed the licensee's analysis and based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of

written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 15, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325-6000 (in Missouri 1 (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John N. Hannon: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack Newman, Esq., Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request, should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 14, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and

at the local public document room located at Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

Dated at Rockville, Maryland, this 7th day of June 1991.

For the Nuclear Regulatory Commission.

James R. Hall, Sr.,

Project Manager, Project Directorate III-3, Division of Reactor Projects—III/IV/V; Office of Nuclear Reactor Regulation.

[FR Doc. 91-14090 Filed 6-12-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

Northeast Nuclear Energy Co., (Millstone Nuclear Power Station, Unit No. 1); Exemption

I.

The Northeast Nuclear Energy Company (the licensee) is the holder of Facility Operating License No. DPR-21 which authorizes operation of Millstone Nuclear Power Station, Unit No. 1. The license provides, among other things, that Millstone, Unit 1 is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The facility is a single-unit boiling water reactor at the licensee's site located in New London County, Connecticut.

II.

Title 10, CFR part 50, appendix J, section III.C requires containment isolation valves to undergo local leak rate (type C) testing. The purpose of the testing, and any subsequent repairs, is to assure that leakage through these valves will not result in an unacceptable release of containment atmosphere during, or following, a design basis accident. Appendix J, section III.C.1 states, in part,

Type C tests shall be performed by local pressurization. The pressure shall be applied in the same direction as that when the valve would be required to perform its safety function, unless it can be determined that the results from the tests for a pressure applied in a different direction will provide equivalent or more conservative results.

In addition, 10 CFR part 50, § 50.12 contains standards for issuance of exemptions from NRC rules, including those contained in appendix J to 10 CFR part 50.

III.

By letter dated April 29, 1988, as supplemented by letters dated May 19, 1989 and November 8, 1990, the licensee requested exemptions from the test requirements of appendix J, section III.C.1 for certain containment penetrations for Millstone Unit 1. The NRC staff's evaluation of the licensee's request for exemptions is summarized in Table 1. The details of the evaluation are contained in the NRC staff's Safety Evaluation dated June 5, 1991.

TABLE 1.—SUMMARY OF THE NRC STAFF'S EVALUATION OF MILLSTONE UNIT 1 APPENDIX J EXEMPTION REQUESTS

Penetration No.	Description	Status of requested exemption
X-20	Demineralized water system supply line	Denied.
X-21	Service air system supply line	Denied.
X-42	Standby liquid control system supply line	Denied.
X-22	Drywell compressor discharge line	Denied.
X-212	Reactor water cleanup (RWCU) system vent line into torus	Not needed.
X-25, 26, 202E and 205	Containment atmosphere control system lines	Acceptable.
X-15	RWCU system line from regenerative heat exchanger	Denied.
X-204 A, B, C and X-210 A, B	Emergency core cooling tie-ins to the torus	Denied.

IV.

Pursuant to 10 CFR 50.12(a)(2)(iii), the Commission may grant an exemption from a regulation if "Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted * * *". With regard to the requested exemptions from appendix J, section III.C.1 for penetration Nos. X-25, 26, 202E and 205, the Commission concludes that the objective of equivalent or conservative reverse direction testing and actuator shaft seal testing cannot be achieved simultaneously with existing piping configuration and that special circumstances are present in that the exorbative cost of equipment modifications, necessary to comply with appendix J, type C, test requirements are unjustified considering the small additional benefit that would be gained. The NRC staff considers, however, that the proposed alternative test procedures are the most conservative with the existing configuration and will test both valve seals to provide indication of the leak tightness of the containment boundaries and therefore, the requested exemptions from appendix J, type C restrictions on reverse direction testing of the subject AC system butterfly valves are acceptable.

V.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, the exemptions are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest. Therefore, the Commission hereby approves the following exemption request.

Exemptions are hereby granted from the requirements of 10 CFR part 50, appendix J, section III.C.1, which require local leak rate testing, as this requirement applies to Millstone Unit 1 containment penetrations Nos. X-25, 26, 202E and 205. These exemptions are conditional upon performance of the alternate testing proposed by the licensee.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the Exemption will have no significant impact on the environment (56 FR 25702).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 5th day of June 1991.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-14091 Filed 6-12-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338 and 50-339]

Virginia Electric and Power Co.; Denial of Portion of Application for Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission has denied a portion of an amendment request by Virginia Electric and Power Company (the licensee), for amendments to Facility Operating License Nos. NPF-4 and NPF-7, issued to the licensee for operation of the North Anna Power Station, Unit Nos. 1 and 2, located in Louisa County, Virginia.

Notice of Consideration of Issuance of these amendments was published in the **Federal Register** on May 2, 1990 (55 FR 18416).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) by replacing the value of the cycle-specific parameter limits with a reference to the Core Operating Limits Report (COLR).

The NRC staff has concluded that the portion of the licensee's request regarding the inclusion of boron concentration in the COLR cannot be granted. The licensee was notified of the Commission's denial of the proposed change by letter dated June 7, 1991.

By July 15, 1991, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 355, Richmond, Virginia 23212, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated March 29, 1990, as supplemented May 8, August 8, and October 30, 1990, and (2) the Commission's letter to the licensee dated June 7, 1991.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, attention: Document Control Desk.

For the Nuclear Regulatory Commission.

Rajender Auluck,

Acting Director, Project Directorate II-2, Division of Reactor Projects I/II; Office of Nuclear Reactor Regulation.

[FR Doc. 91-14092 Filed 6-12-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Performance Management and Recognition System Review Committee; Meeting

The Office of Personnel Management announces the following meeting:

Name: Performance Management and Recognition System Review Committee Meeting.

Date and Time: June 27, 1991, 10 a.m. to 5 p.m.

Place: Room 7B09, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415-0001.

Type of Meeting: Open.

Point of Contact: Ms. Doris Hausser, Chief of the Performance Management Division, room 7454, Office of Personnel Management, 1900 E Street NW., Washington DC 20415-0001.

Purpose of Meeting: To review the Performance Management and Recognition System and make recommendations for a fair and effective performance management system for Federal managers.

Agenda: June 27, 1991—Committee goals and objectives; scope of inquiry; research and resources on performance-based pay; basic issues and challenges facing the committee; committee administration; comments and observations; public input; closing.

SUPPLEMENTARY INFORMATION: The committee welcomes written data, views, or comments concerning systems for managing and recognizing the performance of Federal managers. All such submissions received by close of business June 20, 1991, will be provided to the committee members and included in the record of the June 27, 1991, meeting.

If time permits, the committee will consider oral presentations relating to agenda items. Persons wishing to address the committee orally at the June 27, 1991, meeting should submit a written request to be heard by close of business June 20, 1991. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and an estimate of the amount of time needed.

All communications regarding this committee should be addressed to the Point of Contact named above.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91-14096 Filed 6-12-91; 8:45 am]

BILLING CODE 6325-01-M

POSTAL RATE COMMISSION

[Order No. 886; Docket No. C91-1]

Complaint of Alan Hall Manning, Renumbering Postal Boxes; Order on Filing of Complaint of Alan Hall Manning on Renumbering of Postal Boxes

Issued June 7, 1991.

Before Commissioners: George W. Haley, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; W. H. "Trey" LeBlanc, III; Patti Birge Tyson.

Notice is hereby given that on May 29, 1991, a document entitled "Service Complaint: Renumbering of the Postal Boxes" was filed by Alan Hall Manning and assigned the Docket No. C91-1. Mr. Manning asserts that the Postal Service plans to convert all post office boxes to 6-digit designations. Mr. Manning states that the policy has a nationwide impact on boxholders who have relied on permanent post office box numbers for business and personal correspondence. Mr. Manning states that forwarding service will only be available for one year after the change. Mr. Manning says the Postal Service's policy violates section 403(c) of the Postal Reorganization Act. That section prohibits unreasonable discrimination among users of the mails. Mr. Manning requests that the Commission hold a hearing on the complaint.

Under the Commission's rules of practice (39 CFR 3001.84) the Postal Service has 30 days to file an answer to a complaint. However, we are invoking rule 85 (39 CFR 3001.85) which provides for informal methods for resolution of complaints. It is Commission policy and practice "to encourage the resolution and settlement of complaints by informal procedures * * *" 39 CFR 3001.85. Those informal procedures have been used to resolve similar complaints, and we believe them to be the best alternative at this time. *See* Order No. 831 (Docket No. C89-2). In accordance with rule 85, the Chairman will appoint a coordinator of informal resolution efforts.

The scheduling of any formal procedures, such as the Postal Service's answer, any hearing dates and a due date for petitions to intervene will be postponed pending the outcome of the informal procedure. The Commission will notify the Postal Service and the parties of the scheduling of formal procedural steps if the informal procedure is found to be inadequate to resolve the situation.

It is ordered:

(1) The Commission will use informal procedures, in accordance with section 85 of our rules of practice, in Docket No. C91-1.

(2) Further procedural dates, including the Postal Service's answer, will be established, if needed, in future orders.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 91-14020 Filed 6-12-91; 8:45 am]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29278; File No. S7-20-91]

Public Disclosure of Material Short Security Positions

AGENCY: Securities and Exchange Commission.

ACTION: Concept release.

SUMMARY: The Securities and Exchange Commission is soliciting public comment on whether the Commission should require public reporting of material short security positions in publicly traded companies in a manner analogous to the current reporting requirement for material long security positions. The Concept Release is issued in connection with a rulemaking request received by the Commission. Following public comment, the Commission will determine whether such rulemaking or other action is appropriate.

DATES: Comments should be received on or before September 11, 1991.

ADDRESSES: Interested persons should submit three copies of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6-9, Washington, DC 20549, and should refer to File No. S7-20-91. All submissions will be made available for public inspection and copying at the Commission's Public Reference Section, room 1024, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Selwyn J. Notelovitz or George E. Scargle, Office of Legal Policy and Trading Practices, Division of Market Regulation, at (202) 272-2848, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5-1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities and Exchange Commission ("SEC" or "Commission") is publishing for public comment a rulemaking request submitted by the Association of Publicly Traded Companies ("APTC"),[1] which has petitioned the Commission to adopt a rule imposing a reporting requirement on individuals or groups holding short positions of five percent or more of any publicly traded issuer's equity securities ("APTC Petition").[2] The APTC Petition generally parallels rule 13d-1 under the Securities Exchange Act of 1934 ("Exchange Act") [3] and related Schedule 13D,[4] which requires persons that acquire more than five percent of a class of voting equity securities registered pursuant to section 12 of the Exchange Act [5] to disclose those positions within 10 days of such acquisition. The APTC Petition is intended to elicit information that may benefit issuers and market participants.[6]

The Subcommittee on Commerce, Consumer and Monetary Affairs of the House Commission on Government Affairs has held a series of oversight hearings investigating the market role of short selling.[7] Furthermore, since the filing of the APTC Petition, proposed Federal legislation entitled the "Shareholder Protection Act of 1990" was introduced during the second session of the 101st Congress which, among other things, would require the public reporting of material short positions in a manner similar to that advanced by the APTC Petition.[8] Although Congress did not take any action on the bill, the Commission understands that a similar bill may be submitted during the 102d Congress. In response to these proposals for a material short position reporting requirement, the Commission is publishing this release to solicit public comment on the basic concepts underlying the APTC Petition and related issues.

II. Role of Short Selling in the Market

A short sale [9] is the sale of a security that the seller does not own or that he owns but does not deliver.[10] In order to deliver the security to the purchaser, the short seller will borrow the security, typically from a broker-dealer or an institutional investor. The short seller later closes out the position by returning the security to the lender, typically by purchasing equivalent securities on the open market.[11] In general, short selling is utilized to profit from an expected downward price movement, or to hedge the risk of a long position in the same security or in a related security.

Short selling provides the market with two important benefits: Market liquidity and pricing efficiency. Substantial market liquidity is provided through short selling by market professionals, such as market makers, block

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[1] The APTC, formerly the National Association of OTC Companies ("NAOTC"), represents approximately 800 exchange-listed and over-the-counter companies.

[2] See Letter from John F. Guion, President, NAOTC, to Richard C. Breeden, Chairman, SEC (December 8, 1989). The APTC Petition is contained in File No. S7-20-91, which is available for inspection in the Commission's Public Reference Section, room 1024, 450 Fifth Street, NW., Washington, DC 20549.

The APTC elaborated on its proposal during Congressional testimony:

"[T]he [APTC] Board of Directors voted to recommend that the Securities and Exchange Commission adopt a rule requiring that any person who directly or in concert with others sells short a number of shares of any class of equity securities, the accumulated number of which exceeds five percent of such class, shall, within ten days of crossing the threshold, send to the issuer of the security at its principal executive office by registered or certified mail, and to each market (NASDAQ or the exchanges) where the security is traded, and file with the Commission, a statement containing the information required on a designated Schedule."

Short Selling Activity in the Stock Market: The Effects on Small Companies and the Need for Regulation, Hearings Before the Subcomm. on Commerce, Consumer and Monetary Affairs of the House Comm. on Government Affairs, 101st Cong., 1st Sess. 192 (1989) ("Hearings") (Statement of John F. Guion, President, NAOTC). The APTC has since requested that, to the extent Rule 13d-1 under the Exchange Act, 17 CFR 240.13d-1, is amended to provide for a shortened reporting period (*i.e.*, from ten days to five days), a parallel change be made to its petition.

[3] 17 CFR 240.13d-1. See section IV.A.1. *infra.*

[4] 17 CFR 240.13d-101.

[5] 15 U.S.C. 78*l*.

[6] Hearings at 178-79.

[7] See Hearings, *supra* n.2. See also Memorandum Prepared by the Division of Market Regulation in Response to the Questions Contained in the Letter of November 3, 1989 from the Hon. Doug Barnard Regarding Short Selling. Hearings at 449-507.

[8] The Shareholder Protection Act of 1990, H.R. 5939, is significantly broader than the APTC Petition. In addition to proposing amendments to section 13 of the Exchange Act to require the public reporting of material short positions, H.R. 5939 also proposed amendments to Sections 9, 10, and 12 of the Exchange Act, 15 U.S.C. 78 i, j, and *l*.

[9] Rule 3b-3 under the Exchange Act, 17 CFR 240.3b-3, defines a short sale as "any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller." Pursuant to rule 3b-3, a seller of an equity security subject to rule 10a-1 must aggregate all positions in that security in order to determine whether the seller has a "net long position." Securities Exchange Act Release No. 20230 (September 27, 1983), 48 FR 45119. See also Securities Exchange Act Release No. 27938 (April 23, 1990), 55 FR 17949 (interpreting staff no-action position with respect to the liquidation of index arbitrage positions).

[10] The latter situation is known as short selling "against the box" (*i.e.*, against a long position). Short sales "against the box" are used primarily for hedging purposes and for tax purposes (*e.g.*, to carry over a profit from year to year).

[11] In a short sale "against the box," the seller has the option of delivering to the security lender the security he owns. See n.10 *supra.*

positioners, and specialists, who facilitate the operation of the markets by offsetting temporary imbalances in the supply and demand for securities. To the extent that short sales are effected in the market by securities professionals, such short sale activities in effect add to the trading supply of stock available to purchasers and reduce the risk that the price paid by investors is artificially high because of a temporary contraction of supply. An exchange specialist, for example, is required to maintain price continuity and to minimize the effects of temporary disparities between supply and demand, *i.e.*, to maintain a fair and orderly market. Thus, the specialist may sell short in order to supply stock to satisfy purchase orders. While an over-the-counter ("OTC") market maker is not under the same affirmative obligation to maintain a fair and orderly market, OTC market makers frequently sell short in order to supply stock to fill customers' purchase orders. Similarly, block positioners may provide liquidity in the market through short sales to satisfy large customer purchase orders.

Arbitrageurs contribute to pricing efficiency by utilizing short sales to profit from price disparities between a stock and a derivative security, such as a convertible security or an option on that stock. For example, an arbitrageur may purchase a convertible security and sell the underlying stock short to profit from a current price differential between two economically similar positions.[12] In addition, where an issuer proposes to issue securities (of a class already outstanding) in exchange for the securities of another issuer, pursuant to a merger or exchange offer, arbitrageurs may sell short the security proposed to be issued to hedge their purchases of the security proposed to be acquired.

Short selling also contributes to the pricing efficiency of the equities markets. Efficient markets require that prices fully reflect all buy and sell interest. When a short seller speculates on a downward movement in a security, his transaction is a mirror image of the person who purchases the security based upon speculation that the security's price will rise. Both the purchaser and the short seller hope to profit by buying the security at one price and selling at a higher price—the primary difference being that the sequence of transactions is reversed. Market participants who believe a stock is "overvalued" may engage in short sales in an attempt to profit from the perceived divergence of prices from true economic values. Such short sellers add to stock pricing efficiency because their transactions assure that their perception of future stock price performance (and, inferentially, isssuer performance) is reflected in the market price.

Some short selling may be effected for manipulative purposes.[13] It appears, however, that historically downward price manipulations have been less frequent than upward manipulations.[14]

III. Current Regulation of Short Sale Trading Practices

The Commission's regulation of short sale trading practices is conducted primarily pursuant to its authority under section 10(a) of the Exchange Act,[15] which grants the Commission plenary rulemaking authority to regulate short sales in securities registered on national securities exchanges. Section 10(a) prohibits, among other things, short selling by any person in contravention of such rules and regulations as the Commission may prescribe as necessary and appropriate in the public interest or for the protection of investors. Rule 3b-3 under the Exchange Act defines the term "short sale," [16] and rule 10a-1 under the Exchange Act governs short sales generally.[17]

Rule 10a-1 is designed to prevent the market price of a security registered on, or admitted to unlisted trading privileges on, a national securities exchange,[18] from being forced downward by unrestricted short selling. Paragraph (a) of Rule 10a-1 covers transactions in any security registered on a national securities exchange, if trades in such security are reported in the consolidated transaction reporting system,[19] and prohibits short sales with respect to those securities unless such sales occur on a "plus tick" (*i.e.*, at a price above the price at which the immediately preceding sale was effected), or "zero-plus tick" (*i.e.*, equal to the last sale price if it was higher than the last different price). The *per se* trading prohibitions of rule 10a-1 support the more general anti-manipulation and antifraud prohibitions of the Exchange Act.[20] As discussed below in greater detail, the Exchange Act does not contain any provision that requires the public reporting of material short security positions in publicly traded companies.

IV. Current Security Position Reporting Requirements

A. Exchange Act Reporting Requirements

The Exchange Act requires the public reporting of certain long security positions. The public interest in requiring such reporting relates to a variety of considerations, including transfers of corporate control, the impact of large institutional transactions upon the securities markets, and the trading of corporate insiders. While the APTC Petition has been analogized to the section 13(d) reporting requirement of the Exchange Act,[21] the Commission notes that the purpose of the APTC Petition does not appear to be closely related to that of the reporting requirements of section 13(d) or the other Exchange Act security reporting requirements discussed below.

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[12] Such arbitrage activity is specifically recognized in exception (e)(7) of rule 10a-1, 17 CFR 240.10a-1(e)(7), the Commission's principal short sale regulation.

[13] The Commission notes that such manipulative trading practices are prohibited by the general antifraud provisions of the Exchange Act and the rules thereunder. See sections 9(a), 10(b), and 15(c)(1) of the Exchange Act, 15 U.S.C. 78i(a), 78j(b), and 78*o*(c)(1), and rules 10b-5 and 10c1-2, 17 CFR 240.10b-5 and 240.15c1-2.

[14] See, e.g., Hearings, *supra* n.2, at 428-32 (Statement of Richard G. Ketchum, Director, Division of Market Regulation and John H. Sturc, Associate Director, Division of Enforcement Before the House Committee on Government Affairs Subcommittee on Commerce, Consumer, and Monetary Affairs). Stock market manipulations may involve efforts to achieve an illegal profit by depressing the price of securities through: (1) Selling activity, including short sales, made for the purpose of inducing the sale of the security by others; or (ii) establishing a short position coupled with publicizing negative, materially misleading statements concerning the issuer. *Id.* at 428.

[15] 15 U.S.C. 78j(a).

[16] See n.9 *supra*.

[17] 17 CFR 240.10a-1.

[18] Although rule 10a-1 applies to any security registered on, or admitted to unlisted trading privileges ("UTP") on, a national securities exchange for which last sale information is reported pursuant to an effective reporting plan (which would include certain National Association of Security Dealers ("NASD") Automated Quotation ("NASDAQ")/National Market System ("NMS") designated securities), the Commission specifically excluded from the coverage of rule 10a-1 transactions in NASDAQ/NMS securities that are traded on a listed or unlisted basis. See Securities Exchange Act Release No. 22975 (March 6, 1986), 51 FR 8801 (adopting 17 CFR 240.10a-1(a)(1)(i)). See also n.19 *infra*.

[19] The "consolidated transaction reporting system," also known as the Consolidated Tape or the Consolidated System, refers to "the consolidated transaction reporting system for which a plan originally was submitted to the Commission pursuant to rule 17a-15 (subsequently amended and redesignated as rule 11Aa3-1) under the [Exchange] Act * * *." 17 CFR 240.11Ac1-1(a)(16). The Consolidated Tape Association ("CTA"), composed of various national securities exchanges and the NASD, collects and disseminates reports for transactions on those markets on the Consolidated Tape.

[20] See n.13 *supra*. See also rule 10b-21(T) under the Exchange Act, 17 CFR 240.10b-21(T), discussed *infra*.

[21] 15 U.S.C. 78m(d).

1. Sections 13(d) and 13(g)

One of the purposes underlying the adoption of the Williams Act amendments to the Exchange Act,[22] which, among other things, added section 13(d) of the Exchange Act,[23] was to remove the element of secrecy from the transfer of control of an issuer, and to assure that shareholders would be aware of the control premium that might be paid for their shares.[24] The Domestic and Foreign Investment Act of 1977 [25] added section 13(g) to the Exchange Act[26] in order to fill a gap in the reporting requirements of sections 13 (d) and 16(a) [27] for persons otherwise not covered by those reporting requirements. Sections 13(d) and (g) require the reporting of information with respect to long positions that is relevant to corporate control and its transfer.

The rules implementing sections 13(d) and 13(g) are set forth in Regulation 13D–G, which establishes specific filing and disclosure requirements, and provides standards for determining what constitutes on "acquisition" and "beneficial ownership" for purposes of these provisions.[28] Any person who, directly or indirectly, acquires beneficial ownership [29] of more than five percent of a class of equity security registered pursuant to section 12 of the Exchange Act,[30] is required by Rule 13d–1 to file a statement containing the information required by either Schedule 13D or 13G depending upon whether such person is subject to paragraph (a), (b), or (c) of Rule 13d–1.[31]

Under paragraph (a) of Rules 13d–1, a person who makes an acquisition of covered equity securities [32] that results in that person becoming the beneficial owner of more than five percent of a class of covered equity securities is required to file with the Commission, and send to the issuer and each exchange where the security is traded, a Schedule 13D within 10 days after such acquisition.[33] Paragraphs (b) and (c) of Rule 13d–1 permit a Schedule 13G to be filed and sent within forty-five days after the end of the calendar year by persons who otherwise would be required to file a Schedule 13D if the conditions specified in Rule 13d–1 are met.[34]

2. Section 13(f)

Section 13(f),[35] which was added to the Exchange Act by the Securities Acts Amendments of 1975,[36] requires institutional portfolio managers who exercise investment discretion over $100,000,000 or more of equity securities registered under section 12 to disclose their securities positions on a quarterly basis.[37] Section 13(f) was designed to create a central depository of data concerning the investment activities of large investment managers and thereby to facilitate the consideration of the public policy implications of their influence and impact upon the securities markets.[38]

3. Section 16(a)

Section 16(a) of the Exchange Act [39] requires every person who is directly or indirectly the beneficial owner of more than ten percent of any class of equity security registered pursuant to section 12 of the Exchange Act,[40] and every director or officer of an issuer of such security, to file with the Commission (and the exchange, if any, on which the security is listed) an initial report disclosing the amount of all equity securities of such issuer of which he or she is the beneficial owner and a further report within 10 days after the close of each calendar month in which there has been any change in such beneficial ownership. Rule 16a–3 [41] requires the filing of a Form 3 for initial reports of beneficial ownership and Form 4 for statements of changes in such beneficial ownership.[42] Section 16(a) is designed to facilitate the recovery by the issuer of short-swing profits made by corporate insiders,[43] as well as provide information concerning purchases and sales by insiders to public investors, which may indicate insider opinions of company prospects.[44]

B. Short Interest Reporting Requirements of the Self-Regulatory Organizations

The New York Stock Exchange ("NYSE"), American Stock Exchange ("Amex"), and the NASD have rules requiring member firms to report, as of the 15th of each month, aggregate short positions in all customer and proprietary

[22] Public Law No. 90–439, 82 Stat. 454 (1968).

[23] The Williams Act amendments also added sections 13(e) and 14(d)–(f) to the Exchange Act.

[24] See Full Disclosure of Corporate Equity Ownership and in Corporate Takeover Bids: Hearings on S. 510 Before the Subcomm. on Securities of the Senate Comm. on Banking and Currency, 90th Cong., 1st Sess. (1967); Disclosure of Corporate Equity Ownership, H.R. Rep. No. 1711, 90th Cong., 2d Sess. (1968).

[25] Title II of Pub. L. No. 95–213, 91 Stat. 1494 (1977).

[26] 15 U.S.C. 78m(g).

[27] 15 U.S.C. 78p(a).

[28] 17 CFR 240.13d–1 to 240.13d–102.

[29] The determination of "beneficial ownership" is governed by rule 13d–3, 17 CFR 240.13d–3. Although short sales by a 13D reporting person normally will not change that person's Rule 13d–3 beneficial ownership (since such sales do not change the amount of shares over which the reporting person has voting or investment power), such sales may require an amendment to the Schedule 13D since they may represent: a change in the source of funds (Item 3); a possible shift in purpose, particularly to the extent that a plan or proposal to dispose of securities of the issuer was not disclosed previously (Item 4); a "transaction" in the subject security (Item 5); or "contracts, agreements, understandings, or relationships * * * with respect to any securities of the issuer" (Item 6) requiring such material to be filed as an exhibit to the Schedule 13D (Item 7).

[30] 15 U.S.C. 78*l* See also section 13(d)(4) of the Exchange Act, 15 U.S.C. 78m(d)(4).

[31] The rule contains a number of exceptions. For example, a registered broker-dealer need not file a report if its holding of a security was not more than 5 percent at the end of the calendar year, and acquisitions of more than 5 percent during the course of the year were made in the ordinary course of business and not with the purpose or effect of changing or influencing control of the issuer. 17 CFR 240.13d–1(b).

[32] Because paragraph (d) of Rule 13d–1 excludes non-voting securities from its coverage, only voting equity securities are subject to the rule's reporting requirements.

[33] Rule 13d–2(a), 17 CFR 240.13d–2(a), requires the filing of an amendment to Schedule 13D promptly after any material change occurs in the facts set forth therein.

[34] Schedule 13G must be updated within forty-five days of the end of each calendar year to reflect any changes in the previous filing.

[35] 15 U.S.C. 7m(f).

[36] Public Law No. 94–29, 89 Stat. 97 (1975).

[37] See also Rules 13f–1 and 13f–2(T) under the Exchange Act, 17 CFR 240.13f–1 and 240.13f–2(T). Although section 13(f)(1)(E)(iii), 15 U.S.C. 78m(f)(1)(E)(iii), requires reporting of large sale transactions by institutional investors, the Commission notes that there is no provision requiring sellers to indicate whether reported sales are long sales or short sales.

The Commission also notes that Form 13F reports by institutional investors are granted confidential treatment by the Commission for up to one year where appropriate justification is furnished. See section 13(f)(3) of the Exchange Act, 15 U.S.C. 78m(f)(3), and Form 13F, Instruction D, 4 Fed. Sec. L. Rep. (CCH) ¶ 32,321 (1985). A pertinent factor relevant to a Commission determination to grant confidential treatment for Form 13F filings is protection against the premature disclosure of trading strategies to prevent competitive harm.

[38] See Report of Senate Comm. on Banking, Housing and Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 85 (1975).

[39] 15 U.S.C. 78p(a). The Commission recently approved amendments to the rules and reporting requirements adopted under section 16. See Securities Exchange Act Release No. 28869 (February 8, 1991), 56 FR 7242.

[40] 15 U.S.C. 78*l*.

[41] 17 CFR 240.16a–3.

[42] Form 5 is required to be filed to disclose transactions exempted from section 16(b). Moreover, if officers, directors, or principal security holders fail to file Forms 3, 4, or 5 as required, they are required to file a Form 5 at year-end, and those delinquencies must be disclosed by the issuer in filings with the Commission pursuant to new Item 405 of Regulation S–K, 17 CFR 229.405.

[43] See Section 16(b) of the Exchange Act, 15 U.S.C. 78p(b).

[44] See H. Rep. No. 1383, 73d Cong., 2d Sess. 13, 24 (1934). Section 16(c) of the Exchange Act, 15 U.S.C. 78p(c), prohibits corporate insiders from short selling covered equity securities.

accounts in securities listed on such exchanges or traded in NASDAQ.[45] Reports must be submitted by member firms not later than the second business day after the reporting settlement date. This information is published toward the end of the month in the *Wall Street Journal* and *Barrons*, among other publications The published information is set forth in tabular form and includes the current and prior month's aggregate short interest for those securities where either the current or last month's short interest exceeded 50,000 shares, the percentage change in short interest from the prior month, and the average daily trading volume.[46]

V. Recent Developments in Short Sale Regulation

Over the past three years, the Commission and the NASD have taken a number of significant steps to address perceived short selling abuses, with a principal focus on the OTC market. The Commission also believes that these steps may address in different ways many of the concerns underlying the APTC Petition.

In 1988, the Commission adopted Rule 10b-21(T) to address the concern expressed by the NASD and other commenters about the practice of short selling immediately prior to a public offering of securities with the covering purchases being made from the securities in the offering.[47] This practice permits the short seller to reduce significantly the economic risks associated with a short sale. Rule 10b-21(T) prohibits a person who effects a short sale of an equity security between the filing of a registration statement and the time at which sales of such equity security may be commenced, from covering the short sale with offered securities purchased from an underwriter or other broker or dealer participating in the offering. Rule 10b-21(T) thus does not prohibit all short sales prior to an offering, but abusive short selling is less likely because short sellers cannot utilize the availability of securities at a fixed price (in the offering) to cover their short positions. In sum, Rule 10b-21(T) benefits issuers by eliminating the effects of abusive short selling on the price of offered securities, but does not affect legitimate short selling of an issuer's securities.[48]

The Commission has approved a number of NASD actions to enhance short selling-related information, and to deal with potentially abusive aspects of "naked" short selling.[49] In 1986, the Commission approved an NASD rule filing requiring its members to mark all sales transaction as "long" or "short." [50] In the same release, the Commission approved an NASD rule filing requiring a member firm, prior to accepting a short sale order from a public customer, to make an affirmative determination that it will receive delivery of the security from the customer or that it can borrow the security on behalf of the customer for delivery by settlement date.[51] In July 1990, the Commission approved an NASD rule amendment that requires an NASD member to make an affirmative determination that it can borrow the security before effecting a short sale for its own account, with certain exceptions.[52]

In 1989, the Commission approved NASD rule amendments that imposed a mandatory buy-in for cash or guaranteed delivery for NASDAQ securities, where the buyer is a customer other than another NASD member, upon failure of a clearing corporation to effect delivery pursuant to a buy-in notice. [53] Upon a failure of a clearing corporation to make delivery of securities, NASD members are required to close the contract by purchasing for cash or guaranteed delivery on behalf of a public customer any portion of the securities not delivered through the clearing corporation buy-in process. The Commission, in approving the rule filing, stated that:

> * * * public customers' reasonable expectation that their securities have been delivered and are held by their broker-dealers should be met. Moreover, naked short selling potentially can present substantial manipulative concerns. While market short sellers are margined by [the clearing corporation], they enjoy substantially greater leverage than if they were required to borrow and deliver their securities. The ability of naked short sellers to employ this leverage to effect "bear raids" would appear to provide support for the NASD's decision to impose additional discipline on naked short selling.[54]

Moreover, the NASD has submitted for Commission approval a mandatory buy-in rule that requires a short seller's broker to buy-in securities for cash or guaranteed delivery when delivery has not occured within 10 business days after normal settlement date.[55] The rule would apply to customer and proprietary short sales in NASDAQ securities that have a clearing short position of 10,000 shares or more that is equal to at least one half of one percent of the issuer's total shares outstanding, but exempts transactions in corporate debt securities, *bona fide* market making activities, and fully hedged and arbitrage positions.

Finally, the NASD recently issued a notice soliciting comment from its members on a proposal to extend to NASDAQ/NMS securities short-sale regulation comparable to that for listed securities.[56] The NASD's consideration of a short sale rule is intended to respond to those NASDAQ/NMS issuers

[45] See NYSE Rule 421; Amex Rules 30 and 590; and Article III, Section 41 of the NASD Rules of Fair Practice.

[46] Some market technicians believe the relationship between the short interest and the daily trading volume is informative because it gives an indication of the likely impact if the short position were to be covered.

[47] 17 CFR 240.10b-21(T). See Securities Exchange Act Release No. 26028 (August 25, 1988), 53 FR 33455.

[48] The NASD has submitted to the Commission a proposed rule change that would amend the NASD Board of Governors' Prompt Receipt and Delivery Interpretation under Article III, Section 1 of the NASD's Rules of Fair Practice. *See* Securities Exchange Act Release No. 28769 (January 11, 1991), 56 FR 2057 (File No. SR-NASD-90-63). Subject to specified exceptions, the proposal would require members (including market makers) who engage in short selling in a proprietary account after a registration statement for a secondary offering of securities has been filed to obtain a representation from the seller of securities purchased to cover the short positions that the securities were not obtained from or through an underwriter or broker-dealer participating in the offering. The proposal is intended to address circumstances where short positions are covered without complying with Rule 10b-21(T). Additionally, the proposal would require that, in connection with any customer or proprietary short sale, the executing member must make a written record of its affirmative determination that securities are available to cover the short position.

[49] A short sale becomes a "naked" short sale when the short seller does not intend to borrow and deliver stock to settle the transaction. See also Finn, "NASD Actions Significantly Reduce 'Naked' Short Selling," 11 NASDAO Notes 2-3 (May 1989).

[50] See Securities Exchange Act Release No. 23572 (August 28, 1986), 51 FR 31865 (File No. SR-NASD-86-17) (approving an amendment to Article III, section 21 of the NASD's Rules of Fair Practice and amending the Board of Governors' Interpretation on Prompt Receipt and Delivery of Securities).

[51] *Id.*

[52] See Securities Exchange Act Release No. 28186 (July 5, 1990), 55 FR 28703 (File No. SR-NASD-89-5).

[53] See Securities Exchange Act Release No. 26694 (April 4, 1989), 54 FR 14404 (File No. SR-NASD-87-10) (approving an amendment to Section 59 of the NASD Uniform Practice Code, which governs Close-Out Procedures).

[54] *Id.*

[55] Securities Exchange Act Release No. 28192 (July 10, 1990), 55 FR 28972 (File No. SR-NASD-90-30).

[56] See NASD Notice to Members 91-2 (January 1991). Rule 10a-1 does not apply to transactions in NASDAQ/NMS securities. 17 CFR 240.10a-1(a)(1)(i). See nn. 18 and 19 *supra*. The NASD has reported that NASD members responded 25 in favor of, and 26 opposed to, a short sale rule for NASDAQ/NMS securities, while issuers expressed overwhelming support to such a rule by a margin of 212 to 6. The NASD Board of Governors has referred the proposal to its Trading, Institutional, and Issuer Affairs Committees for further study. See NASD, "Board Refers Short-Sale Concept to NASD Committees for Further Study." 10 *Subscriber Bulletin* (April 1991).

that view a short-sale restriction as a desirable market characteristic.[57]

VI. Statutory Authority

There are two principal perspectives from which the short position reporting requirement recommended in the APTC Petition can be viewed. First, it may be seen as a reporting requirement to provide information relating to potentially significant market developments, analogous to Rule 13d-1. Second, the requirement can be viewed as a means resonably designed to prevent fraudulent, manipulative, or deceptive conduct.

Sections 13(d), 13(f), and 13(g), as discussed above, require public reporting of material long (but not short) positions. The Commission believes that it may be desirable to obtain a similar specific grant of authority prior to imposing analogous reporting of material short positions on a class of persons and transactions not previously subject to the Commission's public disclosure scheme.[58] Therefore, the Commission preliminarily believes that additional legislative authority may be necessary or appropriate to require public reporting of short positions (particularly positions in solely over-the-counter securities) for market information purposes.

On the other hand, the Commission has broad authority to adopt rules that define, or provide a means reasonably designed to prevent, fraudulent, manipulative, or deceptive conduct. For example, the Commission exercised this authority in connection with potentially manipulative short selling in its adoption of rule 10b-21(T).[59] If the Commission were to determine that a short position reporting requirement is necessary or appropriate on this basis, the Commission believes that adequate authority for such a rule exists in the Exchange Act.[60]

VII. Request for Public Comment

Commenters are invited to address the above points and the following areas of inquiry. Commenters also should discuss any other relevant issues and concerns not specifically covered.

A. Existing measures

In view of the substantial recent developments in short sale regulation, including the NASD's measures to address "naked" short selling,[61] commenters are requested to present their views on the efficacy of these measures in addressing short sale abuses, or if the impact of these measures is not yet clear, on the appropriateness of monitoring their effectiveness prior to imposing additional short-sale regulation.[62]

B. SRO Short Position Reporting Requirements

The NYSE, Amex and NASD currently require members to disclose proprietary and customer open short positions on a monthly basis.[63] In view of this publicly available information, the Commission seeks comment, particularly from analysts and issuers, on how additional information relating to the composition of that short interest would be utilized. In this connection, comment is requested on whether more frequent reporting of aggregate open short interest would provide significant benefits as an alternative to, or in addition to, the APTC Proposal.

C. Market Effects

Implementation of the APTC Petition would assist issuers in identifying short sellers.[64] Some issuers have responded to short selling in their stock by attempting to reduce the supply of stock that has been or might be lent to short sellers. Such efforts have included urging that shareholders request delivery of their stock certificates, if they are currently in broker-dealer margin accounts and available for lending, or place them in cash accounts (these actions would require shareholders to fully pay for the securities). Issuers have also applied pressure against stock lenders.[65] Short sellers are potentially vulnerable to having their stock loans recalled (and thereby being forced to purchase shares to close out their short positions). This risk of "short squeezes" has no analogue with respect to long positions, and may be increased by a disclosure requirement. Comment is requested on the current and potential impact of such pressure on legitimate short sellers.

D. Liquidity Costs

Any disclosure requirement applicable to substantial investment positions—long or short—imposes additional liquidity costs.[66] For this reason, public disclosure of substantial investment positions has been limited to situations in which issues of control are significantly implicated.[67] In the case of substantial short sellers, the market would be aware of the amount of stock the short seller will need to cover the position. Comment is requested on the extent a disclosure requirement would affect the activity of large short sellers, and the cost of any such effect in terms of pricing efficiency.

E. Reporting Threshold

Comment is requested on the likely number of disclosure reports that would be produced by a reporting threshold of five percent of a class of voting equity securities registered pursuant to section

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[57] Two alternatives would be a "tick test" based on last-sale prices or a "bid test" based on the current inside bid. See NASD Notice to Members 91-2 (January 1991).

[58] Section 13(h) of the Exchange Act, 15 U.S.C. 78m(h), authorizes the Commission to adopt appropriate reporting levels for the purpose of monitoring the impact on the securities markets of securities transactions involving a substantial volume or a large fair market value. Section 13(h) of the Exchange Act was added by the Market Reform Act of 1990. Public Law No. 101-342, 104 Stat. 963 (1990). Although Section 13(h) applies to short sales as well as to other transactions by large traders, large trader reporting was designed to aid the Commission in market monitoring and reconstruction, and was intended to provide the Commission with the tools to anticipate possible future market stress points. See H.R. Rep. No. 524, 101st Cong., 2d Sess. 23-25 (1990). The statute was not designed as a means of routinely making large trader reports publicly available. See section 13(h)(7). Accordingly, the Commission does not believe that it would be appropriate to use the authority in section 13(h) to create a public reporting obligation with respect to material short positions of the type proposed by the APTC.

[59] See the discussion of Rule 10b-21(T) in section V. *supra*. In addition, section 23(a)(1) of the Exchange Act, 15 U.S.C. 78w(a)(1), states, in pertinent part:

> The Commission, * * * shall * * * have power to make such rules and regulations as may be necessary or appropriate to implement the provisions of this title for which [it is] responsible or for the execution of the functions vested in [it] by this title, * * *."

This general grant of authority provides ample rulemaking power to the Commission, so long as the rule is reasonably related to the enabling legislation. See *Mourning* v. *Family Publications Services, Inc.*, 411 U.S. 356 (1973); *Touche Ross & Co.* v. *SEC*, 609 F.2d 570 (2d Cir. 1979).

[60] See, *e.g.*, sections 10(a), 10(b), 15(c), and 23(a) of the Exchange Act, 15 U.S.C. 78j(a), 78j(b), 78*o*(c), and 78w(a). Of course, to the extent that short selling is used as a part of a fraudulent, manipulative, or deceptive scheme, the Commission presently can bring enforcement actions based upon violations of general or specific antifraud and anti-manipulation provisions of the securities laws.

[61] See the discussion of "naked" short selling in section V. *supra*.

[62] See, *e.g.*, n.47 *supra*.

[63] See the discussion of the open short reporting requirements of the self-regulatory organizations in section IV.B. *supra*.

[64] The Commission notes, however, that even without a disclosure requirement, issuers are often able to identify substantial short sellers and/or lenders of their stock, presumably from their contacts with analysts, market makers, and financial advisors.

[65] See, *e.g.*, Lowenstein and Steptoe, "Companies Shrink Supply of Stock in Defense Against Short Sellers," *Wall St. J.*, June 6, 1989, at C1.

[66] The Commission notes, however, that some short sellers willingly incur such liquidity costs by revealing their positions in order to convince others to sell the securities.

[67] See the discussion of the sections 13(d) and 13(g) reporting requirements in section IV.A.1. *supra*. See also the discussion of the section 13(f) confidentiality provisions in section IV.A.2. *supra*.

12 of the Exchange Act. Comment is also requested on the relative costs and benefits of a lower or higher threshold level.

F. Manipulative Short Selling

Commenters are requested to describe in detail instances of manipulative short selling within their knowledge and to indicate whether and in what manner the APTC Petition would have been effective in preventing such conduct. In this connection, comment should focus upon whether adoption of the APTC Petition is necessary as a "means reasonably designed to prevent fraudulent, manipulative, or deceptive conduct." [68]

G. Operational Considerations

The APTC Petition proposes a concept of short position reporting. The APTC Petition has referred to Rule 13d-1 to suggest the substance of an implementing rule.[69] Commenters are asked to consider the respects in which a short position reporting requirement should "paraphrase" or "mirror" the substance of rule 13d-1, including:

1. What types of market activity should be excepted from the reporting requirement (or permitted to be reported on a delayed basis) [70] and what are the bases for such exceptions? For example, should the short positions of stock exchange specialists, over-the-counter equity market makers, block positioners, third market makers, and options specialists and market makers, all of whom utilize short selling extensively in connection with their market-making operations, be excepted from a short position reporting requirement? [71] Should market participants that engage in *bona fide* hedging and arbitrage transactions be excepted, or would information on the nature of their positions have value to persons who use the aggregate short sale information, for example, because it would reveal that a large portion of the aggregate short position in a particular security was not based on an opinion of the merits of that security?

2. What information should be required about the filing person and the transaction(s) that established the short position? [72]

3. How should the concept of "beneficial ownership" used in section 13(d) and Regulation 13D-G be applied in connection with short positions? [73]

Dated: June 7, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary

Dissenting Statement of Commissioner Fleischman

"Bear raids" via short sales evoke a deep-seated fear in the collective American securities-market subconscious. As in "speculation", some believe there is illegitimacy (if not evil) in short sales—that is, in selling securities that the seller does not own. Occasionally, those of us who are regulators curtsy in the direction of the economic literature that indicates the constructive role played by short selling in providing market liquidity and pricing efficiencies (see the three middle paragraphs of Part II. of the accompanying Release), but the potential for manipulation in all short selling drives us, institutionally, away from price neutrality and toward intervention designed to inhibit, constrict and in some cases preclude participation in the securities markets by those who would be "shorts". The suggestion in Part VI. of the Release that the Commission would likely deal with large short positions (if the Commission does take rulemaking action) under its antifraud authority reflects that institutional bias.

In the particular context of short selling into post-initial public offerings, where the prospects for negative impact on capital-raising by American business enterprises were magnified, this Commission faced great pressure over a fifteen-year time frame to throttle short selling. From initiation of a rulemaking project in 1973 to adoption of a final "*temporary*" rule in 1988, the Commission sought a method of vindicating the concerns of enterprise capital formation with minimal intrusion into legitimate market activities. Even as it adopted Rule 10b-21(T) on a temporary basis, the Commission served notice that it had done so in order to reserve for itself

> * * * the opportunity to analyze, at a later date, whether the rule is achieving its intended purpose. In this regard the Commission's staff will request the NASD and the exchanges to furnish statistical information for non-initial public offerings conducted after the adoption of the Rule for an eighteen-month period. The staff will then review this data and report to the Commission, within twenty-four months of adoption, whether the pricing impact the NASD believes is indicative of short selling persists and whether any new pricing impacts are observed.[74]

Despite the absence of any such report to date, the staff and the Commission now respond to a much broader request to utilize rulemaking as an effective limit on short selling by any single interest in any class of the equity securities of any publicly traded issuer, by requesting public comment on the rulemaking petition.

The questions asked under Part VII. of the Release are good questions, well balanced, that deserve to be asked. But they are questions for which, if the responses are to reflect more than instinct out of the commenters' collective subconscious, the results of the report promised by this Commission three years ago are crucial. The availability of pre- and post-intervention data would allow the Commission, informed observers, and the public generally, to obtain an understanding of what happened when the Commission intervened, surgically, in a narrow segment of the marketplace. That understanding seems to me requisite to intelligent comment on possible Commission intervention, broadside, into the public equity markets. This Commission has failed to fulfill its undertaking; in my view the Commission owes it to the public to do so, as a pre-condition to and a foundation for the request for public comment on additional rulemaking directed at short selling.

I therefore vote "no" to the publication of the foregoing request for public comment on the APTC rulemaking petition at this time.

[FR Doc. 91-14076 Filed 6-12-91; 8:45 am]

BILLING CODE 8010-01-M

[68] See the statutory authority discussion in section VI. *supra*.

[69] See Hearings, *supra* n.2, at 178, 192 (Testimony and Statement of John F. Guion).

[70] *Cf.* 17 CFR 240.13d-1(b).

[71] The Commission notes that the APTC Petition envisions such exceptions for at least some of these categories of market participants acting in these capacities. See Hearings, *supra* n.2, at 178 (Statement of John F. Guion).

[72] See section 13(d) and Schedule 13D.

[73] See 17 CFR 240.13d-3 and 240.13d-4.

[74] Release No. 34-26028, 41 SEC Docket (CCH) 927, 930 n.16 (August 25, 1988).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2507]

Alaska; Declaration of Disaster Loan Area

The State of Alaska with the exception of the Kodiak Island Borough constitutes a disaster area as a result of damages caused by extensive spring flooding which occurred beginning April 30, 1991. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 5, 1991 and for economic injury until the close of business on March 4, 1992 at the address

listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795 or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with Credit Avaliable Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	9.125
For economic injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 250706 and for economic injury the number is 732100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 4, 1991.

Patricia Saiki,

Administrator.

FR Doc. 91-14068 Filed 6-12-91, 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2502]

Kansas (With Contiguous Counties in Oklahoma & Nebraska); Amendment No. 1, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with amendments dated May 6, 8, 17, and 20, 1991, to the President's major disaster declaration of April 29, to include the counties of Jefferson, Wabaunsee and Washington in the State of Kansas as a disaster area as a result of damages caused by tornadoes, which occurred on April 26 and 27. This declaration is also amended to include damages from tornadoes which occurred on May 16 in the counties listed herein as well as the previously declared counties. The incidence period for this disaster has been established as April 26 through May 19, 1991.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Atchison, Clay, Cloud, Douglas, Geary, Jackson, Leavenworth, Lyon, Marshall, Morris, Osage, Pottowatomie, Republic, Riley, and Shawnee in the State of Kansas and the counties of Gage, Jefferson, and Thayer in the State of Nebraska may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the termination date for filing applications for physical damage is June 27, 1991, and for economic injury until the close of business on January 29, 1992.

The number assigned to this disaster for physical damage is 250212 and for economic injury the numbers are 730400 for Kansas, 731200 for Oklahoma, and 7316 for Nebraska.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 5, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-14069 Filed 6-12-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2503]

Louisiana (With Contiguous Counties in Arkansas, Mississippi & Texas); Amendment No. 2, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with amendments dated May 22 and 28, and June 3, 1991, to the President's major disaster declaration of May 3, to include the parishes of Avoyelles, Concordia, Iberville, Jackson, LaSalle, Lincoln, St. James, St. John the Baptist, and St. Tammany in the State of Louisiana as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on April 27. This declaration is also amended to correct the economic injury numbers for Louisiana and Arkansas listed in Amendment #1.

In addition, applications for economic injury loans from small businesses located in the contiguous parishes of East Baton Rouge, Livingston, Tangipahoa, West Baton Rouge, and West Feliciana in the State of Louisiana and the counties of Adams, Jefferson, and Wilkinson in the State of Mississippi may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 2, 1991, and for economic injury until the close of business on February 3, 1992.

The economic injury numbers are 731300 for Louisiana; 731400 for Arkansas; 731500 for Mississippi, and 7318 for Texas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 5, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-14066 Filed 6-12-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2499]

Louisiana (With Contiguous Counties in Texas & Arkansas); Amendment No. 2, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended to include Shelby County in the State of Texas which was inadvertently omitted as a contiguous county, and, in accordance with an amendment dated April 26, 1991, to the President's major disaster declaration of April 23, to establish the incident period for this disaster as beginning on April 12 and continuing through April 26, 1991.

All other information remains the same, i.e., the termination date for filing applications for physical damage is June 22, 1991, and for economic injury until the close of business on January 23, 1992.

The economic injury numbers are 729900 for Louisiana; 730000 for Texas; and 730100 for Arkansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 5, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-14067 Filed 6-12-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2506]

Maine; Declaration of Disaster Loan Area

Aroostook County and the contiguous counties of Penobscot, Piscataquis, Somerset, and Washington in the State of Maine constitute a disaster area as a result of damages caused by severe spring flooding and ice jamming which occurred between April 6 and April 24, 1991. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 2, 1991 and for economic injury until the close of business on March 3, 1992 at the address listed below: U.S.

Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd fl., Occidental Chemical Center, Niagara Falls, NY 14302 or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125
For economic injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 250606 and for economic injury the number is 732000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 3, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-14070 Filed 6-12-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1411]

Strategic Planning Group of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that the Strategic Planning Group (SPG) of the U.S. CCIR Organization will be held at 1:30 p.m., June 26, 1991, in room 1105 of the Department of State, 2201 C Street, NW., Washington, DC. Mr. James McKinney, Advanced Television Systems Committee, and Mr. Francis S. Urbany, BellSouth Corporation, serve as co-chairmen of the Group.

Under the framework of the U.S. Organization, the purpose of the SPG is to provide a forum to allow private sector members to focus on CCIR issues that have broad policy, economic and institutional implications for interested telecommunications-related industries and the U.S. Government.

The agenda of the meeting will include: (a) Review of ITU Administrative Council actions on the Report of the ITU High Level Committee; (b) Approval of a report from the SPG's Task Force on the Voluntary Group of Experts (VGE) relating to the Radio Regulations; and (c) Consideration of future activities of the SPG and related work program.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairmen. Entrance to the Department of State is controlled but can be facilitated by making attendance arrangements in advance. Persons planning to attend the meeting should contact the office of Richard Shrum, State Department; (202) 647-2592, fax (202) 647-7407, no later than two days before the meeting. Notification should include name, date of birth, and Social Security number. All attendees must use the C Street entrance.

Dated: June 4, 1991.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 91-13999 Filed 6-12-91; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

New Route Opportunities (U.S.-Brazil)

By this notice we invite applications from all certificated U.S. air carriers interested in being designated for service to Brazil and/or in receiving allocations for operating additional frequencies to Brazil.

During recent consultations held between representatives fo the United States and Brazilian Governments in Rio de Janeiro, a new amended agreement was concluded, *ad referendum*, which expands the services that United States carriers may provide to Brazil.

Under the terms of the amended agreement airlines designated by the Government of the United States for service to Brazil may operate over the following route:

From a point or points in the United States, via intermediate points, to Manaus, Brasilia, Rio de Janeiro, Sao Paulo, Recife, Porto Alegre, Belem, Belo Horizonte, and Salvador and beyond Brazil to Argentina, Uruguay, Paraguay and Chile.

The amended agreement provides for an increase in the number of U.S. carriers that may serve Brazil and the number of frequencies that may be operated for both combination and all-cargo services.

Designations

Under the existing agreement, four U.S. carriers may be designated for service to Brazil. Beginning January 1, 1992, a total of five airlines may be designated to perform scheduled combination (passengers and cargo) and all-cargo (property and mail) services. Within this limitation up to three airlines may be designated for scheduled combination services OR three airlines for scheduled all-cargo services. Until January 1, 1992, the existing designation provisions remain in effect. Currently, two airlines (American and Pan American) are designated for combination services and one airline (Federal Express) is designated for all-cargo services. One designation is currently available, and on January 1, 1992, the fifth designation becomes available. Based on the existing designations and the provisions of the amended agreement, we may use one designation for combination services and one for all-cargo services or both may be used for all-cargo services.

Combination Service Frequencies

Currently, U.S. carriers may operate 40 weekly combination service frequencies in the U.S.-Brazil market. As of May 15, 1991, U.S. carriers were operating 34 of the 40 available frequencies. (Pan American is allocated 20 frequencies and American 14 frequencies.) These frequencies increase to a total of 47 on July 1, 1991, to 56 on January 1, 1992, and to 61 on January 1, 1993. By Order 91-6-5,[1] the Department allocated 6 frequencies each to American Airlines, Inc. and Pan American World Airways, Inc. American's frequencies are effective immediately, and Pan American's frequencies are effective July 1, 1991, upon the frequency increase provided for under the amended agreement. Therefore, for the period July 1, 1991-December 31, 1991, one additional weekly frequency is available for combination services. Effective January 1, 1992, a total of 10 additional weekly frequencies will be available. Effective January 1, 1993, a total of 15 additional weekly frequencies will be available.

All-cargo Frequencies

Currently, the designated airline(s) of the United States may operate 8 round-trip all-cargo frequencies per week between the United States and Brazil. As of May 15, 1991, the U.S. designated

[1] Not published in Federal Register.

carrier in the market was operating 6 weekly frequencies. As of January 1, 1992, the number of frequencies that may be operated will increase to a total of 12, and effective January 1, 1993, to a total of 14. All-cargo frequencies are defined as flights performed with wide-bodied freighter aircraft. If narrow-bodied aircraft are used, frequency levels increase in a ratio of 2 to 1 (*i.e.* 2 narrow-body frequencies equal one wide-body frequency). Therefore, through December 31, 1991, 2 wide-bodied (4 narrow-bodied) frequencies are available for allocation. Effective January 1, 1992, a total of 6 additional wide-bodied (12 narrow-bodied) frequencies will be available. As of January 1, 1993, there will be a total of 8 additional wide-bodied (16 narrow-bodied) frequencies available.

New Applications

We invite interested carriers to file applications for authority to serve these new route opportunities no later than June 26, 1991. Answers shall be due no later than July 3, 1991, and responsive pleadings no later than July 8, 1991. Carriers which have already filed for authority to serve between the U.S. and Brazil need not refile [2] unless they wish to supplement their requests as a result of changed circumstances.[3] Except as modified above with respect to filing and response dates, applications for certificate authority should be filed pursuant to part 302, subpart Q and applications for exemption authority should conform to the provisions of part 302, subpart D. Docket numbers will be individually assigned by the Department for each application received. Applications should be filed with the Department's Docket Section, room 4107, 400 Seventh Street SW., Washington, DC 20590. Procedures for acting on the applications filed will be established by future Department order.

Dated: June 7, 1991.

'aul L. Gretch,

Director, Office of International Aviation.

[FR Doc. 91-14030 Filed 6-12-91; 8:45 am]

BILLING CODE 4910-62-M

[2] Arrow Air has already filed for authority to provide all-cargo service between the U.S. and Brazil (Docket 47552). Arrow proposes to operate three weekly round trips between Miami and Brazil (one round trip will serve Manaus, Rio de Janeiro, and Sao Paulo; and two round trips will serve Sao Paulo in conjunction with Arrow's service to Buenos Aires, Argentina).

[3] Interested parties may file competing applications and responsive pleadings to applications already filed in accordance with the dates specified above.

National Highway Traffic Safety Administration

[Docket No. 91-25-IP-NO. 1]

Navistar International and Mack Trucks, Inc.; Receipt of Petitions for Determination of Inconsequential Noncompliance

Navistar International (Navistar) of Fort Wayne, Indiana and Mack Trucks, Inc. (Mack) of Allentown, Pennsylvania have each petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (the Act) (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.106, Federal Motor Vehicle Safety Standard No. 106, "Brake Hoses," on the basis that these noncompliances are inconsequential as they relate to motor vehicle safety.

This notice of petition receipt is published under section 157 of the Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petitions.

Paragraph S7.3.7 of Standard No. 106 requires that, except for hose reinforced by wire, an air brake hose shall withstand a tensile force of 8 pounds per inch of length before adjacent layers separate. As a result of a routine compliance test by the National Highway Traffic Safety Administration, it was discovered that certain air brake hoses (Weatherhead H33806 and H33808) manufactured by the Dana Corporation failed to comply with the adhesion requirement of Standard No. 106.

Upon finding the above mentioned noncompliance, NHTSA opened a noncompliance investigation numbered NCI 3166. As a result the Dana Corporation agreed to conduct a notification and remedy campaign. The recall campaign number is 90E-045. Both Navistar trucks and Mack trucks are equipped with these hoses and they are petitioning the agency in response to the notification issued by the Dana Corporation.

Navistar Petition

Navistar reported that 147,612 vehicles built between January 4, 1988, and June 29, 1990, could be equipped with the noncompliant hoses manufactured by Dana Corporation. The air brake hoses on these vehicles may not comply with the adhesion strength requirement of Standard No. 106.

In supporting its petition, Navistar included the following assertions:

Navistar believes the eight pound adhesion test set forth in subparagraph S7.3.7 of Standard 106 is directly derived from SAE standards developed in the 1960s. It is further believed that this test provision was a reflection of concern that brake hoses experiencing an adhesion problem under a vacuum condition could present a safety problem. No air brake hose in Navistar air brake systems are subjected to vacuum.

Navistar questions the possibility that an air brake hose assembly could experience a sudden and unexpected failure in actual vehicle service due to lower than required layer adhesion. It is not aware of anyone having been able to demonstrate the failure mode caused by this condition. All Navistar hose assemblies have crimped-on end fittings that capture the layers of hose. In the assembly state this negates the need for adhesion as a performance requirement. Once the hose is made into an assembly and used in a typical air brake system, Navistar projects no reduction in life expectancy resulting from low layer adhesion as compared to an assembly containing hose meeting the specification.

An additional factor that Navistar believes should be considered is the air brake system design. All Navistar trucks, truck-tractors and buses are manufactured with dual or split braking systems which provide emergency braking capability should failure of a component occur in the service brake system. The concept is similar to that used in all passenger cars. Air brake systems go one step further however, by providing an additional backup emergency feature, that being automatic application of the parking system (spring brakes) in the event all service and emergency reserve air pressure is depleted.

To demonstrate the effect of a hose failure in a worse case situation, a series of stopping tests was conducted at Navistar's test track. A short wheelbase single drive axle tractor with large steer axle brakes was used in the bobtail (empty) condition for the evaluation. This vehicle represents the least stable configuration found on the road today. The road surface was wet asphalt and stops were conducted at speeds varying from 20 to 50 mph. The right steer axle brake hose was selected to induce conditions which ranged from a small rupture to complete venting to atmosphere. The tractor was brought to a safe controlled stop within a twelve foot lane under all of these test conditions by means of the rear axle section of the dual brake system. Air

pressure loss in the steer axle circuit was indicated by the air gauge, audible warning alarm and visual light.

Because of installation procedures, typical in the industry, the brake hoses are painted during the painting of the vehicle chassis. This, along with weathering and the effects of road contamination, makes it virtually impossible to identify the date codes on the hoses. As a result, the practical alternative is to change approximately 980,000 Weatherhead hoses. This would involve 865,000 hose assemblies that are in compliance with Standard 106. This would result in the disruption of many hose connections in a vehicle brake system, in excess of 85 percent of which would be unnecessary if the date codes were discernable.

Also, to correct this condition would place an undue burden on owners through disruption of commerce. Navistar estimates a minimum of four hours road time loss per vehicle to inspect and replace the hoses. Navistar asserts that the time and money loss to correct this condition combined with the risk of tampering with a satisfactorily performing system, far outweighs any possible benefit this action could provide.

Therefore, Navistar maintains that the adhesion noncompliance issue is inconsequential. While the hoses at issue here do not, in some instances, comply with the eight pound adhesion requirement, Navistar agrees that this is a technical noncompliance with Standard 106 and not safety related, and therefore, does not warrant a vehicle recall.

Mack Petition

Mack determined that 65,000 of its vehicles manufactured between January 15, 1988, and March 25, 1991, may be equipped with noncompliant air brake hose assemblies manufactured by Dana. It supports its petition with the following:

Because the air brake hoses in question have only been used as the trailer service/emergency hose assemblies connecting the tractor to the trailer and as jumper hoses connecting frame mounted brake valves to axle mounted tees or quick release valves and because its research has determined that none of the suspect air brake hoses have failed in service due to low adhesion, Mack believes that the hoses will not fail in any way to perform as designed.

Mack agreed with the Navistar assertion that the adhesion requirement more appropriately applies to hoses used in a vacuum application. However, the hoses on the Mack trucks are used in a pressure application, therefore Mack does not believe that the noncompliance with the adhesion requirement is consequential to safety in this case.

Mack holds the position that the condition of low adhesion resulting in buildup of air between plies, which can cause inward ballooning of the hose, can only occur if there is a pressure differential across the inner tube, i.e., if the pressure on the outside of the tube is higher than that on the inside. Mack believes that this condition is feasible in a vacuum application where the inside of the tube is normally at a pressure below atmospheric, however it does not believe it is feasible in the pressure application where the subject hoses exist.

The noncompliant hoses were subjected to internal pressures of 0 to 120 psi above atmospheric. Under this condition Mack envisioned two scenarios as to how a higher pressure can exist on the outside of the inner tube.

The first scenario requires that a path for air exist between the tube and the tube support, the plies at the cut end of the hose inside the fitting must separate and allow air to leak between the plies (this leak area must extend beyond the fitting to the unsupported hose), and this air must remain between the plies while the inner tube is exhausted. Mack believes this scenario is rendered invalid by the deisgn of the end fittings and hose. The end fittings used in its applcations prevent this type of failure. In the trailer hose application, the hose layers are forced together by a compression sleeve in the end fitting which prevents air from traveling between layers to the hose beyond the end fitting. Inside the fitting, the inner tube is held by a tube support preventing it from collapsing. In the jumper line application, a crimped end fitting produces this same effect. Again, the inner tube is supported from collapse by a tube support inside the fitting. The hoses in question consist of an inner tube, a braided layer and a cover. Only the inner tube is designed to contain air; both the braided layer and cover are permeable. This precludes air from being trapped between the layers.

The second scenario requires the following sequence of events: First, a path for air through the inner tube must exist; second, a buildup of pressure causing a spearation of plies must occur; and third, this air must then remain between the plies while the inner tube is exhausted. Mack believes that this scenario is not valid in the case of the subject hose because it has no reason to suspect that the inner tube of the hoses in question is prone to leakage. In addition, the layers of the hose are not designed to contain air as previously noted.

To support its conclusions, Mack requested that Dana-Weatherhead conduct testing that required twenty sections of suspect hose (with the adhesion values shown) to be subjected to 150 psi and 300 psi for one hour (simulating a hose in the spring brake circuit). Both types of end fittings were tested. Upon inspection, neither of the two conditions described above were found.

Mack stated that based on its review of warranty history and the testing done by Dana-Weatherhead, the noncompliance with S7.3.7 of Standard No. 106 will not affect the safety of Mack vehicles and is, therefore, inconsequential.

Interested persons are invited to submit written data, views and arguments on the Navistar and Mack petitions, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 15, 1991.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on June 10, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-14120 Filed 6-12-91; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Applications for Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "p" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before June 28, 1991.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Sreet SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
970-X	Callery Chemical Company, Pittsburgh, PA (See Footnote 1)	970
3187-X	PPG Industries, Inc., Pittsburgh, PA (See Footnote 2)	3187
4884-X	Union Carbide Industrial Gases, Inc., Danbury, CT (See Footnote 3)	4884
8214-X	TG (U.S.A.) Corporation, Perryville, MO (See Footnote 4)	8214
8645-X	Mining Services International Corporation (MSI), Salt Lake City, UT (See Footnote 5)	8645
8710-X	Akzo Chemicals, Inc., Chicago, IL (See Footnote 6)	8710
9162-X	Sun Pipe Line Company, Longview, TX (See Footnote 7)	9162
9618-X	ENPAC Corporation, Jacksonville, FL (See Footnote 8)	9618
9723-X	Aqua-Tech, Inc., Port Washington, WI (See Footnote 9)	9723
10050-X	Ceodeux, S.A., Lintgen, Luxembourg, G.D. (See Footnote 10)	10050
10229-X	United States Can Company, Oak Brook, IL (See Footnote 11)	10229
10256-X	Comdyne I, Inc., West Liberty, OH (See Footnote 12)	10256
10354X	BASF Corporation, Parsippany, NJ (See Footnote 13)	10354
10498-X	El Dorado Chemical Company, St. Louis, MO (See Footnote 14)	10498
10604-X	Werkzeugmaschinentabrik Oerlikon-Buhrle AG, Zurich, Switzerland (See Footnote 15)	10604
10614-X	Tri-Gas Inc., Irving, TX (See Footnote 15)	10614

(1) To modify exemption to provide for an additional non-DOT specification outside container for transporting cylinders of diborane gas with dry ice.
(2) To modify exemption to provide for additional non-DOT specification outside container for use in transporting certain flammable liquids or organic peroxides.
(3) To authorize shipment of certain poisonous gases contained in cylinder comparable to Specification 4BW except they are constructed of stainless steel.
(4) To modify exemption to provide for an additional fiberboard box as outside packaging for use in transporting airbags.
(5) To authorize shipment of an oxidizer, n.o.s. in DOT Specification 103AL and 111A60AKW tank cars.
(6) To modify the exemption to provide for an additional cargo tank for the shipment of certain organic peroxide solutions, n.o.s.
(7) To renew and authorize modifications to the trailers of certain meter provers for shipment of hydrocarbon product classed as flammable liquids or gases.
(8) To modify the exemption to authorize cargo vessel as an additional mode of transportation.
(9) To modify the exemption to provide for 6.5 mil liners inside non-DOT spec. drums; authorize the use of DOT-spec. 12B fiber boxes and 21C fiber drums and increase the buffer zone to 6 feet.
(10) To renew, authorize cargo vessel and cargo only aircraft as additional modes of transportation, to decrease required valve cycles form 50,000 to 5,000 and to modify certain special provisions.
(11) To modify exemption to provide for shipment of certain compressed gases classed as nonflammable gas as consumer commodities.
(12) To modify exemption to provide for additional non-DOT specification cylinders for transporting flammable gases.
(13) To renew exemption originally issued on an emergency basis to authorize shipment of hydrochloric acid, corrosive material in DOT spec. 111A10OW5 tank car tanks equipped w/ a relief set at 125 psi.
(14) To renew exemption originally issued on emergency to authorize shpmt. of Nitric acid, fuming (over 40 percent) classed as an oxidizer contain in DOT-spec. tank cars that are not equipped with AAR valve.
(15) To reissue exemption originally issued on an emergency basis to authorize shipment of certain Class A and B explosives by cargo only aircraft.
(16) To reissue exemption originally issued on emergency basis to authorize shipment of liquid oxygen or liquid nitrogen, nonflammable gases in non-DOT specification portable tanks.

Application No.	Applicant	Parties to exemption
4453-P	Cona, Inc., Tahlequah, OK	4453
6626-P	Gulf States Airgas, Theodore, AL	6626
6657-P	Gulf States Airgas, Theodore, AL	6657
6691-P	Gulf States Airgas, Theodore, AL	6691
7060-P	Ronson Aviation, Inc., Trenton, NJ	7060
8230-P	Mallinckrodt Specialty Chemicals Company, Paris, KY	8230
8843-P	Pengo Wireline of California, Inc., Bakersfield, CA	8843
8845-P	Pengo Wireline of California, Inc., Bakersfield, CA	8845
9108-P	Sierra Chemical Co., Sparks, NV	9108
9262-P	Pengo Wireline of California, Inc., Bakersfield, CA	9262
9275-P	Enviro Data Associates, Inc., Spring Lake, NJ	9275

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 7, 1991.

J. Suzanne Hegepeth,

Chief, Exemptions Branch Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 91-14031 Filed 6-12-91; 8:45 am]

BILLING CODE 4910-60-M

Applications for Exemptions

AGENCY: Research and Sepcial Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before July 15, 1991.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTION

Application Number	Appplicant	Regulation(s) affected	Nature of exemption thereof
10603-N	Chesterfield Cylinders Limited, Chesterfield, Derbyshire, England.	49 CFR 173.301(h), 173.302(a)(1), 173.302(c)(3), 173.304(a), 173.305(a)(3), 173.34(a)(1).	To manufacture, mark and sell non-DOT specification seamless steel cylinders comparable to DOT Specification 3AA cylinders to transport commodities classed as flammable and nonflammable gases, liquified and non-flammable gases and mixtures. (Modes 1, 2, 3, 4)
10606-N	General Oil Equipment Co., Inc., Tonawanda, NY.	49 CFR 173.119, 173.29(c)(2)	To authorize the shipment of residue flammable liquids in non-specification containers for calibration of meters. (Mode 1)
10607-N	Emergency Technical Services Corporation, Schaumburg, IL.	49 CFR 173.302(a)	To authorize the transportation of damaged detector tubes containing boron trifluoride, classed as non-flammable gas, in salvage cylinder overpacks. (Mode 1)
10608-N	HCl Advance Chemical Distributors, Inc., Catoosa, OK.	49 CFR 176.67(i)(j)	To authorize chlorine filled tank cars to stand with connections attached during unloading without the physical presence of an unloader. (Mode 2)
10609-N	Steel Cylinder Manufacturing Ltd., Tilbury, Ontario, Canada.	49 CFR 178.37-4(a), 49 CFR Part 173(g)(h).	To authorize the manufacture, marking and sell of billet pierced DOT 3AA cylinders that are made from billets which are not inspected by an independent inspector after parting. (Modes 1, 2, 3, 4, 5)
10610-N	Harcros Chemicals, Inc., Kansas City, KS.	49 CFR 174.67(j)	To authorize chlorine filled tank cars to stand with unloading connectors attached without the physical presence of an unloader. (Mode 2)
10611-N	Allied-Signal, Inc., Morristown, NJ.	49 CFR 153.154	To authorize the shipment of various hazardous material in specially designed non-DOT specification containers. (Mode 1)
10618-N	Hughes Aircraft Company, Los Angeles, CA.	49 CFR 172.101, 173.92	To authorize shipment of two communication satellites equipped with nonspillable batteries; a rocket motor, class B explosive together with other hazardous materials aboard a cargo aircraft. (Mode 4)
10619-N	Tri-Gas Inc., Irving, TX	49 CFR 176.76(h), 178.338, 49CFR 173.318.	To authorize shipment of liquid oxygen, nitrogen or argon, nonflammable gases, in non-DOT specification portable tanks. (Modes 1, 3)

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 7, 1991.

J. Suzanne Hedgpeth,

Chief, Exemptions Branch Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 91-14032 Filed 6-12-91; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 7, 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: 1545-0001.

Form Number: CT-1.

Type of Review: Revision.
Title: Employer's Annual Railroad Retirement and Unemployment Repayment Tax Return.
Description: Railroad employers are required to file an annual return to report employer and employee Railroad Retirement Tax Act (RRTA) and Railroad Unemployment Repayment Tax (RURT) taxes. Form CT-1 is used for this purpose. IRS uses the information to insure that the employer has paid the correct tax.
Respondents: State or local government, Busineses or other-profit, Federal agencies or employees, Small businesses or organizations.
Estimated Number of Respondents: 2,287.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping, 41 hours, 8 minutes.
Learning about the law or the form, 2 hours, 12 minutes.
Preparing the form, 5 hours, 46 minutes.
Copying, assembling, and sending the form to IRS, 48 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 119,087 hours.
OMB Number: 1545-1024.
Form Number: 8656.
Type of Review: Revision.
Title: Alternative Minimum Tax—Fiduciaries.
Description: This form was developed to assist fiduciaries in computing the alternative minimum tax under Code sections 55 thorugh 59. The minimum tax is determined by recomputing the distributable net income of the fiduciary on a minimum tax basis. The difference between the distributable net income for regular and minimum tax purposes becomes an adjustment for the beneficiary.
Respondents: Businesses or other-profit.
Estimated Number of Respondents: 1,300,000.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping, 7 hours, 56 minutes.
Learning about the law or the form, 4 hours, 34 minutes.
Preparing and sending the form to IRS, 5 hours, 4 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 32,166,120 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.

Dale A. Morgan,
Departmental Reports Management Officer.

[FR Doc. 91-14056 Filed 6-12-91; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of System Notice and Additional Routine Use Statements

AGENCY: Department of Veterans Affairs.

ACTION: Amendment of system notice and additional routine use statements.

The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existance and character of their system of records. Accordingly, the Department of Veterans Affairs (VA) published a notice of addition of a new system of records entitled "Health Care Provider Credentialing and Privileging Records-VA" (77VA11), which appeared on pages 30790 through 30793 of the **Federal Register** of July 27, 1990 (55 FR 30790). If no comments were received during the 30-day comment period, the routine uses in the system of records were to be effective on August 27, 1990. Due to comments that were received and indication that other individuals would like the opportunity to comment, notice was provided in the **Federal Register** of October 30, 1990 (55 FR 45716), that, while the rest of the system notice was effective upon publication on July 27, 1990, the routine uses were not effective on August 27, 1990, and that the comment period was reopened and extended until November 29, 1990.

Twelve comments were received concerning the system of records notice and the routine uses that were proposed for the records. Nine commenters expressed concern that one or more of the proposed routine uses would permit the disclosure of confidential and privileged medical quality assurance information that is protected from disclosure by title 38, United States Code, section 3305. However, quality assurance information that is protected by 38 U.S.C. 3305 and 38 CFR 17.500-17.540 is not within the scope of the Privacy Act and, therefore, shall not be included in this system of records or filed in a manner so that the information may be retrieved by reference to an individual identifier. Since information protected by section 3305 is not maintained in the Health Care Provider Credentialing and Privileging Records, or any other Privacy Act system of records, this type of information may not be disclosed pursuant to a routine use.

One comment concerned statements in the preamble of the notice which discussed the delienation of clinical privileges and the commenter pointed out that the statements imply a requirement to use a process for privileging individuals who are not independent practitioners that is identical to the proccess for physicians. There are, in fact, a number of options that are acceptable to VA and the Joint Commission on Accreditation of Healthcare Organizations for authorizing these individuals to perform activities which are considered outside the scope of their position. The intent of the notice is to describe the various items of information that are maintained in the records as a result of the credentialing and privileging processes. It is not the intent of the notice, however, to establish the policy as to how those processes will be accomplished. The statement "privileges are also delineated for those individuals for activities that are considered outside their routine professional duties and responsibilities" should have stated "privileges *may* also be delineated * * *

Two comments concerned proposed routine use number 4 which provides for the disclosure of record information to congressional offices when the request is made on behalf of the subject of the record. The commenters interpreted the routine use to permit the disclosure of confidential information concerning health care providers (clinical performance and competence and health status) when requests are made by a congressional office on behalf of third parties and the commenters expressed concerns about such disclosures. The purpose of the routine use, however, is to allow VA to make a disclosure of information about a health care provider to a congressional office only when the inquiry is made at the provider's request.

Two comments concerned proposed routine use number 13 which provides for the disclosure of record information to labor organizations. The commenters objected to the disclosure of information to a labor union concerning a health care provider's clinical competence and performance and health status. The purpose of the routine use is to permit the disclosure of information to labor organizations when the information is relevant and necessary to their duties of exclusive representations and the information is needed in order that they can represent their membership.

Confidential and privileged information concerning a health care provider would not be disclosed pursuant to the routine use.

Eleven comments addressed routine use number 11 which proposed disclosures of information concerning health care providers to patients or patient representatives when the information was needed by the patient to make a determination regarding treatment. The proposed routine use provided for the disclosure of "information concerning the health care provider's qualifications (professional education and training), experience, and professional performance." Many of the comments expressed concern that the routine use would provide for the disclosure of confidential and privileged medical quality assurance information which is protected from disclosure by 38 U.S.C. 3305. As previously stated, this type of information will not be maintained in the Health Care Provider Credentialing and Privileging Records, thus, such information may not be disclosed pursuant to the routine use. Commenters also expressed concern that the disclosure of professional performance information would not serve the goal of a more informed patient population, but would promote confusion and misunderstanding for the veteran and family because of misinterpretations of the information. One commenter stated that professional organizations are unable to come to standard conclusions on how to measure clinical competence and it would be a disservice to confuse the general public by imparting data and information that has not been embraced as a guarantee of quality care. The commenters further stated that the examining of a health care provider's professional performance is an integral component of the privileging and reprivileging processes. These processes ensure compliance with educational and training requirements and that the individual is qualified to perform procedures for which they have been clinically privileged. Based upon the comments received, the routine use has been revised to provide that "disclosure will be limited to information concerning the health care provider's professional qualifications (professional education, training and current licensure/certification status), professional employment history, and current clinical privileges."

Notice is hereby given that VA is considering adding three new routine use statements to the system of records. Two of the routine use statements concern disclosures to the National Practitioner Data Bank. The Health Care Quality Improvement Act of 1986 (Title IV of Pub. L. 99-660) set forth requirements for private sector health care facilities and organizations to report to the Secretary of the Department of Health and Human Services (HHS) adverse actions taken against physicians, dentists and other health care practitioners, reports on medical malpractice, sanctions taken by State Licensing Boards, and reduction of clinical privileges following peer review are to be reported to the National Practitioner Data Bank operated by a private contractor (The Unisys Corporation) on behalf of the Secretary.

Participation in the reporting provisions of Public Law 99-660 is not binding on VA. However, through a Memorandum of Understanding with the Secretary of HHS, the Secretary of Veterans Affairs may apply the requirements to VA physicians, dentists, health care practitioners, applicants for employment and health care facilities. VA participation will include accessing the Bank at the time of hiring and every two years thereafter and other times as deemed necessary by VA, and to report payments for medical malpractice claims and decisions that adversely affect clinical privileges for more than 30 days. Routine use number 18 is proposed to provide for disclosures for accessing the Bank and 19 is to provide for the disclosure of information contained in the records which the Department will disclose in reports to the Bank.

The third routine use, number 20, provides for the disclosure of certain information in response to inquiries from prospective health care entity employers. The information proposed for disclosure includes relevant information concerning the individual's professional employment history, final decisions which adversely effect the individual's clinical privileges, and information related to payments made in settlement of medical malpractice actions or claims.

In view of the information that is obtained from, and provided to, the National Practitioner Data Bank, the system notice has been amended to provide for the maintenance of that information. The categories of records and record source categories sections have been revised to reflect this amendment. Also, the system name has been retitled to read "Health Care Provider Records-VA."

Two sections of the system notice have been revised to reflect the reorganization of the Veterans Health Services and Research Administration that occurred since the system notice was initially published. The system location and system manager(s) sections have been revised to reflect, respectively, the location of the Regional Directors and Division Offices and the offices with responsibility for the records.

The routine uses provided in the **Federal Register** of July 27, 1990 (55 FR 30790), and routine use number 11 as herein amended are effective June 13, 1991.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by VA, the proposed routine use numbers 18, 19 and 20 in the system are effective July 15, 1991.

Aproved: June 5, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Notice of System of Records

The system identified as 77VA11, "Health Care Provider Credentialing and Privileging Records—VA," appearing at 55 FR 30790 (July 27, 1990) is amended and set forth as follows:

77VA11

SYSTEM NAME:

Health Care Provider Records—VA.

SYSTEM LOCATION:

Records are maintained at each of the VA health care facilities. Address locations for VA facilities are listed in VA Apppendix 1 at the end of this document. In addition, information from these records or copies of records may be maintained at the Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 and/or Regional Directors' Offices. The Regional Directors and Division Offices are located at: Eastern Region, Baltimore, MD, with Regional Division Offices at Albany, NY, Baltimore, MD, Bedford, MA, and Pittsburgh, PA; Central Region, Ann Arbor, MI, with Regional Division Offices at Ann Arbor, MI, Indianapolis, IN, Minneapolis, MN, and St. Louis, MO; Southern Region, Jackson, MS, with Regional Division Offices at Atlanta, GA, Dallas, TX, Jackson, MS, and Tampa Bay, FL; and the Western Region, San Francisco, CA, with Regional Division Offices at Palo Alto, CA, Phoenix, AZ, Portland, OR, and Salt Lake City, UT.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning health care providers employed by VA and individuals who

make application to VA and are considered for employment as health care providers. These individuals may include audiologists, dentists, dietitians, expanded-function dental auxiliaries, licensed practical or vocational nurses, nuclear medicine technologists, nurse anesthetists, nurse practitioners, nurses, occupational therapists, optometrists, clinical pharmacists, licensed physical therapists, physician assistants, physicians, podiatrists, psychologists, registered respiratory therapists, certified respiratory therapy technicians, diagnostic and therapeutic radiology technologists, social workers, and speech pathologists.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record may include information related to:

(1) The credentialing (the review and verification of an individual's qualifications for employment which includes licensure, registration or certification, professional education and training, employment history, experience, appraisals of past performance, health status, etc.) of applicants who are considered for employment;

(2) The privileging (the process of reviewing and granting or denying a provider's request for clinical privileges to provide medical or other patient care services, within well defined limits, which are based on an individual's prefessional license, registration or certification, experience, training, competence, health status, ability, and clinical judgment) of health care provider applicants who are considered for employment and VA health care providers who are permitted by law and by the medical facility to provide patient care independently and individuals whose duties and responsibilities are determined to be beyond the normal scope of activities for their profession;

(3) The periodic reappraisal of health care providers' professional credentials and the reevaluation of the clinical competence of providers who have been granted clinical privileges; and/or

(4) Accessing and reporting to the National Practitioner Data Bank.

The record will include the individual's name, address, date of birth, social security number, name of medical or professional school attended and year of graduation and may include information related to: The individual's license, registration or certification by a State licensing board and/or national certifying body (e.g., number, expiration date, name and address of issuing office, status including any actions taken by the issuing office or any disciplinary board to include previous or current restrictions, suspensions, limitations, or revocations); citizenship; hours and awards; professional society membership; professional performance, experience, and judgment (e.g., documents reflecting work experience, appraisals of the applicant and the applicant's past and current performance and potential); educational qualifications (e.g., name and address of institution, level achieved, transcript, information related to continuing education); Drug Enforcement Administration certification (e.g., current status, any revocations, suspensions, limitations, restrictions); information about mental and physical status; evaluation of clinical and/or technical skills; involvement in any administrative, professional or judicial proceedings, whether involving VA or not, in which professional malpractice on the individual's part is or was alleged; any actions, whether involving VA or not, which result in the limitation, reduction, revocation, or acceptance of surrender or restriction of the individual's clinical privileges; and, clinical performance information that is collected and used to support a determination of an individual's request for clinical privileges. Some information that is included in the record may be duplicated in an official personnel folder.

PURPOSES(S):

The information may be used for such purposes as: Verifying the individual's credentials and qualifications for employment and/or clinical privileges; advising prospective health care entity employers, health care professional licensing or monitoring bodies, the National Practitioner Data Bank, or similar entities of activities of VA and former VA health care personnel; accreditation of a facility by an entity such as the Joint Commission on Accreditation of Healthcare Organizations; audits, reviews and investigations conducted by staff of the health care facility, the Regional Directors and Division Offices, VA Central Office, and the VA Office of Inspector General; law enforcement investigations; quality assurance audits, reviews and investigations; personnel management and evaluations; employee ratings and performance evaluations; and, employee disciplinary or other adverse action, including discharge.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 210(c) and chapter 73.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. In the event that a record maintained by VA to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuent thereto.

2. A record from this system of records may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevent to a Department decision concerning the hiring or retention of an employee, the issuance or reappraisal of clinical privileges, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefits.

3. A record from this system of records may be disclosed to an agency in the executive, legislative, or judicial branch, or the District of Columbia's Government in response to its request, or at the initiation of VA, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

4. Disclosure may be made to a congressional office from the record or an individual in response to an inquiry from the congressional office made at the request of that individual.

5. Disclosure may be made to NARA (National Archieves and Records Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

6. Records from this system of records may be disclosed to a Federal agency or

to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar nongovernment entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the Department to obtain information relevant to a Department decision concerning the hiring, retention or termination of an employee or to inform a Federal agency or licensing boards or the appropriate nongovernment entities about the health care practices of a terminated, resigned, or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients receiving medical care in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

7. Information may be disclosed to private sector (i.e., non-Federal, State, or local governments) agencies, organizations, boards, bureaus, or commissions (e.g., the Joint Commission on accreditation of Healthcare Organizations). Such disclosures may be made only when: (1) The records are properly constituted in accordance with VA requirements; (2) the records are accurate, relevant, timely, and complete; and (3) the disclosure is in the best interests of the Government (e.g., to obtain accreditation or other approval rating). When cooperation with the private sector entity, through the exchange of individual records, directly benefits VA's completion of its mission, enhances personnel management functions, or increases the public confidence in the VA's or the Federal Government's role in the community, then the Government's best interests are served. Further, only such information that is clearly relevant and necessary for accomplishing the intended uses of the information as certified by the receiving private sector entity is to be furnished.

8. Informatin may be disclosed to a State or local government entity or national certifying body which has the authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity or national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

9. Information may be disclosed to the Department of justice and United states Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

10. Hiring, performance, or other personnel related information may be disclosed to any facility with which there is, or there is proposed to be, an affiliation, sharing agreement, contract, or similar arrangement, for purposes of establishing, maintaining, or expanding any such relationship.

11. Information concerning a health care provider's professional qualifications and clinical privileges may be disclosed to a VA patient, or the representative or guardian of a patient who due to physical or mental incapacity lacks sufficient understanding and/or legal capacity to make decisions concerning his/her medical care, who is receiving or contemplating receiving medical or other patient care services from the provider when the information is needed by the patient or the patient's representative or guardian in order to make a decision related to the initiation of treatment, continuation or discontinuation of treatment, or receiving a specific treatment that is proposed or planned by the provider. Disclosure will be limited to information concerning the health care provider's professional qualifications (professional education, training and current licensure/certification status), professional employment history, and current clinical privileges.

12. Any information in this system which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal, State, local or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

13. Information may be disclosed to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

14. Disclosure may be made to the VA-appointed representative of an employee of all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.

15. Information may be disclosed to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

16. Information may be disclosed to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

17. Information may be disclosed to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised and matters before the Federal Service Impasses Panel.

18. Identifying information in this system, including name, address, social security number and other information as is reasonably necessary to identify such individual, may be disclosed to the National Practitioner Data Bank at the time of hiring and/or clinical privileging/reprivileging of physicians, dentists and other health care practitioners, and other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/reprivileging, retention or termination of the applicant or employee.

19. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank or to a State or local government licensing

board which maintains records concerning the issuance, retention or revocation of licenses, certifications, or registrations necessary to practice an occupation, profession or specialty when under the following circumstances, through a peer review process that is undertaken pursuant to VA policy, negligence, professional incompetence, responsibility for improper care, and/or professional misconduct has been assigned to a physician, dentist or other health care practitioner: (1) On any payment in settlement (or partial settlement) of, or in satisfaction of a judgment in, a medical malpractice action or claim; or, (2) on any final decision that adversely affects the clinical privileges of a physician, dentist or other health care practitioner for a period of more than 30 days. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

20. In response to a request about a specifically identified current or former employee from a prospective Federal or non-Federal health care entity employer, the following information may be disclosed: (a) Relevant information concerning the individual's professional employment history including the clinical privileges held by the individual; (b) relevant information concerning a final decision which results in a voluntary or involuntary limitation, reduction or loss of clinical privileges; and (c) relevant information concerning any payment which is made in settlement (or partial settlement) of, or in satisfaction of a judgment in, a medical malpractice action or claim and, when through a peer review process that is undertaken pursuant to VA policy, negligence, professional incompetence, responsibility for improper care, and/or professional misconduct has been assigned to the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper documents and information included in the record may be stored on microfilm, magnetic tape or disk.

RETRIEVABILITY:

Records are retrieved by the names and social security numbers of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to VA working and storage areas in VA health care facilities is restricted to VA employees on a "need to know" basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the health care facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to the DHCP (Decentralized Hospital Computer Program) computer room within the health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. ADP peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in the DHCP system may be accessed by authorized VA employees. Access to file information is controlled at two levels; the system recognizes authorized employees by a series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties.

3. Access to records in VA Central Office and the Regional Directors and Division Offices is only authorized to VA personnel on a "need-to-know" basis. Records are maintained in manned rooms during working hours. During nonworking hours, there is limited access to the building with visitor control by security personnel.

RETENTION AND DISPOSAL:

The record is maintained as long as the individual is employed with VA. If the individual transfers to another VA facility location, the record is transferred to the new employing location. Paper records and information stored on electronic storage media are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

SYSTEMS MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures; Deputy Chief Medical Director (DCMD) (11), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Officials maintaining the system; Chief of Staff at the health care facility where the individuals made application for employment, or are or were employed, and the DCMD (11) for individuals who made application for employment to, or are or were employed at, VA Central Office.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the VA facility location at which they made application for employment, or are or were employed. Inquiries should include the employee's full name, social security number, date of application for employment or dates of employment, and return address.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility location where they made application for employment, or are or were employed.

CONTESTING RECORDS PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the applicant/employee, or obtained from State licensing boards, Federation of State Medical Boards, National Council of State Boards of Nursing, National Practitioner Data Bank, professional societies, national certifying bodies, current or previous employers and other health care facilitiers and staff, references, educational institutions, medical schools, VA staff, and VA patient medical records.

[FR Doc. 91-14033 Filed 6-12-91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 114
Thursday, June 13, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 18, 1991, 10 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, June 19, 1991, 10 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Continuation of Presidential Primary Matching Fund Submission and Certification Procedures: Notice of Proposed Rulemaking (continued from meeting of May 23).

DATE AND TIME: Thursday, June 20, 1991, 10 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Continuation of Presidential Primary Matching Fund Submission and Certification Procedures: Notice of Proposed Rulemaking (If Necessary)
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Delores Harris,
Administrative Assistant, Office of the Secretariat.

[FR Doc. 91-14241 Filed 6-11-91; 2:37 pm]
BILLING CODE 6715-01-M

NATIONAL LABOR RELATIONS BOARD
Notice of Meeting

TIME AND DATE: 10:30 a.m., Tuesday, June 11, 1991.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices) (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS CONSIDERED: Discussion of personnel matter.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, Telephone: (202) 254-9430.

Dated, Washington, D.C. _____.

By direction of the Board.

John C. Truesdale,
Executive Secretary, National Labor Relations Board.

[FR Doc. 91-14211 Filed 6-11-91; 1:30 pm]
BILLING CODE 7445-01-M

Corrections

Federal Register
Vol. 56, No. 114
Thursday, June 13, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 777

[Docket No. 910480-1080]

Western Red Cedar

Correction

In proposed rule document 91-12774 beginning on page 25054 in the issue of Monday, June 3, 1991, make the following correction:

§ 777.7 [Corrected]

On page 25056, in the first column, in § 777.7(c)(3), in the second line, "October 1, 1978" should read "October 1, 1979".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Admininstration

50 CFR Part 683

[Docket No. 910354-1111]

RIN 0640-AD74

Western Pacific Bottomfish and Seamount Groundfish Fisheries

Correction

In rule document 91-12726 beginning on page 24351 in the issue of Thursday, May 30, 1991, make the following correction:

On page 24352, in the first column, in the **SUMMARY**, in the ninth line, "Notheastern" should read "Northwestern".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 90-4]

RIN 9000-AC43, 9000-AE12, 9000-AD85, 9000-AE00, 9000-AD32, 9000-AE01, 9000-AD66, 9000-AD21, 9000-AD57, 9000-AD08, 9000-AE05, 9000-AD73, 9000-AD02, 9000-AD78, 9000-AD81, 9000-AD77, and 9000-AD33

Federal Acquisition Regulation (FAR); Miscellaneous Amendments

Correction

In rule document 91-8647 beginning on page 15142, in the issue of Monday, April 15, 1991, make the following corrections:

1. On page 15142, in the first column, under **DATES:**, in the third line, "and 25-225-11 (a)" should read "and 52.225-11 (a)".

2. On page 15156, in the third column, the heading that reads "52.224-1 [Amended]" should read "52.244-1 [Amended]".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0188]

Drug Export: "A" HIVAG-Monoclonal

Correction

In notice document 91-12042 appearing on page 23296, in the issue of Tuesday, May 21, 1991, in the third column, in the first full paragraph, in the fifth line, "(21 (CFR 5.10)" should read "(21 CFR 5.10)".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing

[Docket No.N-91-3271]

Submission of Proposed Information Collection to the Office of Management and Budget

Correction

In notice document 91-12600 beginning on page 24530 in the issue of Thursday, May 30, 1991, make the following correction:

On page 24564, in the third column, at the end of the document the file line was omitted. It should read as follows:

[FR Doc. 91-12600 Filed 5-29-91; 8:45 am]

Billing Code 4210-27-M

BILLING CODE 1505-01-D

federal register

Thursday
June 13, 1991

Part II

Environmental Protection Agency

40 CFR Part 261

Special Wastes From Mineral Processing (Mining Waste Exclusion); Final Regulatory Determination and Final Rule

ENVIRONMENTAL PROTECTION AGENCY

[EPA/OSW-FR-91-018; FRL-3956-1]

40 CFR Part 261

RIN 2050-AC41

Final Regulatory Determination for Special Wastes From Mineral Processing (Mining Waste Exclusion)

AGENCY: Environmental Protection Agency.

ACTION: Final regulatory determination and final rule.

SUMMARY: Today's action presents the Agency's final regulatory determination required by section 3001(b)(3)(C) of the Resource Conservation and Recovery Act (RCRA) for 20 special wastes from the processing of ores and minerals. EPA has concluded that regulation under Subtitle C of RCRA is inappropriate for all 20 of the special wastes that were studied. EPA plans to address 18 of the wastes under subtitle D, possibly in the program being developed for mining wastes. For the remaining two wastes (phosphogypsum and process waste water from phosphoric acid production), EPA plans to proceed with the development and promulgation of a program under the Toxic Substances Control Act (TSCA) that will address their management, including possible regulations concerning waste minimization/pollution prevention for these wastes. In addition, EPA plans to use existing authorities under either RCRA Section 7003 or CERCLA section 106 to address any site-specific ground-water contamination problems that are believed to pose substantial and imminent endangerment to human health or the environment. EPA has also decided to postpone consideration of a possible ban on the utilization of one of the special wastes, slag from elemental phosphorus production in construction and/or land reclamation.

The rationale and salient facts used by the Agency to arrive at these decisions are provided below.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: For further information on the regulatory determination, contact the RCRA/Superfund hotline at (800) 424-9346 (toll free) or (703) 928-9810, or Bob Hall at (703) 308-8412.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Statutory Authority

Today's notice is issued under the authority of section 3001(b)(3)(C) of RCRA, which requires that after completion of the Report to Congress mandated by section 8002(p) of RCRA, the Administrator must determine whether or not subtitle C regulation of the special study wastes is warranted. Wastes for which the exclusion is retained will continue to be subject to regulation under RCRA Subtitle D as solid wastes.

B. History of the Mining Waste Exclusion

In October, 1980, RCRA was amended by adding section 3001(b)(3)(A)(ii) to exclude "solid waste from the extraction, beneficiation, and processing of ores and minerals" from regulation as hazardous waste under subtitle C of RCRA, pending completion of a study and a Report to Congress required by section 8002 (f) and (p) and a determination by the EPA Administrator either to promulgate regulations under subtitle C or that such regulations are unwarranted and that the exclusion should continue (as required by section 3001(b)(3)(C)). EPA modified its hazardous waste regulations in November 1980 to reflect this "Mining Waste Exclusion," and issued a preliminary, and quite broad, interpretation of the scope of its coverage. In particular, EPA interpreted the exclusion to include "solid waste from the exploration, mining, milling, smelting and refining of ores and minerals" (45 FR 76618, November 19, 1980).

In 1984, EPA was sued for failing to submit the Report to Congress and make the required regulatory determination by the statutory deadline (*Concerned Citizens of Adamstown* v. *EPA* No. 84-3041, D.D.C., August 21, 1985). In responding to this lawsuit, the Agency explained that it planned to propose a narrower interpretation of the scope of the Mining Waste Exclusion, so that it would encompass fewer wastes, and proposed to the Court two schedules: One for completing the section 8002 studies of extraction and beneficiation wastes and submitting the Report to Congress addressing these wastes, and one for proposing and promulgating a reinterpretation for mineral processing wastes. In so doing, the Agency, in effect, split the wastes that might be eligible for exclusion from regulation into two groups: Mining (mineral extraction and beneficiation) wastes, and mineral processing wastes. The Court agreed to this approach and established a schedule for the two tasks.

On December 31, 1985, EPA published the required Report to Congress on solid wastes from mineral extraction and beneficiation, and on July 3, 1986 (51 FR 24496) published a determination that regulation of such wastes under subtitle C of RCRA was not warranted. Since the determination was made, the Agency has been developing a tailored regulatory approach for these wastes under RCRA subtitle D.

In keeping with its Court-ordered directive to reinterpret the Mining Waste Exclusion for mineral processing wastes, in October, 1985, EPA proposed to narrow the scope of the Exclusion for mineral processing wastes to include only a few specific waste streams (see 50 FR 40292, October 2, 1985). However, the Agency did not specify the criteria that it used to identify these wastes, or to distinguish them from other wastes that were not identified as being eligible for the exclusion. In response to this proposal, many companies and industry organizations "nominated" wastes that they believed were eligible for the regulatory exemption. Faced with an inability at that time to articulate criteria that could be used to distinguish exempt from non-exempt wastes and the approaching Court-ordered deadline for final action, EPA withdrew its proposal on October 9, 1986 (51 FR 36233).

In July, 1988, the court in *Environmental Defense Fund* v. *EPA*, 852 F.2d 1316 (D. C. Cir. 1988), *cert. denied*, 109 S. Ct. 1120 (1989) held that EPA's withdrawal of its 1985 proposal was arbitrary and capricious, and ordered EPA to reinterpret the scope of the Exclusion for mineral processing wastes. In particular, EPA was directed by the court to restrict the scope of the Exclusion as it applied to mineral processing wastes to include only "large volume, low hazard" wastes. In a series of rulemaking notices, EPA has, during the past three years, established the

boundaries of the Mining Waste Exclusion for mineral processing wastes, has articulated the criteria that were used to define "mineral processing," and has evaluated whether individual wastes are large volume and low hazard and, thus, eligible for the temporary exclusion provided by RCRA section 3001(b)(3)(A)(ii). This rulemaking process was completed with the publication of final rules on September 1, 1989 (54 FR 36592) and January 23, 1990 (55 FR 2322). With the completion of these notices, the Agency established that the temporary exemption from subtitle C requirements established by the Exclusion for mineral processing wastes and, therefore, the scope of the Report to Congress, was limited to 20 specific mineral processing wastes.

EPA then prepared and submitted a detailed and comprehensive Report to Congress addressing the 20 special mineral processing wastes, in compliance with the Court-ordered deadline. In addition to the explicit consideration of the eight study factors listed at section 8002(p) of RCRA, the Agency included in the Report a proposed regulatory status for each of the 20 special wastes. Thus, the Report serves both as an information source and as a tentative indication of the Agency's final determination. Accordingly, and in compliance with statutory directive, the Report, the data and analyses that underlie it, and the comments received on it have served as the primary basis for the regulatory decisions that are articulated in today's notice.

EPA did not complete the regulatory determination within the six month statutory deadline. As a result, the Environmental Defense Fund filed a new RCRA citizen's suit, which was settled by consent decree. *EDF* v. *EPA*, No. 91-0429 (D.D.C. Mar. 4, 1991). Under the terms of the consent decree, EPA must issue the regulatory determination no later than May 20, 1991. Today's decision is issued in compliance with that decree.

C. Overview of the Report to Congress

1. Scope of the Report

The scope of the Report to Congress was limited to 20 mineral processing wastes, representing 12 mineral commodity sectors. These wastes are generated by 91 facilities located in 29 states. The 20 wastes covered by the Report to Congress, organized by sector, follow:

Sector	Waste(s)
Alumina	Red and brown muds from bauxite refining.
Chromium (Sodium Chromate/dichromate).	Treated residue from roasting/leaching of chrome ore.
Coal gasification	Gasifier ash from coal gasification.
	Process wastewater from coal gasification.
Copper	Slag from primary processing.
	Calcium sulfate wastewater treatment plant sludge from primary processing.
	Slag tailings from primary processing.
Elemental Phosphorus.	Slag from primary production.
Ferrous Metals	Iron blast furnace APC dust/sludge.
	Iron blast furnace slag.
	Basic oxygen furnace and open hearth furnace APC dust/sludge.
	Basic oxygen furnace and open hearth furnace slag.
Hydrofluoric acid	Fluorogypsum.
	Process wastewater.
Lead	Slag from primary processing.
Magnesium	Process wastewater from primary magnesium processing by the anhydrous process.
Phosphoric acid	Phosphogypsum.
	Process wastewater.
Titanium tetrachloride.	Chloride process waste solids.
Zinc	Slag from primary processing.

2. Study Factors

The RTC addressed the following eight study factors required by section 8002(p) of RCRA:

1. The sources and volumes of such materials generated per year;
2. Present disposal and utilization practices;
3. Potential danger to human health and the environment from the disposal and reuse of such materials;
4. Documented cases in which danger to human health or the environment has been proved;
5. Alternatives to current disposal methods;
6. The costs of such alternatives;
7. The impacts of these alternatives on the use of phosphate rock, uranium ore, and other natural resources; and
8. The current and potential utilization of such materials.

In addition, the statute suggests that the Administrator may review studies and other actions of other federal and state agencies, and invite participation by other concerned parties, including industry and other federal and state agencies, with a view toward avoiding duplication of effort.

The Agency's approach in preparing this Report was to combine certain study factors, for purposes of analysis and exposition, into seven sections. The first section provides a brief overview of the industry, including the types of production processes used and the number and location of operating facilities that generate one or more of the mineral processing special wastes. The second section summarizes information on waste characteristics, generation, and current management practices (study factors 1 and 2), while the third section provides a discussion of potential for and documented cases of danger to human health or the environment (study factors 3 and 4). The fourth section (as suggested generally by section 8002(p) of RCRA), summarizes applicable federal and state regulatory controls. The fifth section discusses alternative waste management practices and potential utilization of the wastes (study factors 5 and 8), while the sixth section discusses costs and impacts of alternative practices (study factors 6 and 7). The seventh and final section summarizes and analyzes the findings of EPA's evaluation of the above study factors.

3. Preliminary Findings in the Report to Congress

The Report to Congress presented EPA's preliminary findings regarding the 20 special wastes from mineral processing, based on two separate approaches: (1) The application of the RCRA section 8002(p) study factors and (2) the application of the RCRA section 8002(p) study factors and additional considerations. A summary of the Agency's findings, prior to receipt and analysis of public comments, regarding the appropriate regulatory status of the 20 mineral processing special wastes covered in the RTC is provided below.

REPORT TO CONGRESS TENTATIVE RECOMMENDATIONS [1]

Waste stream	Approach 1 (using 8002(p) study factors)		Approach 2 (using 8002(p) study factors and additional consider-ations)
	Full subtitle C	Subtitle C-minus	
Red and Brown Muds from Bauxite Refining	D	D	D
Treated Residue from Roasting/Leaching of Chrome Ore	D	D	D
Gasifier Ash from Coal Gasification	D	D	D
Process Wastewater from Coal Gasification	D	D	D
Slag from Primary Copper Processing	D	D	D
Slag Tailings from Primary Copper Processing	D	D	D
Slag from Elemental Phosphorus Production	D	D	D
Iron Blast Furnace Slag	D	D	D
Basic Oxygen Furnace and Open Hearth Furnace Slag from Carbon Steel Prod.	D	D	D
Fluorogypsum from Hydrofluoric (HF) Acid Production	D	D	D
Process Wastewater from Magnesium Processing	D	D	D
Slag from Primary Zinc Processing	D	D	D
Phosphogypsum from Phosphoric Acid Production	D	D	D
Process Wastewater from Phosphoric Acid Production	D	D	D
Air Pollution Control Dust/Sludge from Iron Blast Furnaces	D	D	D
Air Pollution Control Dust/Sludge from Basic Oxygen Furnaces and Open Hearth Furnaces from Carbon Steel Production	D	D	D
Slag from Primary Lead Processing	D	C	D
Calcium Sulfate Wastewater Treatment Plant Sludge from Primary Copper Processing	D	C	D
Process Wastewater from HF Acid Production	C	C	D
Chloride Process Waste Solids from Titanium Tetrachloride Production	D	C	D

[1] Source: USEPA. 1990. Report to Congress on Special Wastes from Mineral Processing, Vol. I, pp. 11-17.

a. Approach 1: Application of the RCRA Section 8002(p) Study Factors

1. Wastes EPA Tentatively Recommended to Remain Under RCRA Subtitle D

Using the study factors listed in RCRA section 8002(p), EPA examined: (1) The potential for and documented danger to human health and the environment; (2) the need for additional regulations; and (3) the costs and impacts of subtitle C regulation for the 20 special wastes. EPA's analysis did not merely evaluate whether the wastes should be treated as hazardous in light of the criteria under subtitle C for other wastes, but took into account Congress' desire to examine "special wastes" in a different light. EPA's analysis suggested that regulation under subtitle C of RCRA would be inappropriate for the following 16 mineral processing wastes:

- Red and brown muds from bauxite refining;
- Treated residue from roasting/leaching of chrome ore;
- Gasifier ash from coal gasification;
- Process wastewater from coal gasification;
- Slag from primary copper processing;
- Slag tailings from primary copper processing;
- Slag from elemental phosphorus production;
- Iron blast furnace slag;
- Basic oxygen furnace and open hearth furnace slag from carbon steel production;
- Air pollution control dust/sludge from iron blast furnaces;
- Air pollution control dust/sludge from basic oxygen furnaces and open hearth furnaces from carbon steel production;
- Fluorogypsum from hydrofluoric acid production;
- Process wastewater from primary magnesium processing by the anhydrous process;
- Process wastewater from phosphoric acid production;
- Phosphogypsum from phosphoric acid production; and
- Slag from primary zinc processing.

Three of these sixteen wastes (treated residue from roasting/leaching of chrome ore; process wastewater from coal gasification; and slag tailings from primary copper processing) were found not to pose an actual or potential danger to human health and the environment. The thirteen remaining wastes were identified as having some actual or potential hazard associated with current management practices or plausible mismanagement scenarios, and so were further evaluated.

EPA found that the potential risk associated with slag from primary zinc processing, process wastewater from primary magnesium processing by the anhydrous process, air pollution control (APC) dust/sludge from iron blast furnaces and from basic oxygen and open hearth furnaces used to make carbon steel, red and brown muds from bauxite refining, elemental phosphorus slag, and gasifier ash from coal gasification, was comparatively low; that is, the Agency found that management of these materials did not present a substantial hazard to human health or the environment. In particular, no documented damages attributable to these wastes were identified. In addition, State regulations are in effect for the one primary magnesium facility and revised/strengthened regulations have been proposed for the primary zinc processing facility. EPA also found that several facilities recycle rather than dispose of ferrous metal production APC dust. Therefore, the Agency found that subtitle C regulation was not appropriate. In the case of elemental phosphorus slag, the Agency found that while there appeared to be some significant hazards associated with use of the material in construction applications (that is, off-site utilization), the best means of dealing with this problem was through the use of authorities provided by RCRA section 3001(b)(3)(B)(iii) (which allows for special controls from phosphate rock mining and mineral processing wastes) rather than through imposition of the subtitle C hazardous waste management standards.

EPA identified four wastes that did not exhibit a hazardous characteristic (with the exception of one sample of copper slag at one facility) but for which documented cases of adverse environmental impacts that affected surface water were identified at at least one facility:

- Iron blast furnace slag;
- Slag from primary copper processing;
- Basic oxygen furnace and open hearth furnace slag from carbon steel production; and
- Fluorogypsum from hydrofluoric acid production.

For all four wastes, however, these surface water releases (one of which occurred via ground water) have been and/or are being addressed under existing regulatory authorities at the state and/or federal level. Therefore, the Agency concluded that regulation of these four wastes as hazardous would not provide additional protection to human health or the environment justifying the elimination of the special status of these wastes; thus, subtitle C regulation was not considered appropriate.

Phosphogypsum and phosphoric acid process wastewater were also of concern because damage case information indicated that both closed and currently active phosphogypsum stacks (in which both the phosphogypsum and the wastewater are managed) and wastewater cooling ponds have caused ground-water contamination at 15 of the 16 facilities for which monitoring data are available. The available waste composition data indicated that phosphogypsum tested EP toxic at one of the ten facilities with available data, and process wastewater exhibited the characteristic of corrosivity at most facilities and the EP-toxicity characteristic at some facilities. However, EPA also estimated that the total industry-wide, incremental annualized cost of either full subtitle C regulation or the Subtitle C-Minus scenario [1-2] for phosphogypsum and process wastewater, as compared to the Subtitle D-Plus scenario [3] developed for cost estimating purposes, could exceed $500 million and $50 million respectively, and could significantly affect several facilities. The Report estimated that economic impacts associated with subtitle C or C-Minus regulation at these facilities were expected to be significant, and it was unlikely that these facilities could pass along their higher costs. As a result, EPA tentatively concluded that regulation for these wastes was most appropriate under RCRA subtitle D.

[1-2] A subtitle C scenario that utilizes the flexibility provided by RCRA section 3004(x).

[3] A subtitle D program similar to those being developed for extraction and beneficiation wastes.

2. Wastes EPA Tentatively Considered for Regulation Under RCRA Subtitle C or D

EPA found, based on the information available at that time, that the remaining four wastes (calcium sulfate wastewater treatment plant sludge from primary copper processing, slag from primary lead processing, process wastewater from hydrofluoric acid production, and chloride process waste solids from titanium tetrachloride production) have posed or may pose a danger to human health or the environment. Available data indicated that all four of the wastes exhibit one or more of the characteristics of hazardous wastes. In particular, EPA found that all of the wastes except process wastewater from hydrofluoric acid production exhibit the characteristic of EP toxicity at at least one facility; process wastewater from hydrofluoric acid production was found to be corrosive at all facilities where it is generated. In addition, damages associated with these wastes were documented as follows: (1) Current lead slag management practices have resulted in surface water contamination; (2) ground-water contamination that may in part be attributable to calcium sulfate sludge from primary copper processing was found at one of the two facilities that generate the waste; and (3) ground-water contamination that may in part be attributable to chloride process waste solids from titanium tetrachloride production was identified at at least one facility that generates this waste. Furthermore, the Report stated that the Agency was not confident that current practices and regulations are adequate to prevent further danger to health or the environment from these four wastes.

Nevertheless, EPA tentatively concluded that regulation of three of the four wastes as hazardous (calcium sulfate wastewater treatment plant sludge from primary copper processing, slag from primary lead processing, and chloride process waste solids from titanium tetrachloride production), under full subtitle C was not appropriate due to cost considerations. The Agency's basis for this finding was a cost comparison between full subtitle C and the D-Plus scenario (with Subtitle D-Plus including subtitle D requirements similar to those being developed for extraction and beneficiation wastes) that showed that the costs for full subtitle C regulation would be significantly higher and the associated impacts would be more significant at nearly all facilities than the estimated costs of regulation under the Subtitle D-Plus scenario.

For process wastewater from hydrofluoric acid production, EPA found that the estimated compliance costs for regulation under full subtitle C and regulation under the Subtitle D-Plus scenario were comparable and that the likely economic impacts were not expected to be significant. Based on these factors, EPA tentatively concluded that process wastewater from hydrofluoric acid production may warrant regulation under subtitle C.

On the other hand, EPA also estimated the cost of managing these four wastes under a subtitle C scenario that utilizes the flexibility provided by RCRA section 3004(x) (Subtitle C-Minus).[4] The Agency then compared the costs for Subtitle C-Minus regulation (rather than full subtitle C regulation) to the estimated costs that might result from regulation under a subtitle D program similar to those being developed for extraction and beneficiation wastes (Subtitle D-Plus). EPA found that the estimated costs for the Subtitle C-Minus and Subtitle D-Plus scenarios are comparable for nearly all facilities. Assuming a Subtitle C-Minus scenario, EPA tentatively concluded that all four wastes might warrant regulation under subtitle C.

b. Approach 2: Application of the RCRA Section 8002(p) Study Factors and Additional Considerations

Sections 3001(b)(3) and 8002(p) of RCRA and the decision in *Environmental Defense Fund* v. *EPA*, 852 F.2d 1309 (D.C. Cir. 1988) make it clear that the Agency may and should consider the specific factors of section 8002(p) (1)–(8) in making its decision regarding the appropriate regulatory status of special wastes. In addition, the Agency stated in the Report that in making its regulatory determination, it might be appropriate to consider other factors relating to the broader goals and objectives of the Agency and RCRA, such as developing and maintaining strong state mining and mineral processing waste regulatory programs and facilitating implementation of federal programs.

Accordingly, EPA stated in the Report to Congress that in order to facilitate both development and maintenance of strong state programs and implementation of any federal regulations that may be necessary for mineral processing wastes, it might be

[4] The Subtitle C-Minus scenario that was considered in the RTC is hypothetical and was assumed only for the purpose of cost estimation; it does not necessarily represent what EPA would consider an appropriate regulatory program.

appropriate to regulate all 20 of the special wastes under subtitle D of RCRA. In addition, the Report stated that some mining and mineral processing wastes might be excluded from any further federal regulation under RCRA.

In light of these considerations, the results of Approach 2 indicated that it might be appropriate for the waste streams identified under Approach 1 for potential subtitle C (full C or C-Minus) regulation not be subject to the hazardous waste management standards, but instead to be retained within the Mining Waste Exclusion. If such a finding was appropriate, EPA stated that it would need to be conditioned on the premise that major steps be taken to control releases from the facilities generating these waste streams. Some corrective measures are already being taken under a variety of Agency authorities (e.g., RCRA, Superfund, CWA) and more can and would be undertaken. EPA also asserted that the states must act to address the most immediate problems posed by these wastes, as well as any of the other mineral processing special wastes that have been found in the Report to pose significant actual or potential hazard to human health or the environment. To assist in this effort, EPA pledged to provide technical and other resource support to the involved states to improve their programs. If near term actions did not result in adequate control of such wastes, EPA would then take action to reconsider its regulatory determination and could designate certain waste streams as subtitle C hazardous wastes.

4. Public Comment Process

With publication of the Report to Congress, EPA initially established a 60-day public comment period that ended on September 28, 1990. In response to requests from several commenters, however, EPA extended the comment period to October 19, 1990. In addition, a public hearing on the Report was held in Washington, DC on October 17, 1990. EPA received 91 sets of written comments prior to the close of the comment period and eight late comments. All individual comments and a transcript from the public hearing are available for public inspection in the docket (Docket No. F-90-RMPA-FFFFF). The docket also contains a summary of all the comments presented at the hearings or submitted in writing. EPA's responses to those comments are provided in the docket, as well as in appendix A to this regulatory determination.

D. Supplemental Analysis and Notice of Data Availability

Supplemental analyses were conducted on five wastes that were addressed in the Report to Congress, including gasifier ash and process wastewater from coal gasification, basic oxygen furnace and open hearth furnace air pollution control dust/sludge, and phosphogypsum and process wastewater from phosphoric acid production. A Notice of Data Availability (NODA), which announced the availability of this information, was published in the **Federal Register** on January 7, 1991.

A 30-day public comment period was provided, which closed on February 6, 1991. As in the case of the Report to Congress, EPA received requests that it extend the comment period. However, EPA did not extend this comment period because of the need to proceed with the regulatory determination process as expeditiously as possible and because the Agency believed that the comment period provided was adequate. In addition, EPA took steps to ensure that commenters could make the maximum use of the time available. For example, EPA made the supplemental data publicly available as soon as possible, immediately following Agency signature, rather than waiting until the NODA was published in the **Federal Register**. Also, at the request of industry, EPA delayed the start of the public comment period until after the holidays.

Included in the new data was information on phosphoric acid process wastewater and phosphogypsum concerning generation and management of these wastes, the engineering feasibility and cost of alternative waste management practices, waste characteristics, ground water monitoring data, and state regulations. The Agency specifically solicited comments on the engineering feasibility and accuracy of cost estimates for the alternative waste management practices presented as part of the new data.

The Agency received 22 written comments addressing the NODA. All of the comments are available for public inspection in Docket No. F-91-RM2A-FFFFF. Agency responses to the comments are provided in the docket and appendix B to this regulatory determination.

II. Factors Considered in Making the Regulatory Determination

The RCRA statute, as amended, directs EPA to make a regulatory determination for the special study wastes based upon its Report to Congress and comments received from interested parties. The statute contains the following eight study factors:

1. The sources and volumes of such materials generated per year;
2. Present disposal and utilization practices;
3. Potential danger, if any, to human health and the environment from disposal and reuse of such materials;
4. Documented cases in which danger to human health or the environment has been proved;
5. Alternatives to current disposal methods;
6. The costs of such alternatives;
7. The impact of those alternatives on the use of phosphate rock and uranium ore, and other natural resources; and
8. The current and potential utilization of such materials.

In addition, RCRA section 8002(p) suggests that EPA review studies and actions of other federal and state agencies, and invite participation from concerned parties, including industry and other federal and state agencies in an attempt to avoid duplication of effort.

EPA has complied with the Congressional mandate in developing the required Report to Congress and soliciting and incorporating comments received from affected parties. In making today's regulatory determination, the Agency has relied upon the analysis of the eight study factors described as "Approach 1" in the RTC, modified slightly in response to public comments. EPA believes that this approach is most consistent with Congressional intent. To the extent that the Agency were otherwise to conclude that subtitle C regulation was warranted based upon consideration of all of these factors and information, EPA believes, upon further reflection, that it is unnecessary and probably inappropriate to look outside the Report to Congress, public comments, and supplemental technical information, as outlined for Approach 2 in the RTC, to justify a different determination.

In addition, as discussed in more detail in appendix A to this preamble, EPA believes that the so-called "additional factors" upon which Approach 2 was based are, in large part, already embodied within the contours of the inquiry that Congress intended for EPA to make in the Report and regulatory determination. The Report identifies (1) the development and maintenance of strong state mining and mineral processing regulatory programs, and (2) the facilitation of an integrated federal mining regulatory program as the key considerations under Approach 2. Section 8002(p)(5) instructs EPA to consider "alternatives to current

disposal methods" as a factor in developing the Report and regulatory determination. Certainly, consideration of alternative state regulatory schemes, in addition to federal schemes, is contemplated by this section. Also, facilitation of a potential integrated federal mining program was actually considered by EPA in its cost estimates (reflected in the "Subtitle D-Plus scenario").

Nonetheless, EPA does not believe that it should rely on "possible" improved state programs to determine that subtitle C is not warranted unless EPA is confident that such programs are being developed and can address the problems associated with mineral processing wastes that may pose a significant risk. Thus, EPA believes that section 8002(p) requires that EPA not consider these factors in a way that would supplant any decision the Agency makes under the decision making methodology outlined in Approach 1.

In any event, EPA notes that the issue is effectively moot. As discussed below, EPA has determined, on the basis of Approach 1, that subtitle C is not appropriate for any of the 20 wastes analyzed. Thus, even if EPA were to employ Approach 2 as outlined in the Report, it would not change any of the decisions made today.

In "Approach 1," the Agency evaluated the RCRA section 8002(p) study factors by first assessing the need for additional regulatory controls (or absence thereof), then evaluating the options for appropriate requirements that could be applied to each individual waste stream for which additional controls might be in order, and, finally, estimating the associated costs and impacts. In applying the decision criteria, EPA believes that the factors that are most important in establishing the regulatory status of the special wastes should be given major emphasis. Therefore, potential risks posed and documented damages caused by the wastes, the need for additional regulations, and the costs and impacts that would be associated with more stringent regulatory controls are the focus of the three steps in the analytical process. The reason for this is that in the absence of a realistic showing of a potential risk and/or documented damages from current management (or in appropriate cases, plausible mismanagement), EPA believes that Congress would not intend to eliminate the special status of these wastes by imposing hazardous waste regulation under RCRA Subtitle C; if greater regulatory controls may be appropriate because of significant potential or documented danger, the costs and impacts of regulatory controls are the critical factors in determining whether a given alternative would conform to Congress' expressed goals for these wastes (adequate protection of human health and the environment and continued operation of the affected industries).

The overall decision making process as described in the RTC was left basically intact for the purpose of this regulatory determination. However, a number of specific changes have been made to the individual decision criteria in response to public comments; these changes are detailed below, and address the specific questions considered in this step-wise process, as well as how the answers to these questions interact when deciding whether to go from one step to the next.

The modified step-wise process that the Agency applied to the available information is outlined below.

Step 1. Does management of this waste pose human health/environmental problems? Might current practices cause problems in the future?

Critical to the Agency's decision making process is whether the special waste either has caused or may cause human health or environmental damage. To resolve these issues, EPA has posed the following key questions:

1. Has the waste, as currently managed, caused documented human health impacts or environmental damage?

2. Does EPA's analysis indicate that the waste may pose a significant risk to human health or the environment at any of the sites that generate it (or in off-site use), under either current management practices or plausible mismanagement scenarios?

3. Does the waste exhibit any of the characteristics of hazardous waste?

In the RTC, EPA concluded that further evaluation was necessary if the answer to any of these three questions was yes. However, numerous commenters argued that several of the damage cases included in the RTC do not represent today's conditions, for a variety of reasons, that the risk assessment conducted for the RTC tends to overstate risk, and that the leachate concentrations measured using the EP leach test overestimate actual leachate concentrations. Although EPA disagrees with many of the specific points made by commenters in support of these arguments, as discussed in appendix A to this preamble, the Agency believes that a more flexible decision making approach is warranted in response to the general concerns expressed. Concluding that further evaluation is necessary if the answer to just one of the above questions is yes, without taking into account the overall certainty and conservativeness of that answer relative to the answers to the other questions, could unnecessarily lead the Agency into Step 2 of the decision making process.

Therefore, for this regulatory determination, EPA answered each of these questions and then considered the combined answers as a whole in deciding whether further evaluation was necessary. A fundamental concept in this approach was that no one question is more significant in reaching a decision regarding potential hazard than the others, as the answer to one question could offset, somewhat, the answer to another. That is, rather than following a very rigid approach of proceeding to Step 2 if the answer to just one question was yes, the Agency considered how the answers traded off, taking into account each answer's supporting weight of evidence and certainty.

For example, the scenario for a given waste could be that (1) there was not a documented damage case that could be attributed to the waste with reasonable certainty (i.e., the answer to question 1 was no); (2) the reasonably conservative risk analysis provided a sound basis for concluding that the potential for human health and environmental problems was low under current management practices or plausible mismanagement scenarios (i.e., the answer to question 2 was no); and (3) the waste exhibited the toxicity characteristic using the EP leach test (i.e., the answer to question 3 was yes), but only rarely and never for samples analyzed using the Synthetic Precipitation Leaching Procedure (SPLP). Under this scenario, EPA would have reached an overall low hazard conclusion because the balance of the information supporting the answers to questions 1 and 2 effectively outweighs, in the Agency's judgment, the answer to question 3.

By following this approach, the Agency considered all of the relevant information in making its decision on the potential for each waste to pose human health and environmental problems. If this analysis led the Agency to conclude that there is a reasonable potential for problems, then EPA concluded that further evaluation was necessary. If the conclusion was that the potential for problems is low, then the Agency determined that regulation of the waste under RCRA subtitle C is not appropriate. EPA believes that this "balancing" approach to the analysis in

Step 1 allows EPA to determine with more precision the actual hazards posed by those wastes, consistent with the intent of the Bevill Amendment. 852 F.2d at 1314. EPA also notes that this analysis does not precisely match the approach EPA uses to list or identify non-special wastes as hazardous, but is more conservative in the direction of not imposing regulation unless the potential risk justifies elimination of special status.

Step 2. Is more stringent regulation necessary and desirable?

If the waste has caused or may potentially cause human health or environmental impacts as determined in Step 1, then EPA concluded that an examination of alternative regulatory controls was appropriate. Given the context and purpose of the study, the Agency focused on an evaluation of the likelihood that such impacts might continue or arise in the absence of more stringent regulation, and whether subtitle C would be an efficient mechanism for controlling these impacts. Specifically, the Agency posed three questions:

1. Are current practices adequate to limit contaminant release and associated risk?

2. Are current federal and state regulatory controls adequate to address the management of the waste?

3. Will Subtitle C effectively address problems associated with the waste without imposing significant unnecessary controls that are inconsistent with the special status of the waste?

Due to changes made in response to public comments, these questions differ from the questions presented for Step 2 in the RTC, in two ways. First, the Agency eliminated a question concerning the likelihood of new facilities opening in the future and generating and managing a special waste in a different environmental setting than those examined in the RTC. The Agency acknowledges that this is a relevant issue and considered it in the Report to Congress for each industry and waste that was studied. However, EPA agrees with public commenters that an analysis of this issue relies largely on conjecture about the potential conditions that might exist at a new facility, if one were to open. Therefore, the Agency believes that the potential for problems at hypothetical new facilities is less important than the other factors considered in the decision making process, and did not consider the question explicitly in developing the regulatory determination.

Second, several commenters argued that subtitle C regulation, even with Section 3004(x) flexibility, would impose numerous prescriptive standards that would not necessarily be needed to control the problems at a given facility or across a commodity sector. While EPA disagrees with many of the specific points made by these commenters in support of their arguments, as presented in the appendices to this preamble, the Agency agrees that the suitability of subtitle C controls relative to the magnitude and extent of the problem(s) defined in Step 1 is an important issue in the decision making process and the approach is also consistent with EPA's previous approach to making regulatory determinations under the Bevill Amendment, which focused on whether subtitle C, even with the use of Section 3004(x), might be too "cumbersome and uncertain" to accomplish the goals of effective regulation of the risks from special wastes, or put another way, whether subtitle C is the right "template" for regulating the special wastes at issue. 852 F.2d at 1313, 1315. Therefore, the Agency added the third question listed above for the purpose of developing today's regulatory determination.

EPA considered the answers developed for these questions together with the answers to the questions addressed in Step 1 to reach an overall conclusion on the need for further evaluation. If current practices or existing regulatory controls were found to be adequate, or Subtitle C would not be an effective regulatory alternative, and if the potential for actual future impacts was considered low (e.g., existing facilities in remote locations, low likelihood of actual risk, adequate federal or state regulatory controls already exist), then the Agency concluded that the waste should not be regulated under Subtitle C. Otherwise, further examination of regulatory alternatives was considered necessary.

Step 3. What would be the operational and economic consequences of a decision to regulate a special waste under Subtitle C?

If, based upon the previous two steps, EPA believed that a waste might be a candidate for regulation under subtitle C, then the Agency estimated and evaluated the costs and impacts of two regulatory alternatives that are based upon subtitle C, and one regulatory alternative that reflects one possible approach that might be taken under RCRA subtitle D ("Subtitle D-Plus"). Two evaluations were performed. The first focused on the magnitude, distribution, and significance of the incremental costs of regulation under full Subtitle C as compared to the Subtitle D-Plus scenario for each potentially affected facility. The second focused on incremental costs and impacts associated with regulation under a modified subtitle C ("Subtitle C-Minus") scenario, that incorporates waste management standards based upon site-specific risk potential, as compared to Subtitle D-Plus. The key questions in the Agency's decision making process for both comparisons were as follows:

1. Are predicted economic impacts associated with the full subtitle C (or Subtitle C-Minus in the case of the second comparison) scenario significant for any of the affected facilities?

2. Are these impacts substantially greater than those that would be experienced under the Subtitle D-Plus scenario?

3. What is the likely extent to which compliance costs could be passed through to product markets or input costs could be reduced, i.e., to what extent could regulatory cost burdens be shared?

4. In the event that costs are significant, could a large proportion of domestic capacity or product consumption be affected?

5. What effects would hazardous waste regulation have upon the viability of the beneficial use or recycling of the special waste?

In EPA's judgment, an ability to pass through costs or an absence of significant impacts suggested that subtitle C regulation (or Subtitle C-Minus in the case of the second comparison) might be appropriate for wastes that pose significant risk. In cases in which the subtitle C (or Subtitle C-Minus) scenario would impose widespread and significant impacts on facilities, result in reductions in domestic capacity or supply, and/or deter the safe and beneficial use of the waste, EPA concluded that regulation under some other regulatory authority, including Subtitle D or TSCA, might be more appropriate.

III. Regulatory Determination for the 20 Special Wastes From Mineral Processing

The following discussion presents EPA's conclusions regarding the appropriate regulatory status of each of the special wastes from mineral processing, based on information obtained by analyzing the statutory study factors in the manner outlined above. The information summarized here incorporates information received during the public comment period and additional refinement of the data

presented in EPA's July 1990 Report to Congress and January 1991 NODA.

EPA has decided that regulation under subtitle C is inappropriate for all 20 of the mineral processing wastes. For nine of the wastes, no comments were received that objected to EPA's tentative determination in the Report to Congress that regulation under subtitle C for these wastes is unwarranted. These nine wastes include:

(1) Red and brown muds from bauxite refining;

(2) Treated residue from roasting/leaching of chrome ore;

(3) Gasifier ash from coal gasification;

(4) Process wastewater from coal gasification;

(5) Fluorogypsum from hydrofluoric acid production;

(6) Iron blast furnace slag;

(7) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(8) Slag tailings from primary copper processing; and

(9) Process wastewater from primary magnesium processing by the anhydrous process.

For the remaining eleven wastes, EPA received at least one comment arguing that subtitle C regulations should be promulgated. EPA's determination rationale for each of these wastes follows.

Slag From Primary Copper Processing. An examination of available information regarding copper slag leads to the following findings regarding the three key questions outlined above for Step I in the Agency's decision making process.

First, copper slag rarely, if ever, exhibits a hazardous waste characteristic. Only one sample out of 70 exceeded EP-toxicity regulatory levels, for cadmium and lead. The Agency agrees with commenters that the accuracy of the one sample is questionable, because the cadmium concentrations in the EP leachate extract are inconsistently high compared to concentrations in the total sample analysis.

Second, although one commenter pointed out that the slag contains a number of constituents in concentrations that exceed the conservative risk screening criteria used in the Report to Congress, these concentrations by themselves do not demonstrate that the slag poses a significant hazard. An examination of the slag management practices and environmental conditions at the 10 active primary copper facilities indicates that copper slag currently generated at these facilities poses an overall low risk to human health and the environment. This is largely due to the fact that most of the active facilities are located in areas with low-risk environmental and exposure characteristics (e.g., very low precipitation and net recharge, large depths to ground water, large distances to surface water, and great distances to potentially exposed populations). As pointed out by several commenters, with whom EPA agrees, the Agency's risk modeling for copper slag was very conservative (tending to overestimate risks) and supports a conclusion that the slag poses low risks as currently managed.

Finally, following careful review of the information and public comments on the copper slag damage cases, EPA believes that the damages documented in the RTC for copper slag resulted from unusual circumstances that generally do not represent current management practices. For example, the damages at Commencement Bay (Puget Sound) were caused by the use of copper slag, as well as other wastes, as fill in a wetland or tideflats area. The nearby copper facility that generated the slag is now inactive, and the ten active primary copper processing facilities are generally concentrated in arid areas where it is very unlikely that slag could be disposed of in a wetland. Similarly, at the inactive copper facilities in Midvale, UT and El Paso, TX, environmental contamination has been caused by the co-management of slag from copper, lead, and/or zinc processing since the late 1800's. Based on the available damage case information, survey responses, and public comments, EPA believes that these cases do not reflect the industry norm today. In addition, EPA presently does not have damage case information that suggests that current copper slag management practices are causing problems.

Based on these findings, EPA concludes that current management of copper slag does not appear to pose significant human health or environmental hazards, and current slag management practices appear unlikely to cause problems in the future. As a result, Federal regulation under subtitle C is not appropriate. Given this finding, EPA did not evaluate the questions addressed in Steps 2 and 3 of the decision making methodology.

Slag From Elemental Phosphorus Production. Addressing the questions in Step 1 of the decision making process, the information included in the RTC and provided in public comments leads to the following major findings for elemental phosphorus slag.

First, elemental phosphorus slag does not exhibit any of the four characteristics of hazardous waste. One commenter contends that the slag is intrinsically dangerous because it is radioactive and contains toxic constituents. EPA agrees that the radionuclide content may pose a direct radiation threat when the slag is used off-site. (See further discussion on this issue later in this section and in section IV.) However, the slag contains few chemical constituents that exceed the RTC's conservative risk screening criteria by a significant margin, and none exceed regulatory levels that would qualify the slag for subtitle C controls.

Second, current on-site slag management practices and environmental conditions at the five active elemental phosphorus facilities generally pose a low risk via the ground-water and surface water exposure pathways. Significant risks via these pathways are limited by the low concentrations of potentially harmful constituents in slag leachate and the generally large size of slag particles that limit stormwater erosion potential. In addition, the potential for the slag piles to cause significant impacts to surface water is precluded by the relatively great distance (more than 500 meters) to the nearest water body at two facilities, the use of stormwater run-off controls at the slag piles at two facilities, and the large flow and assimilative capacity (30 cubic meters per second or 1,058 cubic feet per second) of the creek closest to the fifth facility. As the RTC and one commenter point out, one of the sites is located within a mile of a wetland, one site overlies an area of karst terrain, and one facility is located in a National Forest. While these facts are pertinent, the Agency believes, based on all the evidence, that existing management practices for elemental phosphorus slag should not significantly threaten these environments through the ground-water and surface water pathways, given the small potential for releases to these media.

Moreover, although one commenter points out that ground-water contamination has been observed at three of the five active facilities, available information on the documented damages at elemental phosphorus facilities indicates that the ground-water contamination is due to other wastes and waste management practices (e.g., historic unlined ponds used to store process wastewater). This supports the above finding that on-site management of the slag does not pose a significant ground-water risk.

On-site management at three facilities, however, may pose a

moderate risk via the air exposure pathway due to the chromium, cadmium, and uranium-238 concentrations in the slag. Although the vitrified nature and generally large size of particles tends to limit wind erosion, there is some evidence that dust from slag piles may be blown into the air and potentially lead to exposures. As noted in the RTC and reiterated by one commenter, three of the facilities are located in fairly densely populated areas and three are located in agricultural areas where airborne deposition and subsequent food chain exposures are possible.

Based on these findings, EPA concludes that current on-site management practices for elemental phosphorus slag do not appear to pose a significant ground-water or surface water risk and are not likely to cause significant problems through these pathways in the future. However, there is some potential for airborne releases and resulting impacts; because of the Agency's desire to fully evaluate all potential risks, the Agency proceeded to Step 2 of its decision making process to evaluate whether more stringent regulation is necessary and desirable.

In this step, EPA made three basic findings:

- The relatively low to moderate risk from the on-site management of elemental phosphorus slag is expected to continue in the future in the absence of subtitle C regulation given current waste management practices and environmental conditions at the five active facilities. The slag characteristics and existing management practices at the five active facilities are unlikely to change significantly.
- None of the states where elemental phosphorus slag is generated specifically apply fugitive dust control requirements to slag piles. However, adequate authority and mechanisms already exist under the Clean Air Act to control this dust. For example, the National Ambient Air Quality Standards include a standard for the airborne concentration of particulate matter, and the dust could be controlled under the National Emission Standards for Hazardous Air Pollutants, if necessary.
- Regulation under subtitle C would impose significant and specific requirements (e.g., liners, caps, ground-water monitoring) that are directed at controlling releases/risks that do not appear to exist or are otherwise controlled and, thus, are not appropriate given the special status of the waste.[5]

Based on these combined findings from Steps 1 and 2, EPA concludes that regulation of elemental phosphorus slag under subtitle C is not appropriate under the circumstances. (Accordingly, EPA did not proceed to Step 3 of its decision making process.) EPA plans to further examine the potential impacts of fugitive dust emissions from elemental phosphorus slag piles and will determine whether controls for these releases are needed, and if so, whether they can be developed under the Clean Air Act.

The Agency is uncertain about the potential gamma radiation exposures and risks associated with off-site use of elemental phosphorus slag in construction and land reclamation. As discussed in more detail in section IV of this preamble, the Agency has postponed any decisions about the significance of this risk and the need for additional control of off-site uses pending more extensive review. In response to comments, EPA acknowledges that the RTC is in error in its statement that radon emissions from elemental phosphorus slag pose significant risks, as other EPA studies clearly show that the slag is not a significant source of radon emissions. However, the fact that radon gas emissions from elemental phosphorus slag are inconsequential does not eliminate concern about the potential for direct exposure to gamma radiation emitted from the slag.

Slag From Primary Zinc Processing. Regarding the questions raised in Step 1 of the Agency's decision making process, a careful review of the RTC information and public comments on zinc slag leads to the following three conclusions.

Based on available data, zinc slag frequently exhibits EP-toxicity, as 25 of 37 samples contained lead in concentrations that exceed the EP-toxicity regulatory level by a factor of between 5 and 13. Using the SPLP test, however, lead concentrations never exceeded the EP toxicity regulatory level, although the SPLP test has been shown on occasion to underestimate the amount of leachable lead in a sample.

At the same time, based on a review of existing waste management practices and predictive modeling results, EPA believes that zinc slag, as currently managed at the sole active facility in Monaca, PA, poses an overall low risk to human health and the environment. For example, the Agency predicts that metals leached from zinc slag at the Monaca facility would be largely bound to subsurface soil and would not reach the deep useable aquifer within 200 years. Even if a shallower aquifer exists at the site as the RTC and one commentor suggest, any shallow ground water that may become contaminated with slag leachate is likely to discharge, without being withdrawn for human use, into the adjacent Ohio River via the steep bluff adjoining the site. The Ohio River is very large at this point, and EPA modeling predicts that it can readily assimilate any chronic loading of contaminants that may occur, and any such release would be controlled through permitting under the Clean Water Act.

A portion of the zinc slag is also sold for use at off-site locations as road gravel or construction aggregate, and another portion is stockpiled until it can be sold for off-site use as a source of iron. Given the high concentrations of lead measured in EP leach tests of zinc slag, EPA recognizes that possible off-site use locations may be more conducive to releases and risks than the existing processing facility in Monaca, PA, although the Agency has no evidence that such risks are occurring or would occur. In fact, the Agency did not discover any damages attributable to such slags used off-site.

Third, EPA did not discover any damage cases attributed to zinc slag at the Monaca facility. Damage case studies at inactive sites did demonstrate the potential for surface water contamination via stormwater run-off from zinc slag piles, however. While these cases demonstrate the potential for problems if zinc slag is not properly controlled, they do not by themselves indicate that more stringent controls are needed for slag at the one active facility. In fact, the lack of documented damage associated with the active facility supports the conclusion that zinc slag as currently managed at that facility poses a low risk. One commenter argued that the lack of damage case data from the active facility may be a reflection of the inadequacy of the facility's environmental monitoring system, and not the absence of actual damage. However, the Agency believes that slag at the Monaca facility does not pose a threat, principally because the slag composition at the Monaca facility is not considered comparable to that of the inactive facilities, i.e., it arises from feedstocks having a different chemical composition. It should also be noted that with respect to the commenter's specific point, the facility has been in operation for over 50 years and there are no available monitoring data that show any

[5] To be regulated under subtitle C the waste would have to be listed as a hazardous waste because it does not exhibit any of the four characteristics that would otherwise classify it as a hazardous waste.

evidence of damages resulting from the management of zinc slag.

The Agency considered these findings, by themselves, to be insufficient to support a final regulatory determination. Although on-site risks and damages at the sole active facility are low, the elevated EP leachate concentrations (as well as difficulties in interpreting the low SPLP leachate concentrations) and the prospect of zinc slag being managed at off-site locations that may present a problem prompted the Agency to proceed to Step 2 of its decision making process to determine whether more stringent regulation is necessary and desirable. In answer to the questions addressed in Step 2, the Agency found that:

• The waste management practices and environmental conditions that currently limit the potential for significant threats to human health and the environment at the Monaca facility are expected to continue in the future in the absence of subtitle C regulation. Similarly, management practices at off-site locations would not be expected to change significantly. The characteristics of the slag are also unlikely to change in the future.

• EPA's recently promulgated stormwater regulations (55 FR 47990, November 16, 1990) under the Clean Water Act will minimize the potential for adverse impacts of stormwater run-off from zinc slag piles in the future.

• The only potential problem associated with these slags that EPA has identified is with their off-site use or disposal. However, the Agency has no evidence that such use or disposal is resulting in environmental damage. Control under subtitle C would impose significant and specific requirements (e.g., liners, closure and post-closure care) that are directed at controlling releases/risks that do not appear to exist or are otherwise controlled and, thus, are not appropriate given the special status of the waste.

Finally, the Agency notes that the State of Pennsylvania has proposed regulations that would impose more stringent environmental controls on the on-site management and off-site use of zinc slag, although the exact nature and extent of these controls cannot be predicted with certainty. The proposed rule would require generators to certify that they have attempted to reuse and/or recycle the slag before disposal and would require permits to contain provisions for liners, leachate collection systems, monitoring wells, and disposal of leachate.

Based on these combined findings from Steps 1 and 2, EPA concluded that regulation of zinc slag under subtitle C is inappropriate under the circumstances. (As a result, the Agency did not proceed to evaluate the questions addressed in Step 3 of its decision making process.)

Air Pollution Control (APC) Dust/Sludge From Iron Blast Furnaces. Addressing the questions in Step 1 of the decision making process, the information provided in the RTC and in public comments on the RTC leads to the following findings for this waste.

First, EPA found that lead concentrations measured in iron blast furnace APC dust/sludge leachate using the EP leach test only occasionally exceeded the EP-toxicity regulatory level (4 out of 70 samples from 3 out of 16 facilities with data). In addition, the waste is recycled (completely at one facility and partially at another) at two of the three facilities where the waste was found to be EP-toxic. Although lead concentrations determined by SPLP analyses never exceeded the EP toxicity regulatory level, the Agency has difficulty interpreting these measurements because the SPLP test has been shown on occasion to underestimate the amount of leachable lead in a sample.

At the same time, based on an examination of the site specific conditions at 15 of the 26 facilities that generate this waste, current management practices and environmental conditions are highly variable, with the potential for contaminant releases existing at some sites. For example, there is potential for ground-water contamination at five facilities that manage at least some of the dust/sludge in surface impoundments, although the low EP leachate concentrations at these facilities (none exceeded the EP-toxicity regulatory levels) would appear to suggest that any such contamination would not likely be significant. The dust/sludge also consists of small particles that are amenable to release and transport via stormwater and wind erosion when the waste is managed in exposed piles. Due to site-specific management practices and environmental conditions, there appears to be some potential for migration into surface water at four facilities and a potential for airborne releases and exposures at seven facilities.

One commenter argued that risks posed by this waste could be substantially higher than reported, because, as the commenter pointed out, the RTC did not consider the site-specific conditions at all active facilities, inactive facilities that could be reactivated in the future, and potential new facilities. While the commenter raises a good point, the Agency notes that the sample of facilities examined in the RTC represents more than half (15) of the 26 active facilities and seven of the ten states where active facilities are located. Furthermore, the conditions examined in the RTC represent a wide diversity of management practices and environmental conditions. Specifically, all known management practices for the dust/sludge were represented by the 15 sample facilities, including disposal methods (landfills and ponds) and temporary storage methods (storage pads and transfer areas), such as might be present at facilities that recycle the waste or send it off-site for disposal. Some of these units are equipped with engineered controls to prevent releases (e.g., liners and run-off controls), while others are not. In terms of environmental conditions, the facilities examined represent a variety of depths to ground water, net recharge rates, distances to surface water, and proximities to potential receptors. As a consequence, the Agency believes that the facilities examined reasonably represent the conditions that might exist at the other facilities. EPA thus believes that the hazards that were evaluated reflect the diversity and nature of hazards posed by iron blast furnace APC dust/sludge at the other facilities.

Finally, despite the Agency's theoretical conclusions about the potential for iron blast furnace APC dust/sludge to be released into the environment at some facilities, EPA did not find any damage cases attributable to this waste, which EPA believes to be significant when evaluating the actual hazards posed by special wastes. One commenter alleged that there are such documented damage cases, but that EPA did not discover them because it did not review files for inactive sites and other key information sources. However, as stated in the Agency's responses to comments on the RTC's analytical methodology (see appendix A of this preamble), the Agency maintains the view that its damage case investigation effort for these and other wastes was comprehensive and thorough. The Agency closely evaluated the specific information sources referenced by the commenter and, though the information clearly shows environmental problems at ferrous metal production facilities, EPA does not believe that the damages can be attributed to the special wastes studied in the Report to Congress. For example, surface water and ground-water impacts were found related to "slag landfills" at two facilities, but the landfills contained a number of co-disposed wastes, including sludges, fly

ash, waste acid, and coke plant tars, all of which may have contributed to the observed impacts.

In summary, this waste exhibits hazardous waste characteristics only rarely—only three facilities out of 16 with data generate dust/sludge that exhibits the toxicity characteristic, and even then the data suggest that the waste exhibits the characteristic only occasionally. Moreover, the waste is recycled (completely at one facility and partially at another) at two of the three facilities where it occasionally exhibits the toxicity characteristic. The Agency recognizes that existing waste characteristics, management practices, and environmental conditions could lead to releases at selected facilities. However, the low EP leachate concentrations at most facilities and the lack of documented cases of damage attributable to the dust/sludge indicate that the potential effects of such releases are not of sufficient magnitude to warrant removal of the special status of these wastes. In addition, EPA's recently promulgated stormwater regulations (55 FR 47990, November 16, 1990) under the Clean Water Act will minimize the potential for adverse impacts of stormwater runoff from the dust/sludge. Based on these findings, EPA concludes that regulation of this waste under subtitle C is inappropriate under the circumstances. (Accordingly, the Agency did not evaluate the questions addressed in Steps 2 and 3 of its decision making process.)

Basic Oxygen Furnace and Open Hearth Furnace Air Pollution Control (APC) Dust/Sludge From Carbon Steel Production. Based on a review of information in the RTC, supplemental analysis, and public comments on steel APC dust/sludge, EPA's responses to the questions in Step 1 of the decision making process are basically the same as those outlined above for iron blast furnace APC dust/sludge. Specifically:

- Steel APC dust/sludge appears to be EP-toxic only rarely. Of seven samples analyzed from five facilities, the concentration of selenium exceeded the EP-toxicity regulatory level in only one sample, and in this one case, only by a factor of 1.5. Selenium concentrations as determined by SPLP analyses did not exceed the EP-toxicity level.
- Based on an examination of the site-specific conditions at 11 facilities that generate the dust/sludge, current management practices and environmental conditions are highly variable, with the potential for contaminant releases existing at certain facilities. Like the iron blast furnace APC dust/sludge, however, there appears to be only a minor potential for ground-water contamination at a few facilities that manage the steel APC dust/sludge in impoundments. The steel APC dust/sludge consists of small particles that would be amenable to release and transport via stormwater and wind erosion if the waste is not properly controlled.
- EPA did not identify a single case of documented damage that can be attributed to steel APC dust/sludge.

Based on these findings, EPA concludes that subtitle C regulation for steel APC dust sludge is inappropriate under the circumstances that exist. (Therefore, the Agency did not employ Steps 2 and 3 of its decision making methodology.) The basic rationale for this conclusion is the same as that for iron blast furnace APC dust/sludge. That is, the dust/sludge rarely if ever exhibits a characteristic of hazardous waste. Although existing management practices and environmental conditions have the potential for environmental releases at certain facilities (although no evidence exists that such contamination has occurred or would occur), the waste's low contaminant concentrations and lack of damage cases indicate that the potential for adverse effects is not of sufficient magnitude to warrant removal of the special status of the waste. Thus, to the extent that additional controls may be justified, and state management controls are deemed to be inadequate, EPA may pursue appropriate controls for steel APC dust/sludge management under the Subtitle D program being developed for mineral extraction and beneficiation wastes.

Calcium Sulfate Wastewater Treatment Plant Sludge From Primary Copper Processing. In the Report to Congress, EPA tentatively recommended subtitle C regulation for this waste under Approach 1B. However, EPA received data in comments indicating that only one facility now generates and disposes of this sludge. In addition, as outlined in section II of this preamble, the Agency modified Step 2 of its decision making methodology in response to public comments to deemphasize consideration of potential threats that could exist at any new facilities that open in the future in favor of the other Step 2 factors, in light of the speculative nature of EPA's predictions regarding industry expansion. The possibility of expansion was an important factor contributing to the RTC's Subtitle C recommendation for this waste. EPA, therefore, has reconsidered the RTC tentative recommendation, focusing only on the remaining active generator (located in Garfield, UT).

Addressing the three questions considered in Step 1 of the decision making process:

- The sludge at the Garfield facility is EP-toxic for arsenic (7 out of 7 samples average 44 times the regulatory level), cadmium (6 of 7 samples average 3 times the regulatory level), and selenium (7 of 7 samples average 5 times the regulatory level). SPLP leach test concentrations, however, were below the subtitle C regulatory levels for all of the samples analyzed.
- One commenter argued that calcium sulfate sludge poses a large risk that should be controlled under subtitle C; however, based on a review of existing management practices and the arid setting of the Garfield facility, EPA believes that the hazards associated with calcium sulfate sludge at this site are low. Predictive modeling that accounts for the low net recharge and high evaporation rate, depth to ground water, and clayey subsurface at the site indicates that the potential for ground-water contamination is very low. Similarly, the potential for significant surface water contamination is negligible given the great distance of the sludge management units to the nearest surface water body (over 2 miles to the Great Salt Lake), and windblown dusting is significantly limited by the surface crust that forms on the dried sludge.
- No cases of documented damage caused by the sludge at the one active facility were discovered by EPA.

Even though the site-specific risk findings and lack of damage cases indicate that management of the sludge does not pose human health or environmental problems, the high intrinsic hazard of the sludge compelled EPA to consider additional factors before reaching a final regulatory determination. Therefore, EPA proceeded to Step 2 of its decision making process to examine whether more stringent regulation is necessary and desirable.

In Step 2, EPA found that current practices at the Garfield facility appear adequate to limit contaminant releases and associated risks in the future in the absence of subtitle C regulation. The sludge is well managed at present and the potential for releases appears to be precluded by the environmental conditions at this site. Specifically, potential releases to ground water are significantly limited by the site's very arid setting (liquids discharged to impoundments along with the sludge are expected to quickly evaporate and little precipitation and recharge is available to carry contaminants to the

subsurface), clayey subsurface, and depth to ground water (8 meters to the water table and 90 meters to the uppermost useable aquifer). Because the nearest surface water near the sludge units, the Great Salt Lake, is over two miles away, significant releases to surface water also should not be a problem. Finally, the potential for significant releases to air is limited because a surface crust forms on the dried sludge, largely preventing the wind from blowing dust into the air, and because the dried sludge is exposed to the wind only temporarily before it is stabilized and buried in an on-site landfill.

EPA also found in Step 2 that existing state regulatory programs provide only limited controls over the management of calcium sulfate sludge. Some commenters argued that the RTC's analysis of state regulations significantly understates the regulatory requirements applicable to copper processing wastes. However, upon further consideration of available information and communication with state officials, EPA concludes that the states have been regulating copper processing wastes, including calcium sulfate sludge, only to a limited extent. However, as discussed below, the Agency does not believe, based on available information, that this limited regulation has resulted in any environmental problems.

Finally, EPA also concluded in Step 2 that Subtitle C regulation of calcium sulfate wastewater treatment plant sludge would impose significant and specific requirements (e.g., liners, caps, ground-water monitoring) that are directed at controlling releases/risks that do not appear to exist or are otherwise controlled and, thus, are not appropriate given the special status of the waste.

Based on these combined findings from Steps 1 and 2, EPA concluded that existing sludge management practices at the one facility in question currently limit the potential for damages. Therefore, considering all of these findings together, EPA concludes that subtitle C regulation of calcium sulfate sludge is inappropriate given the existing circumstances. (Accordingly, EPA did not evaluate the questions addressed in Step 3 of its decision making methodology.) EPA may address the generation and management of this sludge under the subtitle D program under development for the mining industry.

This subtitle D determination differs from the RTC's tentative recommendation for two reasons. First, potential human health and environmental problems at one copper processing facility were dropped from consideration because public comments indicate that the facility no longer generates and disposes of calcium sulfate sludge. Second, the Agency agreed with commenters that concerns expressed in the RTC about potential problems at new facilities that may open in the future are somewhat speculative. Therefore, EPA did not place as much weight on these concerns in making the regulatory determination as it did in the RTC.

Chloride Process Waste Solids from Titanium Tetrachloride Production. In the RTC, EPA tentatively recommended subtitle C regulation for this waste under Approach 1B. However, additional data submitted in public comments and reanalysis of the RTC data indicate that the waste is not EP-toxic for lead as indicated in the RTC [6] and, therefore, is EP-toxic only for chromium. In addition, this waste would currently be exempt from subtitle C regulation by 40 CFR 261.4(b)(6), which exempts wastes that are hazardous only because they exhibit the EP toxicity characteristic for chromium, contain only trivalent chromium, and are managed in non-oxidizing environments. For these reasons, EPA decided to reevaluate the RTC's tentative conclusions.

Considering the three questions in Step 1 of the Agency's decision making process, the Agency has made the following findings. First, the waste is characteristically hazardous only as a result of its chromium content, which is currently exempted from regulation under subtitle C of RCRA by § 261.4(b)(6)(i)(A). In addition, chromium concentrations in the waste solids measured using the SPLP leach test are below the EP-toxicity regulatory levels, as indicated by further analysis of the RTC data and information submitted in comments.

Second, based on an examination of existing conditions at the nine active titanium tetrachloride facilities, EPA found that current management of the waste solids may allow contaminants to migrate in the environment at certain sites, but that the potential for this migration to cause significant impacts is low. For example, there appears to be a potential for leachate from this waste to reach ground-water at half of the sites, but predictive modeling at the "most sensitive" site indicates that contaminant concentrations at the property boundary would be below drinking water standards. Similarly, the Agency's modeling predicts that concentrations of contaminants in surface waters near the sites would be well below human health and environmental protection benchmarks, and that the risks associated with the inhalation of windblown dust from the waste solids piles would be negligible.

One commenter argued that the risks posed by this waste are sufficiently high to warrant regulation under subtitle C. In particular, the commenter argued that chemical concentrations (e.g., of chromium, lead, radium, and arsenic) in the waste solids could be much higher than the few samples examined in the RTC, that the wastes threaten fragile ecosystems near several of the facilities, and that drinking water threats could exist if private wells were installed closer to existing facilities. While EPA agrees there is always a possibility that the waste could contain higher chemical concentrations than those reported, the Agency used 17 samples from 7 facilities and believes the resulting characterization of the waste is adequate. The Agency also recognizes that several sites are located near "fragile" ecosystems: Six of the nine active facilities are located within 1,600 meters (1 mile) of a wetland, one is located within 2,600 meters of an endangered species habitat, and three are located within 1,600 meters of a National Park, Wildlife Refuge, or Recreation Area. However, the Agency's conservative modeling predicts that it is very unlikely that contaminants released from the waste solids management units could migrate to these areas in harmful concentrations. Finally, EPA's ground-water modeling for the "worst-case" facility predicts that contaminant concentrations at the property boundary are below health-based and ground-water protection criteria. Therefore, it does not appear that releases to ground water would pose a serious threat to the environments surrounding each plant.

Third, EPA found no documented cases of damage attributable to titanium tetrachloride waste solids. No evidence of damages was uncovered in the RTC's comprehensive review of all nine active and two inactive titanium facilities, and no new damage case information was submitted in public comments.

Based on these findings, EPA concludes that regulation of titanium tetrachloride waste solids under RCRA Subtitle C is inappropriate under the

[6] The sole sample found to contain lead above the EP-toxic level was determined to be for the waste acids and entrained solids discharged to an on-site impoundment, not the titanium waste solids (the special waste) that settle to the bottom of the impoundment. EPA has determined, therefore, that this sample is not appropriate for use in characterizing the waste solids.

circumstances. (Accordingly, the Agency did not evaluate Steps 2 and 3 of the decision making methodology.) Current on-site management practices do not appear to pose a significant risk. In addition, management practices are likely to be improving because the waste is currently comanaged with waste acids from titanium tetrachloride production, a waste that recently became subject to subtitle C controls. EPA plans to follow closely the changes in management practices that are expected to result from the change in regulatory status of the waste acids, changes that in some cases may result in management of the waste solids in units subject to subtitle C requirements. At those facilities where the waste is not managed in units regulated under subtitle C, EPA believes that releases that may occur can be adequately addressed under subtitle D given the special status of these wastes. In addition, in the final Toxicity Characteristic rulemaking, EPA indicated that it would re-evaluate the trivalent chromium exemption in § 261.4(b)(6) (55 FR 11812, March 29, 1990). If EPA finds that this exemption is not protective of human health and the environment and if an examination of titanium tetrachloride waste management shows any continuing or new problems, the Agency will reconsider this subtitle D determination for chloride process waste solids from titanium tetrachloride production.

Today's subtitle D determination is warranted and differs from the RTC's tentative recommendation primarily due to changes in the data base used to characterize the waste, such that the waste only exhibits the toxicity characteristic of hazardous waste for chromium and is exempt from subtitle C regulation. As discussed above, consideration of changes in management practices for waste solids that are expected as a result of the classification of waste acids from titanium tetrachloride production as a hazardous waste supports a subtitle D decision. In addition, if the decisionmaking process had been carried to Step 2, the fact that the Agency modified Step 2 of its decisionmaking methodology (in response to public comments) to deemphasize consideration of potential threats that could exist at any new facilities that open in the future, would also have contributed to the change from the subtitle C tentative recommendation in the RTC to today's subtitle D regulatory determination.

Slag from Primary Lead Processing. In the Report to Congress, EPA tentatively recommended subtitle C regulation for lead slag under decision making Approach 1B. Further Agency analyses in response to public comments, however, provided a clearer picture of the three damage cases presented in the Report and the risks associated with one facility's practice of shipping its slag off-site for disposal. EPA, therefore, reconsidered the RTC's tentative recommendation to account for this additional information.

Addressing Step 1 in the Agency's decision making process, which evaluates whether management of the waste poses human health or environmental problems, EPA made four basic findings. First, lead slag is EP-toxic using results of the EP leach test; EP-toxicity leach tests show that lead exceeded the regulatory level at all five active facilities in a total of 27 out of 101 samples; the maximum lead concentrations exceeded the regulatory level by a factor of 19. Cadmium concentrations exceeded the regulatory level at two facilities, by as much as a factor of seven. Arsenic, mercury, and selenium concentrations also exceeded the regulatory levels at the one facility that is only a refinery (the other facilities are either combined smelters and refineries or, in the case of one facility, only a smelter). No samples analyzed using the SPLP test contained contaminants in concentrations above the EP-toxicity regulatory levels; however, the SPLP test has been shown on occasion to underestimate the concentration of leachable lead in a sample.

Second, current practices for managing lead slag at the five active lead processing facilities appear to limit the potential for significant impacts caused by the slag. The potential for lead slag to cause significant surface water contamination at all but one facility is limited by the use of control systems that retain and treat stormwater run-off from slag piles prior to discharge, or by an expected small contaminant loading that is well within the assimilative capacity of nearby water bodies and is subject to control under the Clean Water Act. Risk modeling indicates that stormwater erosion of a lead slag pile at one facility could result in surface water contamination. However, due to releases to ground water from unlined wastewater ponds at this facility, the site is presently being cleaned up under the Superfund program, and any potential surface water impacts associated with erosion from the slag pile will be addressed as part of the site's overall Superfund response. EPA's recently promulgated stormwater regulations (55 FR 47990, November 16, 1990) under the Clean Water Act will also minimize the potential for adverse impacts of stormwater runoff from lead slag.

The Agency's modeling indicates that it is possible for some contaminants to leach from lead slag piles at two of the active facilities and migrate into underlying ground water. However, increased on-site concentrations of constituents in ground water are expected to be well within applicable drinking water standards. Air pathway modeling also indicates that it is very unlikely for lead slag piles to cause harmful concentrations of contaminants in the air at the nearest residences. One commenter contends that lead slag should be regulated under subtitle C because windblown dust from slag piles could pose a significant risk by resulting in an accumulation of contaminated dust in residential areas where people could be exposed directly. However, a Remedial Investigation/Feasibility Study at the facility in East Helena, MT has shown that slag management is a very minor contributor to windblown particulate matter and accumulated dust in the site environs.[7] As much as 95 percent of the lead particulate matter measured in air near the East Helena facility was found to come from ore processing areas and other sources, not the slag piles.

Third, there is a greater potential for human health and environmental risk at two off-site municipal landfills where lead slag from one facility is disposed, although the Agency has no evidence that such management does present a substantial hazard. Although the total quantity of slag that is shipped to these off-site landfills represents only 3 percent of the total quantity of slag that is generated, the slag that is shipped off-site is the highly concentrated refinery slag that is consistently EP-toxic for mercury, lead, cadmium, arsenic, and/or selenium.

Fourth, historical slag management practices have clearly caused ground-water contamination at one site, but steps have since been taken to help prevent this contamination from occurring in the future. The RTC reported damage cases at two other lead facilities, but close examination of the RTC data and information submitted in public comments has eliminated one of the damage cases and called the other one into question. Specifically, EPA's ongoing Superfund evaluation at the lead facility in East Helena, MT has

[7] Comprehensive Remedial Investigation/Feasibility Study—ASARCO Incorporated, East Helena, Montana, March 30, 1990.

demonstrated that ground-water contamination at that site has been caused by two on-site wastewater impoundments. Contribution to the problem from the lead slag pile is thought to be limited, though further study is planned. At the other site, located in Boss, MO, observed ground-water contamination is not clearly attributable to slag, as it too may have been caused by nearby wastewater impoundments. The Agency's risk modeling predicts that ground-water contamination from the slag pile at this site is unlikely.

Based on these findings, EPA concludes that the potential for lead slag to cause significant impacts is limited by the current management practices and conditions at the five active facilities, but there is some potential for adverse impacts that may be caused by the off-site disposal of relatively small quantities of lead slag from one facility. Therefore, EPA proceeded to Step 2 of its decision making process to evaluate whether more stringent regulation is necessary and desirable. In this step of the process, EPA found that:

- Current practices at the off-site landfills that are receiving lead slag for disposal may not be adequate to limit contaminant release and associated risk. As mentioned above, these are municipal landfills that may or may not be adequately equipped to contain contaminant migration from lead slag.
- In Nebraska, where all of the present off-site disposal of slag takes place, the slag could continue to be managed at off-site locations in the future with minimal state regulation. The other states where primary lead processing occurs have varying degrees of regulatory control. The State of Missouri, for example, where three facilities are located, has recently developed strengthened permitting, closure, maintenance, and financial assurance requirements for facilities that manage mineral processing wastes. In addition, stormwater run-off from lead slag piles into nearby surface waters is subject to control under the Clean Water Act in all three states where the slag is currently managed.
- Because subtitle C regulation would subject the slag to strict hazardous waste management standards, it would prevent the disposal of slag in municipal landfills. However, a subtitle C determination for this waste would also impose significant and specific requirements for on-site management (e.g., liners, closure and postclosure care, ground-water monitoring) that are directed at controlling releases/risks that do not appear to exist or are otherwise controlled at the five active lead processing facilities and, thus, are not appropriate given the special status of the waste. In particular, the Agency does not believe that it is appropriate to subject the entire industry to stringent subtitle C controls when any potential problems appear to be associated primarily with only 3 percent of the lead slag that is currently produced.

Based on the combined findings from Steps 1 and 2, EPA concludes that regulation of the waste under subtitle C is inappropriate under the circumstances. (Accordingly, EPA did not proceed to evaluate the questions addressed in Step 3 of its decision making process.) The Agency, therefore, will work to ensure that both on-site and off-site slag management practices are adequately protective under subtitle D and under the Clean Water Act. In particular, EPA will investigate further the offsite disposal practices used by the Omaha facility to determine the extent to which slag is currently co-disposed with municipal waste. If the management of this waste does prove to be problematic, EPA may, for example, classify co-disposal of the slag with municipal wastes as open dumping under RCRA section 4004. Open dumping is a prohibited practice under criteria promulgated under section 4004.

This determination differs from the RTC's tentative recommendation primarily because the Agency closely reexamined the three lead slag damage cases discussed in the Report to Congress in response to public comments. As outlined above, this examination determined that controls have already been established at one site to address the problem, that another case appears to be mainly if not entirely due to wastes other than lead slag, and that attribution of the third case to slag management practices is questionable. Therefore, an important factor in tentatively recommending Subtitle C regulation in the RTC has been removed.

Process Wastewater From the Production of Hydrofluoric Acid. EPA tentatively recommended subtitle C regulation for hydrofluoric (HF) acid process wastewater under Approach 1A and 1B in the Report to Congress. Additional data submitted in public comments and follow-up with the State of Louisiana, however, confirm that the documented damages cited in the Report are attributable to phosphoric acid wastewaters, and not HF process wastewater as reported in the RTC. EPA also found that two of the three active HF acid production facilities neutralize their wastewater. Accordingly, EPA has reconsidered the RTC's tentative recommendation.

Reconsidering the three questions addressed in Step 1 of the Agency's decision making process, the Agency reaches three basic findings. First, all nine samples of process wastewater analyzed (from two of three active facilities) exhibited the hazardous waste characteristic of corrosivity. However, no constituent concentrations exceeded EP-toxicity regulatory levels (all eight inorganic constituents with EP toxicity regulatory levels were measured in concentrations that were no more than 0.6 times the regulatory levels).

Second, as the RTC and one commenter who argued for subtitle C regulation pointed out, there is a relatively high potential for process wastewater to migrate into shallow ground water at the three active facilities. However, EPA does not believe that this migration will pose significant health risks, either because the shallow ground water is not likely to be used at close downgradient distances or because the waste management units are equipped with controls (e.g., a monitoring well network and slurry walls) to detect and help contain ground-water contamination.

One commenter identified a number of factors that would, according to the commenter, tend to make risks higher than presented in the RTC (e.g., the presence of shallow ground water, the current lack of liners beneath existing impoundments, the potential for changes in population and land use patterns leading to higher risks in the future, the wastewater's corrosivity, and the close proximity of each existing facility to wetlands). All of these factors were considered in the RTC and contribute to EPA's concern that shallow ground water near existing units may be affected. However, EPA does not agree that the RTC understates the potential impacts associated with this contamination, because the concentrations of contaminants in the wastewater are generally low. No constituents in the wastewater were measured in concentrations above the subtitle C regulatory levels, and few exceeded the highly conservative risk screening criteria used in the RTC by more than a factor of 10. Therefore, although the ground-water may become contaminated above levels of concern in the immediate vicinity of waste management units, contaminants are not expected to migrate downgradient to potential human or ecological exposure points.

Third, new data provided in comments appear to indicate that shallow ground water at one of the active facilities has been contaminated

with sulfate, total dissolved solids (TDS), and fluoride.[8] Concentrations of sulfate and TDS in a few wells surrounding wastewater management units exceed upgradient concentrations and secondary drinking water standards (designed to prevent an unpleasant taste). Fluoride concentrations in the ground water exceed background concentrations but do not exceed the health-based drinking water criterion. Contamination above the sulfate and TDS standards appears to have migrated at least 50 meters downgradient from the units. No significant effect on pH has been observed, however, even though the very low pH of the wastewater would appear to pose the greatest threat. In addition, no data are available on the concentrations of metals and other constituents with subtitle C regulatory levels, but any contamination by these constituents is expected to be minor because concentrations in the wastewater are low, as discussed above. No other cases of documented damage attributable to HF acid process wastewater are known to exist.

Based on these findings, EPA concluded that additional waste management controls for HF acid process wastewater might be appropriate, and proceeded to Step 2 of its decision making process. In this step of the process, the Agency found that:

- Current practices at two of the three active facilities are probably adequate to limit contaminant release and associated risk. One of the two manages the wastewater in a surface impoundment bounded by a slurry wall and conducts ground-water monitoring, while the other neutralizes the wastewater prior to using it for gypsum transport.
- It does not appear that existing state controls adequately address the management of this waste at all facilities. Of the three states where active facilities are located (LA, TX, and KY), Louisiana appears to be most comprehensive in its regulation of hydrofluoric acid process wastewater. The other two states impose less stringent requirements, though Kentucky recently proposed new solid waste regulations that may address process wastewater more directly.
- Though the corrosivity of the wastewater is a potential concern, it does not appear to pose a significant problem at the three active facilities based on available ground-water monitoring data. In addition, the concentrations of RCRA Appendix VIII constituents in the waste are low enough that they are not expected to result in exceedances of applicable standards in ground water. Regulation under subtitle C would also impose significant and specific requirements (e.g., liners, financial responsibility) that are not appropriate given the special status of the waste.

Based upon the combined findings of Steps 1 and 2, EPA concludes that regulation of process wastewater from hydrofluoric acid production under subtitle C is inappropriate. Although the waste exhibits the hazardous waste characteristic of corrosivity, the low pH of the wastewater does not appear to pose significant human health or environmental hazards at the three active facilities. Moreover, the only constituents which were found in the wastewater at significant levels (e.g., sulfates, fluoride) are not listed in appendix VIII of part 261. Thus, aside from corrosivity, subtitle C would not identify or list this waste as hazardous under subtitle C. Consequently, to the extent that state programs are determined to be inadequate, the Agency plans to pursue methods within the developing subtitle D mining wastes program to control risks posed by this waste. (Accordingly, EPA did not proceed to evaluate the questions addressed in Step 3 of its decision making process.)

This determination differs from the RTC's tentative recommendation primarily because the Agency closely reexamined the reported damage case in response to public comments. As outlined above, this examination demonstrated that the damages described in the RTC are actually attributable to a different waste, rather than to HF acid process wastewater. Therefore, the primary reason for tentatively recommending subtitle C regulation in the RTC has been removed.

Phosphogypsum and Process Wastewater from Phosphoric Acid Production. The Report to Congress considered two special wastes from phosphoric acid production: Phosphogypsum and process wastewater. EPA believes that it is appropriate to address these two wastes together in this regulatory determination. Although the wastes do not necessarily have to be co-managed, all of the active phosphoric acid facilities presently manage the gypsum and wastewater together in one system, consisting of a phosphogypsum stack and associated impoundments.[9] Therefore, it is not possible to make a determination for one waste without, in practice, affecting the status of the other waste at all of the operating facilities. In addition, though the two wastes have distinct physical and chemical properties, it is very difficult to attribute environmental problems in the vicinity of the waste management units to one waste or the other. Moreover, given the existing co-management of the wastes, it is also appropriate to evaluate the two wastes together from the standpoint of alternative management practices and cost/economic impacts.

In the Report to Congress, EPA tentatively recommended Subtitle D-Plus regulation for both phosphogypsum and process wastewater. Since publishing the RTC, EPA has conducted a supplemental analysis of management technologies and state regulations for the two wastes, and received and evaluated public comments on the RTC and supplemental analysis. In addition, in response to public comments, EPA has more closely evaluated existing ground-water monitoring data for the active phosphoric acid facilities and analyzed the potential costs associated with the corrective action provisions in RCRA sections 3004(u) and 3008(h). EPA therefore reconsidered the RTC's tentative recommendation to account for this additional information.

Addressing Step 1 in the Agency's decision making process, which evaluates whether management of the wastes poses human health or environmental problems, EPA made three findings.

First, both the gypsum and process wastewater exhibit a characteristic of hazardous waste, but the gypsum appears to do so only rarely. Out of 11 facilities with data on the composition of phosphogypsum, only the gypsum at the facility in Rock Springs, WY exhibits the characteristic of EP-toxicity. Two out of two samples of phosphogypsum from this facility contained concentrations of chromium that exceed the toxicity characteristic regulatory level, by a factor of six, on average. This appears to be a characteristic restricted to gypsum derived from the processing of certain phosphate rock mined in Utah and processed at the Rock Springs facility. Available data indicate that the concentrations of chromium and other EP constituents in gypsum at facilities in Louisiana and Florida, which process rock from Florida, and facilities in Idaho and North Carolina, which process locally derived rock, are usually one to

[8] This information does not constitute a documented damage case.

[9] The gypsum is slurried to the stack using process wastewater and large quantities of the wastewater are held in the interstitial pore spaces within a phosphogypsum stack.

two orders of magnitude below the regulatory levels.

In contrast, the process wastewater routinely exhibits the hazardous waste characteristic of corrosivity (i.e., it has a pH of less than 2). Out of 15 facilities with data, all process wastewater samples examined at six facilities had a pH less than 2 and most samples examined at six other facilities had a pH below 2. All of the pH values available for the other three plants with data are greater than or equal to 2. Process wastewater at three out of six facilities with data also exhibits the toxicity characteristic. A total of 19 of 19 wastewater samples from the three facilities contained cadmium concentrations that exceed the regulatory level (by a factor of four on average), and two out of two samples from one of the facilities also contained chromium concentrations that exceed the regulatory level (by a factor of two, on average).

Second, existing practices for managing phosphogypsum and process wastewater appear to pose substantial risks of environmental contamination and impacts through the ground-water and surface water pathways. Considering the hydraulic head created by gypsum stacks and process wastewater impoundments and the net recharge, depth to ground water, and subsurface permeability at the 20 active facilities, EPA believes that there is a moderate to high potential for ground-water contamination across the industry. This potential for ground-water contamination is limited significantly at the one Wyoming facility, which has equipped its waste management units with synthetic liners and a seepage collection ditch, but the units at most other facilities are either unlined or only lined with the clay and silt that naturally exist in the area. EPA's concern about potential ground-water contamination at the 11 facilities in Central Florida is compounded by the presence of underlying karst in the deep Floridan Aquifer; karst is prone to form caverns or solution cavities that can serve as contaminant migration pathways. Available data indicate that the background ground-water quality is suitable for drinking [10] and that there is either a private or public well, where potential human exposures could occur, within 1,600 meters (1 mile) downgradient of the waste management units at 14 of the 20 active facilities. In addition, 15 of the active facilities are located within 1,600 meters of a wetland and 16 facilities have waste management units within 500 meters (less than a third of a mile) of a surface water body where contamination could pose ecological threats. Phosphogypsum does not appear to pose a significant air pathway risk. Radon emissions to the air from gypsum stacks are controlled under the Clean Air Act at a level designed to ensure "acceptable" risk within an "ample margin of safety" (see 54 FR 51654, December 15, 1989). Windblown dust releases from gypsum stacks also appear to be effectively precluded by the crust that forms on the dried gypsum solids.

Third, a close examination of available monitoring data reveals that there are numerous cases of documented ground-water contamination across the industry. For example, out of 16 facilities with data, the phosphogypsum stacks and/or process wastewater ponds at 13 facilities appear to have caused groundwater contamination that exceeds background levels and primary (i.e., health-based) drinking water standards. Contamination by constituents with toxicity characteristic regulatory levels is seldom evident more than 500 meters from the waste management units, but other contaminants with health-based limits (gross alpha radiation, radium, and sodium) have migrated in potentially harmful concentrations over greater distances. Based on a review of the monitoring data and plant configurations, EPA believes that contamination above primary drinking water standards has migrated or is likely to migrate beyond the facility property boundary (unless corrective measures are implemented) at 12 of 15 facilities with data.

Based on these findings, EPA concluded that management of phosphogypsum and process wastewater poses potential health and environmental problems. Therefore, EPA proceeded to Step 2 of its decision making process to examine whether more stringent regulation is necessary or desirable. In this step, EPA found that:

- Current phosphogypsum and process wastewater management practices are often not adequate to limit contaminant release and associated risk. As discussed above, current management practices generally consist of disposal or storage in large unlined piles and ponds, typically in areas that are conducive to ground-water contamination.
- Current state and federal regulations generally do not appear adequate to control current and likely future ground-water contamination. Although Florida is in the process of developing strengthened regulations, the State presently permits the special waste units to contaminate ground water, usually as far as, but sometimes beyond, the facility property boundary. Given the intrinsic hazards of the wastes, the widespread potential for contaminant release and migration, and the potential for human and ecological exposures in the vicinity of active facilities, EPA believes a more stringent regulatory approach is needed.
- EPA believes that regulation under subtitle C would impose significant and specific requirements that are directed at controlling the types of releases/risks that have been documented for phosphoric acid production wastes across the industry.

Based on the combined findings from Steps 1 and 2, EPA concluded that existing management practices create the potential for environmental problems and that more stringent regulation is both necessary and desirable. EPA therefore seriously considered subtitle C regulation for the phosphoric acid wastes and proceeded to Step 3 of its decision-making process to evaluate the operational and economic consequences of a subtitle C determination.

In Step 3 of the decision-making process, EPA examined the costs and impacts of the three regulatory scenarios examined in the RTC and the Supplemental Analysis, and used the insights gained thereby in deciding whether the economic impacts of subtitle C (or C-Minus) regulation might cause extensive and significant economic dislocations within the phosphoric acid production industry. Cost impacts were reevaluated subsequent to release of the RTC and were based upon an integrated management strategy for controlling risks posed by the two special wastes in combination. This departure from the Agency's initial approach was required by new knowledge gained through additional plant visits and analysis; these findings are summarized in the Supplemental Analysis and discussed further in comment response documents.

Extensive comments received on the Supplemental Analysis have cast doubt upon the engineering feasibility of some of the waste management alternatives

[10] Background data for the surficial aquifers indicate that shallow ground water at the sites is generally drinkable, but low yields at the Florida sites limit uses primarily to irrigation and livestock watering. Lower aquifers, where present, are generally of equal or better quality, and appear to be either current or potential public drinking water supplies.

presented in that document. Consequently, the Agency has based its cost analysis in support of today's regulatory determination on the use of lined phosphogypsum stacks and cooling ponds (Engineering Alternative 3 in the Supplemental Analysis). The technology required to implement this alternative has been amply demonstrated (i.e., is feasible), though the costs involved are higher than those of some of the other alternatives evaluated in the Supplemental Analysis. Because EPA is not confident at present that full subtitle C compliance is technically feasible for existing phosphoric acid plants, principally because of the predicted operational effects of the large-scale lime neutralization required for compliance (the only Engineering Alternatives that would comply with promulgated Subtitle C Land Disposal Restrictions (LDRs) for corrosive wastes rely on lime treatment), the cost and impact analyses conducted for today's notice focus exclusively on the Subtitle C-Minus and D-Plus scenarios.

EPA has estimated that the total industry-wide cost of compliance with the Subtitle C-Minus scenario (assuming implementation of Engineering Alternative 3) would be approximately $465 million annually, with an additional $15 million to $60 million required annually for corrective action, depending upon the analytical assumptions employed. Estimated annualized compliance costs for the Subtitle D-Plus scenario are approximately one-third lower, at about $330 million for the industry in total; corrective action costs under this scenario could range from $13 million to $48 million annually. These costs represent from 10.0 to 21.6 percent of the value of shipments (VOS) under Subtitle C-Minus, and from 8.2 to 15.2 percent of the VOS under Subtitle D-Plus (excluding corrective action costs), depending upon the facility involved. Costs of this magnitude exceed typical operating margins in the affected industry, could not be passed through, and hence, could not be sustained over an extended period.

As required by Section 8002(p)(7), EPA has also conducted an analysis of the impacts associated with the costs of regulatory compliance. Based upon the results of this analysis, the Agency has concluded that the costs and impacts of regulatory compliance under the Subtitle C-Minus and D-Plus scenarios would be highly significant for most phosphoric acid facilities, with C-Minus costs being particularly difficult to withstand. These costs would create economic hardship for and threaten the continued economic viability of many of the facilities in the industry. Consequently, the Agency has decided that while the management of phosphoric acid production wastes requires additional controls, hazardous waste controls under RCRA are too inflexible and costly for the industry to implement and remain economically viable. Even a less rigorous approach under the auspices of RCRA Subtitle D could impose costs and impacts that the domestic industry would find difficult to withstand. Therefore, the Agency has serious reservations regarding the economic feasibility of a traditional waste management program designed within the contours of the RCRA statute.

Given these facts and the need for action to address the risks posed by phosphoric acid production processes and associated wastes, EPA believes that a different approach is required. The Agency has therefore developed a two-pronged approach to address these wastes. First, the Agency will rely upon existing authorities under RCRA Section 7003 and CERCLA Section 106 to respond effectively to emergency situations that arise. In addition, EPA will accelerate the collection of facility-specific information, consider the risks posed by these facilities, and take appropriate action to contain or stabilize wastes at facilities that present a risk to human health and the environment. In this manner, EPA believes that it can respond appropriately to any problems that arise while developing a program that is both adequately protective of human health and the environment and economically feasible and achievable for affected industry.

Second, EPA believes that a regulatory program specifically designed to address the complex issues associated with phosphoric acid industry special wastes can be developed under authorities afforded by the Toxic Substances Control Act (TSCA). Like RCRA, TSCA provides a mechanism to address threats posed to human health and the environment and, unlike RCRA Subtitle C, does not contain prescriptive requirements. TSCA provides the additional and significant advantage of being broader in scope, and explicitly allows EPA to address various parts of the production and waste generation process itself. Therefore, EPA plans to proceed with examination of this problem under TSCA to consider how to develop a program that will address phosphoric acid production practices and processes to reduce the risks posed by phosphogypsum and process wastewater.

The TSCA regulatory investigation already underway will focus on developing risk management strategies to reduce or eliminate risks posed by phosphoric acid production wastes. EPA is evaluating the chemicals and the processes involved in phosphoric acid production and the resulting wastes to determine how TSCA authorities can best be used to reduce the toxicity and/or volume of these wastes. The Agency will analyze the efficacy and feasibility of some of the alternatives to current practices that were described in the Supplemental Analysis, with an emphasis on developing sound methods (in both a technical and economic sense) of reducing the toxicity and/or the volume of the special wastes. EPA will assess pollution prevention opportunities based on a phosphoric acid life-cycle analysis, the Supplemental Analysis, and other information obtained during the TSCA investigation. The investigation will also address the risk reduction potential and associated costs for identified regulatory options, such as restrictions on manufacturing, processing, or disposal. Depending on the results of this assessment, site specific risk reduction strategies may be considered as most appropriate. As specific wastes or toxicity reduction techniques are identified, EPA will work with the industry to implement the most promising alternatives as quickly as possible. EPA believes that by developing a tailored program under TSCA, the Agency will be able to more fully explore, promote, and enforce several promising pollution prevention and/or source reduction ideas (e.g., more efficient raw product filtration, fluosilicic acid recovery) than would be possible under a RCRA program.

In addition, EPA plans to further explore and evaluate containment strategies of various kinds, so that whatever wastes are generated will not result in contaminant releases to the environment. If information obtained or findings developed during the TSCA investigation are such that RCRA could better handle this matter, the Agency will revisit today's regulatory determination, and determine whether subtitle C regulation of the phosphoric acid special wastes remains inappropriate.

IV. Decision To Postpone Consideration of a Possible Ban on Elemental Phosphorus Slag Utilization

In the RTC, EPA found that the radionuclide content and potential for

radiation risk is a concern for slag from elemental phosphorus production. The primary basis for this finding was EPA's Idaho Radionuclide Study,[11] which estimated that average life-time cancer risks range from $4x10^{-4}$ to $1x10^{-3}$ in Soda Springs and Pocatello, Idaho as a result of the use of elemental phosphorus slag in a wide range of off-site construction applications. Based on these findings, EPA stated in the RTC that it planned to use the authority of RCRA section 3001(b)(3)(B)(iii) to ban the use of the slag in construction and/or land reclamation when the Agency issued its regulatory determination for mineral processing wastes. EPA solicited comments on the appropriate regulatory language that should be used and how such a ban should be implemented.

In response, five commenters questioned the validity of the Idaho Radionuclide Study. The commenters argued that the study was not conducted according to required procedures, has not been sufficiently peer-reviewed, contradicts epidemiological studies that show that cancer risks in Idaho are low, and suffers from several technical flaws. For example, according to the commenters, the data collection methodology was inadequate to support valid risk estimation, the study relies on a zero threshold low-dose risk model that is not supported by experimental evidence, and the study relies on aerial radiation measurements that exaggerate actual radiation levels. The commenters argued, therefore, that the Idaho study cannot be used as a basis for a decision to ban off-site uses of the slag.

Since the release of the RTC, the Idaho Radionuclide Study and supporting data have been distributed for review by industry, EPA's Science Advisory Board (SAB), and the Agency for Toxic Substances and Disease Registry. A public hearing on the study was also held in Soda Springs, ID on August 21, 1990. Because of the concerns raised, EPA has postponed its final determination on the validity of the study's conclusions until the Agency decides how to incorporate SAB's findings and after the Agency's review of information provided at the public hearing is completed. In addition, the Agency is postponing its consideration of a possible ban on elemental phosphorus slag utilization until it completes its review of the technical basis for such an action. EPA will propose a supplemental notice at the appropriate time.

[11] EPA, 1990, Idaho Radionuclide Study, Office of Research and Development, Las Vegas Facility, Las Vegas, NV, EPA/520/6-90/008, April 1990.

V. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96-354), which amends the Administrative Procedures Act, requires Federal regulatory agencies to consider "small entities" throughout the regulatory process. The RFA requires in section 603 an initial screening analysis to be performed to determine whether a substantial number of small entities will be significantly affected by a regulation. If so, regulatory alternatives that eliminate or mitigate the impacts must be considered.

EPA conducted a detailed analysis of the facilities and companies that generate the 20 special wastes from mineral processing during the preparation of the Report to Congress. The Agency established at that time that no companies that meet the definition of "small business" generate any of the special mineral processing wastes. Also, EPA has not received any information in public comment on the Report that would contradict this finding, and therefore concludes that today's action will not adversely affect small mineral processing companies. Consequently, an explicit Regulatory Flexibility Analysis is not required.

VI. Agency Initiatives

To follow up on the findings that have resulted in today's regulatory determination, EPA plans to continue several initiatives that directly relate to some of the mineral processing wastes addressed in this regulatory determination. These initiatives include the following four activities:

(1) Evaluation of the radiation exposures and risks associated with the off-site use of elemental phosphorus slag;

(2) Review of hazards posed by wastes containing diffuse naturally occurring radioactive material (NORM);

(3) development of a management program under RCRA Subtitle D for mineral extraction and beneficiation wastes; and

(4) Development of a program under TSCA addressing the phosphoric acid industry.

As discussed in section IV of this preamble, in April 1990, EPA released the Idaho Radionuclide Study, which provided an assessment of the direct radiation exposures and risks associated with the use of elemental phosphorus slag in construction in Soda Springs and Pocatello, Idaho. A public hearing on the study was held in Soda Springs, ID on August 21, 1990. EPA has also requested its Science Advisory Board (SAB) and other scientific organizations to review the study's underlying data, methodology, and conclusions. The SAB is scheduled to issue its findings this year. When available, EPA will review these findings together with other scientific and public inputs to define needs for further study. Final conclusions from this study will be used to help evaluate the need for any added controls on the off-site use of elemental phosphorus slag.

In a separate study, EPA is presently evaluating the characteristics, risks, and regulatory control options under TSCA for diffuse NORM wastes. The scope of this study is much broader than the Idaho Radionuclide Study, and includes phosphate and elemental phosphorus wastes, metal mining and mineral processing wastes (including wastes from bauxite and aluminum, copper, zinc, tin, titanium, and zirconium and hafnium processing), and a variety of other wastes (e.g., coal ash, oil and gas production scale, water treatment sludges, and certain consumer items). The purpose of the study is to determine whether the routine management of these wastes pose a sufficient radiological hazard to warrant additional regulatory controls. EPA plans to complete the study in the summer of 1991, at which time the Agency will begin to evaluate whether any added controls are necessary to limit the radiation hazards, what authorities exist for such controls, and what the form and substance of a NORM waste program might be. As appropriate, EPA will evaluate authorities and opportunities to address NORM wastes under RCRA, the Toxic Substances Control Act, and other programs.

EPA is in the process of developing a RCRA Subtitle D program for mineral extraction and beneficiation wastes. EPA plans to include those mineral processing wastes determined here to warrant regulation under subtitle D under the regulatory "umbrella" for extraction and beneficiation wastes, making it the extraction, beneficiation, and mineral processing wastes program. As the development of this program proceeds, the Agency may find it necessary to control certain mineral processing wastes, such as waste acids, that have little in common with the majority of extraction and beneficiation wastes under a separate regulatory program.

Finally, as discussed in the regulatory determination for the phosphoric acid wastes, EPA plans to proceed with an examination of phosphogypsum and process wastewater management under TSCA. EPA will consider how to

develop a program under TSCA, including pollution prevention opportunities, that will address phosphoric acid production practices and processes to reduce the risks posed by these two wastes.

VII. Regulatory Determination Docket

The EPA RCRA docket is located at: United States Environmental Protection Agency, EPA RCRA Docket, room M2427, 401 M Street, SW., Washington, DC 20460.

The Docket is open from 9 a.m. to 4 p.m., Monday through Friday except for Federal holidays. The public must make an appointment to review docket materials. Call the docket clerk at (202) 475-9327 for appointments.

Documents related to this regulatory determination are available for inspection at the docket.

List of Subjects in 40 CFR Part 261

Hazardous waste, Waste treatment and disposal, Recycling, Reporting and recordkeeping requirements. Manifests.

Dated: May 20, 1991.

William K. Reilly,

Administrator.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTES

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.4 is amended by revising the last sentence of the introductory text of paragraph (b)(7) to read as follows:

§ 261.4 Exclusions.

(b) * * *

(7) * * * For the purpose of § 261.4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes:

* * * * *

Note: The Following Appendices Will Not Appear in the Code of Federal Regulations.

Appendix A—Analysis of and Response to Public Comments on the Report to Congress

EPA received numerous public comments on the Report to Congress, including comments on the overall methodology used to evaluate the eight study factors and comments on the specific analysis and discussion of each of the 20 wastes. All of the comments are available for inspection in Docket No. F-90-RMPA-FFFFF. EPA has carefully considered each of these comments in developing this regulatory determination and includes in this appendix responses to certain major comments that have a particularly significant bearing on the Agency's final determination. All other comments and detailed responses are included in a supporting comment response background document, available for inspection in the RCRA docket.

I. Report to Congress Methodology

The Agency received a number of comments on the Report's scope (i.e., the particular wastes studied) as well as the approach that EPA used to evaluate five of the study factors: (1) Waste characteristics, generation, and current management practices; (2) potential danger to human health and the environment; (3) documented danger to human health and the environment; (4) compliance costs; and (5) economic impacts. Commenters did not raise significant methodological issues concerning the Agency's evaluation of Federal and State waste management controls or waste management alternatives and potential utilization.

A. Scope

Several commenters took exception to the Report's overall scope, with some stating that the scope was too narrow and some stating that the scope was too broad. The commenters that argued that the scope was too narrow said that EPA improperly narrowed the scope of the mining waste exclusion, leaving several mineral processing wastes potentially subject to subtitle C regulation when they should have been studied further in the Report to Congress. For example, one commenter said that certain wastes that exhibit a hazardous waste characteristic, such as coal tar wastes from historic town gas manufacturing, constituted exempt mineral processing wastes and should have been studied in the Report. The commenters that believed the scope was too broad said that EPA wrongly studied materials that are not solid wastes and thus not subject to RCRA regulation, such as some slags.

EPA believes the argument that the scope of the Report was too narrow is not an issue pertaining to the Report to Congress, but rather pertains to the scope of the Agency's final rulemakings interpreting the scope of the exclusion for mineral processing wastes. As EPA explained in the preambles to the rules as well as the Report to Congress, two final rules established the scope of the exemption for mineral processing, and EPA did not solicit further comment on this issue in the RTC. EPA also notes that the coal tar wastes mentioned in the comment are no longer generated (the last plant that manufactured gas for municipal use using coal closed in the 1970's) in high volumes (if they ever were), and the Bevill Amendment applies only to currently generated waste and historical stockpiles of currently generated waste. Moreover, the coal tar wastes remaining from historic town gas manufacturing are substantially different from the coal gas wastes studied in the Report to Congress, as the coal tar wastes have a different chemical makeup and were generated by different processes.

With respect to the argument that the scope of the Report is too broad, EPA acknowledges that some of the materials examined in the Report are not always solid wastes, depending on how they are managed in particular instances. In fact, if they are not defined as solid wastes under EPA's regulations, the Agency agrees that regulation under RCRA is not appropriate. However, the Agency believes that all of the materials examined are managed as a solid waste, as defined by RCRA regulations, at least part of the time at some facilities. Therefore, all of these wastes were appropriate for study in the mineral processing report.

B. Waste Characteristics, Generation, and Current Management Practices

One commenter argued that EPA's consideration of waste characteristics in the RTC did not recognize the variability in composition of a given waste from one facility to the next. According to the commenter, this variability provides support for a determination that subtitle C regulation is unwarranted because regulation under other state and federal authorities provides the flexibility necessary to address the geographic variability in waste characteristics (which subtitle C does not). For example, data for phosphogypsum and process wastewater from phosphate rock processing clearly demonstrate, according to the commenter, the variability of characteristics of these wastes and the relationship between that variability and the geographic origin of the phosphate rock being processed. The commenter went on to contend that the RTC used waste characterization data only to determine whether a waste contains constituents at concentrations of potential concern, ignoring the critical aspect of geographic variability.

EPA disagrees with this comment. Waste characteristics and the variability in chemical concentrations from one facility to the next were critical elements in the risk and cost analyses, as well as in the Agency's final decision making. Specifically, the variability in waste composition was

explicitly highlighted in the analysis of each waste's intrinsic hazard, and the facilities that were examined in the cost and economic impact portions of the analysis were selected as a function of whether their wastes exhibit a hazardous waste characteristic. If subtitle C regulation for a given waste warranted serious consideration based on an analysis of the study factors, EPA closely examined on a facility-by-facility basis the frequency and magnitude with which the waste exhibits a hazardous waste characteristic in order to reach a final regulatory determination.

C. Potential Danger to Human Health and the Environment

1. *Leaching Procedures.* Four commenters addressed the appropriateness of different laboratory leach tests used to measure contaminant concentrations in leachate from mineral processing waste samples. Three of the commenters objected to the RTC's use of data generated from the Extraction Procedure (EP) leach test. These commenters stated that EP leachate concentrations overestimate actual leachate concentrations because the EP test mimics an implausible mismanagement scenario in which mineral processing wastes are co-disposed with municipal solid waste in a municipal landfill and exposed to an organic leaching medium. In general, these commenters believed that analytical results from a distilled water leaching procedure or the Synthetic Precipitation Leaching Procedure (SPLP) would provide a more realistic assessment of the leachability of metals from mineral processing wastes under actual field conditions. In contrast, another commenter suggested that use of the EP leach test data is reasonable because, among other reasons, co-disposal with municipal wastes cannot be ruled out for some mineral processing wastes that are disposed off-site, and because at the time the RTC was being prepared, the EP leach test was the required procedure for determining whether a mineral processing waste would be regulated as EP toxic if the Bevill exemption was removed.

The Agency believes that the RTC's use of EP leach test data for mineral processing waste characterization and risk assessment is reasonable for three main reasons. First, use of the EP leachate data is a reasonably conservative approach. While several constituents were found to be present in higher concentrations in EP leachate than SPLP leachate for some samples that were tested using both procedures, results for the two tests are often similar (and for liquid wastes, they are identical since liquids are not leached, but simply compared directly to the appropriate regulatory concentration levels). There are also cases where EP leachate concentrations were found to be less than SPLP leachate concentrations. For example, the results of an EPA study [1] analyzing the validity of the SPLP test showed that the SPLP test has been shown on occasion to underestimate the amount of leachable lead in a sample.[2] Other constituents that are commonly present in higher concentrations in EP leachate than SPLP leachate include iron, zinc, aluminum, cadmium, copper, and nickel. In contrast, arsenic, vanadium, molybdenum, and barium are commonly found in higher concentrations in SPLP leachate than EP leachate. In addition to the fact that EP leachate concentrations appear reasonably conservative relative to the SPLP concentrations, the Agency believes use of the EP leachate data is reasonable because mineral processing wastes may be plausibly mismanaged in a municipal landfill in certain cases. For example, lead slag from one of the primary lead processing plants, and steel (basic oxygen furnace and open hearth furnace) air pollution control dust/sludge from one plant are presently shipped off-site for disposal in a municipal landfill. Given the existing regulatory regime, it is not inconceivable that other mineral processing wastes from other facilities could be disposed in a similar manner in the future.

Second, as noted by one of the commenters, the EP leach test at the time the RTC was being prepared was the legally required procedure for determining whether the mineral processing wastes under study exhibit the hazardous waste characteristic of EP toxicity. The test that has replaced the EP test, the Toxicity Characteristic Leaching Procedure, assumes the same mismanagement scenario and will also be used to determine the toxicity of wastes for regulatory purposes.

Third, the vast majority of available leachate data for mineral processing wastes are from EP leach tests. The amount of data from other laboratory leach tests or from samples of actual leachate collected in the field is insufficient to support a comprehensive evaluation.

The Agency recognizes that there are some uncertainties associated with using EP leachate data to estimate the concentrations of metals in leachate generated from the mineral processing wastes as they are currently managed. As a result, the differences between measured EP and SPLP leachate concentrations were factored into the Agency's decision making for this regulatory determination. Also, EPA acknowledges that the RTC's use of EP leachate data differs from the approach used in the Agency's previous rulemakings on mineral processing wastes (reinterpreting the scope of the Mining Waste Exclusion), but believes the reasons outlined above provide a sound basis for using the EP data in the analysis leading to the regulatory determination. In the previous rulemakings, the Agency used limited SPLP data in order to establish which wastes qualified as "low hazard" and thus were eligible for detailed study in the RTC (i.e., use of the SPLP data was a reasonable approach for selecting the wastes to be studies, because wastes that exhibit hazardous characteristics under the SPLP test are clearly not low hazard). For purposes of actually conducting a risk assessment, however, relying primarily on the EP leachate data is a reasonable, though more conservative approach. The overall conservativeness of EPA's risk assessment is discussed further below.

2. *Overall Conservativeness.* Five commenters stated that the risk assessment methodology in general relies on overly conservative assumptions that grossly overestimate risk and ignore contradictory real-life information. The commenters said the risk screening criteria used to evaluate the intrinsic hazard of each waste stream's composition are ultra-conservative, as they are based on worst-case assumptions regarding an unbroken chain of events that allow contaminant release, migration through the environment, and exposure to receptors.

While the Agency agrees that there are elements of the risk assessment methodology that tend to overestimate actual risks, these overestimates are offset somewhat by other elements of the methodology that tend to underestimate actual risks. The Agency acknowledges that most of the risk screening criteria are conservative, as stated throughout the RTC. However, the Agency used these criteria only for the purpose of analyzing the intrinsic

[1] Performance Testing of Method 1312—QA Support for RCRA Testing, U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory, Las Vegas, NV, March 1989. Docket No. F-89-MWRP-F0002.

[2] Given recent data that indicate that lead is a health hazard at significantly lower levels than previously believed (U.S. Department of Health and Human Services, Toxicological Profile for Lead, Agency for Toxic Substances and Disease Registry, June 1990), EPA believes it is especially important that it not rely solely on a procedure that may underestimate lead leachability.

hazard of each waste stream. EPA interpreted an exceedance of the criteria only as an indication that the risks of a given waste should be evaluated in more detail, not by itself as proof that the waste poses a significant risk. If a waste contained constituents in concentrations above the screening criteria, the analysis was supplemented with additional evaluation of conditions at actual facilities, and then further, if this evaluation indicated that there were potential problems, the Agency conducted risk modeling in order to develop final risk conclusions. The RTC then proceeded to evaluate the risk conclusions together with the damage case conclusions before reaching an overall finding on the hazards associated with each waste.

Overall, EPA believes that the risk assessment, while conservative, was reasonable in that EPA factored the uncertainties created by key assumptions in the risk assessment methodology into the regulatory decision making process for each waste stream. The approach that EPA used to evaluate potential human health and environmental problems is outlined in section II of this preamble and applied in section III, which presents the rationale for the final regulatory determination for specific wastes.

3. *Modeling Inadequacies.* One commenter argued that the Agency's risk modeling was inadequate and significantly underestimated risks because it did not adequately consider a number of specific factors. Important factors that the commenter alleged were left out or considered incorrectly include site-specific soil-water distribution coefficients (Kd's), the transport of metals in ground water by colloids, metal-organic complexing during ground-water transport, ground-water flow through karst terrains, storm events, evaporation and subsequent concentration of metals in small surface water bodies, and the transport of contaminated storm-water run-off to surface water bodies.

In general, EPA acknowledges these modeling limitations but believes most of them were unavoidable, forced in part by necessary limitations in the scope/complexity of the risk assessment, as well as by limitations in the state of ground-water modeling as a science. For example, the Agency agrees that Kd values are highly site-specific, but believes that modeling each site using actual Kd's would have required prohibitively extensive field measurements and verification. As a result, the Agency used the next best approach—EPA used its best professional judgment to select representative Kd values for each site and each contaminant, based on a review of data in the literature and an examination of available data on the soil composition at each site. In addition, with the possible exception of a few experimental models, the Agency is unaware of any reliable techniques for modeling the migration of colloids or the flow of ground water through karst. Overall, the Agency believes that its risk modeling approach accounts for the factors noted by the commenter in the best way possible, considering the study's time limitations. When significant factors could not be considered in the quantitative modeling exercise, they were considered in a qualitative manner so as to not compromise the overall completeness of the risk analysis.

4. *Lack of Consideration of Off-Site Use/Disposal and Future Changes.* One commenter argued that the risk assessment was deficient because it did not consider the risks associated with off-site use or disposal of the mineral processing wastes. This same commenter said the risk assessment is also fundamentally flawed because it analyzes risks only in terms of existing conditions at each facility that generates the mineral processing wastes, not accounting for possible future changes in water use patterns or population distributions.

While the Agency acknowledges that it did not rigorously model the risks associated with off-site use/disposal or possible future locations of new facilities, it disagrees that the RTC did not consider these factors.[3] Based on a review of the past disposal practices and potential utilization of each waste, only about half of the mineral processing wastes are candidates for off-site use or disposal, including copper slag, elemental phosphorus slag, all four of the ferrous metal production wastes, fluorogypsum, lead slag, phosphogypsum, and zinc slag. In the case of elemental phosphorus slag, the RTC relied on monitoring and risk modeling conducted by EPA's Office of Radiation Programs to evaluate the potential radiation hazards associated with off-site uses; as discussed in section VI of this preamble, EPA is in the process of re-examining the validity of this off-site modeling for elemental phosphorus slag. For the other wastes, EPA evaluated the observed and potential hazards associated with off-site use or disposal in the context of the wastes' damage case record and intrinsic hazard analysis, and factored the results of this evaluation into the overall hazard findings in each waste-specific chapter of the RTC. For example, before reaching conclusions about the hazards posed by iron blast furnace slag, a waste that has been shipped off-site for disposal and a variety of uses for decades, EPA searched for and evaluated any evidence of environmental damage caused by the off-site management practices. The conservative risk screening criteria used to evaluate each waste's intrinsic toxicity also were developed using hypothetical scenarios that might occur if the wastes were mismanaged (e.g., scenarios in which an inactive waste pile is not closed or maintained and people are allowed to come into direct contact with the waste). Therefore, the Agency believes that both off-site activities and possible future changes have been accounted for in the overall hazard conclusion for each waste stream. EPA also notes, however, that, as a general matter, the use of site-specific risk modeling and evaluation is appropriate for high-volume special wastes which are typically managed on-site.

5. *Treatment of Radionuclides in the Report to Congress.* One commenter claimed that EPA's treatment of radionuclides is different with respect to the four wastes tentatively proposed for removal from the Mining Waste Exclusion and the sixteen other wastes. The commenter argued that EPA has determined that some radionuclide risk exists for some of the sixteen wastes but instead of recommending subtitle C regulation, EPA merely expressed that it plans to further investigate the potential for exposure and associated radiation risk. This commenter added that if further investigation is warranted before regulatory action is taken on some wastes, the same principle should apply to all the wastes.

EPA could not evaluate the risks associated with radioactive constituents for all of the wastes studied in the RTC because the necessary data were not available. In addition, there presently are no controls for risks from radioactive materials under RCRA subtitle C, as there is not a hazardous waste characteristic test for radioactivity and no radionuclides or radioactivity levels are listed in appendix VIII to 40 CFR part 261 (Hazardous Constituents). As a result, concerns about residual radioactivity

[3] As discussed elsewhere, EPA did examine potential changes in exposure scenarios at existing facilities. For example, the Agency's risk modeling examined potential groundwater exposure points at locations closer to the facility than known current well locations (e.g., at the facility boundary).

would not be resolved by removal of the Mining Waste Exclusion, because such an action would not result in subtitle C regulation unless the waste exhibits a RCRA hazardous characteristic.

To the extent that data were available on the radionuclide concentration in various wastes, EPA believes that it evaluated the data and made final regulatory determinations for the wastes in a consistent manner. That is, EPA uniformly compared available radionuclide concentration data for the wastes to risk screening criteria and developed conclusions on the intrinsic hazard of the wastes accordingly. The Agency then evaluated potential radiation risk as an element in the overall risk assessment for each waste, and combined the risk assessment conclusions with the other RCRA section 8002(p) study factors in accordance with the decision making methodology outlined in section II of this preamble in order to reach a final regulatory determination. Therefore, radiation risk was but one element in an overall evaluation process, and EPA consistently followed that process to reach appropriate determinations for each waste. To the extent that radioactivity appears to be a concern for a given waste, EPA believes that potential radiation risks should be addressed along with the waste's other potential threats within the regulatory framework determined to be appropriate (subtitle D in all cases). In addition, EPA is examining potential radiation risks associated with these and other materials in studies currently underway.

D. Documented Danger to Human Health and the Environment

One commenter contends that many of the damage cases cited in the RTC are not attributable to Bevill processing wastes. The commenter also stated that other damage cases cited by EPA resulted from historical management practices that have long since been discontinued by the mineral processing industry. A number of commenters made this assertion regarding specific mineral commodity sectors and wastes as well.

The Agency reexamined the RTC data and evaluated the information submitted in comments and eliminated some of the damage cases covered in the RTC for the purpose of this regulatory determination (see the comment-response background document in the docket for details). For example, EPA has eliminated the damage cases for lead slag at the ASARCO facility in East Helena, MT and for hydrofluoric acid process wastewater at the Allied facility in Geismar, LA because available information indicates that the contamination documented in the RTC is attributable to other wastes.

Furthermore, as discussed in the RTC, inclusion in the RTC of documented contaminant releases to the environment due to discontinued waste management practices does not necessarily demonstrate that releases from current management practices will occur. The Agency believes, however, that damage case information on past waste management practices is useful in demonstrating the potential for environmental and human health impacts, for two primary reasons. First, these damage cases provide information on combinations of management practices and site conditions that have resulted in environmental problems, which is useful for anticipating and avoiding future problems. Second, damage cases associated with past practices, like those associated with ongoing practices, are useful in demonstrating the kinds of impacts that can result when hazardous constituents are released from the wastes. If damage case information on past waste management practices was available, EPA evaluated the particular circumstances involved to determine if the case represents conditions that are likely to exist today. If, in EPA's judgment, a historical damage case did not apply to current management practices, it was used to supplement the risk conclusions in the sense that it could demonstrate how problems can occur in mismanagement scenarios, but it was not given the full status of a damage case in making the regulatory determination. However, if a historical damage case was found to represent today's management practices, it was considered equally with any damage cases for current management practices in developing the regulatory determination.

One commenter claimed that the Agency did not meet the standard set by Congress that damage cases should relate to the individual waste stream being studied. The commenter added that although relating damage to a specific stream may be difficult, it is essential if an analysis is to be meaningful.

EPA disagrees with this comment. As mentioned previously, the Agency reexamined the RTC data and evaluated the information submitted in comments and eliminated some of the damage cases covered in the RTC because the damages could not be attributed to a given waste stream being studied. In some of the cases that were retained for the purpose of this regulatory determination attribution to a sole waste stream was not possible, because wastes were co-managed, for example. However, the Agency believes that at least one of the special wastes being studied was contributing to the damages described in cases used for the regulatory determination. This view is based on EPA's review of available data on waste management practices and site conditions as reflected in state or EPA regional regulatory files.

One commenter argued that contrary to the Agency's position, the absence of damage cases is not a reliable indicator of the absence of potential hazard from the wastes studied in the Report. The commenter stated that the lack of damage cases can be attributed to two factors: Deficiencies and flaws in EPA's methodology for identifying damage cases, and inadequacies within state programs for identifying damage cases.

The Agency has reviewed these comments and maintains the view that its damage case investigation effort was comprehensive and thorough. Many sources were utilized to obtain information on facilities, including the National Priorities List (NPL) and other lists; federal, state, and local regulatory agencies; public interest or citizen's groups; and professional and trade associations. In addition, EPA followed up on general and specific examples cited in comments and has not found any additional damage cases. For example, EPA has reviewed the evidence suggested by one commenter linking observed damages to ferrous metal production wastes, and concludes that any such damages are not attributable to any of the four ferrous metal production wastes studied in the Report. The Agency acknowledges that although damages may have occurred at some facilities not identified in the Report, documentation of these damages was not available or non-existent. This is precisely why the RTC's findings about the hazards of each waste stream are based on both an analysis of damage cases and risks in the absence of any known damages. Moreover, EPA believes that the lack of documented damages for a given waste stream does not necessarily signify a lack of hazard from that waste stream, but believes that the attribution of damage cases to a waste stream is the most concrete evidence of such a hazard.

E. Estimation of Compliance Costs

1. *Incorrect Cost Estimates.* Several commenters claimed that EPA had seriously underestimated the total compliance costs associated with subtitle C regulations by failing to consider several pertinent elements,

including: The cumulative financial impact of federal and state regulations (including the recent Bevill rulemakings); hydrogeological investigations that may include the construction of systems of ground-water monitoring wells; location requirements at facilities within a 100-year flood plain; land disposal restriction requirements; neutralization; recycling; remedial work to control releases; and closure activities. One commenter, on the other hand, asserted that EPA overstated the cost associated with compliance by assuming that more facilities exhibit hazardous waste characteristics than are indicated by available data. For example, the commenter stated that the Agency incorrectly assumed that wastewater at every facility would be regulated as hazardous, even though the wastewater may not actually exhibit hazardous waste characteristics at each operating plant.

The Agency generally disagrees with those commenters who argued that EPA underestimated compliance costs associated with subtitle C regulation. As part of its analysis, EPA did, in fact, address many of the cited compliance cost elements. In the Report to Congress, EPA accounted for ground-water monitoring systems, neutralization of wastes, location standards, land disposal restrictions (in some cases), and closure requirements. The cumulative impact of previous rulemakings is not relevant to the issue of whether the special mineral processing wastes studied in the Report to Congress can be managed under RCRA subtitle C without excessive additional costs being incurred by the regulated community. That is, the costs and impacts of regulating non-special mineral processing wastes under subtitle C have no relevance to today's regulatory determination. EPA acknowledges that, at certain facilities, corrective action requirements could result in potentially significant costs for some wastes and, thus, has given further consideration to the associated costs (further discussion of this issue is presented below).

On the other hand, EPA acknowledges that compliance costs may be overstated in certain instances in which wastes were assumed to exhibit a hazardous characteristic when in fact they may not. The Agency used this conservative assumption to overcome data limitations (i.e., a lack of EP-toxicity test data for some facilities) and to demonstrate the estimated magnitude of compliance costs at potentially affected facilities. While actual impacts may be less widely distributed, EPA believes that the approach employed was a reasonable way of demonstrating potential impacts to industry under subtitle C, as contemplated by the Bevill Amendment. In addition, the assumption of hazardousness at all facilities and the associated cost estimates did not affect the regulatory determination in a meaningful way (as discussed further below).

2. *Corrective Action Costs.* Several commenters complained that EPA failed to consider the appropriate costs associated with corrective action. Many of these commenters stated that by ignoring corrective action requirements under RCRA sections 3004(u) and 3008(h), EPA was failing to fulfill its statutory obligation under the Bevill Amendment, which requires EPA to study the costs of regulating Bevill wastes under subtitle C. A few of these commenters recommended that EPA revise its cost estimates to reflect necessary corrective action. One of these commenters also indicated that EPA has the information required to determine at least the range of likely corrective action costs.

In response to these comments, EPA has analyzed corrective action issues in further detail and estimated corrective action costs at certain facilities. EPA focused this analysis on only those wastes for which corrective action costs might influence the final regulatory determination: Phosphogypsum and process wastewater from phosphoric acid production. These are the only wastes for which application of EPA's decision making methodology required EPA to consider potential regulatory compliance costs. If cost had been a factor in the decision for the other 18 wastes, inclusion of corrective action costs would only have added support to the Agency's determination not to regulate these 18 wastes under subtitle C.

EPA's corrective action analysis reflects the probable response to the predominant source and type of contamination that has been observed at phosphoric acid facilities, namely contamination of underlying ground-water aquifers by the routine operation of gypsum stack-cooling pond complexes. The response strategy examined by EPA involves the installation of a ground-water containment system consisting of extraction wells (in some cases supplemented by a slurry wall) around the entire stack-pond complex. In this manner, contaminants entering the subsurface would be removed, thereby preventing them from further contaminating the affected aquifer(s). This strategy assumes that over time, existing contaminants present in the ground-water system would be diluted and/or attenuated to below MCLs (due in part to the gradual rise in ground-water pH caused by eliminating the continuous introduction of acidic process wastewater to an unlined stack/pond system), thereby obviating the need for active aquifer remediation activities over the entire contaminated area. The Agency has identified the facilities that would likely experience corrective action (under either a modified subtitle C or D situation), and has estimated the costs of implementing the response strategy described here. Details regarding EPA's methodology and the results of the analysis are provided in a Technical Background Document that they may be found in the supporting docket for today's notice. In general, corrective action costs are relatively modest [4], contrary to the unsupported statements of many commenters, and comprise approximately ten percent of total annualized compliance costs at the individual facility level.

3. *Land Disposal Restrictions Costs.* EPA received several comments stating that the Agency did not include specific estimates of costs associated with land disposal restrictions as they would apply to mineral processing waste types and sectors. One of these commenters argued that in the "third third" rule, EPA designates stabilization as BDAT for treating metal-bearing wastes, yet the Agency does not include stabilization costs in its RTC cost estimates. This commenter further argued that EPA should have considered the additional on- and off-site disposal costs associated with acquiring additional land for disposal on-site and transportation costs to a remote location.

Contrary to these assertions, EPA did evaluate land disposal restrictions costs for some of the wastes addressed in the Report to Congress, including sludges. These materials were assumed to be cement stabilized prior to disposal in subtitle C landfills. Moreover, the resulting increase in the volume of the wastes in question was explicitly factored into EPA's analysis, by calculating the incremental landfill volume required, adjusting the landfill

[4] The annualized compliance costs (ACC) of EPA's corrective action strategy for the twelve potentially affected facilities range from approximately $2.0 million to $6.9 million under the Subtitle C-Minus scenario, and from about $1.6 million to $5.7 million under the Subtitle D-Plus scenario.

design accordingly, and calculating the total cost of the necessary land disposal unit(s) for the wastes in question. In conducting the supplementary analysis of the phosphoric acid sector, the Agency also factored land disposal restriction costs (lime treatment) into the total costs for phosphogypsum disposal.

BDATs were not applied, and costs, therefore, were not calculated, for copper, lead, and zinc slags because of an assumption that slags, when generated, are similar to wastes that have been treated by vitrification (a BDAT). For this reason, stabilization was presumed to be an unnecessary management method for these wastes. (If stabilization is required, costs would increase, but this would not have affected the Agency's regulatory determination.) Transportation costs were not factored in for on-site management because data in EPA's possession and personal observations made during site visits to a substantial number of the facilities considered in the Report demonstrate that many, if not most, potentially affected facilities own land of adequate size contiguous with or close to their existing waste management units to construct new units of sufficient capacity.

4. *Costs Associated With Replacing Waste Management Units.* Some commenters argued that EPA failed to consider the costs associated with replacing subtitle C hazardous waste disposal facilities in the future (i.e., after the first operation is closed in year 15). These commenters suggested that such costs, when discounted to the present, are significant (i.e., on the order of 25 percent of the total compliance costs).

EPA acknowledges this comment to be true. A 15-year life without replacement of equipment or facilities was assumed for simplicity during the analysis. Data provided by facility operators in response to the 1989 SWMPF Survey and the Agency's understanding of relevant mineral commodity markets suggest that an assumed 15-year operating life is not unreasonable for some facilities. In other cases, however, it is unclear whether this is or is not a valid assumption. In those cases, the remaining life of the facilities cannot be predicted with accuracy. EPA acknowledges that in situations in which the facilities would continue to operate and would require new waste management units periodically, annualized compliance costs would increase over those reported in the RTC, even by 25 percent or more. In any event, such an increase does not effect today's regulatory determination.

5. *Accuracy of Cost Estimates.* EPA received several comments regarding the accuracy of its cost estimates. While many commenters argued that EPA provided inaccurate cost estimates for regulating the 20 special wastes, one commenter contends that, although EPA ignores many of the costliest elements of the subtitle C program, the Agency's economic analysis accurately demonstrates the high cost impacts of regulating Bevill wastes under subtitle C.

In its analysis, EPA employed an engineering design model and detailed cost analyses to develop realistic cost estimates of subtitle C regulation. After review of the comments and upon further analysis, EPA continues to stand by its cost estimates (as modified) as adequate and appropriate for their intended use as input to the regulatory determination, even though some cost considerations were excluded from the analysis for most wastes (e.g., corrective action). Furthermore, EPA notes that high costs alone are not determinative of appropriate regulatory status. Rather, the financial impact of such costs is the real measure of economic feasibility. Section F below provides additional comments on economic impacts.

6. *Maximum Flexibility.*

One commenter asserted that EPA should calculate subtitle C-Minus compliance costs on the basis of a realistic level of flexibility under RCRA section 3004(x) rather than on the maximum level of flexibility. Unless the maximum flexibility rules can be guaranteed, contends this commenter, firms may be faced with the unpalatable choice of investing in "maximum flexibility" waste disposal facilities in year one, only to find that they need "full subtitle C" facilities in year three.

As was clearly stated in the RTC, the purpose of EPA's evaluation of three regulatory scenarios was to demonstrate the range of potential compliance costs, not to articulate a new regulatory program (which was beyond the scope of the RTC). The Agency believes that using a hypothetical subtitle C-Minus scenario is appropriate for considering the feasibility of subtitle C regulation of special mineral processing wastes, because of the significant technical challenges that stringent regulation of special wastes (by definition) may pose. Moreover, the Agency believes that the "realistic" level of flexibility that may in fact be appropriate needs to be determined based on a detailed evaluation of site-specific conditions, which was not possible within the context of the RTC because of data limitations.

7. *Relative Costs of subtitle C, C-Minus, and subtitle D-Plus.* Several comments were submitted to EPA regarding the relative costs of the subtitle C, C-Minus, and subtitle D-Plus regulatory scenarios. Many of those who commented, recognizing the different cost implications of each scenario, encouraged a subtitle D determination, while others argued that because the differences in estimated costs among the scenarios for certain wastes are insignificant, a subtitle C determination should be promulgated. One commenter argues that with little cost difference, a subtitle C determination would offer greater environmental protection advantages. Another commenter stated that the differences between subtitle C-Minus and subtitle D-Plus regulation are likely to be especially apparent with respect to corrective action costs (which EPA did not include) because inclusion of the processing wastes under subtitle C-Minus may expose the facilities to the same corrective action requirements (and costs) as those under full subtitle C. This same commenter added that non-hazardous wastes should not be regulated under subtitle C (through application of corrective action) simply because such regulation is projected by EPA to be only slightly more costly than subtitle D regulations.

EPA responds that the cost of alternative management practices is but one of the study factors that EPA is required to consider; therefore, the regulatory determination is not being made on the basis of the comparative cost difference between subtitle C and D programs alone. The Agency does recognize that similar corrective action requirements might be applied under both subtitle C and C-Minus, and has examined the associated costs (as discussed above).

In addition, EPA notes that the regulatory scenarios that were used to estimate potential compliance costs were developed with consideration of the environmental protection that they would afford. Thus, it is not the case that subtitle C regulation necessarily would provide more environmental protection that the other scenarios considered. For example, in some cases, adequately protective design and operating standards for new waste management units under subtitle C-Minus and D-Plus have been defined by EPA to be identical.

F. Estimation of Economic Impacts

1. *Inaccurate Use of Price Data.* One commenter identified a specific concern

with EPA's use of estimated mineral prices in 1995, with no explanation as to how they were derived other than that they were reported by an EPA subcontractor. This commenter claimed that EPA did not verify its data by contracting industry sources.

Contrary to the commenter's claim, the Agency used industry experts retained for this purpose to estimate projected 1995 prices. Industry and affected facility input and review prior to the publishing of the RTC were not possible because of procedural constraints. Affected parties were, however, encouraged to review the RTC estimates during the public comment period. In response to comments received, EPA has in fact made corrections to the prices reported in the RTC for refined lead and merchant grade phosphoric acid, which had resulted from calculation and transcription errors; estimated impacts on the corresponding facilities and sectors have been revised in support of today's regulatory determination. As no alternative long-term price projections were suggested by commenters for the remaining primary mineral commodities, estimated long-term real prices remain as reported in the RTC.

Furthermore, the Agency notes two points that reduce the importance of the use or accuracy of the 1995 projected prices. First, while the prices are important in assessing the overall magnitude of the economic impacts, their accuracy will not greatly affect the difference between or relative impacts of subtitle C versus D regulation; that is, the magnitude of the impacts will be affected to a far greater extent than the relative differences between scenarios. Second, if the prices as used are potentially underestimated (in many cases, estimated 1995 prices are lower than current prices), the impacts in the RTC are overestimated because the estimated value of shipments (price multiplied by production quantity) would be smaller and the cost as a percentage of value of shipments, therefore, larger. This is the case for the majority of the sectors, and is consistent with EPA's objective of performing a conservative and defensible analysis. Only in the titanium tetrachloride sector were prices projected to increase significantly, raising the possibility that EPA's estimated value of shipments was overstated and the impacts on that sector were, therefore, underestimated. However, given the strength of that sector (as evidenced by the planned construction of several new domestic plants), EPA believes that the long-term projection of prices for that sector are reasonable and that impacts are not significantly understated.

2. *Impact on Industry.* Several commenters argued that industries producing primary copper, lead, zinc, and elemental phosphorus would be adversely affected by a subtitle C regulatory determination because the regulations would generate additional and substantial annual fixed costs that would have to be met regardless of market conditions. Several of these commenters argued that these costs are likely to remain fixed even in periods of slack demand, contributing to depressed profits during such periods. A few of these commenters further argued that a decreased profit margin would make the market less desirable to investors, thereby discouraging the overall economic growth of the industry.

EPA recognizes that increased costs that cannot be passed along reduce profits at all times, irrespective of market conditions. The costs of adequate environmental protection are, however, simply a component of the total cost of doing business. In trying to evaluate future trends and market conditions, the Agency did conduct qualitative analyses of sectors for which it believed the industry was subject to potentially significant compliance costs, and included the results of these analyses in the RTC. For example, the impacts discussions for the copper, ferrous metal, lead, phosphoric acid, titanium tetrachloride, and zinc sectors included examinations of both the present and future general competitive position of domestic producers, and the potential for compliance cost pass-through (discussed more fully below). EPA believes that its discussion of future trends and market conditions has adequately addressed the concerns regarding long-term impacts.

3. *Pass-Through Potential.* Several commenters indicated that EPA should not assume that the mineral processing industry can pass on the costs of new regulatory requirements to the product consumer in the form of higher prices. A few of these commenters noted that the world market sets the commodity prices; if American producers raise their prices, consumers will look to international markets, where products could be obtained at lower prices. These commenters agreed that higher pricing on mineral processing products could be devastating to the industry.

EPA understands that higher prices in any market can cause adverse impacts on the affected industry. EPA believes, however, that the commenters' suggestions that all mineral processors in all commodity sectors are "price takers" having no ability to pass on cost increases and therefore having to absorb them internally, is demonstrably untrue.

In general, the pass-through of compliance costs follows the path of least market resistance. Where all facilities in the affected sector face similar compliance costs and produce commodities for which there are few alternative supply sources or substitute materials, there is a high likelihood that moderate compliance costs can be passed forward in the form of higher product prices. On the other hand, where only a small proportion of facilities in a sector are affected, or alternative supplies or substitute materials are abundant, the opposite may be true. Similar possibilities exist in input and labor markets where the regulated sector may be able to negotiate wage or price concessions in order to remain in operation or continue operating at current levels. In all cases, the ability to pass through compliance costs depends on the initial incidence of compliance costs within the affected sector and the concentration and interdependency of buyers and sellers in relevant input and product markets. In the RTC, EPA discussed the market factors that, in combination, determine the extent to which regulatory compliance costs can be passed through for each affected commodity sector. In general, EPA found little substantive information or data in the comments received that suggested that the Agency's preliminary findings with respect to pass-through potential were incorrect.

II. Decision making Methodology for the Regulatory Determination

One commenter argued that EPA's second approach, which recommends that the Agency not regulate any of the wastes studied in the RTC as hazardous because of the potential for improved state mineral processing programs, is not authorized by the statute, is factually insupportable, and unlawful, adding that the authority for EPA's second approach does not arise from the study factors in section 8002(p) of RCRA and that EPA's regulatory determination must be directed by the specific provisions of the Bevill Amendment. This commenter further argued that states cannot regulate mineral processing wastes adequately without a national hazardous waste designation, stating that there are no federal programs for nonhazardous waste in place and no statutory authority to ensure that state nonhazardous waste programs adequately regulate mineral

processing wastes. This same commenter stated that EPA's assertions in the RTC about the success of individual state mineral processing waste management control efforts are uncertain and impossible to assess at the present, and therefore cannot support the use of EPA's second approach. In addition, this commenter stated that by delaying regulatory action with EPA's second approach, EPA would substantially undermine the two principal objectives of RCRA: Overall protection of human health and the environment and the minimization of generation and land disposal of hazardous waste. Finally, the commenter argued that if the Agency decides to consider factors beyond the eight listed in section 8002(p), then it must consider all objectives and goals of the RCRA statute, not just a select few.

On the other hand, several commenters encouraged EPA to apply Approach 2 to its regulatory determination, stating that the development and maintenance of strong state programs and federal regulations under other statutory authorities is, in fact, mandated by RCRA. These commenters further argued that the flexibility offered by Approach 2 for regulation of the mineral processing industry is essential to its continued strength and growth, which the Bevill Amendment was enacted to ensure. Other commenters argued that the "other factors" discussed for Approach 2 were, in fact, embodied in the study factors and should be considered in Approach 1.

As was stated in section II of this preamble, EPA generally agrees that its regulatory determination should be based on the eight study factors outlined in section 8002(p) of RCRA, as embodied in the Report to Congress, as well as the public comments and additional information received in response to the Report (and developed by EPA to supplement the Report in response to comments). EPA also agrees that, to the extent that the Agency were otherwise to conclude that subtitle C regulation was warranted based upon consideration of all of these factors and information, that it would be improper to look outside the Report to Congress, public comments, and supplemental technical information to justify a different determination. Therefore, EPA has decided not to employ Approach 2 as outlined in the Report to Congress in making today's regulatory determination, and has instead employed an Approach 1 methodology (modified slightly, as discussed in the main text).

EPA also agrees somewhat with commenters who asserted that the so-called "additional factors" upon which Approach 2 was based are, in large part, already embodied within the contours of the inquiry that Congress intended for EPA to make in the Report and regulatory determination. The Report identifies (1) the development and maintenance of strong state mining and mineral processing regulatory programs, and (2) the facilitation of an integrated federal mining regulatory program as the key considerations under Approach 2. Section 8002(p)(5) instructs EPA to consider "alternatives to current disposal methods" as a factor in developing the Report and regulatory determination. Certainly, consideration of alternative state regulatory schemes, in addition to federal schemes, is contemplated by this section. In addition, facilitation of a potential integrated federal mining program was actually considered by EPA in its cost estimates (reflected in the "subtitle D-Plus scenario").

Nonetheless, EPA does not believe that it should rely on possible improved state programs to determine that subtitle C is not warranted unless EPA is confident that such programs are being developed and can address the problems associated with mineral processing wastes that may pose a significant risk. Thus EPA disagrees that section 8002(p) requires EPA to consider these factors in any way that would supplant a decision the Agency makes under the decision making methodology outlined in Approach 1.

In any event, EPA notes that the issue is effectively moot. As discussed in the section III of this preamble, EPA has been able to make its regulatory determination for all 20 wastes on the basis of a slightly modified Approach 1 alone. Subtitle C was found not to be warranted for any of the wastes analyzed. Thus, even if EPA were to employ Approach 2 as originally conceived in the Report, it would not change any of the decisions made today.

III. Wastes for Which Regulation Under RCRA Subtitle D is Generally Supported

Nine of the twenty special mineral processing wastes studied in the Report to Congress were found to pose few if any risks to public health or the environment. EPA tentatively recommended a subtitle D regulatory determination for these wastes in its Report and continues to believe that subtitle C regulation is unwarranted. The Agency received no comments on the Report suggesting a contrary position. The nine wastes include: (1) Red and brown muds from bauxite refining; (2) gasifier ash from coal gasification; (3) process wastewater from coal gasification; (4) slag tailings from primary copper processing; (5) fluorogypsum from hydrofluoric acid production; (6) treated residue from roasting/leaching of chrome ore; (7) process wastewater from primary magnesium processing by the anhydrous process; (8) basic oxygen furnace and open hearth furnace slag from carbon steel production; and (9) iron blast furnace slag. Therefore, the Agency is today finalizing its decision, as proposed in the RTC, for these nine wastes.

IV. Wastes for Which the Regulatory Determination is Contested

EPA received numerous comments regarding the Report's recommended regulatory determination for 11 wastes: (1) Slag from primary copper processing; (2) slag from elemental phosphorus production; (3) air pollution control dust/sludge from iron blast furnaces; (4) air pollution control dust/sludge from basic oxygen furnaces and open hearth furnaces from carbon steel production; (5) phosphogypsum from phosphoric acid production; (6) process wastewater from phosphoric acid production; (7) slag from primary zinc production; (8) calcium sulfate wastewater treatment plant sludge from primary copper processing; (9) process wastewater from hydrofluoric acid production; (10) slag from primary lead production; and (11) chloride process waste solids from titanium tetrachloride production. As discussed in section I.C.3 of this preamble, the Report tentatively recommended, based on decision making Approach 1, that the first seven of these wastes be regulated under subtitle D, while the last four be regulated under either subtitle C or D, depending on the scenario modeled.

The comments focused on the Report's analysis of the section 8002(p) study factors for each of these wastes, as well as the Report's tentative conclusions. EPA received at least one comment arguing that subtitle C regulation of each of the 11 wastes is warranted. The Agency has considered each of the comments it received, sometimes conducting additional analyses in response, and all of the comments and additional information have been taken into account in developing this final regulatory determination. EPA's responses to these comments are in the supporting comment-response background document.

Appendix B—Analysis of and Response to Public Comments on the Notice of Data Availability

I. Engineering Feasibility and Cost of Alternative Management Practices for Phosphogypsum and Process Wastewater From Phosphoric Acid Production

A. Subtitle C-Minus and D-Plus Scenarios as the Basis for the Regulatory Determination

Twenty commenters questioned the appropriateness of using the Subtitle C-Minus and D-Plus scenarios as a basis for the regulatory determination. Specifically, the commenters contend that because these two scenarios are hypothetical and because regulatory requirements for the scenarios have not been established, the two scenarios cannot be used as a basis for a regulatory determination, and costs estimated for these two scenarios cannot be used to make a decision as to whether or not regulation under the existing subtitle C program is warranted. Furthermore, the commenters believed that the Agency assumption (and cost estimates resulting from that assumption) that certain sub-scenarios for management of process wastewater and/or phosphogypsum would be identical under a C-Minus scenario and a D-Plus scenario is illogical. The commenters concluded that EPA must make its decision between the subtitle C and subtitle D programs and not on variations (i.e., C-Minus and D-Plus) of the two programs.

EPA disagrees with these comments. Section 3004(x) of RCRA allows the Administrator to modify certain subtitle C requirements, *at his discretion*, so as to "take into account the special characteristics" of the wastes in question. Such modifications are "hypothetical" and have not been "established" to the extent that to date, none of the special wastes to which section 3004(x) applies have been regulated under RCRA subtitle C. As discussed at length in the RTC, the Subtitle C-Minus scenarios articulated in the RTC and in the Supplemental Analysis represent realistic (though maximal) application of the regulatory flexibility provided by the statute. The Agency has provided cost estimates for implementation of section 3004(x) flexibility because it believes that a tailored subtitle C program is less costly and may be less burdensome to industry so as to address the risks posed by phosphoric acid industry special wastes. The Agency recognizes that the contours of a prospective subtitle D program for mineral processing wastes have yet to be established. Nonetheless, EPA believes that for analytical purposes, it was appropriate to consider one possible approach to such a program, to estimate the costs and impacts that would result from implementation thereof, and to compare these estimates to those of the other regulatory scenarios, in order to develop an understanding of the potential differences between environmentally protective approaches to special wastes management under the provisions of the two potentially applicable portions of the RCRA statute. Finally, the fact that, in the Agency's view, adequately protective tailored approaches to waste management under subtitle C and subtitle D are very similar in terms of requirements and their costs does not in any way invalidate EPA's analysis. Rather, this suggests only that: (1) Current management controls are inadequate in some cases (as discussed at length in the RTC and elsewhere in today's notice, (2) that even under a Subtitle D program, certain site conditions and waste management practices (such as are found at many phosphoric acid plants) would require fairly stringent controls and changes in current practice to adequately protect the environment, and (3) that the flexibility afforded by section 3004(x) can be employed to develop management standards that are achievable while also ensuring protection of human health and the environment.

B. Technical Feasibility of Engineering Alternatives

The Agency received comments on several aspects of the feasibility of the engineering alternatives (discussed in the NODA). Several of the comments are summarized below; the remainder are addressed in the supporting comment response background document.

1. Use of Undemonstrated Technologies. Several commenters objected to EPA's presentation of engineering alternatives that incorporate certain technologies that are considered by the industry to be undemonstrated, unproven, and/or experimental. The commenters contend that waste management scenarios that utilize undemonstrated technologies cannot be used as alternatives to current waste management practices under the definition of section 8002(p) of RCRA. The commenters contend that each of the "Subtitle C compliance scenarios" (Engineering Alternatives 1, 2, and 7) incorporate one or more technologies that are not currently demonstrated in the industry as feasible. These technologies include the following:

- Segregation (hydraulic separation) of waste management units for process wastewater and phosphogypsum (Alternatives 1, 2, and 7);
- Neutralization of phosphogypsum slurry, disposal of limed gypsum on existing stacks, and return of transport water to the production process (Alternatives 1, 2, and 7);
- Recovery of fluosilicic acid from the reaction stage of phosphoric acid production (Alternatives 2 and 7); and
- Use of cooling towers and indirect cooling via heat exchangers to effect a closed-loop cooling system in lieu of a process wastewater cooling pond.

As an example of undemonstrated technology, the commenters stated that even though lime neutralization of process wastewater is used at some plants before NPDES-permitted discharge, neutralization of all process wastewater and subsequent recycle to the production process has not been successfully demonstrated at an existing plant. Because this technology and the other technologies are undemonstrated in the industry in the manner in which they are intended to be used in the engineering alternatives, the commenters argued that the subtitle C engineering alternatives cannot be used as a basis for a regulatory determination to regulate the industry under subtitle C.

EPA largely disagrees with these comments. The commenters' proposed definition of "demonstrated" is extreme and contrary to long-standing Agency policy. While EPA agrees that there must be an expectation that a given technology will perform adequately if it is to serve as the basis for a regulatory decision, the Agency does not agree that current use of the technology in the industry being examined is necessary. In fact, it is very often the case that technologies and techniques that have been developed elsewhere for different purposes are used by the Agency for achievement of new pollution control standards. This type of "technology transfer" is at the very heart of such programs as Clean Water Act Effluent Guidelines development and establishment of Best Demonstrated Available Technology (BDAT) requirements under the RCRA Subtitle C Land Disposal Restrictions.

With regard to the specific technologies that comprise engineering alternatives 1, 2, and 7, EPA believes that most, if not all, of these technologies have been demonstrated in other industrial applications and that their technical feasibility is not in question. The fact that they are not in

use in the phosphoric acid industry is more reflective of an absence of strong regulatory controls and associated financial incentives than of the feasibility or availability of the technologies themselves. Specifically, EPA has at least anecdotal evidence that closed loop cooling and recovery of FSA from the reactor/flash cooler system have been successfully employed in other industries and in foreign phosphoric acid plants, respectively.

Moreover, EPA wishes to make clear that it believes that the commenters have misinterpreted the Agency's response to the statutory requirement to examine "alternatives to current disposal methods" and "the costs of such alternatives" (RCRA section 8002(p), study factors 5 and 6). As pointed out by the commenters, in the RTC, EPA discussed a number of alternatives to current waste management practices, focusing on techniques that have been applied on a commercial scale to reduce the quantity and/or toxicity of the special wastes considered in the Report. The intent of this discussion was to achieve *partial fulfillment of study factors 5 and 8 (potential utilization) by focusing on proven* means of source reduction and waste minimization as an alternative to on-site waste management. For most of the 20 special wastes considered in the RTC, opportunities for recycling and commercial use are quite limited, for various reasons. In contrast, EPA's approach to responding to the remainder of study factor 5 as well as study factor 6 was to articulate and estimate the costs of on-site waste management under alternative *regulatory* scenarios. The Agency believes that this context was and is the most relevant to the key decisions to be made (Subtitle C vs. Subtitle D regulation) based upon the findings of the RTC and subsequent analysis. Thus, there is no direct linkage between EPA's criterion for discussion of a waste management alternative or opportunity for utilization and the development and analytical implementation of the regulatory scenarios presented in the RTC and the Supplemental Analysis. Accordingly, EPA categorically rejects the commenters' assertion that a given technology, device, and/or practice must currently be in use within the domestic phosphoric acid industry in order for it to be considered "technically feasible." The Agency further rejects the commenters' suggestion that EPA's own methodology as articulated in the RTC compels such an approach, because commenters have misconstrued the Agency's analytical methods and underlying rationale.

The Agency acknowledges that there are significant uncertainties regarding the operational consequences of the lime treatment of phosphogypsum. Once again, however, commenters have based their arguments upon an inaccurate interpretation of EPA's analysis. The treatment of phosphogypsum contemplated in engineering alternatives 1, 2, and 7 assumes that the water being used to slurry the gypsum from the filter to the neutralization mixing basin would be *treated* process wastewater, not the "pond water" that is currently managed at active facilities.

Consequently, the laboratory test results reported by the commenters in support of their argument are, in the Agency's view, of questionable relevance, and by no means demonstrate that treated gypsum would present significant disposal and other operational problems.

Finally, EPA believes that the importance of the issue of segregation of the gypsum management and cooling water areas within a facility's waste management system has been overstated by the commenters. In the Supplemental Analysis, EPA discussed a number of different approaches for separately addressing contaminants contained in phosphogypsum slurry and contaminants condensed into cooling waters. In no case did EPA state (or even suggest) that a complete hydraulic separation between gypsum management units and cooling ponds would be either necessary or appropriate, even under a full subtitle C scenario. Indeed, the Supplemental Analysis recognizes that leachate will continue to be generated for many years from any existing gypsum stack. To the extent that this leachate or gypsum transport water (which would have been rendered non-hazardous under engineering alternatives 1, 2, and 7) might enter the cooling water pond, treatment or product recovery would occur through removal of this water to the treatment system or filter, respectively. In either case, "co-mingling" of separate hazardous wastes would not occur, obviating the need for complete hydraulic separation and any associated undesirable effects on plant water balance.

2. Feasibility of Lime Neutralization. Several commenters expressed doubt over the engineering feasibility of lime neutralization of both process wastewater and phosphogypsum, for several reasons, including the limited availability of lime to meet the demand that would be created and the formation of a silica gel that would interfere with waste management and production process operations.

Several commenters argued that the demand for lime imposed by any of the engineering alternatives that incorporate lime neutralization would place a severe burden on the United States lime production industry. The commenters stated that implementation of Engineering Alternative 1 (lime neutralization of all waste streams) would require the southeastern lime industry to triple its present capacity in the first year of implementation of the alternative to meet the additional demand. In addition to expressing their uncertainty over whether this demand could be met, the commenters also expressed concern over potential environmental impacts that the demand would create, including increased generation of carbon dioxide, increased fuel consumption, and the need for additional limestone strip mines.

In response to this comment, EPA has conducted additional analysis to determine whether implementation of Alternative 1 would impart significant impacts on lime supply, demand, and capacity within the relevant regions of the country. A description of this analysis and the results thereof may be found in the docket.[1] These results suggest several conclusions.

First, EPA agrees that adoption of engineering alternative 1 by the entire domestic industry would significantly increase the demand for lime in the regions of the country in which the active phosphoric acid plants are located, requiring an increase in lime production. In the western states (Idaho and Wyoming), this increase could probably be met through greater utilization of existing lime production capacity. In the south, uniform adoption of engineering alternative 1 would create demand in excess of regional supply, requiring shipments from other parts of the country (e.g., Ohio, Pennsylvania), installation of additional lime capacity, and/or imports of lime (probably from Mexico).

Second, the analysis of incremental lime demand presented by the commenters significantly overstates the impacts of new regulatory requirements, for several reasons. The estimates of lime demand presented by the commenters are substantially higher than EPA's estimates. Because the

[1] ICF Incorporated. 1991. Technical Background Document: Data and Analyses in Support of the Regulatory Determination for Special Wastes from Phosphoric Acid Production. Prepared for the Office of Solid Waste, US EPA.

reasons for this difference have not been adequately explained in the materials submitted to the Agency, EPA continues to believe that its lime consumption estimates for engineering alternative 1 are valid. Moreover, in comparing demand with supply, commenters were quite selective in terms of which states and lime plants were defined as being located within the same region as the phosphoric acid plants. EPA believes that lime produced in Virginia, Kentucky, Illinois, Indiana, Missouri, and Texas is also available (in a logistical and economic sense) to the potentially affected phosphoric acid facilities, particularly those located in Louisiana, Texas, and North Carolina. Therefore, the gap between potential demand and existing supply is substantially narrower than that suggested by the commenters.

Third, the Agency acknowledges that implementation of any alternative that substantially increased the demand for lime would result in increased energy consumption and releases of carbon dioxide, a "greenhouse" gas, to the atmosphere. Because many lime and limestone producers are operating at levels substantially below their capacity, however, EPA is not convinced that opening of additional limestone mines would necessarily be required to any significant degree as a result of implementation of the engineering alternatives, though additional production from existing mines would clearly be needed.

Finally, and most importantly, the comments focus on a worst-case scenario under which every plant would lime treat all of its special wastes. Under a tailored subtitle C (C-Minus) program, this is but one option among many. EPA believes that most facility operators, when provided with the incentive to comply in a least-cost manner, would develop alternatives to lime treating all of their wastes, thus greatly reducing the amount of lime required and the importance of this issue.

Commenters also stated that a colloidal silica gel would be created during the neutralization of process wastewater and phosphogypsum. The commenters argued that this gel is likely to remain in suspension in both the gypsum transport water and the cooling pond process wastewater, which may pose significant problems in the operation of plant equipment when these waters are returned to the production process. In particular, several commenters stated that the gel would potentially "blind" (clog) the phosphogypsum filter when the treated gypsum transport water is returned to the filter and reused as filter washwater, resulting in decreased efficiency, increased downtime, and lost production. Commenters also indicated that they were unaware of any demonstrated technology to remove the gel from the phosphogypsum filters.

EPA is not convinced that the catastrophic operational effects predicted by the commenters would occur on a widespread and continuing basis if lime treatment of the special wastes were to be instituted, particularly if FSA recovery were to be practiced. Commenters have assumed that the engineering alternatives contemplated by EPA would involve continual treatment of process wastewater and phosphogypsum as they are *currently* generated, when in fact the alternatives were developed to address management of new waste streams having different chemical characteristics resulting from treatment and/or product recovery. Therefore, the appropriate question is whether lime treatment of process wastewater that has *not* reached a high equilibrium concentration of chemical contaminants would result in significant gel formation, not whether lime treatment of currently generated "pond water" would create such operational problems.

Nevertheless, EPA does have some concerns about the efficacy of a lime treatment strategy. For example, the Agency recognizes that for a period of time (perhaps one to two years), treatment of existing pond water would occur. To the extent that gel formation took place, operational difficulties might be significant. Because, however, implementation of today's decision does not require that lime treatment be implemented, EPA does not believe that resolution of this issue (which would require additional research) is necessary prior to a determination of the appropriate regulatory status of the special wastes from phosphoric acid production.

3. Feasibility of Separate Management of Phosphogypsum and Process Wastewater. Commenters expressed concern over the technical difficulty inherent in separately managing phosphogypsum and process wastewater so that no hydraulic communication between the two "circuits" is permitted. Because the integrated management of these two wastes is employed at all existing facilities and is, according to the commenters, essential to maintaining a negative water balance (i.e., zero discharge through NPDES outfalls), the commenters believed that the separate management of these two wastes is an undemonstrated technology that cannot be used to support a regulatory determination. One commenter performed a computer modeling study to predict his facility's water balance under Engineering Alternatives 1 and 7 and predicted that separate management of process wastewater and phosphogypsum at the facility would require treatment and discharge of excess process wastewater. Commenters indicated that the potential increase in discharge created by segregated management would be contrary to the objectives of the Clean Water Act effluent guidelines as well as NPDES requirements for the industry. Furthermore, the commenters pointed out that the Agency addressed neither the feasibility nor the cost of implementing separate management of the wastes.

As discussed above, the Agency has never suggested that it would require complete hydraulic separation of the areas dedicated to gypsum disposal and process water cooling. In addition, the computer simulation results submitted by the commenter assume no changes or adjustments in the operation of the plant, an assumption that is contrary to standard industry practice. Plants continually monitor water balance and modify their water management activities as needed to comply with discharge limits and operational requirements. EPA has received no convincing evidence that suggests that a new water balance could not be developed for affected plants, though admittedly, new equipment and piping might be necessary in some situations. Accordingly, EPA believes that the potential impacts on plant water balance and associated regulatory significance of the issue as suggested by the commenters are substantially overstated.

4. Land Required To Implement Subtitle C Compliance Alternatives. Some commenters contend that adequate amounts of land are unavailable to implement the subtitle C compliance alternatives (Alternatives 1, 2, and 7); hence, the commenters stated that implementation of these alternatives under subtitle C is infeasible. The commenters contend that the implementation of these alternatives would require the construction of new waste management and treatment units and expansion of existing waste management units on land that is in addition to acreage already occupied at the facilities. Specifically, the commenters stated that in order to implement Alternative 1 (lime

neutralization of all waste streams), additional land would be required for: (1) Extra filter capacity; (2) lime receiving and slaking facilities; (3) a 50-acre gypsum transport water pond; (4) an additional 50 acres of cooling ponds; (5) a cooling water neutralization basin; (6) a larger stack; and (7) cooling water sludge ponds. Many of the facilities that commented claimed that they did not have enough land available to accommodate all of these units, and many of these facilities reported that they could not purchase adjacent property of sufficient size.

EPA continues to believe that the availability and cost of land needed for regulatory compliance are not critical issues. As discussed in more detail below, the Agency believes that the commenters' estimates of the size of new required waste management units are significantly overstated. Also, additional land required for many of the items listed by the commenters (e.g., extra filter capacity, lime receiving and slaking facilities, neutralization basin) is quite modest in extent, particularly within the context of the vast scale of a domestic phosphoric acid plant (all of which are hundreds or thousands of acres in size). Moreover, to the extent that substantial new acreage is required for additional waste management units, land could be acquired that was not adjacent to the facility, i.e., the units could be sited at some distance from the plant. EPA believes that the incremental costs of managing the phosphoric acid wastes in this manner would be modest because the wastes are already piped (in slurry and liquid form) considerable distances (hundreds of yards) at some plants. Therefore, the Agency believes that "extending the pipeline," even for several miles, is not a significant issue, from either a feasibility or cost standpoint.

C. Costs of Engineering Alternatives

The Agency received comments on several aspects of the estimated costs of the engineering alternatives. Several of these comments are summarized below; the remainder are addressed in the supporting comment response background document.

1. Operating Year. Commenters argued that EPA significantly understated the costs of the engineering alternatives by basing its calculation of annual incremental compliance costs per ton of P_2O_5 output on a 365-day production year. The commenters contend that it is not possible for phosphoric acid facilities to operate 365 days in a year and that, due to necessary maintenance, facilities operate, on average, 330 days per year.

Data submitted by individual facility operators in EPA's 1989 National Survey of Special Wastes from Mineral Processing Facilities demonstrate that most phosphoric acid plants operated for more than 350 days in 1988. Nonetheless, EPA recognizes that individual production lines within a given plant are subject to considerable down time for maintenance and repairs. Because the model plant used to evaluate the engineering alternatives in the Supplemental Analysis was based on a single production line, the Agency has revised its cost estimates to reflect the commenter's suggestion that a 330 day operating year be employed.

2. Capital Cost for Neutralization Sludge Ponds. Commenters argued that EPA seriously understated the capital cost of installing sludge disposal impoundments necessary to manage the calcium fluoride sludge that would be generated by lime neutralization of the cooling water component of process wastewater. The reasons given by the commenters are:

(1) EPA's capital cost was sufficient for only one year of sludge storage;

(2) The capital cost does not include the cost of acreage needed to provide adequate residence time for settling of solids in the treated cooling water; and

(3) Lining of the impoundment was not included and would be required.

EPA generally disagrees with this comment. The Agency recognizes that it did not provide complete information concerning engineering design assumptions in the Supplemental Analysis; this omission occurred because of extreme time constraints. EPA believes that many of the commenters' concerns arise from incorrect (though, in many cases, reasonable) inferences that they have made based upon the limited information that was available to them. First, the sludge settling/disposal impoundments referred to by the commenter were indeed designed to accommodate a 15 year accumulation of process wastewater treatment sludge. For engineering alternative 1, the impoundment was designed to contain 118,271,000 cubic feet of sludge (generation rate of 7.8 million cubic feet or 180 acre-feet per year). Using the same cost engineering model as employed for the RTC, EPA estimated that this impoundment would cover 64 acres (80 acres total, allowing for site preparation activities), and have a depth of 42 feet (14 foot dug out depth, 28 foot berm height).

Furthermore, as clearly stated in the Supplemental Analysis, the Agency believes that the volume of the sludge disposal impoundment (the vast majority of which would be available in the early years of operation) coupled with the large volume of the existing cooling pond, would provide adequate residence time for solids removal (settling) from the treated process wastewater stream. Commenters have provided no evidence or a rationale supporting their contention that EPA's assumptions in this regard might be invalid; EPA concludes, therefore, that its approach as described in the Supplemental Analysis was and is reasonable. Therefore, the Agency believes that the commenters' suggestion that the actual area required for treated process wastewater and sludge management (1,272 acres versus EPA's estimate of 80 acres) is significantly in error.

Finally, EPA does acknowledge that there is a distinct possibility that the sludge settling impoundments required under Alternative 1 would require composite liners, at least for facilities located in the State of Florida. Florida ground-water protection standards (which incorporate federal MCLs) allow individual permit writers, at their discretion, to require the installation of liners under new units to ensure adequate protection of the ground-water resource. Because the concentrations of lime-treated process wastewater contaminants such as sulfate and sodium are likely to be an order of magnitude or more above MCLs (they are *not* removed to any significant extent by lime treatment [2]), EPA has concluded that liners would probably be required as a permit condition for any CaF_2 sludge disposal impoundment(s) that would be built in Florida as part of a regulatory compliance strategy. Therefore, to the extent that such impoundments would actually be constructed in response to new regulations, EPA has underestimated the associated compliance costs in the Supplemental Analysis.

3. Cost of Separate Management of Phosphogypsum and Process Wastewater. The industry commenters stated that EPA failed to consider the capital costs and operating and maintenance costs involved with separately managing the cooling water and phosphogypsum slurry circuits. The commenters further contend that separate management of these waste streams would necessitate a major retrofit of current waste management units at existing production facilities.

[2] As depicted in the Supplemental Analysis, Exhibit 1, p. 12, and as suggested by numerous additional data submitted to the docket.

The commenters estimated that the cost necessary to separate the gypsum and cooling water circuits (capital cost) at EPA's model plant would be at least $10 million.

As discussed above, the Agency has never stated that it would require complete hydraulic separation of the areas dedicated to gypsum disposal and process water cooling. Accordingly, EPA does not believe that a plant retrofit to achieve separation of these areas would be necessary or required.

D. Economic Impacts of Alternative Waste Management Practices

In general, all of the industry commenters considered implementation of the various alternatives under subtitle C to be economically intractable. Based on their analysis of the economic impacts they believe would be imposed by the implementation of engineering alternative 1, the commenters concluded that: (1) Implementation of the alternative would eliminate the industry's export markets; (2) it is possible that foreign producers could penetrate the domestic market; and (3) incremental compliance costs could not be reasonably passed on to suppliers, workers, or consumers. The commenters believed that these conclusions would apply equally to impacts posed by engineering alternatives 2 and 7.

EPA recognizes that implementation of engineering alternatives 1, 2, and 7 under a subtitle C framework would impose cost impacts that might be difficult for members of the domestic industry to withstand. The real issue, however, is the magnitude and distribution of the impacts that might be imposed by tailored subtitle C standards. Under the Subtitle C-Minus scenario presented in both the RTC and the Supplemental Analysis, facilities could achieve compliance by adopting strategies to either contain or reduce/eliminate contaminants in their special wastes. Presumably, they would do so in a manner that minimized costs, given their own operational strategies and site-specific conditions. Therefore, the cost estimates provided in the Supplemental Analysis should be viewed as upper-bound estimates; it is likely that actual costs and associated impacts would be lower (at least on a per ton P_2O_5 basis) than those estimated for the model plant.[3] This fact, coupled with diminished relevance of the cost impacts of full subtitle C regulation, suggests that many of the claims made by commenters are overstated.

II. Other Wastes Addressed in the Notice of Data Availability

EPA received no comments on the additional information regarding gasifier ash and process wastewater from coal gasification. However, the Agency did receive two comments addressing the supplemental analysis of basic oxygen furnace dust/sludge from carbon steel production. The Agency has taken the comments into account in developing this final regulatory determination. EPA's detailed responses to the comments are available for inspection in the docket.

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[3] While this is true, estimated costs under the Subtitle D-Plus scenario are also very high.

federal register

Thursday
June 13, 1991

Part III

Environmental Protection Agency

40 CFR Parts 261, 264, and 265
Hazardous Waste Management System; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 264, and 265

[FRL-3963-6]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; and Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Administrative stay.

SUMMARY: The Environmental Protection Agency is today announcing an administrative stay of the hazardous waste listings F032, F034, and F035 in process areas at wood preserving plants. The primary effect of the stay is to conditionally extend the effective date of the drip pad management standards to February 6, 1992, for the upgrade of existing drip pads and to May 6, 1992, for the installation of new drip pads. Certain management standards for drip pads, the inclusion of past users of chlorophenolic formulations in the listing description for certain F032 wastes, and the scope of wastewaters with respect to waters that do not come into contact with preservative are also being stayed.

DATES: Effective Date: June 5, 1991. For reporting deadlines, see section VI of this preamble.

ADDRESSES: The official record for this administrative stay is identified as Docket Number F-91-WPWS-FFFFF and is located in the EPA RCRA Docket, room M2427, 401 M Street SW., Washington, DC 20460. The public must make an appointment in order to review docket materials by calling (202) 475-9327. The docket is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Edward L. Freedman, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 245-3657.

SUPPLEMENTARY INFORMATION: The contents of today's notice are listed in the following outline:

I. Background
II. Appropriate Effective Date for Drip Pad Standards
III. Substantive Standards for Drip Pads
IV. Pentachlorophenol Cross-Contamination
V. Scope of the Wastewater Listing
VI. Agency Action
VII. Effects On State Authorization
VIII. Paperwork Reduction Act

I. Background

On December 6, 1990, EPA promulgated regulations listing as hazardous various wastes generated from wood preserving processes that use chlorophenolic, creosote, and/or inorganic (arsenical and chromium) preservatives (55 FR 50450 (Dec. 6, 1990), adding hazardous wastes F032, F034, and F035 to the lists of hazardous wastes in 40 CFR 261.31). In addition, and of particular relevance for the present notice, the Agency promulgated standards for a new type of waste management unit, a drip pad (55 FR 50484-89, adding a new subpart W to parts 264 and 265 of the regulations). Drip pads receive drippage from treated wood immediately after the wood is removed from the treatment vessel. The pads are eligible for 90-day generator accumulation status under § 262.34 provided they are designed and operated in compliance with the subpart W standards (amended § 262.34(a)(2), 55 FR 50483-84). The standards vary somewhat for new and existing drip pads.

Because the rule was promulgated partially pursuant to the 1984 amendments and partially pursuant to preexisting authorities, the requirements take effect at different times in different states. As a HSWA rule, the F032 listing of various residues from wood preserving processes using, or that previously used, chlorophenolic formulations takes effect on June 6, 1991 in authorized and unauthorized States (55 FR 59469-70 and RCRA section 3001(e)). Drip pads used in connection with F032 wastes are likewise subject to the subpart W standards on June 6 in all States (*Id.* at 50470). The F034 and F035 listings and related management standards do not take effect immediately in authorized States since they were not adopted pursuant to HSWA (*Id.*).

II. Appropriate Effective Date for Drip Pad Standards

The first issue discussed in the present notice concerns the appropriate effective date for the drip pad standards. After the rule was promulgated, the American Wood Preservers Institute (AWPI), representing a significant segment of the wood preserving industry, conducted a survey to determine its members' ability to comply with the drip pad standards on June 6. Although results are somewhat fragmentary, it appears that a significant number of facilities subject to the June 6 date are unable to comply at that time. Extrapolation of the survey results in an estimate of 200 wood preserving facilities subject to the June 6 deadline (i.e. those managing F032 wastes, those in unauthorized States, and those in States authorized for the wood preserving rule), of which approximately 140 (70 percent) report that they are unable to comply on June 6.

The principal reasons cited for inability to comply are: (1) Difficulties in obtaining financing; (2) difficulties in obtaining a professional engineer's certification of compliance (see § 265.441(a), 55 FR 50487); and (3) difficulties in coordinating pad installation or upgrading activities with ongoing corrective action at the facility. In addition, there has been some discussion of difficulties in some climates of constructing pads during very cold or rainy seasons.

EPA has examined this information carefully, and conducted its own independent inquiries and site visits. The Agency's conclusion is that, although a significant percentage of facilities can comply with the June 6 effective date, a significant portion are unable to meet that date for legitimate reasons. In this regard, the Agency notes that it has phased in new design requirements for other types of regulated units to accommodate similar difficulties to those now facing certain wood preservers. See § 265.193(a) (phasing in secondary containment requirements for hazardous waste tanks); § 265.90(a) (groundwater monitoring requirements effective 18 months after promulgation date); 47 FR 16555 (April 16, 1982) (phasing in certain financial responsibility requirements). The Agency notes further that the issue of drip pad compliance effective date did not receive a great deal of attention during the rulemaking because the main focus of the industry's rulemaking comments challenged the need for listing these wastes at all, and also because the court-ordered November 15, 1990, promulgation date necessitated an expedited Agency review schedule.

III. Substantive Standards for Drip Pads

AWPI and other affected industry parties also questioned the

appropriateness of requiring new drip pads to be sealed with an impermeable coating and to have liners and leak detection systems as well. In their view, this level of control is either redundant or unnecessary. In addition, they questioned the technical feasibility of finding an impermeable sealer for some arsenical solutions.

IV. Pentachlorophenol Cross-Contamination

A further issue that concerns the wood preserving industry is the scope of the F032 listing (for wastes from processes using pentachlorophenol as a preservative). As promulgated, this listing includes wastes generated by creosote or CCA plants that previously used chlorophenolic formulations. Although the rules provide a procedure whereby an individual facility can demonstrate that cross-contamination is no longer occurring (in which case the wastes from the process would still be hazardous but classified under either the F034 or F035 waste codes), the industry argues that these procedures are potentially unnecessary and impracticable. Furthermore, by including potentially cross-contaminated wastes within the scope of the F032 listing, more facilities become subject to the June 6 deadline, since the F032 listing takes effect on that date in both authorized and unauthorized States since it is a HSWA rule. This increases the number of wood preserving facilities potentially unable to comply with the drip pad standards on that date.

V. Scope of the Wastewater Listings

The wood preserving industry further questioned the scope of the listing of wood preserving wastewaters. Among other points, they contend that certain wastewaters are not hazardous because the wastewaters do not come in contact with process contaminants, and maintain further that processes can be reconfigured to avoid contamination of other water, such as rainwater. Because the listing applies to all wastewaters, however, these efforts would be without point because all the wastewaters would remain hazardous (unless and until delisted).

VI. Agency Action

A. EPA has determined to issue an administrative stay of the applicability of the F032, F034 and F035 listings to the process area receiving drippage of these wastes, i.e., the area potentially covered by the subpart W drip pad standards. As explained below, this stay is available only for wood preserving facilities meeting certain conditions intended to limit the extension to those facilities making bona fide efforts to comply with the rule. For existing drip pads, the stay will remain in effect until February 6, 1992, and for new drip pads, the stay will remain in effect until May 6, 1992.

The Agency has selected these dates for the following reasons. The Agency believes that two months of time beyond the June 6, 1991, effective date is necessary for wood preserving plants to determine and report their definite intentions as to compliance with the rule. The Agency believes that up to three additional months will be required for all facilities intending to come into compliance to fully investigate and obtain the necessary funding required to retrofit existing pads and to construct new pads. The retrofitting of existing drip pads will require less time than the construction of new drip pads. Thus, the Agency has allowed up to three additional months for the retrofitting of existing drip pads and up to six additional months for the construction of new drip pads. These estimates are consistent with information supplied by the wood preserving industry. Based on these estimates, the Agency feels that final compliance dates of February 6, 1992, and May 6, 1992, are reasonable compliance dates for plants with existing drip pads and newly constructed drip pads, respectively.

The effect of the administrative stay is that activities that would otherwise constitute disposal of F032, F034, or F035 wastes into the process area, or onto existing drip pads in process areas, are not covered by the respective wood preservative waste listings during the duration of the stay. The stay is limited to the process area, however. Thus, the listings are not stayed for F032, F034, or F035 wastes, including soil contaminated with these wastes, that are removed from this area. (During the term of the administrative stay, such removal would be considered generation of an F032, F034, or F035 waste. 53 FR 31147–49 (August 17, 1988).)

As noted above, the Agency intends (and AWPI expressly agrees) that this limited stay should apply only to those facilities that intend to comply with the subpart W standards and that are willing to make bona fide efforts to do so during the stay period. It obviously makes no sense to extend the rule's compliance date for facilities simply desiring to continue operations that are environmentally unsound (such as operating without a drip pad or with defective pads) until they are forced to close. Consequently, the Agency is making the stay applicable only to those facilities that comply with the conditions described below. Failure to comply with these conditions means that the listings remain in effect, in which case process area drippage can only occur lawfully for facilities with compliant drip pads, or for facilities in compliance with requirements for land disposal of hazardous waste (or other units meeting applicable technical standards). It should be noted that all portions of the rule that are not stayed remain in effect. For example, the stay does not affect the March 6, 1991, 3010 notification deadline for generators and TSDs handling F034 and F035 in unauthorized states or F032 in all states. Thus, those generators and TSDs that were managing the forementioned wastes, that had not previously notified the Agency of hazardous waste activity, and that did not submit a 3010 notification to the Agency by the deadline are in violation of that requirement.

First, by August 6, 1991, all wood preserving facilities affected by the stay (i.e., those otherwise subject to the June 6 compliance date) must notify either the Agency's applicable Regional Office or an authorized state of their intention to follow one of four courses of action: (1) To upgrade an existing drip pad by February 6, 1992; (2) to install a new drip pad by May 6, 1992; (3) the facility already has installed a drip pad in compliance with subpart W; or (4) the facility will cease operation by August 7. A facility notifying that it intends to cease operation must cease operation by August 7 or its drippage in the process area becomes subject to all applicable subtitle C regulations. The drip pads already installed in compliance with subpart W are not subject to regulation until February 6, 1992, and owners and operators of such pads need not submit any further notification to the Agency other than the August 6 notice. Facilities notifying that they intend to comply by February 6, 1992, or May 6, 1992, must further state that they will use best efforts to minimize drippage that occurs during the duration of the stay.

Second, on November 6, 1991, facilities intending to comply with drip pad standards must submit a second notification providing evidence that they are making good faith efforts to comply and have a reasonable expectation of doing so. To make this showing, the notification must include an estimate of the cost of compliance, and evidence of financing to pay this expense. Evidence could take the form of an agreement with a bank or other lending institution, or an escrow account dedicated to paying for installation of drip pads.

Persons unable to make this demonstration would have to cease operation by November 7, 1991. (The scheme is somewhat similar to the statutory loss of interim status provisions which required certain facilities to certify that the facility was in compliance with financial responsibility and groundwater monitoring requirements by a particular date or to cease operation (RCRA section 3005(e)(2))). EPA repeats that the rule remains in effect for persons who do not comply with these conditions. EPA or the state, as appropriate, may in its discretion, allow a facility to operate beyond the November 6, 1991, deadline: *provided,* that (1) The respondent demonstrates that it cannot meet the November 6, 1991, deadline because of circumstances entirely beyond its control, despite its best efforts to comply (e.g., its impossibility of performance is due to corrective action being undertaken at the wood preserving facility pursuant to a federal or state order or permit), and (2) such authorization to operate is set forth in an enforceable compliance order.

B. EPA has also decided to issue a stay of the requirement that new drip pads be sealed, coated, or covered with an impermeable material (§ 264.572(a)(4), § 265.443(a)(4)). The Agency is taking this step because we are now convinced that this requirement is unnecessary for pads constructed with a liner and leak detection system provided the pad is maintained in good condition with actions taken to remedy any cracks that may develop. The liner would provide secondary containment, thus fulfilling the Agency's object in developing management standards for drip pads (55 FR at 50453). We consequently are staying this requirement. Thus, on May 6, 1992 (i.e., the date when new pads must comply with the regulatory standards), new pads will not be required to be sealed, coated, or covered with an impermeable material. EPA also intends to initiate rulemaking to determine whether to make this a permanent regulatory change.

EPA intends, however, that this requirement remain in place for existing pads, once those pads are required to comply with the regulatory standards, because few (if any) existing pads are known to have liner and leak detection systems that comply with the subpart W standards. Thus, on February 6, 1992, existing pads must be sealed, coated, or covered with an impermeable surface. Because existing pads need not have liner and leak detection systems (§§ 264.571, 265.441) the requirement of an impermeable surface is necessary to provide secondary containment. (The Agency has determined that commercially available sealants exist that would be appropriate for use at the pH of preservative solutions used by the wood preserving industry.)

C. The Agency is also staying the portion of the rule that included wastes from plants generating F034 or F035 wastes that previously used chlorophenolic formulations as within the scope of the F032 listing. Upon reflection, the Agency realizes that structuring the rule in this way is not serving any useful environmental purpose. Wastes from creosote or inorganic arsenical wood preserving processes that previously used chlorophenolics are already classified as hazardous under the F034 or F035 listings. The regulatory standards for F032, F034, and F035 wastes are identical, so that the F032 listing does not carry with it a stricter regulatory regime (55 FR at 50467). The only immediate regulatory consequence of the F032 listing for these plants is to make more facilities subject to the June 6 compliance date. As explained above in the discussion on compliance dates for drip pads, this consequence has negative features because many facilities that can comply with the drip pad standards with some additional time appear unable to do so by June 6 for legitimate reasons. Since the F032 listing does not result in different substantive regulation for the wastes other than the timing of the effective date, EPA has decided to stay the scope of the F032 listing so that it does not cover wastes from creosote or inorganic arsenical plants that previously used chlorophenolic preservatives as long as any wastes from that plant are regulated as F034 or F035 wastes. EPA also intends to initiate rulemaking to determine whether to permanently amend the F032 listing.

The Agency notes, however, that the issue of chlorophenolic cross-contamination will be relevant when EPA establishes treatment standards for the F032, F034 and F035 wastes under the land disposal restrictions program. The fact that a waste may be classified as F034/F035 rather than F032 does not prevent the Agency from promulgating treatment standards for the chlorophenolic formulation, and the various dioxins and furans that may be present in these wastes as a result of equipment cross-contamination. Thus, the Agency anticipates including standards for these constituents in all of the treatment standards for the listed wood preserving wastes.

D. Finally, EPA has decided to stay the listing of wastewaters so that the listing applies only to wastewaters that have come in contact with process contaminants, i.e., wood preserving solutions, spent preservatives, and the like. It is these process contaminants that make the wastewater hazardous, and the Agency did not intend for the listing to apply to uncontaminated wastewaters (see 56 FR 21955, May 13, 1991). Thus, if wastewaters are kept uncontaminated, they will not be (and should not) be covered by the listing. EPA intends to initiate rulemaking to determine whether to make this a permanent regulatory change.

Any wood preserver claiming that wastewater has not come in contact with process contaminants would have the burden of proving that this is the case. This is because the details of plant operation, and in particular wastewater management, are within the special knowledge of the wood preserving facility. See 50 FR at 643 (January 4, 1985) and cases there cited. The best (and perhaps only) way of showing no contamination would be to segregate uncontaminated waters (for example, non-contact cooling water) from normal process wastes and process areas. Such segregation also serves a useful waste minimization function by reducing the total volume of contaminated wastewater. Thus, the Agency views today's action as creating an incentive for waste minimization. Conversely, however, the Agency notes that if initially uncontaminated wastewater is mixed with contaminated wastewater (as in a centralized wastewater treatment system) or with process contaminants (such as rainwater falling on a process area drip pad), then the entire volume of wastewater is hazardous because of the mixture rule.

E. EPA is issuing this administrative stay pursuant to 5 U.S.C. 705 which provides that an agency may postpone the effective date of action taken by it when justice so requires, pending judicial review.[1] The Agency believes that this standard is satisfied here because it appears to be legitimately infeasible for a significant number of wood preserving facilities to comply with the drip pad standards by June 6.

In addition, the sealant requirement for new drip pads appears unnecessary and could add to the time needed to comply with drip pad standards. Inclusion of potentially cross-contaminated wastes within the F032 listing does not serve any direct

[1] AWPI has filed a petition for review of the December 6 rule.

regulatory purpose (given the uniform regulatory standards for F032, F034, and F035 wastes), and causes more facilities to be subject to the June 6 effective date with which they may be unable to comply. Inclusion of uncontaminated wastewaters within the scope of the listing is not necessary to further any legitimate environmental objective, and so should legitimately be stayed.

At the same time, the administrative stay is structured so as to prevent environmental abuses from uncontrolled drippage during the pendency of the stay, and is further structured to be available only to facilities making bona fide efforts to comply. A significant number of wood preservers thus could be harmed irreparably should the drip pad standards take effect on June 6. The conditions on the administrative stay, plus structuring the duration of the stay to allow time for clean-up of drippage contamination in existing process areas, also assures that the stay will be in the public interest. The Agency consequently finds that issuing this stay is in the interests of justice.[2]

VII. Effects on State Authorization

The effects of the administrative stay depend largely on whether the facility is managing a wood preserving waste identified by a HSWA-based listing (i.e., the F032 wastes), as opposed to the newly listed wastes (F034 and F035) for which the listing determinations were based on pre-HSWA authority.

As explained earlier, EPA considers that both the F032 listing and the new subpart W drip pad standards (when applied to the management of F032 wastes) are based on HSWA authority. As EPA explained in the December 6, 1990 notice (see 55 FR 50469), the HSWA-based F032 listing and related subpart W facility standards take effect simultaneously in all States, regardless of their authorization status. With respect to these HSWA-based requirements, the effect of the administrative stay is to defer in all States EPA's implementation and enforcement of these requirements beyond June 6, 1991, in accordance with the administrative stay schedule. According to the schedule for State program revisions contained in 40 CFR 271.21(e), the December 6, 1990 Wood Preservation Rule is subject to a July 1, 1992 deadline (July 1, 1993 if a statutory change is required) for States to modify their hazardous waste programs and thereafter seek approval from EPA for the program revision. Since the administrative stay would not extend any effective dates beyond May 6, 1992, EPA considers it very unlikely that any State will have received approval from EPA to implement the December 6, 1990 regulation under RCRA authority with earlier or more stringent effective dates than those set out in this stay. Nevertheless, States may modify their hazardous waste programs to adopt the Wood Preservative Rule in the interim. While EPA encourages States to follow the deferred effective dates announced in this stay, States may elect to implement the rule with effective dates earlier than those imposed under this stay, as a matter of State law.

In the case of facilities managing F034 and F035 wastes, the effect of the stay depends on whether the facility is located in an authorized or unauthorized State. The F034 and F035 listing determinations were promulgated pursuant to pre-HSWA authority, and EPA considers the subpart W drip pad standards that govern the management of F034 and F035 wood preserving wastes to also be based on pre-HSWA authority. According to the December 6, 1990 Rule notice, these wastes listings and facility standards would have been effective on June 6, 1991 only in those States that are not authorized for any part of RCRA. EPA implements the RCRA program in unauthorized States, and the effect of this stay will be to defer EPA's implementation and enforcement of the Wood preserving Rule's F034 and F035 provisions in accordance with the administrative stay schedule.

In authorized States, the pre-HSWA basis for the F034 and F035 listings (and related subpart W drip pad standards) means that these requirements cannot be implemented as RCRA requirements until the State has adopted the necessary program modifications and obtained approval for the necessary program modifications and obtained approval for the revisions from EPA. The modification schedule in 40 CFR 271.20(e) requires that States modify their programs by July 1, 1992 (July 1, 1993 if a statutory change is required) to adopt this regulation and thereafter seek approval of the revisions from EPA. Since the stay does not extend any effective dates beyond May 6, 1992, it is unlikely that States will become authorized for the F034 and F035 listings and facility standards before the deferred effective dates in the stay have already passed. However, facilities in both authorized states and unauthorized states should understand that states may adopt and implement wood preserving regulations as a matter of state law, prior to obtaining EPA approval. While EPA strongly encourages States to follow the deferred effective dates announced in this stay, States may elect to adopt wood preserving waste regulations with more stringent (e.g., earlier) effective dates than those announced in this administrative stay.

VIII. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The OMB approval number is 2050–915. The public reporting burden for the wood preserving rule (as published in the **Federal Register** on December 6, 1990), inclusive of the reporting requirements in this administrative stay, is estimated to result in a total of 271 hours per facility per year. The burden prior to this administrative stay was estimated to average 272 hours per facility per year.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 marked "Attention: Desk Officer for EPA."

Dated: June 5, 1991

F. Henry Habicht,

Acting Administrator.

List of Subjects

40 CFR Part 261

Hazards materials, Waste treatment and disposal, Recycling.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

[2] Although the Agency does not regard today's action as a rule, were it to be viewed as a rule the Agency believes that there is good cause for issuing it without prior notice and opportunity for comment and for making it immediately effective. This is borne out by the pending compliance date and infeasibility of compliance for a substantial number of facilities, and means of conditioning the stay to assure continued protection of human health and the environment. In addition, EPA has sought and obtained comment on this action not only from the wood preserving industry but from members of the environmental community and the waste treatment industry as well. There also was opportunity to comment on all of these issues during the rulemaking itself, so that further comment may be unnecessary.

40 CFR Part 265

Air pollution control, Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

For the reasons set out in the preamble, title 40, chapter I is amended as set forth below.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.31 is amended by revising the F032, F034, and F035 listings to read as follows:

§ 261.31 Hazardous wastes from non-specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	* * * * * * *	
F032 [1]	Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with § 261.35 of this chapter and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. (NOTE: The listing of wastewaters that have not come into contact with process contaminants is stayed administratively. The listing for plants that have previously used chlorophenolic formulations is administratively stayed whenever these wastes are covered by the F034 or F035 listings. These stays will remain in effect until further administrative action is taken.).	(T)
F034 [1]	Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving process generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. (NOTE: The listing of wastewaters that have not come into contact with process contaminants is stayed administratively. The stay will remain in effect until further administrative action is taken.).	(T)
F035 [1]	Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving process generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. (NOTE: The listing of wastewaters that have not come into contact with process contaminants is stayed administratively. The stay will remain in effect until further administrative action is taken.).	(T)

[1] The F032, F034, and F305 listings are administratively stayed with respect to the process area receiving drippage of these wastes provided persons desiring to continue operating notify EPA by August 6, 1991 of their intent to upgrade or install drip pads, and by November 6, 1991 provide evidence to EPA that they have adequate financing to pay for drip pad upgrades or installation, as provided in the administrative stay. The stay of the listings will remain in effect until February 6, 1992 for existing drip pads and until May 6, 1992 for new drip pads.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

4. Section 264.572 is amended by revising paragraph (a)(4) to read as follows:

§ 264.572 Design and operating requirements.

(a) * * *

(4) Be impermeable, e.g., concrete pads must be sealed, coated, or covered with an impermeable material such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system.

Note: The requirement that new drip pads be impermeable, e.g., that new drip pads be sealed, coated, or covered with an impermeable material is administratively stayed. The stay will remain in effect until further administrative action is taken.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

5. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

6. Section 265.443 is amended by revising paragraph (a)(4) to read as follows:

§ 265.443 Design and operating requirements.

(a) * * *

(4) Be impermeable, e.g., concrete pads must be sealed, coated, or covered with an impermeable material such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system.

Note: The requirement that new drip pads be impermeable, e.g., that new drip pads be sealed, coated, or covered with an impermeable material is administratively stayed. The stay will remain in effect until further administrative action is taken.

* * * * *

[FR Doc. 91-13954 Filed 6-12-91; 8:45 am]

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Thursday
June 13, 1991

Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Source Categories; Compliance Extensions for Early Reductions; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-3920-3]
RIN 2060-AC89

National Emission Standards for Hazardous Air Pollutants for Source Categories: Proposed Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The proposed rule would implement the provisions in section 112(i)(5) of the Clean Air Act (as amended in 1990) ("the Act"). Those provisions allow an existing source to obtain a six-year extension of compliance with an emission standard promulgated pursuant to section 112(d) of the Act if the source has achieved an emission reduction of 90 percent or more of hazardous air pollutants (95 percent or more for particulates) by certain dates specified in the Act. If the source is granted a compliance extension, an alternative emission limitation would be established by permit to ensure continued achievement of the emission reduction. The intended effect of the proposed rule is to establish requirements and procedures for source owners and operators to follow in order to obtain compliance extensions and for reviewing agencies to follow in evaluating requests for extensions.

DATES: *Comments.* Comments must be received on or before July 29, 1991.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by June 27, 1991, a public hearing will be held on July 11, 1991, beginning at 10 a.m. Persons interested in attending the hearing should call Ms. Lina Hanzely at (919) 541-5673 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by June 27, 1991.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket (LE-131), Attention Docket Number A-90-47 (see Docket section below), room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Lina Hanzely (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5673.

Docket. Docket No. A-90-47, containing supporting information used in developing the proposed regulation and background information on the high-risk pollutant list, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, room M1500, U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

Documents. The emission estimating document may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone (919) 541-2777. Please refer to "Procedures for Establishing Emissions for Early Reduction Compliance Extensions—Volume 1" (EPA-450/3-91-012a). The EPA also has prepared an enabling document which is intended to aid EPA Regional Offices and the States in implementing the rule. However, the information in this document also may be useful to the public and is available from the U.S. EPA Library (see above address). Please refer to "Enabling Document for Regulations Governing Compliance Extensions for Early Reductions for Hazardous Air Pollutants" (EPA-450/3-91-013).

FOR FURTHER INFORMATION CONTACT: Mr. David Beck, Chemicals and Petroleum Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5421.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background and Purpose
- A. Clean Air Act Amendments: Provisions for Early Reductions
- B. Advantages of Early Reduction Program
- C. Coordination with States
- D. Participation of Interested Parties
- E. Judicial Review

II. Summary of and Rationale for Proposed Rule
- A. Applicability
- B. Definition of Source
- C. Demonstration of Early Reduction
  - 1. General
  - 2. High-Risk Pollutants
  - 3. Reduction Demonstration Procedures
  - 4. Base Year and Post-Control Emissions
- D. Enforceable Commitments
- E. Review of Base Year Emissions
- F. Permit Applications and Permits
- G. Selection of List of High-Risk Pollutants
  - 1. Criteria for Identifying High-Risk Pollutants
  - 2. Application of the Criteria

III. Administrative Requirements
- A. Public Hearing.
- B. External Participation.
- C. Docket.
- D. Paperwork Reduction Act.
- E. Executive Order 12291 Review
- F. Regulatory Flexibility Act Compliance.

I. Background and Purpose

A. Clean Air Act Amendments: Provisions for Early Reductions

On November 15, 1990, the Clean Air Act was amended, and significant changes were made to section 112 of the Act establishing national emission standards for hazardous air pollutants (HAP). One of the new features of the Act is a provision in section 112(i)(5) that allows an existing source to be granted a six-year extension of compliance with an otherwise applicable section 112(d) standard (MACT standard) upon demonstration by the owner or operator of the source that it has achieved a reduction of 90 percent or more in emissions of HAP (95 percent or more in the case of particulates). An enforceable emission limitation reflecting the reduction would then be established for the source by a permit. The emission reduction would have to be achieved before proposal of the applicable standard in most cases. However, the Act provides that a source achieving the reduction after a standard's proposal but before January 1, 1994, may qualify for the compliance extension if it makes an enforceable commitment (to achieve such reduction) before proposal of the standard.

The Act requires that the emission reduction be determined by comparing the post-control emissions with verifiable and actual emissions in a base year not earlier than 1987, except that 1985 or 1986 may be used as a base year if the emission data are based on information received by the Administrator before November 15, 1990, pursuant to an information request issued under section 114 of the Act. To qualify for an extension, the reduction would be calculated by comparing total base year and post-control HAP emissions from all emission points in the source. The only limit to this overall reduction calculation is with respect to "high-risk pollutants." Section 112(i)(5)(E) of the Act states that, "With respect to pollutants for which high risks of adverse public health effects may be associated with exposure to small

quantities including, but not limited to, chlorinated dioxins and furans, the Administrator shall by regulation limit the use of offsetting reductions in emissions of other hazardous air pollutants from the source as counting toward the 90 per centum reduction in such high-risk pollutants qualifying for an alternative emissions limitation under this paragraph." Section II.C. of this preamble includes a discussion of additional high-risk pollutants that are listed in today's proposed rule for which offsetting reductions of other HAPs would be limited.

Although the Act provides that a source may obtain a compliance extension and an alternative emissions limitation upon demonstration of the 90 (95) percent reduction, there is a further provision in section 112(i)(5)(A) that says, "Nothing in this paragraph shall preclude a State from requiring reductions in excess of those specified in this subparagraph as a condition of granting the extension * * *" In other words, a State may require that greater than a 90 (95) percent reduction of HAP emissions be achieved by the source in order to obtain a compliance extension. This topic is discussed further in section I.C. of this preamble.

B. Advantages of Early Reduction Program

The purpose of the section 112(i)(5) provision is to encourage early reductions in HAP emissions. It has the potential for substantial emission reductions well before the compliance date for MACT standards. Source owners and operators can realize benefits from participating in the early reduction program by obtaining more time to develop strategies for compliance with MACT standards in exchange for significantly reducing HAP emissions earlier than otherwise required and by being able to choose the means by which they reduce their HAP emissions. The early reduction option gives them an opportunity to design cost-effective emission reduction approaches for their facilities and reduce the cost of compliance over the long-term. In addition, participating companies will enjoy improved community relations when they become recognized as good corporate citizens that are concerned about improving the environment. Public and environmental exposure to HAP would be significantly reduced earlier than if sources delay control of emissions until they are subject to MACT standards. This early reduction results not only in lower annual emissions but also in lower overall emissions from the source over the long-term.

The potential long-term reduction of HAP emissions due to achieving early reductions can be illustrated in an example (see Table 1). Consider a source emitting HAP at a rate of 100 tons per year. Assume this source achieves a 90 percent reduction in HAP emissions, to a rate of 10 tons per year, just prior to proposal of an applicable MACT standard, and receives a six-year extension for compliance with the standard. In comparison, consider an identical 100 ton-per-year source which does not achieve early reductions but complies with a MACT standard three years after the standard is promulgated, according to the compliance schedule for the standard (the Act provides that the standard specify the compliance date, not to exceed three years after promulgation of the standard). For purposes of this example, the standard is assumed to reduce HAP emissions from the source to two tons per year (98 percent reduction).

To estimate the additional HAP emissions decrease due to early reductions, a comparison can be made of cumulative HAP emissions under each scenario during the ten years starting from the time the early reductions are made to the time both sources are complying with the MACT standard (which is after expiration of the six-year extension). The ten-year period includes one year from proposal (the time the early reduction must be achieved) to promulgation of the standard, three years from promulgation to the assumed compliance date of the standard, and six years for the compliance extension. During the ten years, the source reducing emissions early emits 10 tons per year or a total of 100 tons. The other source emits 100 tons per year for four years (period before it complies with the standard) and two tons per year for the remaining six years, for a total of 412 tons. Thus, even when the standards are very stringent, the early reduction program can produce significant additional HAP reductions.

A source may achieve reductions after proposal of an applicable standard and still participate in the early reduction program, provided the source reduces emissions before January 1, 1994 and enters into an enforceable commitment to achieve these reductions before proposal of the standard. In such cases, reductions do not occur as far in advance of compliance with a standard as in the previous example, and the net reduction of HAP emissions would be less but still significant.

TABLE 1.—EMISSIONS UNDER EARLY REDUCTIONS VS. MACT

Time (years)	MACT scenario	Early reduction scenario
From proposal to promulgation (year 1)	100	10
Year 2	100	10
Year 3	100	10
Year 4	100	10
Year 5	2	10
Year 6	2	10
Year 7	2	10
Year 8	2	10
Year 9	2	10
Year 10	2	10
Totals	[1] 412	[1] 100

Assumptions: 100 ton/yr source (uncontrolled); MACT achieves 98% control; MACT is effective 3 yrs after promulgation; 9 yrs after MACT promulgation MACT applies to source which received a compliance extension.

[1] Discounting the implicit valuation of these emission totals at a 3 percent social discount rate leads to present values of 380 tons/year under the MACT scenario and 85 tons/year under the early reduction scenario.

The EPA is strongly committed to encouraging emission sources to voluntarily reduce emissions of air toxics, and the provisions of the rule being proposed today are intended to provide sufficient flexibility to encourage source owners and operators to participate in the early reduction program. In addition, because the Act includes certain requirements a participating source must meet, the proposed rule also contains provisions to ensure that those requirements are met, as discussed in section II of this preamble. The regulatory nature of the early reduction program distinguishes it from another EPA program, the 33/50 Project (Industrial Toxics Project), which also is designed to encourage voluntary reduction of toxics releases, not only into the air but other environmental media as well.

The 33/50 (Industrial Toxics) Project was announced in February 1991 and is one of the major components of the Agency's pollution prevention strategy. The project establishes a national goal to reduce releases and offsite transfers of 17 chemicals by one-third by 1992 and one-half by 1995 with emphasis on the use of pollution prevention techniques. The baseline for these reduction goals is the 1988 Toxics Release Inventory (TRI). The Administrator is asking companies who produce or use these chemicals to participate in this program by making voluntary commitments to reduce their releases to all environmental media. Progress in achieving these goals will be monitored through the use of information reported to the TRI.

The Agency intends to implement the 33/50 Project and the early reduction program in a coordinated manner to minimize confusion over their differing requirements and encourage participation. The early reduction program is being implemented by a rule defining procedures and requirements that must be followed to obtain a compliance extension. Any HAP emission reductions documented under the early reduction program also can be submitted and credited under the 33/50 Project. Reduction credits are not "used up" when applied to one of these programs. However, it is not necessarily the case that HAP reductions achieved and documented under the 33/50 Project will qualify a source for a compliance extension under the early reduction program. In general, the early reduction program documentation requirements are more stringent and, of course, sufficient control must be employed to achieve at least a 90 (95) percent reduction from base year HAP emissions in order to qualify.

As with the 33/50 Project, the Agency encourages participation in the early reduction program through the adoption of pollution prevention measures. The Agency defines pollution prevention as the use of materials, processes, practices, or products that avoid, reduce or eliminate wastes or toxic releases, through activities such as toxic use reduction, source reduction and closed-loop recycling.

C. Coordination With States

EPA will administer the early reduction program until States have approved permit programs under title V of the Act, and source owners or operators seeking compliance extensions will submit enforceable commitments and permit applications to the appropriate EPA Regional Office. EPA headquarters offices will be available to provide technical assistance and guidance to EPA Regional Offices and States in administering the early reduction program. After a State has an approved permit program, it will process and evaluate for approval the enforceable commitments and permit applications. The Agency solicits specific comment on whether it would improve the implementation of the early reduction program to delegate to the States review and acceptance of enforceable commitments prior to the approval of a State permit program under title V of the Act, as would be authorized in the State Programs provisions of section 112(l) of the Act. If EPA were to approve such delegations, EPA would anticipate using the delegation procedures set forth in 40 CFR part 61. EPA also solicits comment on whether such procedures would be appropriate for use in the early reduction program.

The involvement of State regulatory agencies, with or without approved permitting programs or delegated authority, will be very important to the success of the early reduction program. The proposed rule requires that source owners and operators send copies of enforceable commitments and permit applications to appropriate agencies in the States, and EPA will consult with State officials on applications that EPA processes. In addition, as the owner or operator attempts to comply with the requirements of the program at the Federal level, other procedures or requirements may apply to the source at the State level. For example, a source may be required to obtain State preconstruction and operating permits for any actions it undertakes under the early reduction program, or the source may have to meet separate control requirements imposed by existing State regulations for toxic air pollutants.

Thus, the States will be playing active roles, even at the outset, as sources reduce their HAP emissions to qualify for compliance extensions. Because of the potential for confusion or uncertainty to develop from differences in requirements for the early reduction program and existing State laws and regulations, EPA plans special coordination efforts to reduce these undesirable effects. The EPA will consult with the States to describe the features and advantages of the early reduction program and how EPA plans to administer the program prior to the States assuming administration responsibilities. In return, the States could share with EPA any conflicts or problems they envision, especially with regard to State air toxics regulations. The EPA Regional Offices also will consult with States regarding permit applications processed by EPA. The goal of these efforts is to foster EPA/State cooperation on the reduction of HAP emissions and ensure that all involved parties understand the requirements and procedures for early reduction demonstrations.

D. Participation of Interested Parties

The development of the proposed rule was closely coordinated with representatives of industry, environmental groups, State and local air pollution control agencies, and other special interest groups. Options for the rule's major provisions were presented and discussed with these and other interested parties at a meeting of the National Air Pollution Control Techniques Advisory Committee on January 29, 1991, and at four "roundtable" discussions in January, February, and March 1991. The views and concerns of these groups and individuals have been very helpful to the Agency in its attempt to develop a rule that will carry out the requirements of the Act, encourage the greatest possible early reduction of emissions consistent with the legislation, and hold to a minimum the difficulties that are inherent in any regulatory program. Comments on all aspects of the proposed rule are encouraged.

E. Judicial Review

Issuance of the permit establishing an alternative emissions limitation for a source would be considered a final Agency action and, as such, would be considered judicially reviewable. However, acceptance of an enforceable commitment by EPA would not be a final Agency action and would, therefore, not be judicially reviewable.

II. Summary of and Rationale for Proposed Rule

This section of the preamble includes discussion of the major provisions of the proposed rule, the rationale for the decisions that were made concerning them, and other options that were considered in making those decisions.

A. Applicability

The proposed rule applies to any existing source that wishes to obtain a six-year compliance extension from an applicable MACT standard by achieving early HAP emission reductions. The compliance extension would be obtained and authorized in accordance with section 112(i)(5) of the Act, as described in section I.A. of this preamble. As sections 112 (a)(4) and (a)(10) of the Act provide, an existing source is any source for which construction or reconstruction commenced prior to the date of proposal of an applicable standard. (See section II.B. for further definition of "source".) Any source commencing construction or reconstruction after proposal of an applicable standard would be considered a new source and could not apply for a compliance extension. The proposed rule also applies to State or local air pollution control agencies reviewing applications for compliance extensions and issuing permits with alternative emission limitations in accordance with a permit program approved under title V of the Act. The EPA Regional Offices will review applications and issue permits for sources located in States that do not

have approved permit programs. Upon approval of their permit programs, States will assume the review and permitting activities.

B. Definition of Source

Section 112(i)(5)(A) of the Act specifies that the Administrator or a State with an approved permit program "* * * shall issue a permit allowing *an existing source*, for which the owner or operator demonstrates that *the source* has achieved a reduction of 90 per centum or more in emissions of hazardous air pollutants (95 per centum in the case of hazardous air pollutants which are particulates) from *the source*, to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated under subsection (d) for a period of 6 years from the compliance date for the otherwise applicable standard: *Provided*, That such reduction is achieved before the otherwise applicable standard under subsection (d) is first proposed." (emphasis added). The "emission limitation promulgated under subsection (d)" refers to an applicable hazardous air pollutant standard issued under section 112(d) of the Act (MACT standard).

"Existing source" is defined in section 112(a)(10) as "any stationary source other than a new source." "Stationary source" is given the same meaning under section 112 as under section 111(a). CAA section 112(a)(3). "Stationary source" under section 111(a) is defined as "any building, structure, facility, or installation which emits or may emit any air pollutant." "Major source" is defined as "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 * * * 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants."

The language of section 112(i)(5)(A) proceeds from the assumption that one can identify the "source" to which "the otherwise applicable standard" would apply. If EPA has made a determination as to what will constitute a "source" for a particular MACT standard, then it is that source that must achieve the 90 (95) percent early reduction in order to obtain an extension from the MACT compliance date. However, with one exception noted, below, at this time, EPA has not made any concrete determinations as to how it intends to define source for purposes of establishing MACT standards under section 112(d). Therefore, at this time EPA cannot define precisely an "existing k source" to which an otherwise applicable standard might apply for any particular source categories. EPA must define source for purposes of implementing the early reductions program.

At the outset, it must be noted that it is "[a] fundamental canon of statutory construction * * * that unless otherwise defined, words will be interpreted as taking their ordinary, contemporary meaning." *Perrin* v. *U.S.*, 100 S.Ct. 311, 413 (1979) citing *Burns* v. *Alcala*, 420 U.S. 575, 580–81 (1975). Because the terms, "building, structure, facility, or installation are not further defined in the statute they would normally assume their ordinary meaning."

Under *Chevron, USA, Inc.* v. *NRDC*, 467 U.S. 837 (1984), however, EPA has very broad legal discretion to determine whether strict application of the ordinary meaning rule is adequate to achieve the policies underlying the statute. If, in the Agency's reasonable judgment an alternative explanation better advances the statutory policies, EPA may adopt a definition that broadens or narrows the natural meaning of the language. Specifically, the Supreme Court has recognized in *Chevron* that EPA has broad discretion to define "source." Indeed the Court recognized in *Chevron* that if any Congressional intent can be discerned from the statutory language of section 111(a)(3), "the listing of overlapping, illustrative terms was intended to enlarge, rather than to confine, the scope of the Agency's power to regulate particular sources in order to best effectuate the policies of the Act." *Chevron*, 467 at 862 (1984). The use of the series of terms building, structure, facility, or installation is meant to convey an idea. Thus, a "source" can encompass "any discrete, but integrated operation, which pollutes." *Chevron*, 467 U.S. at 861. It could also encompass an entire plant.

EPA recognizes that, depending on a particular MACT standard, "source" may be defined broadly or narrowly, from an individual emission point up to and including an entire plant. EPA's definition of "source" proposed here today for purposes of the early reductions program is consistent with the broad flexibility encompassed under section 111(a)(3) and is designed to further the underlying purposes of the early reductions program. The definition represents EPA's best efforts to balance the statutory policy to encourage maximum participation in the program with the statutory constraints imposed by the requirements that 90 percent reduction must be achieved from an existing "source."

As set forth in § 63.73, EPA is proposing a multi-part definition of "source" for purposes of the early reductions program as follows:

(a) For the purposes of the early reductions program under this subpart only, source is defined as follows:

(1) A building, structure, facility or installation identified as a source in Appendix B;

(2) The entire contiguous facility;

(3) Any unit consisting of one of one or more emission points that can be characterized as a building, structure, facility, or installation;

(4) Any combination of sources defined in paragraph (a)(3), provided that emission reductions from the aggregation of sources constitutes significant reductions of hazardous air pollutant emissions of the entire contiguous facility under common ownership or control;

(5) Any individual emission point or combination of points, provided that emission reductions from such point or points constitutes a significant reduction of hazardous air pollutant emissions of the entire contiguous facility.

(b) for purposes of paragraphs (a)(4) and (a)(5) of this section, emission reductions from a source are considered significant if they are made from a hazardous air pollutant baseline of not less than (i) a total of 10 tons per year where the total base year emissions of hazardous air pollutants from the entire contiguous facility is greater than 25 tons per year or (ii) a total of 5 tons per year where the total base year emissions of hazardous air pollutants from the entire contiguous facility is 25 tons or less per year.

The scope of the definition is best illustrated by examples of "sources" that fall within this definition.

Under subparagraph (a)(1), EPA has, to date, only identified one type of emissions likely to be covered by a MACT standard. These are fugitive emissions sources from hazardous organic chemical facilities.

Fugitive emissions from equipment leaks covered in the Hazardous Organic NESHAP, or HON, to be proposed later this year have been identified with sufficient certainty to be considered separately. EPA has engaged in an extensive regulatory negotiation to establish MACT standards to be proposed for equipment leaks from HON facilities. See 56 FR 9315 (March 6, 1991). The negotiated regulation will apply to the collection of equipment (valve, pumps, connectors, etc.) within a process unit that either uses as a reactant or makes one of the organics listed as hazardous in section 112(b) of the Clean Air Act Amendments. For the purposes of the negotiated rule, the HON equipment leaks standard will cover all equipment from the feedstock

storage tanks through end product disposition and wastewater treatment. The negotiating committee treated fugitive equipment leaks separately because they can occur throughout the plant wherever process equipment handles fluids and are not associated with any particular type of discrete emission point, e.g., storage or process vents. EPA recognizes that this coverage is for proposal purposes only. It may change as a result of the notice and comment process. Nevertheless, for purposes of early reductions, the definition of source for these types of emissions will be based on the regulatory language in the March 6 notice. EPA notes that tentatively identifying equipment leaks as a source for early reductions is in no way meant to limit how "source" will be defined for the purposes of any particular MACT standard, including the HON equipment leak standard.

The second part of the definition, paragraph (a)(2) encompasses the entire contiguous facility. (See Figure 1.) Under paragraph (a)(2) of the definition, if an applicant designates the entire contiguous facility as the source and demonstrates sufficient reductions in total emissions of hazardous air pollutants from the contiguous facility, then the facility would receive a six year extension from any and all MACT standards applicable to the facility. A plantwide definition of source clearly falls with the definition of source under section 111(a)(3). *See Chevron, supra*, 467 U.S. at 861.

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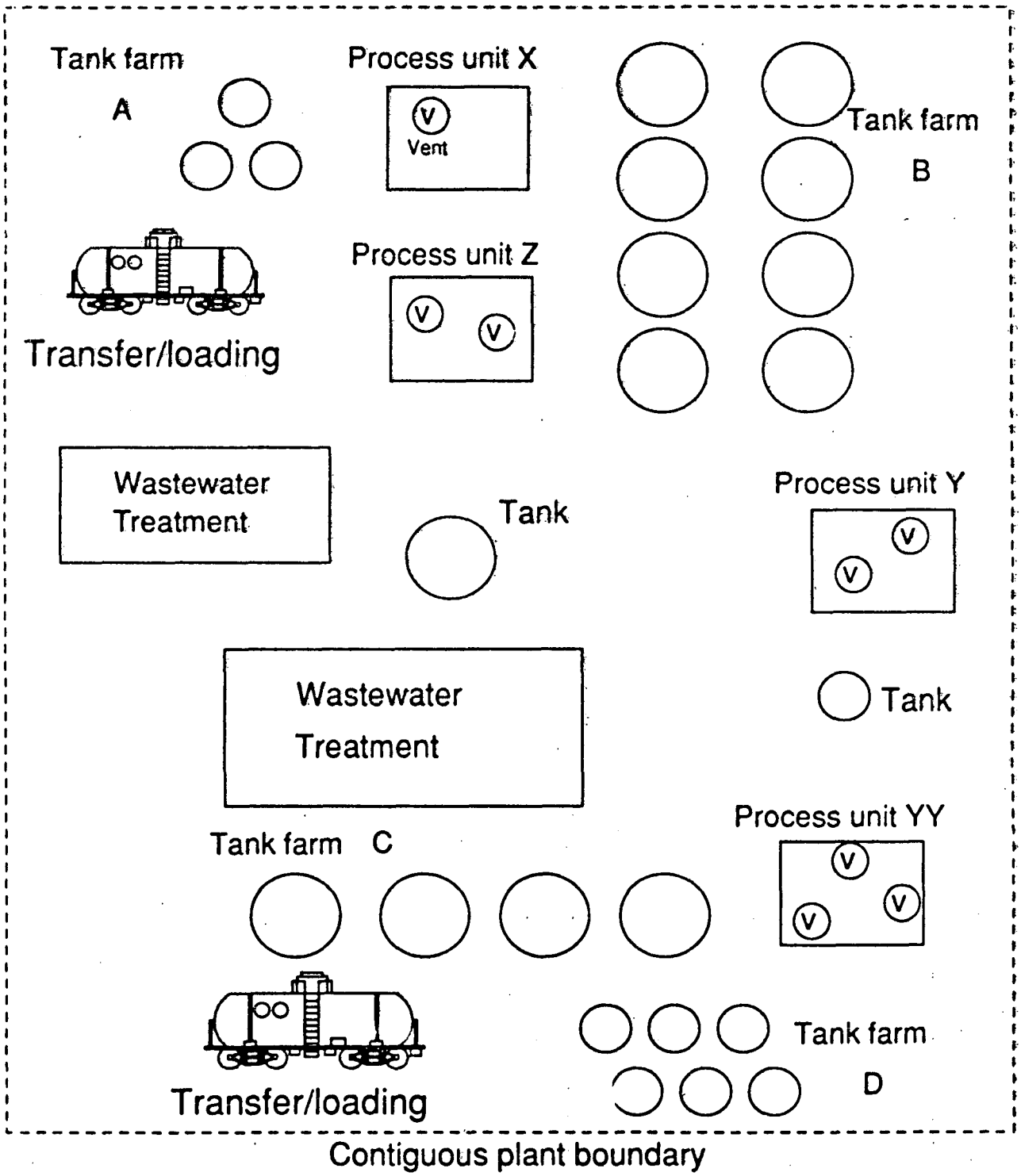
Figure 1
Chemical Plant Schematic
Entire facility



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A "source" under paragraph (a)(3) may be defined to encompass less than an entire plant. However, only those units (building, structure, facility, or installation) identified as the source would be eligible for the six year MACT extension.

Under paragraph (a)(3), the applicant can identify a group of emission points that have a functional or geographical relationship to one another and characterize the collection of points as a facility or installation. For example, the applicant could identify a group of functionally similar points, such as all storage tanks identified in Figure 2, as a source and achieve qualifying reductions across that source. Alternatively, the applicant could identify all tanks in one of the four areas (A, B, C, or D) as a separate source because each of the 4 areas could be defined as a tank farm installation or facility and therefore fall within the definition of source under paragraph (a)(3). Thus, the applicant could identify the tanks in area B as a source (a tank farm storing chemical X) and achieve sufficient aggregate reduction from the entire tank farm, even if one or more of the individual tanks did not achieve a 90 percent reduction. Moreover, the applicant could take one or more of the eight tanks in tank farm B out of service and credit that reduction towards the overall reduction demonstration provided the shutdown was permanent. Under paragraph (a)(3), however, the applicant could not identify the tank farm as the source and then subdivide the tank farm to exclude a portion of the tanks because they were already partially controlled. (Figure 3). [This configuration of a source may, however, be acceptable under paragraph (a)(4) or (a)(5).]

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Figure 2

Chemical Plant Schematic

Functional and geographical

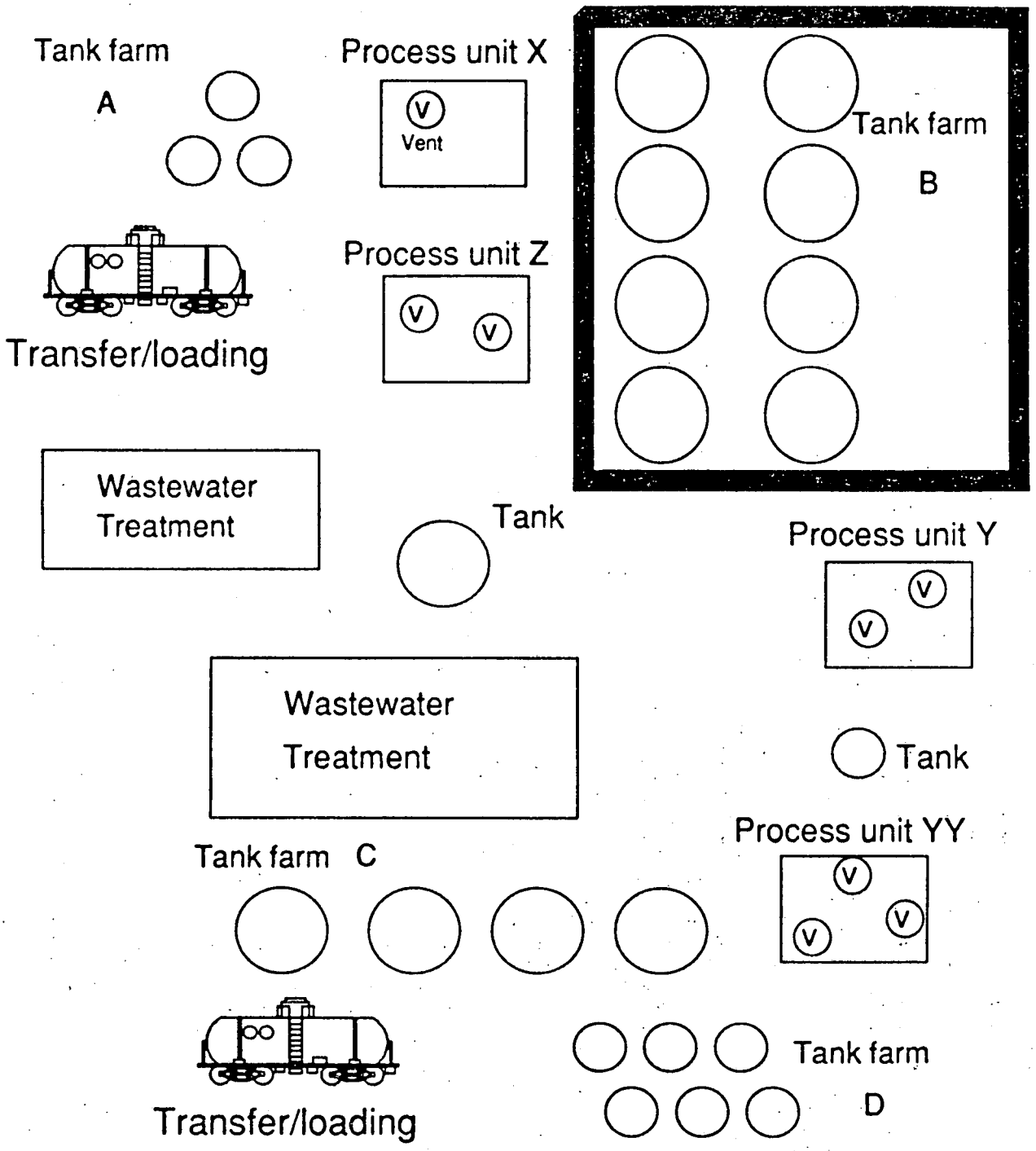
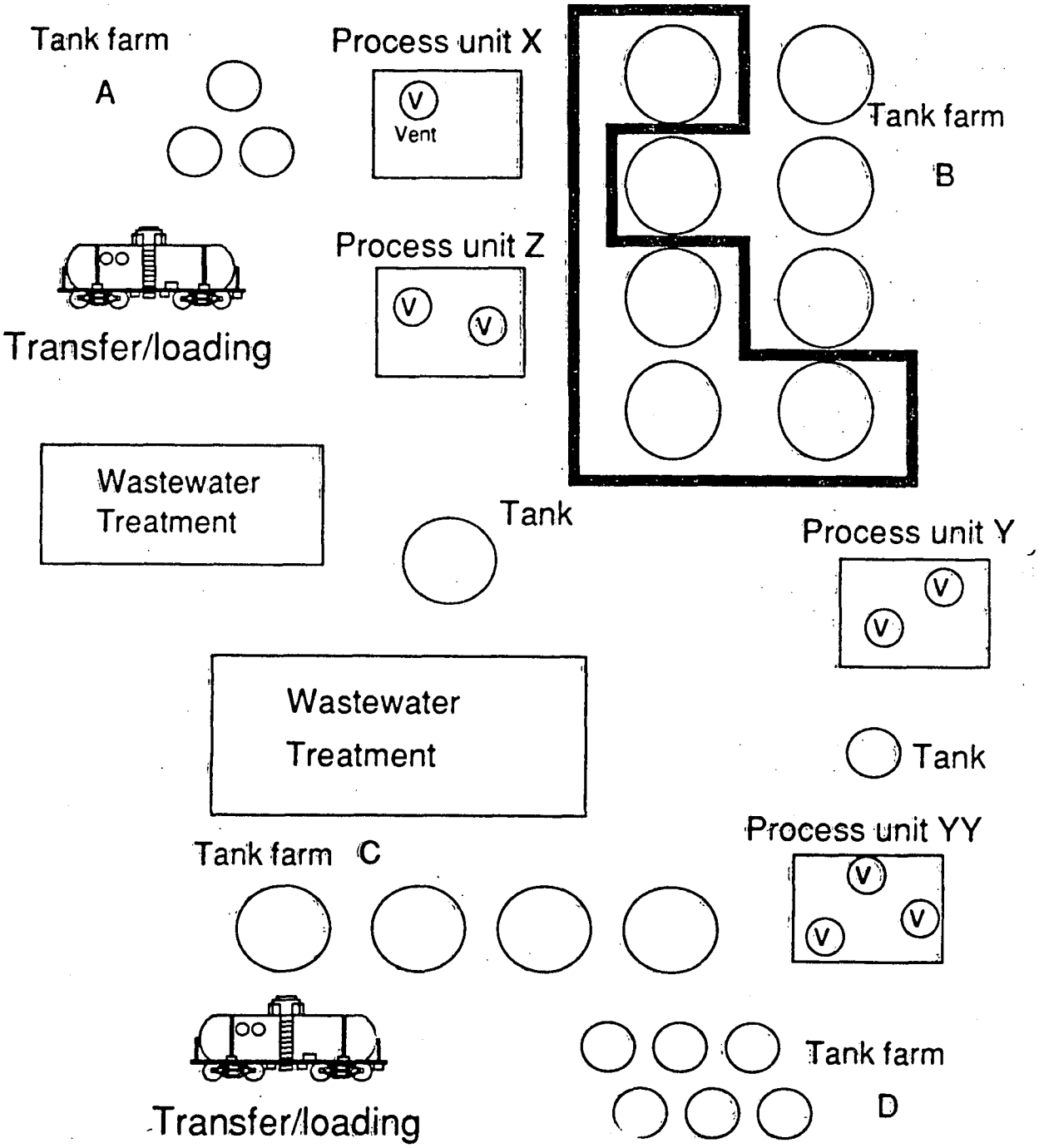


Figure 3
Chemical Plant Schematic
Potentially Unacceptable Selective Grouping*



* Unacceptable if significance threshold specified in paragraph (b) of the source definition is not met.

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Generally, geographic grouping to form a source would only be allowed for emission points of the same type within a logical physical area, as in the examples above. It would not be acceptable to aggregate as a source based on a geographical relationship several unrelated tanks, process vents, wastewater units, etc., simply because they were all located on the same side of the road. Such a collection of points may, however, be acceptable under paragraph (a)(5). However, if a building or other enclosed structure houses a collection of emission points, such a source definition would be consistent with section 111(a)(3)'s definition of source as "any building, structure, facility, or installation."

For example, a metal parts coating operation consisting of degreasers, painting lines, and paint strippers within a single enclosed structure could collectively be considered a source. See Figure 4.

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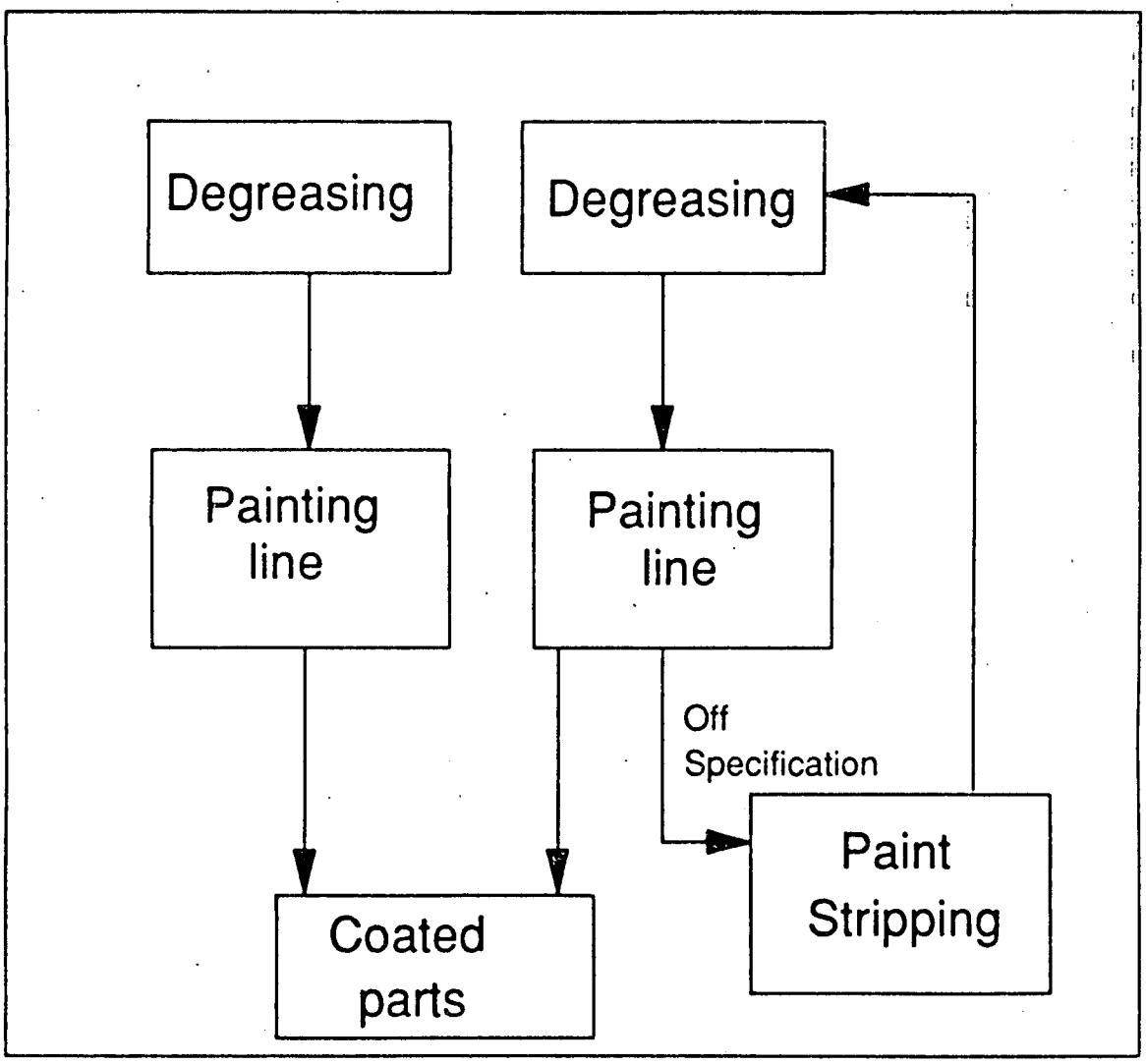
Figure 4
Metal Coating Operation



Enclosed building

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Under paragraph (a)(3), the applicant could also identify a process or production unit as a source, such as all equipment associated with the production of chemical X. An applicant, therefore, could identify as one "source" the outlined areas in Figure 5 which constitute a process unit and include all tanks in Area A, the vents on Production Unit X, and the tanks in Area B. In Figure 5, if the applicant defines the process units as the raw material storage tanks, the production process vents, the completed product tanks, and the wastewater treatment system, then the combined HAP emissions of all such process components must be reduced. If this source definition is used, a 90 (95) percent reduction of each component would not be required provided the aggregate overall reductions are sufficient to qualify for a compliance extension. In many instances, however, some components of the plant will be shared by multiple process units, e.g., a wastewater treatment system. For common or shared facilities which serve or are linked with multiple process units, the applicant could consider the common facility as part of a single process unit or treat it as a separate source. The applicant has fairly broad flexibility to identify those logical points that constitute a process unit or production train. However, the applicant must achieve sufficient overall reductions in HAP emissions from the entire process unit as defined.

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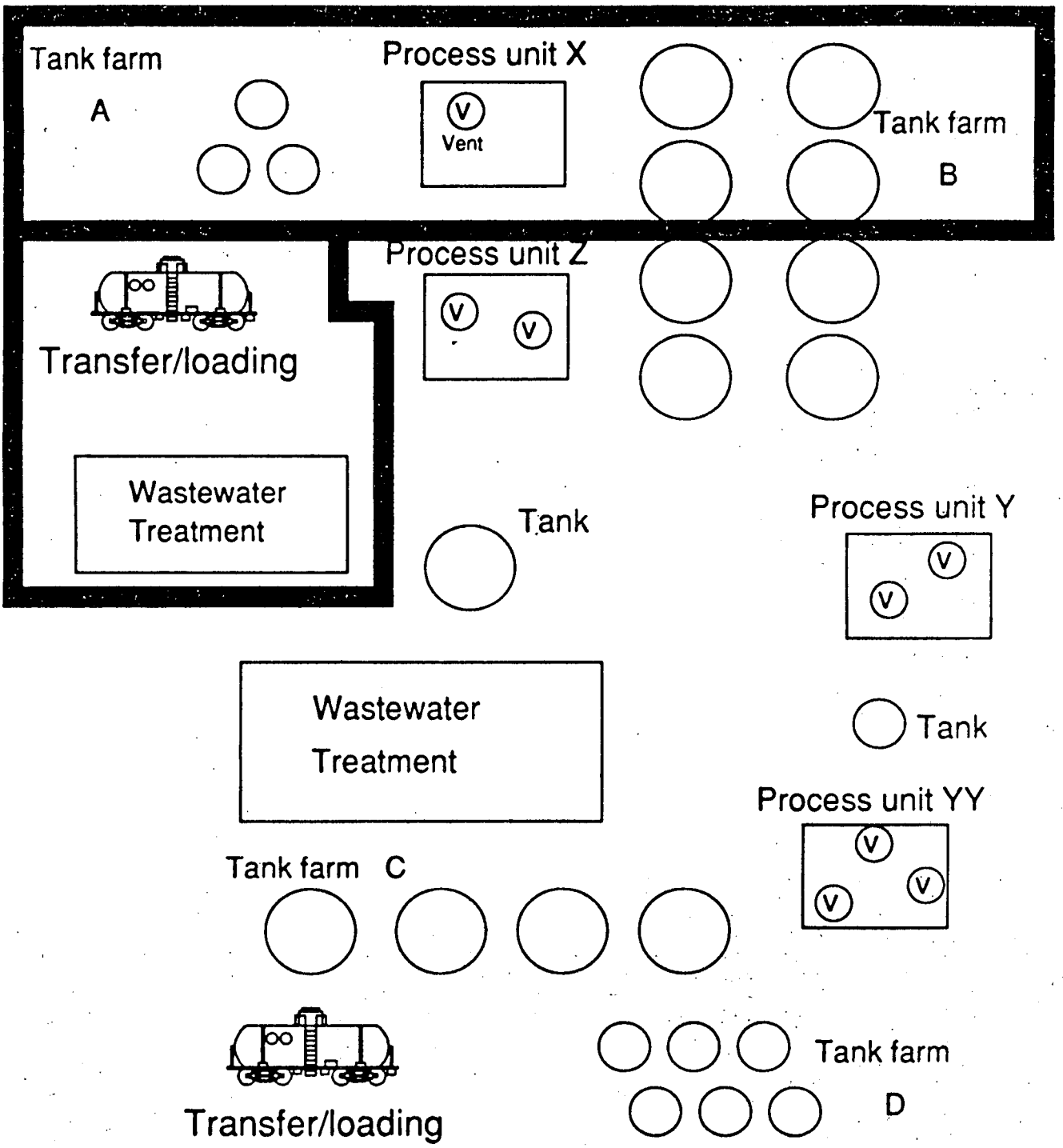
Figure 5
Chemical Plant Schematic
Process train



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Under subparagraph (a)(4), a "source" may also encompass any combination of units that can be characterized as a building, structure, facility, or installation under paragraph (a)(3) of the definition provided that the aggregate reduction from such combined units represents a significant reduction of the plant total emissions. EPA has determined that for the purposes of the early reductions program a significant reduction of emissions of HAPs is a 90 (95) percent reduction from baseline emissions of at least 10 tons per year for plants emitting 25 tons per year or more during the baseline year, or a 90 (95) percent reduction from baseline emissions of at least 5 tons of HAPs for plants emitting less than 25 tons of HAPs during the baseline year.

Additionally, the conclusion that EPA may group together, or "bubble," sources without regard to whether each individual source is "functionally-related or geographically contiguous" to the others is suggested not only by the result in *Chevron* itself, but is also clearly implicit in the definition of "major source" in section 112(a)(1). This definition of "major source" for purposes of the title III air toxics program states that "any * * * *group of* stationary sources" may be considered as a single major "source," provided that they are "located within a contiguous area and under common control." [1] Thus, it follows that EPA may consider unrelated units that are under common ownership and control as a single "source" for purposes of the Early Reductions Program,[2] provided that the units all are under common control and are located "within a contiguous area," such as a common plant-site. The individual sources to be aggregated such as pieces of equipment, process units, tanks or buildings do not have to be located next to one another or to be functionally-related in order to be "bubbled," provided that they are all located within the same geographic area which is under common control, such as a plant-site. The conclusion that bubbling between unrelated process units is permissible for purposes of the early reduction program is confirmed not only by the statutory language and case law discussed above, but also by the statutory policies and legislative history of the early reduction program. In section 112(i)(5)(e), Congress authorized a form of emissions trading—offsetting early reductions of one hazardous air pollutant against reductions of other hazardous air pollutants for purposes of the early reduction program "Bubbling" units is merely another form of emissions trading.[3]

Moreover, the legislative history indicates that Congress wanted EPA to encourage participation in the program. See H.R. Rep. No. 101-490, 101st Cong., 2d Sess. 332 (May 17, 1990) ("In the administration of this provision EPA thus should strive to encourage companies to take advantage of this incentive to reduce emissions early.") In addition, the significance threshold is designed to ensure that real substantial reductions are achieved and that the program is not trivialized. The flexibility afforded through aggregating process units or equipment units offers greater incentive to participate in the early reduction program. Greater overall participation in the program combined with a minimum threshold for early reductions achieved under the program will help ensure that the reductions achieved under the program are both real and substantial and the concomitant environmental benefits maximized and that the possibility for "gaming" the system is minimized.

Finally, the definition of source in this proposal includes, in paragraph (a)(5), any individual emission point or combination of such points within a contiguous facility under common ownership or control provided that such points meet the same significance threshold that is required under (a)(4). As with the bubbling of sources under paragraph (a)(4), EPA believes this definition will encourage greater overall participation in the program to the overall benefit of the environment. The significance threshold requirement for this portion of the definition will likewise serve to prevent trivializing the early reduction program.

These foregoing examples of the definition of source are meant to be illustrative only to demonstrate the types of groupings that may reasonably fall within the proposed definition of source for purposes of the early reduction program. Obviously, each plant is configured differently and it is impossible to contemplate all the combinations of emission points or units that may be unique to a particular contiguous facility. However, because EPA has not yet defined "source" for purposes of establishing MACT standards, the test for the definition of source under the early reduction program must be whether the application includes identifiable "sources" as that term is defined. EPA's proposed definition is an attempt to recognize the breadth of that flexibility.

The proposed definition provides the maximum benefit to an applicant who is capable of making reductions in various parts of its plant, and is trying to make reductions without actual knowledge as to how EPA will define various components of his plant as "sources" for purposes of particular MACT standards. Each source identified would receive extensions from the MACT standards applicable to it. If a plant owner or operator chose to reduce plantwide emissions sufficiently, the plant would receive an extension on all MACT standards applicable to it.

EPA's definition attempts to balance two competing concerns expressed during the public roundtable discussion. First, some asserted that some early reduction projects would not be undertaken unless broad flexibility was provided to combine independent but discrete points. In contrast, others wanted the definition to stimulate future projects to be undertaken and not allow random groupings that could allow reductions already achieved to shield other emissions from MACT coverage for six years. For example, the shutdown of a 100 ton unit could allow another 10 tons of emissions to avoid MACT for six years. Those taking this position considered this a "loss" in environmental terms.

After carefully considering these concerns, EPA has decided that in the particular circumstances of this rule, the proposed "source" definition serves the emission-reducing purpose of section 112(i)(5). EPA believes it must balance

[1] It is not beyond the limits of legal ingenuity to argue that something can be a "major source" without being a "source." This tortured reading is implausible, however. To the extent that Congress thought about the issue at all after *Chevron*, the language of section 112(a)(1) clearly suggests that Congress contemplated that a group of unrelated sources in a common area under common control could be considered a single source.

It is irrelevant for present purposes that in applying the limits for determining whether a source is "major," emissions from all of the collocated sources within common control must be considered. The important point for present purposes is that Congress clearly contemplated that a "group" of sources could be grouped together and considered as a single "source."

[2] This conclusion is limited to the context of the Early Reductions Program for several reasons. In particular, Congress specifically contemplated netting one hazardous pollutant against another for purposes of this program. Congress indicated in the legislative history that it wishes EPA to encourage participation in this program to obtain early reductions (see discussions below); and the statutory requirement for 90% reductions raises quite different factual and policy questions than might be applicable elsewhere.

[3] The only exception is for a separate category of high risk pollutants, such as dioxins and furans, which are to be treated differently.

the environmental gains from inducing early reduction projects that otherwise would not have occurred against the emissions reduction "losses" from MACT compliance extensions associated with projects that would have occurred anyway.

EPA has concluded that "gains" are likely to outweigh "losses" because of the emission reduction requirement for a 90 percent reduction from baseline emission levels. Each project which in fact is induced by the proposed source definition will bring a "gain" of a 90 percent reduction from the baseline emissions level. In contrast, each project that would have occurred anyway will cause a "loss" of 10 percent of the baseline emissions level. Assuming projects of equal size, "loss" projects would have to outnumber "gain" projects by 10-to-1 before the proposed source definition would result in overall emissions.

The legislative history of the early reductions provision provides a clear indication that the purpose of the provisions was to provide an incentive to achieve early reductions. The Bill reported out by the House Energy and Commerce Committee was almost identical to the final Act with respect to the early reduction requirements. The Report accompanying that Bill stated that the purpose of the provision was to encourage early reductions, adding that:

> Owners and operators should have an incentive to use this option because it allows them greater flexibility to choose the means by which they will reduce their air toxics emissions and to make those reductions without waiting for prescribed standards and regulatory schedules. Clearly, early reductions achieved before emission controls are required by MACT will benefit the environment and communities near the facilities that make early reductions. In the administration of this provision EPA thus should strive to encourage companies to take advantage of this incentive to reduce emissions early.

Committee on Energy and Commerce, U.S. House of Representatives, Report No. 101–490, at 332 (May 17, 1990).

Thus, the House Committee expressed a clear intent that the provision be utilized to encourage early emission reductions.

The legislative history on the scope of the definition of "source" for purposes of section 112 also sheds some light on Congress' intent. While the Conference Report does not address the source definition issue, there are statements by Senator Durenberger submitted for the record which speak to the issue. Senator Durenberger was one of the managers of the bill in the Senate and the principle author of title III of the CAAA of 1990.

Conference report statements are typically considered to be the most reliable historical aids to statutory interpretations. See, e.g., *United States* v. *UAW*, 352 U.S. 567, 585–586 (1966). Statements of sponsors are not controlling legislative history but they are entitled to some consideration. See *Brock* v. *Pierce County*, 476 U.S. 253, 263 (1986) ("statements by individual legislators should not be given controlling effect, but when they are consistent with the statutory language, and other legislative history, they provide evidence of Congress' intent"). Moreover, several members cautioned about the use of statements of individual members on various provisions of the 1990 Amendments. See, e.g., 126 Cong. Rec. E 3714 (November 2, 1990) (Cong. Dingell) (only the statement of managers, which is part of the conference report reflects the views of all the managers or conferees in the House and Senate); (Cong. Waxman) (accurate legislative history is not necessarily reflected in the commentary of individual members) 126 Cong. Rec. E 3699 (November 2, 1990). These statements are consistent with customary use of legislative history, i.e. that one resorts to the legislative history in the first instance only where the plain language of the statute is not clear and that statements in conference reports agreed upon by all managers should be given higher precedence than individual statements by members.

A short time before final passage of the Bill by the Senate, Senator Durenberger made a number of specific statements about the early reductions provisions. The Senator reviewed a draft EPA paper concerning the definition of source and concluded that "creditable reductions must come from the same part of a plant site that is covered by the applicable MACT standard * * *. The owner cannot claim credit for reductions made at another part of the plant." 126 Cong. Rec. S.16928 (daily ed. October 27, 1990). Senator Durenberger's floor statement indicates that his interpretation of the source definition with respect to early reductions would require reductions to be demonstrated by individual MACT units. His statement also recognizes that what constitutes the "source" may vary from standard to standard and may range from a discrete portion of an entire contiguous facility to an entire facility. 126 Cong. Rec. S 16927, (3rd col.) (daily ed. October 27, 1990) (agreeing with EPA paper that a MACT standard may focus on a specific portion of a facility or may encompass the entire contiguous facility).

EPA believes that the definition of source proposed in § 63.73 is consistent with Senator Durenberger's statements. The Senator's statements start from the presumption that EPA has already identified the "source" to be regulated by a MACT standard. However, at the time many companies will undertake to make early reductions, EPA will not have determined what the "source" will be for purposes of the MACT standard. If EPA has not identified the "source" for purposes of MACT, it is impossible for an owner or operator to determine what portions of its plant it should control in order to receive a six year extension from MACT. Therefore, if EPA has not defined "source" as it may apply to any particular units within an entire contiguous facility, the owner or operator can achieve an overall qualifying reduction from the entire major source or it can choose any portions of the facility that meet the regulatory definition of source set forth in § 63.73.

This broad definition affords the plant owner or operator flexibility to participate in the early reductions program to the maximum extent possible and is consistent with the intent of the program as reflected in the House report cited above. Reading Senator Durenberger's statement as precluding such a definition ignores the fact that his statement proceeded from the assumption that the MACT source was identified at the time a source must commit to make (or actually make) the early reduction. As noted, this will often not be the case. Moreover, such a narrow reading of the provision would limit participation in the program to those situations where EPA has already sufficiently progressed in the development of the MACT standard to have an idea of what unit(s) at a plant will constitute a "source" for that particular MACT standard. Congress could not have meant to so restrict the early reductions program. Indeed, EPA believes the broad definition will encourage significant participation in the program. At the same time, the minimum threshold of reductions for applicants seeking to aggregate dissimilar process units (or other "sources") reflects EPA's policy to ensure significant reductions and not to trivialize the program so as to frustrate the purposes of the Act.

EPA's definition of "source" in this rule is an effort to "represent a reasonable accommodation of manifestly competing interests" in a manner it believes to effectuate the underlying policies of the Act. EPA believes the proposed definition of

"source" is within the bounds of the Agency's discretion in light of the language of the statute, the underlying purposes of the early reductions provision, and the legislative history on the definition of source. See Memorandum from E. Donald Elliott, Assistant Administrator and General Counsel to William G. Rosenberg, Assistant Administrator for Air and Radiation, "Legal Opinion on the Definition of 'Source' for Early Reductions Program (Clean Air Act section 112(i)(5)." (May 9, 1991). Moreover, EPA believes that the proposed definition will provide owners and operators sufficient flexibility to encourage significant participation in the early reductions program to the overall benefit of the environment.

C. Demonstration of Early Reduction

1. General

Because there are many differences in sources, types of HAPs, procedures for establishing emission data, and emission control measures, it is neither possible nor desirable to prescribe by regulation a uniform manner in which the required emission reduction must be demonstrated. Each situation will be unique in some way. Thus, the proposed rule provides a framework of general rules that allow differing methods and procedures for demonstrating emission reduction achievement. However, owners or operators may find that this flexibility leads to uncertainty whether particular procedures for establishing emissions will be acceptable for demonstrating the emission reduction. To assist owners and operators, EPA will publish acceptable methods for documenting emissions for source categories that will be subject to MACT standards. The document will indicate the appropriate EPA reference method or conditional method that should be used for source testing emission points from the subject source, but the primary focus will be on how to establish emissions using an alternative method when source tests are not feasible. The document does not preclude a source owner or operator from establishing emissions using other methods or procedures that are appropriately documented. A notice announcing the availability of this document for the several categories in the first group (those for which standards will be proposed in the 1991–1993 time frame) will be published in a subsequent **Federal Register** notice.

The time period in which the early reduction may be demonstrated is limited by section 112(i) of the Act. In most cases, calendar year 1987 is the earliest year that can be used to calculate base year, or pre-control, emissions (see discussion of base year emissions below). The reduction must be achieved prior to proposal of an applicable MACT standard, with one exception. If the reduction is achieved after proposal of the standard, the source may still qualify for a compliance extension and alternative emission limitation if two conditions are met: (1) Before proposal of the standard, the source owner or operator makes an enforceable commitment (discussed in section II.D. of this preamble) to achieve the reduction, and (2) the reduction is achieved before January 1, 1994.

As a first step in an early reduction demonstration, an owner or operator must describe the source and how it conforms to one of the allowable source definition options. If the source will consist of an aggregation of equipment from the contiguous facility as allowed under § 63.73(a)(4) or (5) of the proposed rule, an owner or operator also must show that total base year emissions from the source are significant (i.e., 10 tons per year, except that 5 tons per year is considered significant in cases where the entire contiguous facility containing the source emits 25 tons per year or less).

To demonstrate that qualifying emission reductions have been achieved at the source, the owner or operator must sum the estimated emissions of all HAPs listed in section 112(b) of the Act that are emitted by the emission points in the source in the base year and compare the total with a similar sum for emissions following implementation of reduction measures. The post-control emissions sum must be ten percent or less of the sum for base year emissions, reflecting a 90 percent reduction as required to qualify for a compliance extension (five percent or less for hazardous air pollutants which are particulates, reflecting a 95 percent reduction). Thus, for a source containing more than one emission point, an owner or operator may control some emission points by less than 90 (95) percent and others by more than 90 (95) percent as long as total base year emissions from the source are reduced by 90 (95) percent. If the source emits any high-risk pollutants, the owner or operator must make a similar but separate reduction demonstration to document sufficient control of such high-risk pollutants. High-risk pollutants and the separate reduction demonstration required are discussed in more detail in sections II.C.2 and II.C.3 of this preamble, respectively.

Some sources may emit gaseous and particulate HAPs, possibly from the same emission point (e.g., a paint spray booth may emit particulate matter and gases, both types of emissions could contain HAPs). To demonstrate qualifying reductions from such sources, an owner or operator could show separate 90 percent and 95 percent reductions for the gaseous and particulate HAP, respectively. Alternatively, the proposed rule contains a provision (§ 63.74(g)) that would allow an owner or operator of such sources to qualify for an extension by combining the gaseous and particulate HAP emissions from the source and demonstrating achieving a combined percent reduction between 90 and 95. Determination of the new "target" percent reduction needed to qualify in this manner is made according to the equation in § 63.74(h) of the proposed rule and is based on the proportional amounts of gaseous and particulate HAPs emitted. For example, if a source emits equal amounts of gaseous and particulate HAPs, then the combined percent reduction necessary to qualify in this manner is halfway between 90 and 95, or 92.5 percent. The combined percent reduction demonstration for "mixed" sources of HAPs would provide additional emission control flexibility for the owner or operator and lead to increased participation in the early reduction program without changing the total amount of HAP emission reduction required to qualify for an extension, compared to separate 90 and 95 percent demonstrations for "mixed" sources. EPA specifically requests comments on this proposed approach for handling sources emitting gaseous and particulate HAPs.

To demonstrate achieving the HAP emission reduction required to qualify for an extension, source owners and operators may take credit for emission reductions achieved for any reason. All emission reductions since the base year are allowable for meeting the early reduction goal. The early reduction provisions in the Act and in the proposed rule do not distinguish between reductions achieved voluntarily and those that result from other regulatory requirements, including emission standards promulgated under section 112 prior to the Clean Air Act Amendments of 1990.

Emission reductions resulting from shutdown or curtailment of production also can be credited, provided that they are "permanent", i.e., for the duration of the 6-year MACT extension period. If a process or piece of equipment without a source is shutdown and another process or piece of equipment replaces it, any

HAP emissions from the replacement unit must be counted in the demonstration of post-control emissions for the source. Additionally, if an owner or operator takes emission reduction credit for a shutdown in an early reduction demonstration and is granted a compliance extension but later wishes to restart the shutdown unit or startup a replacement unit (before the compliance extension expires), the owner or operator is obligated to maintain 90 (95) percent reduction of HAPs at the source and would have to make compensating additional reductions in HAPs to offset any HAP emissions added to the source from the restarted or replacement unit. Similarly, if emission reduction credit has been taken for reduced production or hours of operation, any subsequent plans to increase production at the source prior to the expiration of a compliance extension period would require compensating HAP reductions at the source to maintain the 90 (95) percent reduction. If compensating reductions are not made, the source will lose the compliance extension.

2. High-Risk Pollutants

Section 112(i)(5)(E) specifies that the Administrator shall limit the use of offsetting reductions in emissions of other hazardous air pollutants from the source as counting toward the 90 percent reduction in such high-risk pollutants qualifying for an alternative emissions limitation. This section also identifies chlorinated dioxins and furans as two pollutants to which such limitations must apply. The proposed regulation identifies 33 other pollutants to which such limitations shall apply.

In defining limitation for the purposes of this section, the EPA first considered prohibiting the offsetting of high-risk pollutants with other listed hazardous air pollutants. There is, however, a potential implementation difficulty with this approach. Several of the high-risk pollutants such as arsenic compounds, chromium compounds and dioxin can be emitted in trace amounts as an incidental by-product of industrial processes and fuel combustion. Achieving reductions of 90 percent or more in these trace amounts can be extremely difficult or technically infeasible. In such circumstances, strict adherence to the requirement to acheive a 90 or 95 percent reduction of any high-risk pollutant could preclude participation by some applicants. Such an outcome does not seem consistent with the intent of encouraging participation in the early reduction program.

Instead, the EPA has interpreted this limitation to allow offsets of higher risk pollutants with lower risk (less toxic) pollutants based on the relative toxicity of the pollutants involved, provided that the overall requirement of 90 percent reduction in HAP emissions from the soure is achieved. Where a measure of relative toxicity has been established, the proposed regulation provides for the greater reductions of lower risk pollutant emissions to offset emissions of higher risk pollutants. Where a measure of relative toxicity has not been established, as with noncarcinogens, EPA has established an interim policy which allows the offsetting of noncarcinogens based on the weighting factors assigned to the carcinogens in comparable groups.

The indexed offsetting system is based on estimates of the carcinogenic potency of the carcinogens on the HAP list. The EPA has concluded that comparable measures of relative toxicity for the listed noncarcinogens are not currently available, but has employed the carcinogen indexing system to obtain rough weightings for the high risk noncarcinogens. As more appropriate indices become available, EPA will amend the proposed system to include them.

Table 2 lists the 35 pollutants on the proposed high risk list along with their assigned relative weights. Section II.G. of this preamble describes the criteria and methods used to select the pollutants.

TABLE 2.—LIST OF HIGH RISK POLLUTANTS

	Weighting factor*
Carcinogens:	
2,3,7,8-Tetrachlorodibenzo-p-dioxin	100,000
Benzidene	1,000
Bis(chloromethyl)ether	1,000
Asbestos	100
Chromium Compounds	100
Hydrazine	100
Arsenic Compounds (inorganic including arsine)	100
Chloromethyl Methyl Ether	10
Cadmium Compounds	10
Heptachlor	10
Beryllium Compounds	10
Acrylamide	10
Coke Oven Emissions	10
Hexachlorobenzene	10
Chlordane	10
Dichloroethyl ether (Bis(2-chloroethyl)ether)	10
1,3-Butadiene	10
Benzotrichloride	10
Ethylene dibromide (Dibromoethane)	10
Ethylene oxide	10
Vinyl chloride	10
Acrylonitrile	10
1,1,2,2-Tetrachloroethane	10
Vinylidene chloride (1,1-Dichloroethylene)	10
Benzene	10
1,2-Propylenimine (2-Methyl aziridine)	10

TABLE 2.—LIST OF HIGH RISK POLLUTANTS—Continued

	Weighting factor*
Noncarcinogens:	
2,4-Toluene diisocyanate	10
Acrolein	10
Acrylic acid	10
Chloroprene	10
Dibenzofurans	10
Mercury Compounds	10
Methyl isocyanate	10
Methylene diphenyl diisocyanate (MDI)	10
Phosgene	10

*HAP not on the high risk list have a weighting factor of 1.

The proposed high-risk list includes 26 carcinogens and nine noncarcinogens. Carcinogens are defined as those hazardous air pollutants with EPA weight of evidence classifications of A, B, or C and approved unit risk estimates (cancer potency factors). All other hazardous air pollutants are considered noncarcinogens for the purposes of this proposed regulation.

The methods used to formulate the list of high-risk pollutants, the list itself, and weighted offsetting scheme described in the following paragraphs are a direct response to the mandate in section 112(i)(5)(E) of the Act. This is warranted in the Early Reduction Program because of the flexibility allowed participants of the definition of source and method of reduction. It will also encourage participation in the program while ensuring that high risk pollutants are addressed. This list and the weighted offsetting scheme may not be applicable to or appropriate for programs designed to implement other sections in title III of the Act, that do not contain such flexibility or explicitly require the Administrator to limit offsetting among chemicals.

a. *Weighted index for carcinogens.* The list of hazardous air pollutants contains approximately 60 carcinogens with EPA-approved potency factors, 26 of which have been selected as high-risk pollutants. To establish the weighting factors, carcinogens on the high-risk list were ranked according to carcinogenic potency. The seven substances with the highest carcinogenic potency (2,3,7,8-tetracholorodibenzo-p-dioxin, benzidene, bis(chloromethyl)ether, chromium compounds, asbestos, hydrazine, and arsenic compounds) were determined to warrant individual weighting factors based on the high relative toxicity of these compounds. Weighting for the remaining 19 carcinogens on the high-risk list was based on the geometric mean potency

for this group. The geometric mean was chosen to represent this group since there was not as great a variation in potency, compared to the highest eligible carcinogens. The use of a consistent factor for these pollutants also simplifies the index for trades among carcinogens. A mean potency value was also obtained for the remaining carcinogens not on the high-risk list. The weighting factors shown in Table 2 represent the ratio of individual or mean factors to the mean value for the carcinogens not on the high-risk list, rounded to the nearest order of magnitude. The resulting factors provide a relative index of carcinogenicity, normalized to 1 for the non-high-risk carcinogens.

The weighting factors specify the equivalent offsets for trading among the listed carcinogens. For example, a source emitting one ton of hydrazine, with a weighting factor of 100, that wishes to participate in the early reduction program is unable to achieve a full 90 percent reduction in hydrazine emissions. Under the proposed system, the source has the option of offsetting this shortfall by achieving greater than necessary reductions of another HAP. If the actual hydrazine reduction was 0.8 tons (80 percent) and the source also emitted 40 tons of benzene, the hydrazine shortfall of 0.1 ton (the difference between the actual reduction and 90 percent) could be offset by reductions in benzene of 0.1 ton $\times$ 100/10 (the ratio of the weighting factors for hydrazine and benzene) or 1.0 tons. It would take 10 tons of additional reductions of a HAP with a weighting factor of 1 to offset the 0.1 ton shortfall in hydrazine reductions. (See section II.C.3 of this preamble for a more detailed explanation of demonstration qualifying early reductions when high-risk pollutants are involved.)

For the purposes of offsetting, pollutants with verified carcinogenic potency factors which also exhibit other toxic effects will be treated as carcinogens. Carcinogens without approved potency factors will be treated as noncarcinogens.

b. *Offsetting of noncarcinogens on the high-risk list.* In the absence of a comparable measure of relative toxicity, EPA has made an interim policy decision that offsetting reductions of noncarcinogens on the high-risk list (Table 2) will be keyed to the weighting of the carcinogens on this list. For the purposes of offsetting, the high-risk noncarcinogens are assumed to have a weighting factor of 10. Other noncarcinogens and carcinogens not on the high-risk list have a weight of 1 for the purposes of offsetting. As more appropriate indices become available for these pollutants, EPA will amend the proposed weighting system to include them.

The EPA requests comments on the method used to select the high-risk pollutants, described in section II.G. of this preamble, and on the above description of indexed offsetting for the purposes of implementing the early reduction program. The EPA in particular solicits comments on whether this approach represents, the best method for addressing those situations in which a source emits trace emissions of a high-risk pollutant, and on the impact of the high-risk pollutant list and offsetting system on the cost of participating in the program and potential emissions reductions.

3. *Reduction Demonstration Procedures.* To qualify for a compliance extension under the early reduction program, an owner or operator must demonstrate having achieved sufficient reductions (i.e., 90 percent, 95 percent, or a combined percentage between 90 and 95, as applicable) in (1) overall HAP emissions from the source and (2) high-risk pollutants from the source, if any are emitted.

To make the first demonstration, an owner or operator would calculate total base year emissions from the source by summing documented base year emission data accounting for all HAP emissions from each point in the source. Similarly, total post-control emissions would be calculated by summing documented emission data accounting for all post-control HAP emissions from the source. These two totals would be compared to show that the required overall reduction had been achieved.

If high-risk pollutants are emitted from the source, a second reduction demonstration is required. The second demonstration is similar to the first, but incorporates the high-risk pollutant weighting factors. Once again base year emissions are compared to post-control emissions. However, in this case before total base year or post-control emissions are calculated by summing emission data accounting for all emission points in the source, the owner or operator must multiply each individual emission number by the weighting factor associated with the pollutant emitted.

As a simple example, consider a reduction demonstration for a source emitting benzene and toluene. Assume benzene emissions are 20 tons in the base year and 3 tons per year after control, while toluene emissions are 200 tons in the base year and 18 tons following control. For the first demonstration, total base year emissions are 20 + 200 = 220 tons per year and total post-control emissions are 3 + 18 = 21 tons per year, which gives an overall HAP reduction of 90.5 percent. To make the second demonstration, the weighting factors are used before summing. According to Table 2, the weighting factors are 10 for benzene and 1 for toluene (any HAPs not on the high-risk list have a weighting factor of 1), and individual base year emissions adjusted for weighting factors are 20 $\times$ 10 = 200 tons for benzene and 200 $\times$ 1 = 200 tons for toluene. Total base year emissions adjusted for weighting factors are 200 + 200 = 400 tons per year. Similarly, total post-control emissions adjusted for weighting factors are 3 $\times$ 10 + 18 $\times$ 1 = 48 tons per year. Emission reduction considering high-risk pollutant weighting factors is 88 percent. Thus, in this example the source has demonstrated achieving a reduction in overall HAP emissions of 90.5 percent, but a reduction of only 88 percent when considering high risk pollutant weighting factors. To make up for the shortfall and qualify for a compliance extension, additional reductions of benzene or toluene would have to be made at the source (e.g., an additional toluene reduction of 8 tons per year would qualify the source by increasing the HAP reduction adjusted for weighting factors to 90 percent).

4. *Base Year and Post-Control Emissions.* There are a number of requirements for establishing base year and post-control emissions for a source. Emission data must be in the format of an annual emission rate (e.g., megagrams per year). The base year emission rate must represent actual and verifiable emissions for calendar year 1987 or later. However, emission rates for 1985 or 1986 may be acceptable if they are verifiable, based on data submitted to the Administrator pursuant to an information request issued under section 114 of the Act, and received by the Administrator prior to November 15, 1990. The base year must also be one in which emissions were not artificially or substantially greater than emissions in other years before the emission reduction measures were implemented. This means that the base year emissions should reflect a period of time in which production rates, operating hours, and other operating parameters were within normal conditions for the source. The owner or operator must provide information to demonstrate that all these conditions have been met. Emissions in excess of emission limits imposed by an applicable air pollution control law, regulation, or permit

condition cannot be used as base year emission data. These requirements would ensure that the post-control emissions are compared to normal, typical, and lawful base-year emissions.

The proposed rule prohibits the use of EPA average emission factors for estimating base year equipment leak emissions. Use of these factors may produce significant overestimates of base year emissions in many cases. However, source owners or operators could establish base year estimates for equipment leaks specific to their sources consistent with other equipment leak emission estimating protocols already established by EPA in the document entitled "Protocols for Generating Unit-Specific Emission Estimates for Equipment Leaks of VOC and VHAP," EPA-450/3-88-010, October, 1988. These protocols allow the use of "leak/no leak" factors or "stratified" emission factors, while better approximate an individual source's actual emissions, as well as actual bagging data to establish source-specific emission factors. The source must have screening data on each component proposed to be covered within the source definition, with the exception of flanges and other connectors (a special formula is used to determine the appropriate number of these), to which the appropriate emission factors are applied to determine total equipment leak emissions. Also, a source owner or operator may propose an alternative estimating method to account for equipment leak emissions from the source. Such methods would be reviewed and approved or denied on a case-by-case basis.

To demonstrate the post-control emission rate, the source owner or operator would need to present verifiable and actual emission data for a year after 1987 (or 1985 or 1986, if allowed) and prior to the dates required for demonstration of the reduction, as discussed earlier. For both base year and post-control emissions, the presumption is that verifiable and actual data will consist of source test results using validated methods. A validated method is a measurement methodology with a demonstrated precision and bias over the measured concentration of the source's emission. A validated method may be an EPA Reference Method, conditional method, or a test method validated according to the protocol in Method 301. Because EPA does not have reference or conditional methods for all of the 189 compounds listed in the 1990 amendments, the Agency is proposing Method 301, a process for the validation of test methods developed by sources who wish to make early reduction demonstrations. Method 301, "The Field Validation of Emission Concentrations from Stationary Sources," is being proposed today in appendix A to 40 CFR part 63. A list of validated methods may be obtained from the Emission Measurement Technical Information Center (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. There may be cases, however, in which emission data may be established through methods other than source tests. Specifically, other methods may be used due to: (1) Lack of a test method; (2) the economic or technical infeasibility of testing; (3) the demonstration that emission data based on engineering principles, emission factors, or material balances are as accurate as results gained through testing, or (4) the emissions from the emission point in the source are small compared to total source emissions and errors in estimating emissions from such points will not have a significant effect on the accuracy of estimated total emissions from the source. A fifth reason, applicable to base year emissions only, would be that the base year conditions no longer exist for the emission point(s) and that source test results under current conditions could not be converted to base year conditions to establish emissions more accurately than could be obtained in other ways. Since there is a presumption of testing to define emissions, the source owner or operator would need to provide a justification based on one of these reasons to support the use of alternate methods. Acceptance of emissions data would be based on the appropriate use of test methods or other equivalent means of determining the emissions.

D. Enforceable Commitments

Section 112(i)(5) of the Act provides the opportunity for sources that achieve a 90 percent (95 percent for particulates) reduction in HAP emissions before proposal of an applicable MACT standard to obtain a six-year extension from compliance with the standard. Section 112(i)(5)(B) contains a special provision that is available to sources that would be subject to standards proposed before 1994.[4] Because of the short time prior to proposal of these standards, sources subject to the standards would not have the same amount of time as sources affected by later standards to plan for and achieve early reductions prior to proposal of the applicable MACT standard. Therefore, Congress provided that if a source could not achieve reductions prior to proposal, the source still could qualify for a compliance extension and an alternative emission limitation if it enters into an enforceable commitment, before proposal of the applicable MACT standard, to achieve the 90 (95) percent reduction prior to January 1, 1994. The provision further states that "such commitment shall be enforceable to the same extent as a regulation under this section." Sources subject to early MACT standards, but which nonetheless have achieved qualifying reductions before proposal, are not required to submit enforceable commitments to participate in the early reduction program. Such sources need only file a permit application demonstrating that qualifying reductions have been achieved (see section II.F of this preamble for a discussion of permit applications).

The proposed rule would require that, before proposal of an applicable MACT standard, the enforceable commitment be submitted to the EPA Regional Office and a copy to the State in which the source is located. If the State has an approved permit program under title V of the Act, the commitment must be sent to the appropriate state agency and a copy to the EPA Regional Office. (See list of Regional Office addresses at the end of this section for submittal of commitments or for assistance in obtaining addresses of State reviewing agencies.)

The commitment to achieve the early reductions before January 1, 1994, is binding on the source and is enforceable under section 113 of the Act. There are several required components of an enforceable commitment. The commitment shall contain information identifying the name and location of the source, a description of the source as defined according to this rule, the base year estimate of HAP emissions for the source, the general plan for reducing those emissions, and a statement, signed by a responsible official representing the owner or operator of the source, committing the source to achieve the necessary reductions before January 1, 1994. The description of the planned emission reduction measures does not bind the source to carrying out the plans exactly but should be in sufficient detail to demonstrate that the source owner or

[4] Currently, the EPA anticipates proposing section 112(d) standards before 1994 for the following source categories: Synthetic organic chemical manufacturing industry, coke ovens, dry cleaners using perchloroethylene and 1,1,1-trichloroethane, commercial sterilizers, chromium electroplating and chromic acid anodizing, industrial cooling towers, and halogenated solvent cleaners.

operator has given serious consideration to real emission reduction measures that can be implemented to qualify the source for the early reduction program.

The commitment is considered to be "enforceable". The Agency believes that once a source has made a commitment to achieve early reductions, an enforcement action may be brought against that source if it fails to achieve the reductions or if fraudulent information is contained in the commitment. Sources found submitting fraudulent information in the commitment for early reduction shall be subject to enforcement action under section 113 of the Act or other Federal statutes. All data and information submitted should be carefully reviewed by the owner or operator to assure accuracy and veracity. The EPA will ensure the integrity of information contained in the commitments by conducting audits of any or all submittals. The purpose of this activity is to encourage sources to ascertain that any commitment made is supported by acceptable emissions data. An enforceable commitment is a revocable commitment, and source owners or operators have the option to rescind such commitments before January 1, 1994. The proposed rule specifies that rescission requests be submitted by December 1, 1993, which will allow time before January 1, 1994 to alert the reviewing agency of the source's intention to withdraw. If a source elects to rescind its commitment prior to December 1, 1993, the source will be required to comply with the applicable MACT standard by the compliance date specified in the standard. Any source that does not rescind the commitment prior to December 1, 1993, and fails to achieve a 90 (95) percent reduction before January 1, 1994 will be subject to penalties for the emission reductions not achieved, until compliance is achieved with either the enforceable commitment or the MACT standard for all affected sources. The penalty may vary depending on the amount of pollutant reduction already achieved and control measures required to achieve the target reduction but in most situations will exceed the economic benefit to comply with the applicable MACT standard by the compliance date in the standard. Thus, the source would not only fail to obtain the six-year extension but would be subject to an enforcement action under section 113 of the Act.

The proposed detailed requirements for information to be contained in enforceable commitment are as follows:

1. Identifying information concerning the applicant and name of official contact person.

2. A general description of the source and information to verify that the source conforms to one of the allowable definitions of source.

3. A complete list of all HAP emission points that define the source for which the early reduction will be achieved.

4. A statement of base year emissions and the associated supporting basis accounting for all HAPs emitted from each emission point contained in the source (see section II.C.3 of this preamble for requirements pertaining to emission data submissions). Separate base year emissions for high-risk pollutants, discussed in section III.B.2 of this preamble, would be required in addition to the total HAP emissions for each emission point.

5. A general plan for achieving the required emission reductions, including descriptions of emission control equipment to be employed, process changes or modifications to be made, and any other emission reduction approaches upon which the source intends to rely. (The plan is not an enforceable part of the commitment.)

6. A statement of commitment, signed by a responsible official, certifying the accuracy and veracity of the base year emission data; providing the post-control emission level(s) necessary to achieve the 90 (95) percent reduction and qualify for the compliance extension; committing to achievement of the stated post-control emission level(s); and acknowledging that the base year emission data are being submitted in response to EPA under the authority of section 114 of the Act and that the commitment is subject to enforcement as specified in the proposed rule.

Although an enforceable commitment must be submitted prior to proposal of an applicable MACT standard, some sources may be unable to provide, within that time frame, supporting source test data as required for some emission points. Therefore, the proposed rule allows an owner or operator up to 180 days after the applicable MACT proposal date to submit test data for such emission points. However, in order to make a complete enforceable commitment submittal before proposal, the owner or operator still must provide the best substitute calculations of base year emissions for those emission points. When results from the source tests are available, the owner or operator must submit the results and amend the enforceable commitment to take them into account.

The base year emission data submitted in an enforceable commitment may be audited by the Agency. Fraudulent statements will be considered violations of section 114 of the Act and of this proposed rule and, thus, actionable under section 113; they can be considered, in appropriate cases, violations of 18 U.S.C. 1001, the general false swearing criminal provision of the Code. A source owner or operator should have a high degree of confidence in the emission numbers provided. Given the scope and effect of the Clean Air Act Amendments, resources of Federal, State, and local agencies and of source owners and operators will be taxed heavily, and should be expended only in serious activities to accomplish real environmental improvement. Thus, EPA encourages only those commitments to early reduction that are based on sound evaluation of HAP emission sources and emission reduction potential.

In determining what should be required in an enforceable commitment, the Administrator considered the purpose of a commitment and what would be needed to carry out that purpose. The only sources required to submit an enforceable commitment are those for which the early reduction of HAP emissions will occur after proposal of an applicable MACT standard and before January 1, 1994. The purpose of the commitment is, therefore, to encourage the source owner or operator to achieve a 90 (95) percent reduction earlier than otherwise required and to do so by extending the period otherwise provided for achieving the reduction (i.e. by the date of proposal of an applicable MACT standard) to January 1, 1994. In order to make such a commitment, a company will need to determine with at least some degree of accuracy that the planned emission reduction is achievable. To do this, emission points in the source must be identified and base year emissions from these points. An initial assessment of the types and effectiveness of appropriate emission reduction measures for these emission points should be made. Such information must be submitted as part of an acceptable enforceable commitment.

The Administrator could have required more information than that which is being proposed. In addition to the proposed requirements for documented base year emissions and a clear definition of the emission points in the source, he could have required detailed descriptions of planned control measures with calculations showing how the planned emission reduction would be achieved for each emission

point in the source. There are two reasons the proposed rule does not include this requirement. First, there is a very short time period between now and the scheduled date of proposal for early section 112(d) standards (about six months). Section 112(i)(5) of the Act and the proposed rule requires submittal of the enforceable commitment before proposal of an applicable standard. To require submittal of definite plans for specific emission control measures companies would have to obtain funding commitments from corporate officials and prepare full documentation for inclusion in the submittal. EPA believes that requiring such information within a short period of time poses an undue burden on companies.

A second reason for not requiring extensive details regarding plans for achieving the emission reduction is that it could legally bind the source to the specific measures in the commitment. The Administrator believes that the source owner or operator should be given flexibility to determine the best approach for achieving early reductions and should not required to implement an approach that was committed to at an early date if that approach later proves to be infeasible to implement, inferior to, or more costly than another approach. Therefore, EPA believes that the proposed requirement for submittal of general emission reduction plans, with submittal of specific approaches required later as part of the permit application is the most reasonable alternative that is consistent with the goals of the early reduction program.

Enforceable commitments are to be submitted to the appropriate EPA Regional Office at the following addresses:

Director, Air, Pesticides, and Toxics Management Division, EPA Region I (AAA), John F. Kennedy Federal Building, Boston, MA 02203

Director, Air and Waste Management Division, EPA Region II, Jacob K. Javits Federal Plaza, New York, NY 10278

Director, Air Toxics and Radiation Management Division, EPA Region III, 841 Chestnut Street, Philadelphia, PA 19107

Director, Air Management Division, EPA Region 4, 345 Courtland Street, NE., Atlanta, GA 30365

Director, Air and Radiation Division, EPA Region 5, 230 South Dearborn Street, Chicago, IL 60604

Director, Air, Pesticides and Toxics Division, EPA Region 6, 1445 Ross Avenue, 12th Floor, suite 1200, Dallas, TX 75202

Director, Air and Toxics Division, EPA Region 7, 726 Minnesota Avenue, Kansas City, KS 66101

Director, Air and Toxics Division, EPA Region 8, 999 18th Street, suite 500, Denver, CO 80202-2405

Director, Air and Toxics Division, EPA Region 9, 1235 Mission Street, San Francisco, CA 94103

Director, Air and Toxics Division, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101

Enforceable commitments for several different sources within a contiguous facility may be aggregated into one submittal, providing the base year emissions and post-control emission levels committed to are identified separately for each source.

E. Review of Base Year Emissions

Each enforceable commitment and each permit application must contain base year emission data for each emission point in the source for which the applicant is requesting an early reduction extension. The Act requires that the base year emissions be "determined with respect to verifiable and actual emissions" and that the applicant show "there is no evidence that emissions in the base year are artificially or substantially greater than emissions in other years prior to implementation of emissions reduction measures." In other words, the base year emissions should represent, as accurately as possible, actual emissions during a normal year of operation. This is important because the base year emissions determine the amount of emission reduction and the residual HAP emission level that will qualify the source for a compliance extension.

Considering their importance to the program, EPA plans to review base year data submitted in enforceable commitments to determine their adequacy, and also will provide the opportunity for the States and the public to review and comment on the data. Sources that have achieved or will achieve HAP reductions prior to proposal do not have to make enforceable commitments. However, EPA also will provide review of base year emission data from such a source if requested by the owner or operator. In order to provide applicants speedy review of their base year data, EPA is proposing the following review procedure.

No later than 30 days after receipt of a commitment, the EPA Regional Office will notify the applicant whether the base year emission contained in the submittal is complete or incomplete. At this point in the review process, EPA is judging only whether all information required for the emission data evaluation has been supplied, not whether the information is adequate for the purposes of the early reduction program. Where EPA determines the submission is incomplete, the deficiencies will be listed, and the applicant must correct and resubmit the base year emission data before further review can proceed.

Within 60 days of making a determination that a base year data submission is complete, EPA will judge its adequacy and give notice of the results. If EPA determines that the base year data represents actual and verifiable emissions, a notice will be published by advertisement in the area affected identifying the aggregate base year emissions number that is being proposed for approval for the source and noting the availability of the nonconfidential information contained in the enforceable commitment for public inspection in at least one location in the community in which the source is located and in the appropriate EPA Regional office. A 30-day public comment period will be provided, with an opportunity for extension to 60 days upon request. If EPA determines that the base year emissions are not approvable because they are incorrect or deficient in some manner, the applicant will be notified of the decision and the reasons for the decision. The applicant may correct and resubmit the base year emissions or choose not to revise the data. If revised base year emissions data are not received by the reviewing agency within 90 days of notifying the applicant of disapproval of base year emission data, the source will be considered to have withdrawn the enforceable commitment and a notice to that effect will be sent to the applicant. EPA is not proposing a time limit for submittal of revised data on the assumption that an applicant will resubmit its revised data as quickly as possible to provide adequate time after approval for implementation of the emission reduction plans. If the applicant chooses to submit corrected base year emission data, EPA will review the revised version within 30 days and, if approvable, will publish a notice to that effect by advertisement in the area affected.

If no adverse comments are received on base year emission data proposed for approval, it will be considered approved upon expiration of the comment period and a notice of the approval will be sent to the applicant and published by advertisement in the area affected. However, if adverse comments are received during the comment period and EPA agrees with the comments, notice will be given to the applicant of disapproval and the reasons for disapproval. Again, the applicant will be given the opportunity to correct the data and resubmit to EPA. If revised base

year data are submitted to EPA that adequately address the adverse comments, EPA will send notice of the approval to the applicant and publish a notice containing the approved base year emission data for the source.

In cases where adverse comments are received on proposed base year emission data and EPA determines that the comments do not warrant changing the data, EPA will publish a notice approving the base year data without changes and its reasons for not accepting the adverse comments. Such approval of base year emission data does not constitute a final agency action and, therefore, is not judicially reviewable.

It is important to note that the proposed rule does not provide an absolute shield against changes to the base year emission data. EPA intends to provide assurance to the applicant that approved emission data will be honored and will not be subject to change arbitrarily. However, discovery of incorrect or fraudulent information in the emission data or supporting materials even after its initial approval, could potentially invalidate the base year data and require revision to it. In the case of fraudulent information, EPA may bring an enforcement action against the source owner or operator under section 113 of the Act [see § 63.80(b) of the proposed rule]. Such discrepancies could be discovered at any stage of the process, including during review of the permit application. This possibility underscores the importance of the applicant submitting "verifiable and actual" data that have been carefully reviewed and approved by knowledgeable company officials.

This initial review of the base year emission data is not to be taken lightly. The EPA believes that adequate time will be provided for reviewers and commenters to examine the basis for the emission numbers. During this comment period, commenters are urged to present any criticisms regarding data quality and approach so that applicants can make appropriate modifications at that point and proceed with reasonable confidence that their emission data are acceptable. The EPA believes this approach will provide some level of certainty to participants concerning their base year emission data prior to their implementation of emission reductions. As noted, incorrect or fraudulent information cannot shield the applicant from further review at a later time.

During development of the proposed rule, industry representatives expressed concern about the Agency's plans to provide opportunity for public review and comment on base year emissions and supporting data and information. One concern was that the applicant may consider some of the supporting data and information to be confidential and, therefore, would not want it made available to the public. The EPA is sensitive to industry's need to keep certain information confidential. EPA will continue to follow its current regulations concerning the treatment of confidential data. This policy will be followed in the early reduction program. The categories of data that are considered "emission data", and therefore nonconfidential include: Identification of the facility and emission points, emission types (type of release point and specific pollutants), emission rates, release heights, descriptions of terrain and surrounding structures, stack or vent diameters at point of emission, release velocities, release temperatures, frequencies of releases, durations of releases, concentrations, densities of emission streams or average molecular weights, boiler or process design capacities, emission estimation methods, percent space heat, and hourly maximum design rates.

Once every month, EPA will publish in the **Federal Register** a list of any sources that have submitted enforceable commitments or base year emission data for review. Interested parties will be able to use these lists to identify the actions they wish to review and comment on and can contact the appropriate Regional Offices and State agencies for information.

F. Permit Applications and Permits

The request for a compliance extension and alternative emission limitation will be in the form of a permit application. The application should contain the elements necessary to demonstrate achievement of the early emission reduction as well as any additional information required for a complete permit application (as specified in regulations under part 70 or part 71, which implement permit programs required under title V of the Act as amended). In most instances, the application must be received by the appropriate permitting authority before proposal of an applicable MACT standard. However, there are two exceptions. The first exception is for sources that previously made an enforceable commitment, where the permit application must be received no later than December 1, 1993 (which may be after proposal of an applicable standard). The second exception is for sources which have achieved qualifying reductions prior to proposal of an applicable MACT standard but which are unable to submit a permit application before proposal, because the Federal permit program has not been initiated (i.e., part 71 Federal permitting regulations have not been promulgated) and the State does not have a permit program approved pursuant to title V of the Act. These programs will define the information needed for a complete permit application. This situation may arise within the next year or so, before part 71 regulations are promulgated and any State permitting programs are approved. Therefore, to take this situation into account, the proposed rule specifies that the deadline for submitting permit applications under the early reduction program is the later of the following dates: (1) The date of proposal of an applicable MACT standard; or (2) 120 days after promulgation of part 71 regulations or 120 days after approval of a State permit program under title V of the Act, whichever occurs first. It is recommended that owners or operators in this situation notify the appropriate EPA Regional Office of their intent to send in a permit application for the early reduction program. The EPA Regional Office, in turn, will notify the potential applicant when the part 71 regulations have been promulgated or the appropriate State has received approval for a title V permit program, whichever occurs earlier. This will give the applicant timely notice of an approaching permit application submittal deadline.

The permit application for sources with an enforceable commitment should contain the information necessary to demonstrate that a qualifying early reduction has been achieved or, where applicable, will be achieved by January 1, 1994 (as required in § 63.74 of the proposal rule). In the latter case, the source is required to provide, by March 31, 1994, additional data for any emission points for which emission data were not available on January 1, 1994. This second submittal allows the source time to provide required post-control emission data from tests conducted after final controls are in place, perhaps as late as December 31, 1993. The permit application should specify appropriate emission limitations for the source and the test method or equivalent means used for the determination. Current EPA plans, under proposed 40 CFR part 70 (56 FR 21712), would require that the permit be issued within nine months after receipt of the complete permit application. Until that time, the enforceable commitment would remain the enforceable instrument for the source. Section 112(i)(5)(B) of the Act

provides that the commitment "shall be enforceable to the same extent as a regulation under this section."

If the relevant State has an approved title V permit program, it will be responsible for processing the application according to provisions in 40 CFR part 70 (scheduled for promulgation in November 1991). For sources in States without approved title V permit programs, applications should be submitted to the EPA Regional Office and will be processed according to provisions in 40 CFR part 71. (These regulations are scheduled for proposal in November 1991, and promulgation in May 1992, and will specify the time increments for evaluation and approval/denial of permit applications at the State and Federal levels.) A fee may be required by States to offset the costs of reviewing applications. (If EPA is the permitting authority, a fee as specified in 40 CFR part 71 would be required.)

If the application is denied, the source will be subject to applicable MACT standards. If the application is approved, the permitting authority will prescribe a source specific emission limitation to ensure the continued reduction in emissions at the level which qualified the source for the extension. Compliance monitoring, reporting, and recordkeeping requirements also would be included. The emission limitation would be established by a permit issued under title V of the Act (either by EPA or a State), would be effective and enforceable upon issuance, and would remain in effect until six years after the compliance date for the applicable standard, at which time the standard would take effect.

The permit application will provide a general description of the type of activity at the source which causes HAP emissions, identify the type of source category(ies) and the specific emission points that define the source for purposes of the early reduction demonstration, document the base year emissions accounting for all HAPs emitted from each emission point in the source, describe measures taken to achieve the early emission reduction, document post-control emissions accounting for each emission point in the source, provide calculations showing that the 90 (95) percent reduction has been achieved, and contain a certification by a responsible official of the source that the reduction was achieved. In addition, the application must specify methods for certification of compliance. Such methods would indicate how and when emissions will be monitored by the source owner or operator and how violations of the emission limits will be reported and corrected.

In determining whether to approve or deny a permit application, the permitting authority would evaluate available information, including that supplied by the source owner or operator and information received from public comments on the application. Specific to the demonstration of early reductions, the permitting authority would decide whether the information and data required had been provided and whether data were valid considering the following:

1. Were emission tests conducted in accordance with the procedures and requirements of the proposed rule?
2. Were justifications acceptable for using something other than testing to establish post-control emission data?
3. Are engineering calculations correct and the assumptions underlying the calculations valid?
4. Have emission factors been appropriately applied and can their use be reasonably expected to represent the emissions from the source accurately?
5. Are material balance data adequately documented by records and sufficiently accurate to give credible emission estimates?
6. Have all HAP emissions from each source for which a compliance extension is requested been documented and included in the calculations?

After evaluating a permit application containing an early reduction demonstration, the permitting authority will make a determination to either approve or deny it. If denied, the owner or operator will be notified of the reasons for denial, which may include any of the following:

1. The information provided by the owner or operator is incomplete.
2. The required 90 (95) percent reduction has not been demonstrated or it has not continued to be achieved after demonstration.
3. The base year or post-control emission data are incorrect or not sufficiently reliable or well-documented to determine with reasonable certainty that required reductions have been achieved. (Sources which submit base year emission data for review early, including sources which submit an enforceable commitment, will not be subject to a second base year review at the permit application stage. Note, however, that base year emission data could change at this stage if they are found to be based on incorrect or fraudulent information.
4. The emission of HAPs or the performance of emission control measures is sufficiently variable or unreliable as to preclude determination that the required reductions have been or will continue to be achieved.

If the application is approved, the reviewing agency would establish by permit issued under title V of the Act enforceable emissions limitations for the source reflecting the control which qualified the source for the compliance extension. The permit would also include operating conditions and compliance monitoring, reporting, and recordkeeping requirements necessary to ensure continuing compliance.

Although the demonstration of 90 (95) percent reduction of HAP emissions must be expressed in terms of actual annual emissions, the emission limitation may be expressed in a number of different ways. A numerical emission limitation in the same format as applicable source category standards would be preferable. However, that may not be possible if, for example, the early reduction is being achieved with emission control technology that is different from that on which the standard is based. A different format may be necessary in such a case, or a different time period for averaging emissions (e.g., 24 hours vs. 1 month) may be appropriate. The main objective in selecting the format and units of the emission limitation, and complementary monitoring, recordkeeping, and reporting requirements is to ensure continuing achievement of the 90 (95) percent reduction of emissions. Although a numerical emission limitation is the preferred format, if a numerical limitation is not feasible for technological or economic reasons, some other requirement could be established instead as long as it reflects the reduction which qualified the source for a compliance extension.

The emission limitation would be effective and enforceable immediately upon issuance of the permit for the source and would remain in effect until six years after the compliance date for the applicable section 112(d) standard, at which time the source would be required to comply with the standard. Since permits will be issued for periods not to exceed five years, there will be at least two permits in effect over the six-year compliance extension. The second and subsequent permits, which will be issued when the first one expires, will contain the alternative emission limitation for the remainder of the six-year extension.

Emission reductions of HAP for the purpose of obtaining an alternative emissions limitation under section 112(i)(5) of the Act are not creditable for

the purpose of meeting an offset requirement under section 173(a)(1) of the Act. A source in a nonattainment area (an area where a national ambient air quality standard is exceeded) may need to obtain offsets for new construction or modification activities. The HAP reductions are not allowed as offsets in this instance because section 173(c)(2) of the Act states: "Emission reduction for purposes of any such offset reqirement." A source emitting HAPs either will have to comply with a standard issued under section 112(d) of the Act or an alternative emissions limitaton which is granted to the source in lieu of such a standard. Therefore, the reduction of HAP emissions under the early reduction program is a substitute for the reduction of HAP emissions as "required" under a MACT standard.

However, a source owner or operator may use as offsets any reductions in HAP emissions in excess of those required to qualify for an exemption under the early reduction program or reductions in non-HAP emissions which are obtained through use of the HAP emission reduction measures, if such reductions are not required by any other provision of the Act and meet any other requirements for offsets under title I of the Act. These reductions are allowed as offsets pursuant to 173(c)(2) of the Act which further states: "Incidental emission reductions which are not otherwise required by this Act shall be creditable as emission reductions for such purposes* * *." As a simple example, consider a source emitting ethylene (a non-HAP) and ethylene oxide (a HAP) which is controlled for purposes of qualifying for a compliance extension under the early reduction program. Assume that the control measures used reduce ethylene oxide emissions by 92 percent or 46 tons per year and also reduce ethylene emissions by 20 tons per year, although there is no requirement to reduce the ethylene emissions. Further, assume that the permit issued to the source requires a continuing 92 percent reduction. In this instance, the 20 ton per year reduction in ethylene emissions may be used, if needed, to offset an increase in volatile organic compound emissions from new construction or a modification of an existing source. Additionally, since the source achieved a 2 percent HAP reduction beyond that required to obtain an extension, the extra 2 percent reduction, or 1 ton per year in this example, may be used as an offset.

G. Selection of List of High-Risk Pollutants

As described in section II.C. of this preamble, EPA is proposing a list of high-risk pollutants. The methodology used to develop this list is considered reasonable and appropriate for the purposes of section 112(i)(5)(E). The intent of this provision is to limit the use of offsetting reductions in emissions of other hazardous air pollutants as counting towards the 90 percent reduction in the high-risk pollutants. Other provisions of section 112 may require ranking of the pollutants on the list of hazardous air pollutants in section 112(b)(1). For example, establishing lesser quantities under section 112(b)(1) and identifying the relative hazards to human health from emissions of each of the listed pollutants under section 112(g) involve assessments of the relative hazards associated with pollutants on the list. While the approach for identifying the high-risk pollutants in today's rulemaking may be found to be appropriate for these other provisions, different approaches may also be considered appropriate. The selection of today's approach for the purposes of section 112(i)(5)(E) is not intended to establish a precedent for the other provisions affected by hazard ranking or preclude the consideration of other alternatives. This section discusses the criteria and rationale for selection of this proposed list.

1. Criteria for Identifying High-Risk Pollutants

The screening analysis employed a three-tiered approach in which the hazardous air pollutants were evaluated according to specific criteria. Only those pollutants meeting the criteria of the first tier were further evaluated in the second tier. Similarly, only those meeting the criteria for the second tier were evaluated in the third tier. Following the third tier, EPA examined the resulting list as well as the pollutants eliminated, and added back several pollutants to the high-risk list based on additional considerations. Two pollutants (dibenzofurans and 2,3,7,8-tetrachlorodibenzo-p-dioxin) were not screened using the tiered analysis because section 112(i)(5)(E) of the CAA specifically includes these pollutants on the high-risk list.

Prior to the screening process, available data on health effects for each of the pollutants were compiled. The health effects endpoints considered were carcinogenicity, reproductive and developmental toxicity, acute lethality, and systemic effects other than acute lethality (e.g., neurologic disorders). For carcinogens, there were two sources of information. The source for potency factors and weight-of-evidence (described below) was the Integrated Risk Information System (IRIS) which is administered by EPA's Office of Health and Environmental Assessment. The second source of information used to identify potential carcinogens of high concern was the hazard ranking developed to support reportable quantity adjustments under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), section 102.

The IRIS was also used to gather information on noncarcinogens having an EPA-verified inhalation reference concentration or oral reference dose. A reference concentration or reference dose is an estimate (with uncertainty spanning perhaps an order of magnitude or more) of the daily exposure to the human population (including sensitive subpopulations) that is likely to be without deleterious effects during a lifetime. Uncertainty factors are typically used to derive a reference concentration or reference dose from experimental data to account for factors such as sensitive human subpopulations and the uncertainty in extrapolating animal data to humans. For pollutants with neither a reference concentration nor reference dose, the primary source of information for health effects other than cancer was the Registry of Toxic Effects of Chemical Substances (RTECS), which is developed and maintained by the National Institute of Occupational Safety and Health. The RTECS data base is widely used as a toxicity data source by both industry and regulatory agencies. Although RTECS is not formally peer-reviewed, the data are from the scientific literature. The EPA recognizes the limitations associated with the lack of peer review, but believes for the initial step of compiling health effects information, RTECS represents one of most readily available comprehensive sources of information on toxicological endpoints other than cancer.

Information on the cancer potency factor, weight-of-evidence, and CERCLA hazard ranking was recorded for each carcinogen on the list where these data were available. The potency factor (i.e., the unit risk estimate) is an upper-bound estimate of the probability of an individual developing cancer as a result of exposure to a specified unit ambient concentration (e.g., 1 microgram per cubic meter) over a 70-year lifetime. The weight-of-evidence that a pollutant is a carcinogen is based on a classification scheme that considers the quality and adequacy of available health effects data. The weight-of-evidence classification scheme is described in

EPA's Risk Assessment Guidelines of 1986 (EPA/600/8-87-045).

The CERCLA hazard ranking is a comprehensive evaluation of pollutants for potential carcinogenicity. Each pollutant was assigned a hazard ranking of "high", "medium", or "low." The hazard ranking is based on a review of human epidemiologic and/or animal bioassay data and a quantitative assessment of available data to calculate the relative strength of a pollutant to elicit a carcinogenic response. The hazard ranking methodology is described in the EPA document entitled Methodology for Evaluating Potential Carcinogenicity in Support of Reportable Quantity Adjustments Pursuant to CERCLA Section 102 (EPA/600/8-89/053).

Data pertinent to reproductive and developmental effects, acute lethality, and other systemic effects were also recorded for each substance on the list. For reproductive and developmental effects and effects other than acute lethality, the lowest observed effect level (LOEL) was recorded. The LOEL is the lowest dose or exposure level of a chemical in a study at which a statistically or biologically significant effect is observed in the exposed animal population. For acute effects, the dose or concentration of a chemical required to cause death in 50 percent of the exposed population (LD_{50} or LC_{50}) was recorded. The EPA recognizes that lethality is not an endpoint typically used in developing environmental regulations and that there are issues concerning route-to-route extrapolation associated with LD_{50}'s. However, other types of preferable data are lacking for certain acutely toxic substances. In this analysis, the LD_{50} was used as a screening value only in the absence of other types of data such as reference concentrations or LOELs.

Both human and animal studies for each health effects category were examined, and data from studies involving inhalation, ingestion, and dermal absorption routes of exposure were considered. Once the health effects data were compiled, the pollutants were evaluated on the basis of potency or toxicity in each health effects category.

a. *Tier 1 of the Analysis.* The first tier of the analysis focused on whether the available health effects data for a pollutant met certain criteria. A potential carcinogen could meet the criteria if it had an EPA-approved potency factor or if it had been designated as a CERCLA section 102 chemical of high concern for potential carcinogenicity. The basis for these criteria is that the health effects data for pollutants with an approved potency factor or a high-concern designation have been thoroughly reviewed by EPA. Cancer risk assessment information (i.e., a potency factor designation) is considered approved by EPA only after the development of a health assessment document, including review by EPA's Science Advisory Board (SAB) or by consensus on available chronic toxicity data by the Carcinogen Risk Assessment Verificatioin Endeavor (CRAVE), an inter-disciplinary scientific panel of EPA experts. Similarly, the CERCLA methodology and the individual evaluations of the high-concern chemicals have received both extensive EPA and external review as part of the rulemaking process for reportable quantities under CERCLA section 102.

For carcinogens that also cause health effects other than cancer and for noncarcinogens, data used in support of development of an EPA-verified inhalation reference concentration or oral reference dose were given preference because the scientific studies have been extensively reviewed by EPA. If a verified reference concentration or dose was unavailable, the health effects data (i.e., the LOEL or LD_{50}) retrieved from RTECS was reviewed for quality of the scientific study. In examining the RTECS data, the following criteria were applied: (1) Only data from studies involving inhalation, oral ingestion and skin application routes of exposure were considered (not, for example, intraperitoneal or intravenous routes of exposure); (2) both human and animal studies in each category were examined; and (3) data from Eastern European studies were considered only if other data on a given endpoint were unavailable. Although the strength of the scientific basis for route-to-route extrapolation varies between substances, the lack of a complete inhalation data base for all hazardous air pollutants, as well as concern for possible indirect exposures, requires the consideration of noninhalation data.

It is possible that in the future additional verified potency factors or other health effects data may become available that indicate that a pollutant should be added to the high-risk list. In such a case, the CAA does not preclude the EPA from adding pollutants to the list. If EPA does add pollutants to the list, it is possible that a source already complying with an alternative emission limit may become subject to additional emission control requirements. The EPA solicits comments on whether or not a source already complying with alternative emission limits issued under section 112(i) should be exempted from any changes to the list of high-risk pollutants or whether these sources should be phased into compliance over a reasonable period of time, such as three years.

b. *Tier 2 of the Analysis.* The second tier of the evaluation was to determine which of the remaining pollutants merited further analysis based on potential for adverse public health effects under relevant exposure scenarios.

To evaluate this potential for carcinogens, generic exposure modeling was performed on 60 carcinogens for which approved potency factors were available. The EPA's Human Exposure Model was used for this exercise, and dispersion parameters representative of average conditions were assumed. The model provided an estimate of the ambient concentration in the vicinity of a source emitting 10 tons per year at an average release height of 10 meters under median meterological conditions. The predicted long-term ambient concentration at a distance from the source (500 meters) representing the location of nearby residences was recorded. This modeled ambient concentration was then compared to the concentration of each pollutant that would result in an increase in cancer risk of one in ten thousand to the most exposed individual. This risk level was selected to be consistent with the presumptive acceptable risk benchmark described in the National Emission Standard for Hazardous Air Pollutants for benzene proposed on September 14, 1989 (54 FR 38044). Pollutants that would not exceed the presumptive benchmark (when emitted in amounts of ten tons per year) were not given further consideration in the analysis. Pollutants with the potential to exceed the benchmark when emitted in quantities of 10 tons per year or less were retained for further evaluation in Tier 3.

The generic modeling assumptions selected for this tier of the analysis were considered reasonable, given the purposes of this analysis. Other assumptions could have been used and would have resulted in either more or fewer pollutants exceeding the presumptive risk level used for this tier. For example, decreasing the distance to the nearest resident or decreasing the release height would result in higher predicted maximum concentrations and, therefore, more pollutants exceeding the presumptive risk level. Conversely, increasing the distance to the nearest resident or increasing the release height would result in lower concentrations and fewer pollutants exceeding the risk level.

Generic parameters were considered appropraite for this analysis because the high-risk list is intended to address specific pollutants and to span a range of emission release and exposure situations that could be anticipated across source categories. The EPA requests comment on the appropriateness of the modeling assumptions that were used.

Noncarcinogens with verified inhalation reference concentrations or oral reference doses met the criteria for this tier if the modeled ambient concentration (using the same modeling parameters described above) exceeded the reference concentration or dose by at least one order of magnitude. Noncarcinogens without verified inhalation reference concentrations or oral reference doses met the criteria for this tier if the modeled ambient concentration exceeded either a pollutant's LOEL or LD_{50}, divided by uncertainty factors of 100 and 1000, respectively, for any of the health effects categories described above (i.e., acute lethality, reproductive/developmental effects, and systemic effects other than lethality).

Uncertainty factors were applied to the health effects benchmarks since the LOEL and LD_{50} values represent levels at which health effects are known to occur. These uncertainty factors are meant to account for variables such as interspecies variations and sensitive subpopulations. It should be noted, however, that the uncertainty factors used in this analysis do not account for all the factors typically considered in developing an inhalation reference concentration. In this sense, the analysis is not conservative.

By comparison, a reference concentration or reference dose represents the exposure level below which no deleterious effects are expected to occur over a lifetime of exposure. That is, the reference concentration or dose is a level at which the potential for public health effects would be considered negligible. To estimate a level at which public health risks could be potentially significant, the EPA deemed it appropriate to consider exposure levels one order of magnitude higher than the reference concentration or dose. These levels would therefore be somewhat higher than the reference concentration or dose but would still be below the level at which health effects are known to occur.

The Tier 2 screening criteria, in effect, selected for further analysis 14 pollutants having either a LOEL less than or equal to 0.1 mg/kg/day for reproductive/developmental effects and effects other than acute lethality, an LD_{50} less than or equal to 1.0 mg/kg/day for acute lethality, or reference concentration or dose less than 0.0003 mg/m^3 or 0.0009 mg/kg/day.

c. *Tier 3 of the Analysis.* The final tier in the screening process consisted of a review of nationwide emissions data to determine whether or not each remaining pollutant would actually be emitted by one or more sources in quantities sufficient to result in significant risk to public health. The primary source of emissions information was the 1989 Toxics Release Inventory (TRI). Because the TRI data base is limited to certain pollutants, source industrial classification (SIC) codes, and facility sizes, additional data were also gathered for each pollutant. These additional data were derived from in-house EPA data bases on source categories (e.g., the source category listing) and the 1990 Chemical Economics Handbook—SRI International for information on U.S. production and consumption of chemicals.

Sources with reported emissions were evaluated against the presumptive benchmarks for significant health risk potential described previously in Tier 2. If no source in the U.S. reported emissions of a given pollutant sufficient to exceed the benchmarks, the pollutant was not included on the list. If one or more sources exceeded the benchmarks with reported emissions of a listed pollutant the pollutant was retained for designation as a high-risk pollutant. The rationale for this decision was that one source emitting a listed pollutant could have an adverse impact on public health and should not be allowed to offset emissions of a high-risk pollutant with reductions in a less hazardous pollutant.

d. *Additional Considerations.* Based on the three tiers of analysis, 31 pollutants were identified as meeting the criteria for inclusion on the high-risk list. In examining those pollutants eliminated as a result of the screening tiers, however, EPA concluded that several carcinogens classified as Group A (known human carcinogens) should be retained on the list despite not meeting the exposure or significant source criteria. This resulted in the addition of 4 pollutants (benzene, benzidene, bis(chloromethyl)ether, and chloromethyl methyl ether). Section C.2. of this preamble contains the proposed list of high-risk pollutants (Table 2) and a description of the indexed weighting system that limits the participation of high-risk pollutants in the offsetting of emission reductions as part of early reduction demonstrations.

The EPA recognizes that a source's emissions may change from year to year. If emissions data become available that indicate that a pollutant should be added to the high-risk list, the CAA does not preclude EPA from doing so.

III. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed regulation in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. 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 Section address given in the **ADDRESSES** section of this preambles.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. External Participation

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and other regulatory agencies. In addition, a number of meetings were held with interested parties during development of the proposed regulation. The Administrator welcomes comments on all aspects of the proposed regulation.

C. Docket

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 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 (section 307(d)(7)(A))).

D. Paperwork Reduction Act

Information collection requirements associated with this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1582.01), and a copy may be obtained from (Sandy Farmer), Information Policy Branch, EPA, 401 M

Street SW. (PM-223Y), Washington, DC 20460, or by calling (202) 382-2740. The public reporting burden for this collection of information is estimated to average 213 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. (This figure is obtained from the Supporting Statement prepared for the proposed rule.)

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223Y, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Comments are specifically requested concerning the reporting burden on small entities and whether special provisions are needed to reduce it. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Executive Order 12291 Review

Under Executive Order 12291, OMB is required to judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The criteria set forth in section 1 of the Order for determining whether a regulation is a major rule are as follows: (1) Is likely to have an annual effect on the economy of $100 million or more; (2) is likely to cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local governments; or (3) is likely to result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Office of Management and Budget (OMB) has concluded that this regulation meets the first criteria of a major regulation; that the regulation will likely have an annual effect on the economy of $100 million or more. The effect of this regulation is not adverse, however, and is realized as a savings to the economy. Because of the importance of proposing this regulation quickly, and because the annual effect is not adverse to the economy, a Regulatory Impact Analysis has not yet been prepared, but will be available at promulgation.

The proposed regulation presented in this notice was submitted to OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA and any written EPA response to those comments will be included in the docket listed at the beginning of today's notice under **ADDRESSES.** The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

F. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities because the impact of the proposed rule is not significant.

List of Subjects in 40 CFR Part 63

Air pollution control, early emission reductions, hazardous air pollutants, compliance extensions, sources.

Dated: May 31, 1991.

F. Henry Habicht,

Acting Administrator.

It is proposed that 40 CFR chapter I be amended by adding part 63 to read as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

Subpart A—General Provisions

Subpart B—[Reserved]

Subpart C—List of Hazardous Air Pollutants, Petition Processes, Lesser Quantity Designation, Source Category List

Subpart D—Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants

Sec.
63.70 Applicability.
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63.73 Source.
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63.76 Review of base year emissions.
63.77 Application procedures.
63.78 Early reduction demonstration evaluation.
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63.81 Rule for special situations.

Appendix A—Test Methods

Appendix B—Sources Defined for Early Reduction Provisions

Authority: Clean Air Act (42 U.S.C. 7401 [et seq.], as amended, by Pub. L. 101-549).

Subpart A—General Provisions [Reserved]

Subpart B—[Reserved]

Subpart C—List of Hazardous Air Pollutants, Petition Processes, Lesser Quality Designation, Source Category List [Reserved]

Subpart D—Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants

§ 63.70 Applicability.

The provisions of this subpart apply to an owner or operator of an existing source who wishes to obtain a compliance extension from a standard issued under section 112(d) of the Act. The provisions of this subpart also apply to a State or local agency acting pursuant to a permit program approved under title V of the Act. The Administrator will carry out the provisions of this subpart for any State that does not have an approved permit program.

§ 63.71 Definitions.

All terms used in this subpart not defined below are given the same meaning as in the Act or in subpart A of this part.

Act means the Clean Air Act as amended.

Actual emissions means the actual rate of emissions of a pollutant but does not include excess emissions from a malfunction. Actual emissions shall be calculated using the source's actual operating rates, and types of materials processed, stored, or combusted during the selected time period.

Artificially or substantially greater emissions means abnormally high emissions such as could be caused by equipment malfunctions, accidents, unusually high production or operating rates compared to historical rates, or other unusual circumstances.

EPA Conditional Method means any method of sampling and analyzing for air pollutants that has been validated by the Administrator but that has not been published as an EPA Reference Method.

EPA Reference Method means any method of sampling and analyzing for an air pollutant as described in appendix A of part 60, appendix B of part 61, or appendix A of part 63.

Equipment leaks means leaks from pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, agitators, accumulator

vessels, and instrumentation systems in hazardous air pollutant service.

Existing source means any stationary source other than a new source.

Hazardous air pollutant means any air pollutant listed pursuant to section 112(b) of the Act.

High-risk pollutant means a hazardous air pollutant from the following list (corresponding Chemical Abstracts Service numbers are shown in parentheses next to the pollutant, where available): Acrolein (107028); acrylic acid (79107); acrylamide (79061); acrylonitrile (107131); arsenic compounds (inorganic, including arsine); asbestos (1332214); benzene (71432); benzidene (92875); benzotrichloride (98077); beryllium compounds; bis(chloromethyl)ether (542881); 1,3-butadiene (106990); cadmium compounds; chlordane (57749); choromethyl methyl ether (107302); chloroprene (126998); chromium compounds; coke oven emissions; dichloroethyl ether (111444); dibenzofuran (132649); ethylene dibromide (106934); ethylene oxide (75218); heptachlor (76448); hexachlorobenzene (118741); hydrazine (302012); methylene diphenyl diisocyanate (101688); methyl isocyanate (624839); mercury compounds; phosgene (75445); 1,2-propylenimine (75558); 2,3,7,8-tetrachlorodibenzo-p-dioxin (1746016); 1,1,2,2-tetrachloroethane (79345); 2,4-toluene diisocyanate (584849); vinyl chloride (75014); and vinylidene chloride (75354).

Malfunction means any sudden failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset conditions or preventable equipment breakdown shall not be considered malfunctions.

New source means a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under section 112(d) of the Act establishing an emission standard applicable to such source.

Not feasible to prescribe or enforce a numerical emission limitation means a situation in which the Administrator or a State determines that a pollutant (or stream of pollutants) listed pursuant to section 112(b) of the Act cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal law; or the application of measurement technology to a particular source is not practicable due to technological or economic limitations.

Permitting authority means either a State agency with an approved permitting program under title V of the Act or the Administrator in cases where the State does not have an approved permitting program.

Process or production unit means equipment or machinery connected together or assembled into a unit for the purpose of making a product or performing a function.

Responsible official means one of the following:

(a) 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;

[Note: The EPA does not require specific assignments or delegations of authority to responsible officials. The Agency will presume that these responsible corporate officers have the requisite authority to sign enforceable commitments under this subpart unless the corporation has notified the enforceable commitment reviewing agency to the contrary. Corporate procedures governing authority to sign enforceable commitments may provide for assignment or delegation to applicable corporate positions rather than to specific individuals.]

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively; or

(c) For a municipality, State, Federal, or other public agency, either a principal executive officer or ranking elected official. For the purposes of this subpart, 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., Regional Administrators of EPA).

Reviewing agency means a State agency with an approved permitting program under title V of the Act. An EPA Regional Office is the reviewing agency where the State does not have such an approved permitting program.

State means a State or local air pollution control agency.

§ 63.72 General provisions for compliance extensions.

(a) Except as provided in paragraph (f) of this section, a State acting pursuant to a permitting program approved under title V of the Act shall by permit allow an existing source to meet an alternative emission limitation in lieu of an emission limitation promulgated under section 112(d) of the Act for a period of 6 years from the compliance date of the otherwise applicable standard provided the source owner or operator demonstrates:

(1) According to the requirements of § 63.74 that the source has achieved a reduction of 90 percent (95 percent or more in the case of hazardous air pollutants which are particulates) in emissions of:

(i) Total hazardous air pollutants from the source,

(ii) Total hazardous air pollutants from the source as adjusted for high-risk pollutant weighting factors, if applicable.

(2) That such reduction was achieved before proposal of an applicable standard or, for sources eligible to qualify for an alternative emission limitation as specified in paragraph (c) of this section, before January 1, 1994.

(b) A source granted an alternative emission limitation shall comply with an applicable standard issued under section 112(d) of the Act immediately upon expiration of the six year compliance extension period specified in paragraph (a) of this section.

(c) An existing source which achieves the reduction specified in paragraph (a)(1) of this section after proposal of an applicable standard but before January 1, 1994, may qualify for an alternative emission limitation under paragraph (a) of this section if the source makes an enforceable commitment, prior to proposal of the applicable standard, to achieve such reduction. The enforceable commitment shall be made according to the procedures and requirements of § 63.75.

(d) For each permit issued to a source under paragraph (a) of this section, there shall be established as part of the permit an enforceable alternative emission limitation for hazardous air pollutants reflecting the reduction which qualified the source for the alternative emission limitation.

(e) An alternative emission limitation shall not be available with respect to standards or requirements promulgated to provide an ample margin of safety to protect public health pursuant to section 112(f) of the Act, and the Administrator will, for the purpose of determining whether a standard under section 112(f)

of the Act is necessary, review emissions from sources granted an alternative emission limitation under this subpart at the same time that other sources in the category or subcategory are reviewed.

(f) Nothing in this regulation shall preclude a State from requiring hazardous air pollutant reductions in excess of 90 percent (95 percent in the case of particulate hazardous air pollutants) as a condition of such State granting an alternative emission limitation authorized in paragraph (a) of this section.

§ 63.73 Source.

(a) An alternative emission limitation may be granted under this subpart to an existing source. For the purposes of this subpart only, a source is defined as follows:

(1) A building structure, facility, or installation identified as a source by the EPA in appendix B;

(2) All portions of an entire contiguous facility under common ownership or control that emit hazardous air pollutants;

(3) Any portion of an entire contiguous facility under common ownership or control that emits hazardous air pollutants and can be identified as a facility, building, structure, or installation for the purposes of establishing standards under section 112(d) of the Act;

(4) Any combination of sources defined in paragraph (a)(3) of this section, provided that emission reduction from the aggregation of sources constitutes a significant reduction of hazardous air pollutant emissions of the entire contiguous facility under common ownership or control; or

(5) Any individual emission point or combination of emission points within a contiguous facility under common control, provided that emission reduction from such point or aggregation of points constitutes a significant reduction of hazardous air pollutant emissions of the entire contiguous facility.

(b) For purposes of paragraphs (a)(4) and (a)(5) of this section, emissions reductions are considered significant if they are made from base year emissions of not less than:

(1) A total of 10 tons per year of hazardous air pollutants where the total emissions of hazardous air pollutants in the base year from the entire contiguous facility is greater than 25 tons per; or

(2) A total of 5 tons per year of hazardous air pollutants where the total emissions of hazardous air pollutants in the base year from the entire contiguous facility is less than or equal to 25 tons per year.

§ 63.74 Demonstration of early reduction.

(a) An owner or operator applying for an alternative emission limitation shall demonstrate achieving early reductions as required by § 63.72(a)(1) by following the procedures in this section.

(b) An owner or operator shall establish the source for the purposes of this subpart by documenting the following information:

(1) A description of the source including; a site plan of the entire contiguous facility under common control which contains the source, markings on the site plan locating the parts of the site that constitute the source, and the activity at the source which causes hazardous air pollutant emissions;

(2) A complete list of all emission points of hazardous air pollutants in the source, including identification numbers and short descriptive titles; and

(3) A statement showing that the source conforms to one of the allowable definition options from § 63.73. For a source conforming to the option in § 63.73(a)(4) or (a)(5), the total base year emissions from the source, as determined pursuant to this section, shall be demonstrated to be at least:

(i) 5 tons per year, for cases in which total hazardous air pollutant emissions from the entire contiguous facility under common control are 25 tons per year or less as calculated under paragraph (n) of this section, or

(ii) 10 tons per year in all other cases.

(c) An owner or operator shall establish base year emissions for the source by documenting the following information:

(1) The base year chosen, where the base year shall be 1987 or later except that the base year may be 1985 or 1986 if the owner or operator of the source can demonstrate that emission data for the source for 1985 or 1986 was submitted to the Administrator pursuant to an information request issued under section 114 of the Act and was received by the Administrator prior to November 15, 1990;

(2) The best available data accounting for actual emissions, during the base year, of all hazardous air pollutants from each emission point listed in the source in paragraph (b)(2) of this section;

(3) The supporting basis for each emission number provided in paragraph (c)(2) of this section including;

(i) For test results submitted as the supporting basis, a description of the test protocol followed, any problems encountered during the testing, and a discussion of the validity of the method for measuring the subject emissions; and

(ii) For calculations based on emission factors, material balance, or engineering principles and submitted as the supporting basis, a step-by-step description of the calculations, including assumptions used, and a brief rationale for the validity of the calculation method used; and

(4) Evidence that the emissions provided under paragraph (c)(2) of this section are not artificially or substantially greater than emissions in other years prior to implementation of emission reduction measures.

(d) An owner or operator shall establish post-control emissions by documenting the following information:

(1) For the emission points listed in the source in paragraph (b)(2) of this section, a description of all control measures employed to achieve the emission reduction required by § 63.72(a)(1);

(2) The best available data on an annual basis accounting for actual emissions, after the base year and following employment of control measures, of all hazardous air pollutants from each emission point in the source listed in paragraph (b)(2) of this section;

(3) The supporting basis for each emission number provided in paragraph (d)(2) of this section including:

(i) For test results submitted as the supporting basis, a description of the test protocol followed, any problems encountered during the testing, and a discussion of the validity of the method for measuring the subject emissions; and

(ii) For calculations based on emission factors, material balance, or engineering principles and submitted as the supporting basis, a step-by-step description of the calculations, including assumptions used, and a brief rationale for the validity of the calculation method used.

(4) Evidence that all emission reduction was achieved prior to proposal of an applicable standard issued under section 112(d) of the Act or, for sources subject to enforceable commitments, prior to January 1, 1994;

(5) Evidence that none of the emission reduction achieved at a source was due to lower production rates or fewer hours of operation compared to the base year, unless such lower rates or hours are employed continuously until any compliance extension granted to the source expires and no compensating increase in rates or hours occurs at other facilities within the contiguous area under common control which contains the source or, if it occurs, does

not result in emissions of hazardous air pollutants; and

(6) Evidence that emission reductions achieved due to shutdown of equipment will be permanent or will continue until the expiration of any compliance extension granted to such source. If shutdown equipment is replaced by new equipment, any hazardous air pollutant emissions from the new equipment shall be counted in the post-control emissions for the source.

(e) An owner or operator shall determine the following emission totals for the source, except that the emission totals specified in paragraphs (e)(3) and (4) of this section are not calculated when high-risk pollutants are not emitted from the source:

(1) Total base year emissions, calculated by summing all base year emission data from paragraph (c)(2) of this section;

(2) Total post-control emissions, calculated by summing all post-control emission data from paragraph (d)(2) of this section;

(3) Total base year emissions adjusted for high-risk pollutants, calculated by multiplying each emission number for a pollutant from paragraph (c)(2) of this section by the appropriate weighting factor for the pollutant from Table 1 and then summing all weighted emission data; and

(4) Total post-control emissions adjusted for high-risk pollutants, calculated by multiplying each emission number for a pollutant from paragraph (d)(2) of this section by the appropriate weighting factor for the pollutant from Table 1 and then summing all weighted emission data.

TABLE 1.—LIST OF HIGH RISK POLLUTANTS

	Weighting factor [1]
Carcinogens:	
2,3,7,8-Tetrachlorodibenzo-p-dioxin	100,000
Benzidene	1,000
Bis(chloromethyl)ether	1,000
Asbestos	100
Chromium Compounds	100
Hydrazine	100
Arsenic Compounds (inorganic including arsine)	100
Chloromethyl Methyl Ether	10
Cadmium Compounds	10
Heptachlor	10
Beryllium Compounds	10
Acrylamide	10
Coke Oven Emissions	10
Hexachlorobenzene	10
Chlordane	10
Dichloroethyl ether (Bis(2-chloroethyl)ether)	10
1,3-Butadiene	10
Benzotrichloride	10
Ethylene dibromide (Dibromoethane)	10
Ethylene oxide	10

TABLE 1.—LIST OF HIGH RISK POLLUTANTS—Continued

	Weighting factor [1]
Vinyl chloride	10
Acrylonitrile	10
1,1,2,2-Tetrachloroethane	10
Vinylidene chloride (1,1-Dichloroethylene)	10
Benzene	10
1,2-Propylenimine (2-Methyl aziridine)	10
Noncarcinogens:	
2,4-Toluene diisocyanate	10
Acrolein	10
Acrylic acid	10
Chloroprene	10
Dibenzofurans	10
Mercury Compounds	10
Methyl isocyanate	10
Methylene diphenyl diisocyanate (MDI)	10
Phosgene	10

[1] HAP not on the high risk list have a weighting factor of 1.

(f) If particulate and gaseous hazardous air pollutants are emitted from the source, separate emission totals for particulate pollutants and gaseous pollutants shall be calculated pursuant to paragraphs (e)(1) through (e)(4) of this section, except for cases where a combined particulate and gaseous pollutant reduction demonstration is made.

(g) By comparing the emission totals calculated in paragraphs (e)(1) through (e)(4) of this section, an owner or operator shall show that both total base year emissions and total base year emissions adjusted for high-risk pollutants, as applicable, have been reduced by at least 90 percent for gaseous hazardous air pollutants emitted and 95 percent for particulate hazardous air pollutants emitted, or a combined percentage between 90 and 95 percent for sources emitting gaseous and particulate hazardous air pollutants, where the exact percentage is determined and documented according to the following paragraph.

(h) Where the owner or operator applies a combined percent reduction for gaseous and particulate emissions emitted from the source pursuant to paragraph (g) of this section, the percent reduction applied shall be calculated as follows:

$$\%_w = \frac{0.9\,(\Sigma M_g) + 0.95\,(\Sigma M_p)}{\Sigma M_g + \Sigma M_p} \times 100$$

where:

$\%_w$ = the required weighted percent reduction

ΣM_g = the total mass rate (e.g., kg/yr) of all gaseous emissions

ΣM_p = the total mass rate of all particulate emissions

(i) The best available data representing actual emissions for the purpose of establishing base year or post-control emissions under this section shall consist of documented results from source tests using an EPA Reference Method, EPA Conditional Method, or the owner's or operator's source test method which has been validated pursuant to Method 301 of appendix A of this part. However, if one of the following conditions exists, an owner or operator may submit, in lieu of results from source tests, calculations based on engineering principles, emission factors, or material balance data as actual emission data for establishing base year or post-control emissions:

(1) No applicable EPA Reference Method, EPA Conditional Method, or other source test method exists;

(2) It is not technologically or economically feasible to perform source tests;

(3) It can be demonstrated to the satisfaction of the reviewing agency that the calculations will provide emission estimates of accuracy comparable to that of any applicable source test method;

(4) For base year emission estimates only, the base year conditions no longer exist at an emission point in the source and emission data could not be produced for such an emission point, by performing source tests under currently existing conditions and converting the test results to reflect base year conditions, that is more accurate than an estimate produced by using engineering principles, emission factors, or a material balance; or

(5) The emissions from one or a set of emission points in the source are small compared to total source emissions and potential errors in establishing emissions from such points will not have a significant effect on the accuracy of total emissions established for the source.

(j) For base year or post-control emissions established under this section that are not supported by source test data, the source owner or operator shall include the reason source testing was not performed.

(k) In cases where emission control measures have been employed less than a year prior to demonstrating emission reductions under this section, an owner or operator shall extrapolate post-control emission rate data to an annual basis and shall describe the extrapolation method as part of the supporting basis required under paragraph (d)(5) of this section.

(l) The EPA average emission factors for equipment leaks cannot be used under this subpart to establish base year emissions for equipment leak sources.

(m) A source owner or operator shall not establish base year or post-control emissions, for any emission point in the source, that exceed allowable emission levels specified in any applicable law, regulation, or permit condition.

(n) For sources subject to paragraph (b)(3)(i) of this section, an owner or operator shall document total base year emissions from an entire contiguous facility under common control providing the information required pursuant to paragraphs (b)(2), (c)(2), and (e)(1) of this section for all hazardous air pollutants from all emission points in the contiguous facility under common control.

§ 63.75 Enforceable commitments.

(a) To make an enforceable commitment an owner or operator shall submit a commitment to achieve the early reductions required under § 63.72(a)(1) to the appropriate EPA Regional Office and a copy of the commitment to the appropriate State, except that the commitment shall be submitted to the State and a copy to the EPA Regional Office if the State has an approved permitting program under title V of the Act. A copy shall also be submitted to both the EPA Office of General Counsel (LE-132A), 401 M Street, SW., Washington, DC 20460 and the EPA Emission Standards Division (MD-13), Research Triangle Park, NC 27711; attention both to the Early Reductions Officer. The commitment shall contain:

(1) The name and address of the source;

(2) The name and telephone number of the source owner or operator or other responsible official who can be contacted concerning the commitment;

(3) An alternative mailing address if correspondence is to be directed to a location other than that given in paragraph (a)(1) of this section;

(4) All information specified in § 63.74 (b), (c) and (e)(1), which defines and describes the source and establishes the base year hazardous air pollutant emissions from the source;

(5) The general plan for achieving the required hazardous air pollutant emissions reductions at the source including descriptions of emission control equipment to be employed, process changes or modifications to be made, and any other emission reduction measures to be used; and

(6) A statement of commitment, signed by a responsible official of the source, containing the following:

(i) A statement providing the post-control emission levels for total hazardous air pollutants and high-risk pollutants, as applicable, from the source on an annual basis which reflect a 90 percent (95 percent for particulate pollutants) reduction from base year emissions;

(ii) A statement certifying that the base year emission data submitted as part of the enforceable commitment constitute the best available data for base year emissions from the source and are correct to the best of the responsible official's knowledge;

(iii) A statement that it is understood by the source owner or operator that submission of base year emissions constitutes a response to an EPA request under the authority of section 114 of the Act and that the commitment is subject to enforcement according to § 63.80; and

(iv) A statement committing the source owner or operator to achieving the emission levels, listed in paragraph (a)(6)(i) of this section, at the source before January 1, 1994.

(b) The following language may be used to satisfy the requirements of paragraphs (a)(6)(ii) through (a)(6)(iv) of this section:

> I certify to the best of my knowledge that the base year emissions given above are accurate and acknowledge that these estimates are being submitted in response to an EPA request under section 114 of the Act. Furthermore, I commit to achieve before January 1, 1994 the stated post-control emission level(s) at the source, which will provide the 90 (95) percent reduction required to qualify for the compliance extension, and acknowledge that this commitment is enforceable as specified in Title 40 Part 63 Subpart D of the *Code of Federal Regulations.*

(c) A commitment for a source shall be submitted prior to proposal of an applicable standard issued under section 112(d) of the Act. Commitments received after the proposal date shall be void.

(d) If test results for one or more emission points in a source are required to support base year emissions in an enforceable commitment but are not available prior to proposal of an applicable standard issued under section 112(d) of the Act, the test results may be submitted after the enforceable commitment is made but no later than 180 days after proposal of an applicable standard. In such cases, the enforceable commitment shall contain the best substitute emission data for the points in the source for which test results will be submitted later.

(e) An owner or operator may rescind such a commitment prior to December 1, 1993 without penalty and forfeit the opportunity to obtain a six year compliance extension under this subpart.

§ 63.76 Review of base year emissions.

(a) Pursuant to the procedures of this section, the appropriate reviewing agency shall review and approve or disapprove base year emission data submitted in an enforceable commitment under § 63.75 or in a request letter from an applicant that wishes to participate in the early reduction program but who is not required to submit an enforceable commitment. For review requests submitted to a State agency as the appropriate reviewing agency, a copy of the request also shall be submitted to the applicable EPA Regional Office. For review requests submitted to the EPA Regional Office as the appropriate reviewing agency, a copy of the request also shall be sent to the applicable State agency. Copies also shall be submitted to the EPA Office of General Counsel (LE-132A), 401 M Street, SW., Washington, DC 20460 and the EPA Emission Standards Division (MD-13), Research Triangle Park, NC 27711; to the attention of the Early Reductions Officer.

(b) Within 30 days of receipt of an enforceable commitment or base year emission data, the reviewing agency shall advise the applicant that:

(1) The base year emission data are complete as submitted; or

(2) The base year emission data are not complete and include a list of deficiencies that must be corrected before review can proceed.

(c) EPA will publish a notice in the **Federal Register** which contains a list, accumulated for the previous month, of the sources for which complete base year emission data have been submitted and which are undergoing review either in the EPA Regional Office or a State agency within the EPA region. The notice will contain the name and location of each source and a contact in the EPA Regional Office for additional information.

(d) Within 60 days of a determination that a base year emission data submission is complete, the reviewing agency shall evaluate the adequacy of the submission with respect to the requirements of § 63.74(b) and (c) and either:

(1) Determine to approve the submission and publish a notice, by advertisement in the area affected, providing the aggregate base year emission data for the source and the rationale for the proposed approval,

noting the availability of the nonconfidential information contained in the submission for public inspection in at least one location in the community in which the source is located, providing for a public hearing upon request by an interested party, and establishing a 30 day public comment period that can be extended to 60 days upon request by an interested party; or

(2) Determine to disapprove the base year emission data and give notice to the applicant of the reasons for the disapproval. An applicant may correct disapproved base year data and submit revised data for review in accordance with this subsection, except that the review of a revision shall be accomplished within 30 days.

(e) If no adverse public comments are received by the reviewing agency on proposed base year data for a source, the data shall be considered approved at the close of the public comment period and a notice of the approval shall be sent to the applicant and published by the reviewing agency by advertisement in the area affected.

(f) If adverse comments are received and the reviewing agency agrees that corrections are needed, the reviewing agency shall give notice to the applicant of the disapproval and reasons for the disapproval. An applicant may correct disapproved base year emission data and submit revised emission data. If a revision is submitted by the applicant that, to the satisfaction of the reviewing agency, takes into account the adverse comments, the reviewing agency will publish by advertisement in the area affected a notice containing the approved base year emission data for the source and send notice of the approval to the applicant.

(g) If adverse comments are received and the reviewing agency determines that the comments do not warrant changes to the base year emission data, the reviewing agency will publish by advertisement in the area affected a notice containing the approved base year emission data for the source and the reasons for not accepting the adverse comments. A notice of the approval also shall be sent to the applicant.

(h) If an applicant submits revised emission data under paragraph (d)(2) or (f) of this section for a source subject to an enforceable commitment, the applicant also shall submit an amended enforceable commitment which takes into account the revised base year emissions.

(i) If revised base year emission data are not submitted by an applicant within 90 days of receiving a notice of disapproved base year emission data for a source that is subject to an enforceable commitment, the enforceable commitment shall be considered withdrawn and a notice to that effect shall be sent by the reviewing agency to the applicant.

§ 63.77 Application procedures.

(a) To apply for an alternative emission limitation under § 63.72, an owner or operator of the source shall file a permit application with the appropriate permitting authority.

(b) If filed with a State agency, the permit application shall contain a demonstration of early reduction for the source as prescribed in § 63.74 and the additional information required for a complete permit application as specified by the State's permitting program approved under title V of the Act.

(c) If filed with an EPA Regional Office, the permit application shall contain a demonstration of early reduction for the source as prescribed in § 63.74 and the additional information required for a complete permit application as specified by Federal permitting regulations under part 71.

(d) Permit applications under this section for sources not subject to enforceable commitments shall be submitted by the later of the following dates:

(1) The date of proposal of an otherwise applicable standard issued under section 112(d) of the Act, or

(2) 120 days after promulgation of part 71 regulations or 120 days after approval of a State permit program under title V of the Act, whichever occurs first.

(e) Permit applications for sources subject to enforceable commitments pursuant to § 63.75 shall be submitted no later than December 1, 1993.

(f) If a source test is the supporting basis for a post-control emission estimate for one or more emission points in the source but the test results are not available by the deadline for submittal of a permit application according to paragraph (d) of this section, the owner or operator shall provide the supporting basis no later than 90 days after the applicable deadline for submittal of the permit application or no later than March 31, 1994 for sources subject to an enforceable commitment.

(g) Review and disposition of permit applications submitted under this section will be accomplished according to part 70 regulations where a State agency is the appropriate permitting authority and according to part 71 regulations where an EPA Regional Office is the appropriate permitting authority.

§ 63.78 Early reduction demonstration evaluation.

(a) The permitting authority will evaluate an early reduction demonstration submitted by the source owner or operator in a permit application with respect to the requirements of § 63.74.

(b) An application for a compliance extension may be denied if, in the judgment of the permitting authority, the owner or operator has failed to demonstrate that the requirements of § 63.74 have been met. Specific reasons for denial include, but are not limited to:

(1) The information supplied by the owner or operator is incomplete;

(2) The required 90 percent reduction (95 percent in cases where the hazardous air pollutant is particulate matter) has not been demonstrated;

(3) The base year or post-control emissions are incorrect, based on methods or assumptions that are not valid, or not sufficiently reliable or well documented to determine with reasonable certainty that required reductions have been achieved; or

(4) The emission of hazardous air pollutants or the performance of emission control measures is sufficiently variable or unreliable as to preclude determination that the required reductions have been achieved or will continue to be achieved during the extension period.

§ 63.79 Approval of applications.

(a) If an early reduction demonstration is approved and other requirements for a complete permit application are met, the permitting authority shall establish by a permit issued pursuant to title V of the Act enforceable alternative emissions limitations for the source reflecting the reduction which qualified the source for the extension. However, if it is not feasible to prescribe a numerical emissions limitation for one or more emission points in the source, the permitting authority shall establish such other requirements, reflecting the reduction which qualified the source for an extension, in order to assure the source achieves the 90 percent or 95 percent reduction, as applicable.

(b) An alternative emissions limitation or other requirement prescribed pursuant to paragraph (a) of this section shall be effective and enforceable immediately upon issuance of the permit for the source and shall expire exactly six years after the compliance date of an otherwise applicable standard issued pursuant to section 112(d) of the Act.

§ 63.80 Enforcement.

(a) All base year or post-control emissions information described in § 63.74 and required to be submitted as part of a permit application under § 63.77 or an enforceable commitment under § 63.75 shall be considered to have been requested by the Administrator under the authority of section 114 of the Act.

(b) Fraudulent statements contained in any base year or post-control emissions submitted to a State or EPA Regional Office under this subpart shall be considered violations of section 114 of the Act and of this regulation and, thus, actionable under section 113 of the Act and can be considered, in appropriate cases, violations of 18 U.S.C. 1001, the general false swearing provision of the United States Code.

(c) If a source subject to an enforceable commitment fails to achieve reductions before January 1, 1994, sufficient to qualify the source for an extension under this subpart, the source shall be considered to be in violation of the commitment and shall be subject to enforcement action under section 113 of the Act.

(d) If an early reduction demonstration in a permit application filed under § 63.77 is disapproved for a source not subject to an enforceable commitment, the owner or operator shall comply with an applicable standard issued under section 112(d) of the Act by the compliance date specified in such standard.

(e) If an early reduction demonstration in a permit application filed under § 63.77 is disapproved for a source that is subject to an enforceable commitment, the owner or operator shall comply with an applicable standard issued under section 112(d) of the Act by the compliance date specified in such standard and will be subject to enforcement action under section 113 of the Act.

(f) A violation of an alternative emission limitation or other requirement established by permit under § 63.79 (a) or (b) for the source is enforceable pursuant to the authority of section 113 of the Act notwithstanding any demonstration of continuing 90 percent (95 percent for hazardous air pollutants which are particulates) emission reduction over the entire source.

§ 63.81 Rule for special situations.

(a) If more than one standard issued under section 112(d) of the Act would be applicable to a source as defined under § 63.73, then the date of proposal referred to in § 63.72(a)(2), § 63.72(c), § 63.74(d)(6), § 63.75(c), and § 63.77(d) is the date the first applicable standard is proposed.

Appendix A—Test Methods

Method 301—Field Validation of Emission Concentrations from Stationary Sources

1. *Applicability and Principle*

1.1 Applicability. This Method, as specified in the applicable subpart, is to be used whenever a source owner or operator (hereafter referred to as an "analyst") proposes a test method to meet a U.S. Environmental Protection Agency (EPA) requirement in the absence of a validated method. This Method includes procedures for determining and documenting the quality, i.e., systematic error (bias) and random error (precision), of the measured concentrations of the source emissions.

1.1.1 If EPA currently recognizes an appropriate test method or considers the analyst's test method to be satisfactory for a particular source, the Administrator may waive the use of this protocol or may specify a less rigorous validation procedure. A list of validated methods may be obtained by contacting the Emission Measurement Technical Information Center (EMTIC), Mail Drop 19, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, 919/541-0200. Procedures for obtaining a waiver are in section 12.0.

1.1.2 This method includes optional procedures that may be used to expand the applicability of the proposed method. Section 7.0 involves ruggedness testing (Laboratory Evaluation), which demonstrates the sensitivity of the method to various parameters. Section 8.0 involves a procedure for including sample stability in bias and precision for assessing sample recovery and analysis times; section 9.0 involves a procedure for the determination of the practical limit of quantitation for determining the lower limit of the method. These optional procedures are required for waiver consideration method status, Section 12.0.

1.2 Principle. The purpose of these procedures is to determine bias and precision of a test method at a permissible emission concentration, e.g., emission standard, in the gas stream. The procedures involve (a) introducing known concentrations of an analyte or comparing the test method against a validated test method to determine the method's bias and (b) collecting multiple or collocated simultaneous samples to determine the method's precision.

1.2.1 Bias. Bias is established by comparing the method's results against a reference value and may be eliminated by dividing the measured concentration by an appropriate factor (i.e., average measured concentration/reference value). An offset bias may be handled accordingly. Methods that have bias correction factors outside 0.7 to 1.3 are unacceptable. Validated method to proposed method comparisons, section 6.2, requires a more restrictive test of central tendency and a lower correction factor allowance of 0.90 to 1.10.

1.2.2 Precision. At least two (i.e., paired) sampling trains shall be used to established precision. The precision of the method at the level of the emission standard shall not be greater than 50 percent relative standard deviation. For a validated method to proposed method equivalency comparisons, section 6.2, the analyst must demonstrate that the precision of the proposed test method is as precise as the validated method for acceptance.

2. *Definitions.*

2.1 Negative bias. Bias resulting when the measured result is less than the "true" value.

2.2 Paired trains. Two collocated and simultaneously operated sampling systems.

2.3 Positive bias. Bias resulting when the measured result is greater than the "true" value.

2.4 Proposed method. The sampling and analytical methodology selected for field validation using the method described herein.

2.5 Quadruplicate trains. Four collocated and simultaneously operated sampling train system.

2.6 Surrogate compound. A compound that serves as a model for the types of compound being analyzed. The model can be distinguished by the method from the compounds being analyzed.

3. *Reference Material*

The analyst shall obtain a known concentration of the reference material (i.e., analyte of concern) from an independent source such as a specialty gas manufacturer, specialty chemical company, or commercial laboratory. A list of vendors may be obtained from EMTIC (see section 1.1.1). The analyst should obtain the manufacturer's stability data of the analyte concentration and recommendations for recertification. If the reference material is in the gaseous state, the concentration(s) [multiple levels may be required to expand a method's concentration applicability] shall be within 0.20 to 5 times the average concentration in the sample gas stream.

3.1 Surrogate Reference Materials. The analyst may use surrogate compounds, e.g., for highly toxic or reactive organic compounds, provided the analyst can demonstrate to the Administrator's satisfaction that the surrogate compound behaves as the analyte. A surrogate may be an isotope or one that contains a unique element (e.g., chlorine) that is not present in the stack gas or a derivative of the toxic or reactive compound, if the derivative formation is part of the method's procedure. Laboratory experiments or literature data may be used to show behavioral acceptability.

3.2 Isotopically Labeled Materials. Isotope mixtures may contain the isotope and the natural analyte. For best results, the isotope labeled analyte concentration should be more than five times the natural concentration of the analyte. Deuterated compounds of interest may be in gaseous or liquid states. The gasous form should be obtained in compressed-gas cylinders in high-purity nitrogen.

4. *EPA Performance Audit Material*

4.1 To assess the method bias independently, the analyst shall use (in addition to the reference material) an EPA performance audit material, if it is available. The analyst may contact EMTIC (see section 1.1.1) to receive a list of currently available

EPA audit materials. If the analyte is listed, the analyst should request the audit material at least 30 days before the validation test. If an EPA audit material is not available, request documentation from the validation report reviewing authority that the audit material is currently not available from EPA. Include this documentation with the field validation report.

4.2 The analyst shall sample and analyze the performance audit sample three times according to the instructions provided with the audit sample. The analyst shall submit the three results with the field validation report. Although no acceptance criteria are set for these performance audit results, the analyst and reviewing authority may use them to assess the relative error of sample recovery, sample preparation, and analytical procedures and then consider the relative error in evaluating the measured emissions.

5. *Procedure for Determination of Bias and Precision in the Field*

The analyst shall select one of the sampling approaches below to determine the bias and precision of the data. After analyzing the samples, the analyst shall calculate the bias and precision according to the procedure described in section 6.0.

5.1 Isotopic Spiking. This approach shall be used only for methods that require gas chromatography/mass spectrometry (GC/MS) analysis. Bias and precision are calculated by procedures described in section 6.1.

5.1.1 Number of Samples and Sampling Runs. Collect a total of 12 samples using either paired (2) or quadruplet (4) collocated sampling trains. For paired trains, conduct six sampling runs. For quadruplet trains, conduct three sampling runs.

5.1.2 Spiking Procedure. Spike all 12 sampling trains with the reference material as follows. The spike shall be introduced as close to the tip of the probe as possible.

5.1.2.1 Gaseous Reference Material with Sorbent or Impinger Trains. Sample the reference material (in the laboratory or in the field) at a concentration equal to the level of the emission standard for the time required by the method, and then sample the gas stream for an equal amount of time. The time for sampling both the reference material and gas stream should be equal; however, the time should be adjusted to avoid sorbent breakthrough.

5.1.2.2 Gaseous Reference Material with Sample Container (Bag or Canister). Spike the containers after completion of the test run with an amount equal to the level of emission standards. The final concentration of the reference material shall approximate the level of the emission standard. The volume amount of reference material shall be less than 10 percent of the sample volume.

5.1.2.3 Liquid and Solid Reference Material with Sorbent or Impinger Trains. Spike the trains with an amount equal to the level of the emission standard before sampling the stack gas. The spiking should be done in the field; however, it may be done in the laboratory.

5.1.2.4 Liquid and Solid Reference Material with Sample Container (Bag or Canister). Spike the containers at the completion of each test run with an amount equal to the level of the emission standard.

5.2 Comparison Against a Validated Test Method. Bias and precision are calculated using the procedure described in section 6.2. This approach shall be used when a validated method is available and an alternative method is being proposed.

5.2.1 Number of Samples and Sampling Runs. Collect a total of 18 samples using paired trains or 16 samples using quadruplet sampling trains. For paired trains, conduct nine sampling runs. For quadruplet trains, conduct four sampling runs. In each run, the validated test method shall be used to collect and analyze half of the samples.

5.2.2 Performance Audit Exception. Conduct the performance audit as required in section 4.0 for the validated test method. Conducting a performance audit on the test method being evaluated is recommended.

5.2.3 Probe Placement and Arrangement. The probes should be placed in the same horizontal plane. For paired sample probes the arrangement should be that the probe tip is 2.5 cm from the outside edge of the other with the pitot tube on the outside of each probe. For quad probes, the tips shall be in a 6.0 cm × 6.0 cm square area measured from the inside edge of the probe tip with the pitot tube in the center.

5.3 Analyte Spiking. Bias and precision are calculated using the procedures described in section 6.3.

5.3.1 Number of Samples and Sampling Runs. Collect a total of 24 samples using quadruplet sampling trains. Conduct six sampling runs.

5.3.2 In each run, spike half of the sampling trains (two out of the four) according to the applicable procedure in sections 5.1.2.1 through 5.1.2.4.

6. *Calculations*

Data resulting from the procedures specified in section 5.0 shall be treated as follows to determine bias, correction factors, relative standard deviations, precision, and data acceptance.

6.1 Isotopic Spiking. Analyze the data for isotopic spiking tests as outlined in sections 6.1.1 through 6.1.6.

6.1.1 Calculate the numerical value of the bias using the results from the analysis of the isotopically spiked field samples and the calculated value of the isotopically labeled spike:

$$B = S_m - CS \qquad \text{Eq. 301-1}$$

where:

B = bias at the spike level;

S_m = mean of the measured values of the isotopically spiked samples;

CS = calculated value of the isotopically labeled spike.

6.1.2 Calculate the standard deviation of the S_i values as follows:

$$SD = \sqrt{\frac{\Sigma(S_i - S_m)^2}{(n-1)}} \qquad \text{Eq. 301-2}$$

where:

S_i = The measured value of the isotopically labeled analyte in the ith field sample;

n = The number of isotopically spiked samples, 12.

6.1.3 Calculate the standard deviation of the mean (SDM) as follows:

$$SDM = \frac{SD}{\sqrt{n}} \qquad \text{Eq. 301-3}$$

6.1.4 Test the bias for statistical significance by calculating the t-statistic,

$$t = \frac{|B|}{SDM} \qquad \text{Eq. 301-4}$$

and compare it with the critical value of the two-sided t-distribution at the 95-percent confidence level and n-1 degrees of freedom. This critical value is 1.80 for the eleven degrees of freedom when the procedure specified in section 5.1.2 is followed. If the calculated t-value is greater than the critical value the bias is statistically significant and the analyst should proceed to evaluate the correction factor.

6.1.5 Calculation of a correction factor. If the t-test does not show that the bias is statistically significant, proceed to the precision evaluation. If the method's bias is statistically significant, calculate the correction factor, CF using the following equation:

$$CF = \frac{1}{\frac{1+B}{CS}} \qquad \text{Eq. 301-5}$$

Multiply all analytical results by CF to obtain the final values.

6.1.6 Calculation of the relative standard deviation (precision). Calculate the relative standard deviation as follows:

$$RSD = \left(\frac{SD}{S_m}\right) \times 100 \qquad \text{Eq. 301-6}$$

where S_m is the measured mean of the isotopically labeled spiked samples.

6.2 Comparison with Validated Method.

Analyze the data for comparison with a validated method as outlined in sections 6.2.1 through 6.2.2.5. Conduct the following to determine if a proposed method produces results equivalent to a validated method. Make all necessary bias corrections for the validated method, as appropriate. If the proposed method fails either test, the method results are unacceptable, and conclude that the proposed method is not as precise or accurate as the validated method. For some highly cyclic emission sources additional precision checks may be necessary. The analyst should consult with the Administrator if a highly cyclic emission source is suspected.

6.2.1 Paired sampling trains.

6.2.1.1 Precision. Determine the acceptance of the proposed method's variance with respect to the variability of the validated method results. If a significant difference is determined, the proposed method and the results are rejected. Proposed methods demonstrating F-values equal to or less than the critical value have acceptable precision.

6.2.1.2 Calculate the variance of the proposed method. S_p^2, using the following equation:

$$S_p^2 = \frac{\Sigma d_i^2}{2n} \qquad \text{Eq. 301-7}$$

where:

d_i = The difference between the validated method values and the proposed method values.

6.2.1.3 The F-test. Determine if the variance of the proposed method is significantly different from that of the validated method by calculating the F-value using the following equation:

$$F = \frac{S_p^2}{S_v^2} \qquad \text{Eq. 301-8}$$

where:

S_v^2 = the variability of the validated method that is furnished with it.

Compare the experimental F value with the critical value of F. The critical value is 1.0 when the procedure specified in section 5.2.1 for paired trains is followed. If the calculated F is greater than the critical value, the difference in precision is significant and the data and proposed method are unacceptable.

6.2.1.4 Bias analysis. Test the bias for statistical significance by calculating the t-statistic and determine if the mean of the differences between the proposed method and the validated method is significant at the 80-percent confidence level. Determine the bias (the mean of the differences, d_m) and the standard deviation, S_d, of the differences. Calculate the standard deviation of the mean of the differences, SD_d, using Equation 301-2

where:

d_i replaces S_i

d_m replaces S_m

Calculate the t-statistic using the following equation:

$$t = \frac{d_m}{\left(\frac{SD_d}{\sqrt{n}}\right)} \qquad \text{Eq. 301-9}$$

where n is the total number of paired samples. For the procedure in section 5.2.1, n equals nine. Compare the calculated t-statistic with the corresponding value from the table of the t-statistic. When nine runs are conducted, as specified in section 5.2.1, the critical value of the t-statistic is 0.889 for eight degrees of freedom. If the calculated t-value is greater than the critical value the bias is statistically significant and the analyst should proceed to evaluate the correction factor.

6.2.1.5 Calculation of a correction factor. If the method's bias is statistically significant, calculate the correction factor, CF, as follows:

$$CF = \frac{1}{1 + \frac{d_m}{V_m}} \qquad \text{Eq. 301-10}$$

where V_m is the mean of the validated method's values. Multiply all analytical results by CF to obtain the final values. The method results, and the method, are unacceptable if the correction factor is outside the range of 0.9 to 1.10.

6.2.2 Quadruplet sampling trains.

6.2.2.1 Acceptable precision for equivalency. Determine the acceptance of the proposed method's variance with respect to the variability of the validated method results. If a significant difference is determined the proposed method and the results are rejected.

6.2.2.2 Calculate the variance of the proposed method, S_p^2, using Equation 301-7.

6.2.2.3 The F-test. Determine if the variance of the proposed method is significantly different from that of the validated method by calculating the F-value using Equation 301-8. Compare the experimental F value with the critical value of F. The critical value is 1.0 when the procedure specified in section 5.2.2 for quadruplet trains is followed. If the calculated F is greater than the critical value, the difference in precision is significant the results and the proposed method are unacceptable.

6.2.2.4 Bias Analysis. Test the bias for statistical significance at the 80 percent confidence level by calculating the t-statistic. Determine the bias (mean of the differences between the proposed method and the validated method, d_m) and the standard deviation, SD_d, of the differences. Calculate the standard deviation of the mean of the differences, SD_d, using Equation 301-7 where:

$$d_i = \frac{(V_{1i} + V_{2i})}{2} - \frac{(P_{1i} + P_{2i})}{2} \qquad \text{Eq. 301-11}$$

and:

V_{1i} = The first measured value of the validated method in the ith test sample;

P_{1i} = The first measured value of the proposed method in the ith test sample.

Calculate the t-statistic using Equation 301-9 where n is the total number of test sample differences (d_i). For the procedure in section 5.2.2, n equals four. Compare the calculated t-statistic with the corresponding value from the table of the t-statistic and determine if the mean is significant at the 80-percent confidence level. When four runs are conducted, as specified in section 5.2.2, the critical value of the t-statistic is 0.978 for three degrees of freedom.

If the calculated t-value is greater than the critical value the bias is statistically significant and the analyst should proceed to evaluate the correction factor.

6.2.2.4 Correction factor calculation. If the method's bias is statistically significant, calculate the correction factor, CF, using Equation 301-10. Multiply all analytical results by CF to obtain the final values. The method results, and the method, are unacceptable if the correction factor is outside the range of 0.9 to 1.10.

6.3 Analyte Spiking. Conduct sampling as described in section 5.3, and analyze the data for analyte spike testing as outlined in sections 6.3.1 through 6.3.6.

6.3.1 Bias. Calculate the numerical value of the bias using the results from the analysis of the spiked field samples, the unspiked field samples, and the calculated value of the spike:

$$B = S_m - M_m - CS \qquad \text{Eq. 301-12}$$

where:

B = bias at the spike level

S_m = mean of the spiked samples

M_m = mean of the unspiked samples

CS = calculated value of the spiked level.

6.3.2 Determine the precision of the spiked samples. Calculate the difference, d_i, between the pairs of the spiked proposed method measurements for each sampling run. Determine the standard deviation (SD_s) of the spiked values using the following equation:

$$SD_s = \sqrt{\frac{\Sigma d_i^2}{2n}} \qquad \text{Eq. 301-13}$$

where:

n = the number of samples.

6.3.3 Calculate the standard deviation of the mean using Equation 301-3.

6.3.4 Test the bias for statistical significance by calculating the t-statistic using Equation 301-4 and comparing it with the critical value of the two-sided t-distribution at the 95-percent confidence level and n-1 degrees of freedom. This critical value is 1.80 for the eleven degrees of freedom.

6.3.5 Calculaton of a correction factor. If the t-test does not show that the bias is statistically significant use all analytical results without correction. If the method's bias is statistically significant, calculate the correction factor using Equation 301-5. Multiply all analytical results by CF to obtain the final values.

6.3.6 Determination of precision of the unspiked samples. Calculate the standard deviation of the unspiked values using Equation 301-13 and the relative standard deviation of the proposed unspiked method using Equation 301-6.

7. *Ruggedness Testing (Optional)*

7.1 Laboratory Evaluation.

7.1.1 Ruggedness testing is a useful and cost-effective laboratory study to determine the sensitivity of a method to certain parameters such as sample collection rate, interferant concentration, collecting medium temperature, or sample recovery temperature. This section generally discusses the principle of the ruggedness test. A more detailed

description is presented in citation 10 of section 13.0.

7.1.2 In a ruggedness test, several variables are changed simultaneously rather than one variable at a time. This reduces the number of experiments required to evaluate the effect of a variable. For example, the effect of seven variables can be determined in eight experiments rather than 128 (W.J. Youden, Statistical Manual of the Association of Official Analytical Chemists, Association of Official Analytical Chemists, Washington, DC, 1975, pp. 33–36).

7.1.3 Data from ruggedness tests are helpful in extending the applicability of a test method to different source concentrations or source categories.

8. *Procedure for Including Sample Stability in Bias and Precision Evaluations (Optional)*

8.1 Sample Stability.

8.1.1 The test method being evaluated must include procedures for sample storage and the time within which the collected samples shall be analyzed.

8.1.2 This section discusses the procedures for including the effect of storage time in bias and precision evaluations. The evaluation may be deleted if the test method specifies a time for sample storage.

8.2 Stability Test Design. The following procedures should be conducted to identify the effect of storage times on analyte samples. Store the samples according to the procedure specified in the test method.

8.2.1 For sample container (bag or canister) and impinger sampling systems set up in regards to section 5.1 and 5.3, analyze six of the samples at the minimum storage time. Then analyze the same six samples at the maximum storage time.

8.2.2 For sorbent sampling systems set up in regards to section 5.1 and 5.3 that require liquid extraction, extract six of the samples at the minimum storage time and extract six other samples at the maximum storage time. Analyze an aliquot of the first six extracts at both the minimum and maximum storage times. This will provide some freedom to analyze extract storage impacts.

8.2.3 For sorbent sampling systems set up in reference to section 5.1 and 5.3 that require thermal desorption, analyze six samples at the minimum storage time. Analyze another set of six samples at the maximum storage time.

8.2.4 For systems set up in accordance with section 5.2, the number of samples analyzed at the minimum and maximum storage times shall be half those collected (8 or 9).

9. *Procedure for Determination of Practical Limit of Quantitation (Optional)*

9.1. Practical Limit of Quantitation.

9.1.1 The practical limit of quantitation (PLQ) is the lowest level above which quantitative results may be obtained with an acceptable degree of confidence. For this protocol, the PLQ is defined as 10 times the standard deviation, s_o, at the blank level. This PLQ corresponds to an uncertainty of ±30 percent at the 99-percent confidence level.

9.1.2 The PLQ will be used to establish the lower limit of the test method.

9.2. Procedure I for Estimating s_o. This procedure is acceptable if the estimated PLQ is no more than twice the calculated PLQ. If the PLQ is greater than twice the calculated PLQ use Procedure II.

9.2.1 Estimate the PLQ and prepare a test standard at this level. The test standard could consist of a dilution of the reference material described in section 4.0.

9.2.2 Using the normal sampling and analytical procedures for the method, sample and analyze this standard at least seven times in the laboratory.

9.2.3 Calculate the standard deviation, s_o, of the measured values.

9.2.4 Calculate the PLQ as 10 times s_o.

9.3. Procedure II for Estimating s_o. This procedure is to be used if the estimated PLQ is more than twice the calculated PLQ.

9.3.1 Prepare two additional standards at concentration levels lower than the standard used in Procedure I.

9.3.2 Sample and analyze each of these standards at least seven times.

9.3.3 Calculate the standard deviation for each concentration level.

9.3.4 Plot the standard deviations of the three test standards as a function of the standard concentrations.

9.3.5 Draw a best-fit straight line through the data points and extrapolate to zero concentration. The standard deviation at zero concentration is s_o.

9.3.6 Calculate the PLQ as 10 times s_o.

10.0 *Field Validation Report Requirements*

The field validation report shall include a discussion of the regulatory objectives for the testing which describe the reasons for the test, applicable emission limits, and a description of the source. In addition, validation results shall include:

10.1 Summary of the results and calculations shown in Section 6.0.

10.2 Reference material certification and value(s).

10.3 Performance audit results or letter from the reviewing authority stating the audit material is currently not available.

10.4 Laboratory demonstration of the quality of the spiking system.

10.5 Discussion of laboratory evaluations.

10.6 Discussion of field sampling.

10.7 Discussion of sample preparations and analysis.

10.8 Storage times of samples (and extracts, if applicable).

10.9 Reasons for eliminating any results.

11. *Followup Testing*

The correction factor calculated in section 6.0 shall be used to adjust the sample concentrations in all followup tests conducted at the same source. These tests shall consist of at least three sample collections, and the average shall be used to determine the emission rate. The number of samples per sample collection period (run) of the method shall be as follows, depending on the validated method precision level:

11.1 Validated relative standard deviation (hRSD) ≤ ±15 Percent. One sample per run or three total samples.

11.2 Validated RSD ≤ ±30 Percent. Two samples per run or six total samples.

11.3 Validated RSD ≤ ±50 Percent. Three samples per run or nine total samples.

11.4 Equivalent method. One sample per run or three total samples.

12. *Procedure for Obtaining a Waiver*

12.1 Waiver. These procedures may be waived or a less rigorous protocol may be granted for site-specific applications. The following are three example situations for which a waiver may be considered.

12.1.1 "Similar" sources. If the test method has been validated previously at a "similar" source, the procedures may be waived provided the request can demonstrate to the satisfaction of the Administrator that the emission characteristics are "similar." The method's applicability to the "similar" source may be demonstrated by conducting a ruggedness test as described in section 6.0.

12.1.2 "Documented" methods. In some cases, bias and precision may have been documented through laboratory tests or protocols different from this method. If the analyst can demonstrate to the satisfaction of the Administrator that the bias and precision apply to a particular application, the Administrator may waive these procedures or parts of the procedures.

12.1.3 "Conditional" test methods. When the method has been demonstrated to be valid at several sources, the analyst may seek a "conditional" method designation from the Administrator. "Conditional" method status provides an automatic waiver from the procedures provided the test method is used within the stated applicability.

12.2 Application for Waiver. In general, the requester shall provide a thorough description of the test method, the intended application, and results of any validation or other supporting documents. Because of the many potential situations in which the Administrator may grant a waiver, it is neither possible nor desirable to prescribe the exact criteria for a wiaver. At a minimum, the requester is responsible for providing the following.

12.2.1 A clearly written test method, preferably in the format of 40 CFR Part 60, appendix A Reference Methods. The method must include an applicability statement, concentration range, precision, bias (accuracy), and time in which samples must be analyzed.

12.2.2.2 Summaries (see section 10.0) of previous validation tests or other supporting documents. If a different procedure from that described in this method was used, the requester shall provide appropriate documents substantiating (to the satisfaction of the Administrator) the bias and precision values.

12.2.2.3 Results of testing conducted with respect to section 7.0, 8.0, and 9.0.

12.2.3 Discussion of the applicability statement and arguments for approval of the waiver. This discussion should address as applicable the following: Applicable regulation, emission standards, effluent characteristics, and process operations.

12.3 Requests for Waiver. Each request shall be in writing and signed by the analyst. Submit requests to the Director, OAQPS, Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

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Appendix B—Sources Defined for Early Reduction Provisions

Source	Location of definition
1 Organic Equipment Leaks at Chemical Plants.	56 FR 9315, Announcement of Negotiated Rulemaking.

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federal register

Thursday
June 13, 1991

Part V

Department of the Interior

Minerals Management Service

Intent to Prepare an Environmental Impact Statement for Outer Continental Shelf Lease Sale, Beaufort Sea Planning Area; Notice

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
Proposed 1993 Lease Sale in the Beaufort Sea, Lease Sale 144
Call for Information and Nominations
and
Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS

Purpose of Call

The purpose of the Call for Information and Nominations (Call) is to gather information for proposed Outer Continental Shelf (OCS) Lease Sale 144. This proposed sale, located in the Beaufort Sea Planning Area, is tentatively scheduled for the latter part of 1993. Information and nominations on natural gas and oil leasing, exploration, and development and production within the Beaufort Sea Planning Area are sought from all interested parties. This initial planning and consultation step is part of the Area Evaluation and Decision Process and is important for ensuring that all interests and concerns are communicated to the Department of the Interior (DOI) for future decisions in the leasing process pursuant to the OCS Lands Act (43 U.S.C. 1331-1356 (1988)) and regulations at 30 CFR 256. This Call does not indicate a preliminary decision to lease in the area described below. Final delineation of the area for possible leasing will be made at a later date and in compliance with applicable laws including all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the OCS Lands Act, and with established departmental procedures.

Description of Area

The area of Call is located offshore the State of Alaska in the Beaufort Sea. The area available for nominations and comments consists of approximately 5,420 whole and partial blocks (about 29.5 million acres). Respondents may nominate and are asked to comment on any acreage within the entire Call area. A large scale map of the Beaufort Sea Planning Area (hereinafter referred to as the Call map) showing boundaries of the Call area on a block-by-block basis and a complete list of Official Protraction Diagrams (OPD's) are available from the Records Manager, Alaska OCS Region, Minerals Management Service (MMS), 949 E. 36th Avenue, Room 502, Anchorage, Alaska 99508-4302, telephone (907) 261-4621. The OPD's may be purchased from the Records Manager for $2.00 each.

Instructions on Call

Respondents are requested to nominate blocks within the Call area that they would like included in proposed OCS Lease Sale 144. Nominations must be depicted on the Call map by outlining the area(s) of interest along block lines. Respondents are asked to submit a list of whole and partial blocks nominated (by OPD designations) to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are proprietary information.

Respondents are also requested to rank areas nominated according to priority of interest (e.g., priority 1 (high), 2 (medium), or 3 (low). Areas nominated that do not indicate priorities will be considered priority 3. Respondents are encouraged to be specific in indicating areas or blocks by priority.

Blanket priorities on large areas are not useful in the analysis of industry interest. The telephone number and name of a person to contact in the respondent's organization for additional information should be included in the response.

Comments are sought from all interested parties about particular geologic, environmental, biological, archaeological, or socioeconomic conditions, conflicts, or other information that might bear upon potential leasing and development in the Call area. Comments are also sought on potential conflicts with approved local coastal management plans (CMP's) that may result from the proposed sale and future OCS oil and gas activities. If possible, these comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the large-scale Call map.

Nominations and comments must be received no later than 60 days following publication of this document in the Federal Register in envelopes labeled **"Nominations for Proposed Beaufort Sea Lease Sale 144,"** or **"Comments on the Call for Information and Nominations for Proposed Beaufort Sea Lease Sale 144,"** as appropriate. The original Call map with indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, Minerals Management Service, 949 E. 36th Avenue, Room 110, Anchorage, Alaska 99508-4302. Copies of the Call map showing indications of interest and any comments are to be sent to the Program Director, Office of Program Development and Coordination, Department of the Interior, Minerals Management Service, 1849 C Street, NW., MS-4230, Washington, D.C. 20240.

Use of Information from Call

Information submitted in response to this Call will be used for several purposes. First, responses will be used to focus the analysis in the remainder of the sale process on areas indicated as having hydrocarbon potential for oil and gas development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area and to assess the possible need for additional information or studies and/or additional time to resolve potential conflicts. This information will be used to make a preliminary determination of potential advantages and disadvantages of gas and oil exploration and development to the Region and the Nation. A third purpose for this Call is to use the comments to initiate the scoping process for the EIS and analyze alternatives to the proposed action. The Notice of Intent to Prepare an Environmental Impact Statement (EIS) is located later in this document. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore oil and gas activities.

Existing Information

An extensive environmental as well as socioeconomic studies program has been under way in this area since 1975. The emphasis, including continuing studies, has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. A complete listing of available study reports and information for ordering copies may be obtained from the Records Manager, Alaska OCS Region, at the address stated under Description of Area. The reports may also be ordered directly from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephone at (703) 487-4650.

In addition, a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, at the address stated under Instructions on Call or by telephone at (907) 261-4620. Summary Reports and Indices and technical and geologic reports are available for review at the MMS Alaska OCS Region (see address under Description of Area). Copies of the Alaska OCS Regional Summary Reports may also be obtained from the OCS Publications Program, Office of Offshore Information and Publications, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070-4817 or by calling (703) 787-1080.

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

Purpose of Notice of Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), MMS is announcing its intent to prepare an EIS regarding the oil and gas leasing proposal known as Sale 144 in the Beaufort Sea off Alaska. The Notice of Intent also serves to announce the scoping process that will be followed for this EIS. Throughout the scoping process, Federal, State, and local governments and other interested parties aid MMS in determining the significant issues and alternatives to be analyzed in the EIS and the possible need for additional information.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identification procedure as the proposed area of the Federal action. Alternatives to the proposal that may be considered are to delay the sale, cancel the sale, or modify the sale.

Instructions on Notice of Intent

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues that should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under Instructions on Call above. Comments should be enclosed in an envelope labeled **"Comments on the Notice of Intent to Prepare an EIS on the Proposed Beaufort Sea Lease Sale 144."** Comments are due no later than 45 days from publication of this Notice.

Director
Minerals Management Service

Approved:

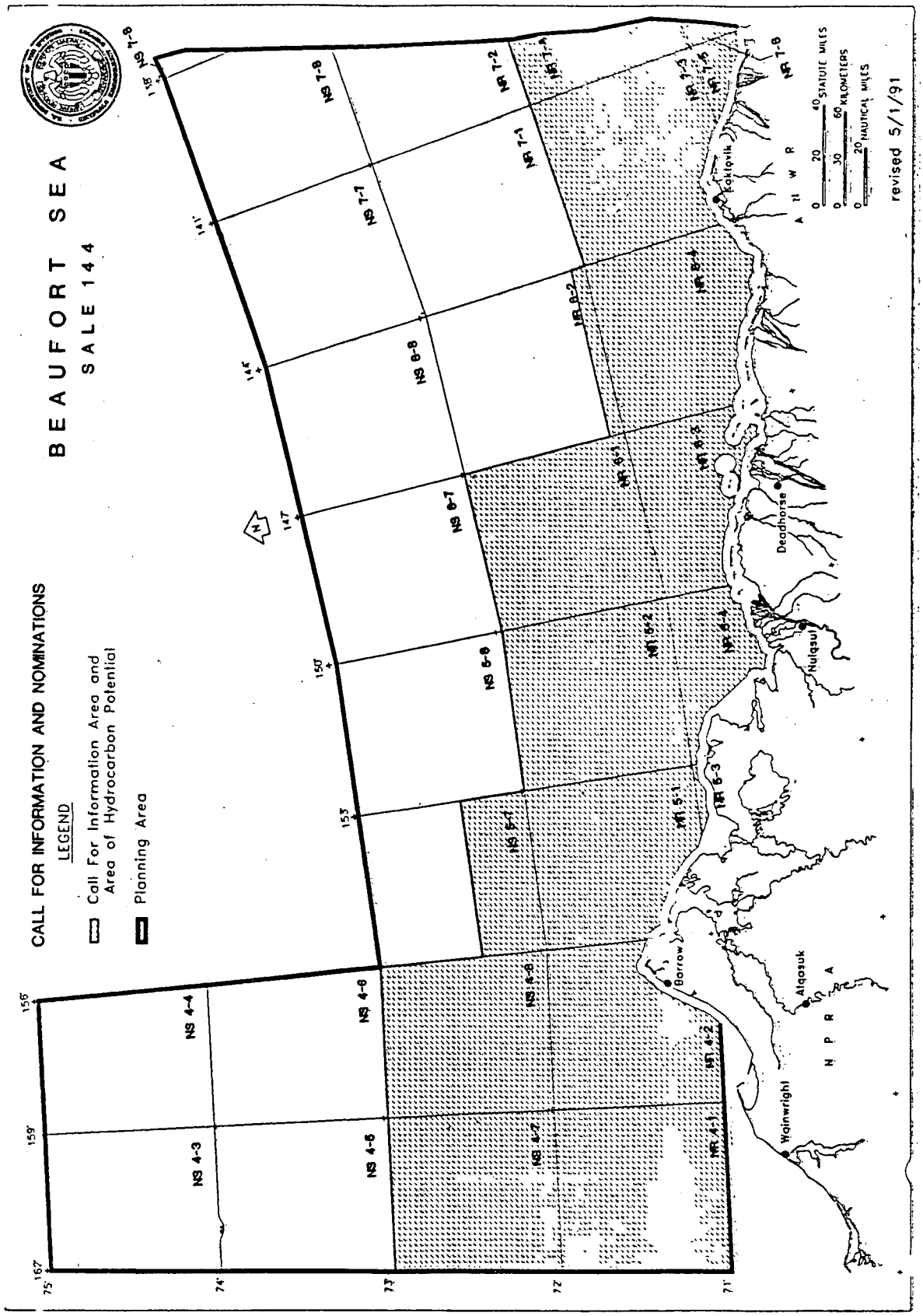
Barry Williamson

Richard Roldan

Assistant Secretary, Land and Minerals Management

6 10 91
Date

Richard Roldan



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federal register

Thursday
June 13, 1991

Part VI

Department of the Interior

Minerals Management Service

Intent To Prepare an Environmental Impact Statement for Outer Continental Shelf Lease Sale, Central Gulf of Mexico Planning Area; Notice

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
Gulf of Mexico OCS Region

Proposed 1993 Lease Sales

Call for Information and Nominations
and
Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS
(Responses Due in 30 Days)

Purpose of Call

The purpose of the Call is to gather information for Outer Continental Shelf (OCS) Lease Sale 142 in the Central Gulf of Mexico (CGOM) Planning Area, tentatively scheduled for March 1993, and OCS Lease Sale 143 in the Western Gulf of Mexico (WGOM) Planning Area, tentatively scheduled for August 1993.

Information and nominations on leasing, exploration, and development and production within the CGOM and WGOM Planning Areas are sought from all interested parties. This initial information-gathering step is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCS Lands Act (43 U.S.C. 1331-1356) (1988)), and regulations at 30 CFR 256. This Call does not indicate a preliminary decision to lease in the area described below.

Description of Area

The general area of this Call covers the entire central and western portions of the Gulf of Mexico between approximately 88 degrees W. longitude on the east and approximately 97 degrees W. longitude on the west and extends from the Federal-State boundaries seaward to the provisional maritime boundary between the United States and Mexico. The entire Call area is offshore the States of Texas, Louisiana, Mississippi, and Alabama. This area is divided into two planning areas.

The CGOM Planning Area is bounded on the east by approximately 88 degrees W. longitude. Its western boundary begins at the offshore boundary between Texas and Louisiana and proceeds southeasterly to approximately 28 degrees N. latitude, thence east to approximately 92 degrees W. longitude, thence south to the provisional maritime boundary with Mexico which constitutes the southern boundary of the area. The northern part of the area is bounded by the Federal-State boundary offshore Louisiana, Mississippi, and Alabama. The area available for nominations and comments consists of about 47.8 million acres.

The WGOM Planning Area is bounded on the west and north by the Federal-State boundary and on the east by the CGOM Planning Area. The area extends south to the provisional maritime boundary with Mexico. The entire area is offshore Texas and, in deeper water, offshore Louisiana. The area available for nominations and comments consists of about 35.9 million acres.

A standard large-scale Call for Information Map depicting each planning area on a block-by-block basis is available without charge from:

Minerals Management Service
Public Information Unit
1201 Elmwood Park Boulevard
New Orleans, Louisiana 70123-2394
Telephone: (504) 736-2519

Areas Deferred from this Call

High Island Area, East Addition, South Extension, (Flower Gardens), Block A-375 and Block A-398 (WGOM).

Area Under Ongoing Discussions with the Navy

The Corpus Christi Naval Operations Area containing 340 blocks has been deferred from leasing in Western Gulf Sales 135 and 141 in accordance with a 1990 agreement with the Navy, but is not being deferred from this Call. The Minerals Management Service (MMS) will institute a review of the area to take into account possible changes in nearby oil and gas discovery and development patterns and will continue discussions with the Navy regarding future activities.

Instructions on Call

Indications of interest and comments must be received no later than 30 days following publication of this document in the Federal Register in envelopes labeled "Nominations for Proposed 1993 Lease Sales in the Gulf of Mexico" or "Comments on the Call for Information and Nominations for Proposed 1993 Lease Sales in the Gulf of Mexico." The standard Call for Information Map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated above.

The standard Call for Information Map delineates the Call area all of which has been identified by the MMS as having potential for the discovery of accumulations of oil and gas. Respondents are requested to indicate interest in and comment on any or all of the Federal acreage within the boundaries of the Call area

that they wish to have included in proposed Sale 142 in the CGOM and proposed Sale 143 in the WGOM.

Although individual indications of interest are considered to be privileged and proprietary information, the names of persons or entities indicating interest or submitting comments will be of public record. Those indicating such interest are required to do so on the standard Call for Information Map by outlining the areas of interest along block lines.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 (high), 2 (medium), or 3 (low)). We encourage respondents to be specific in indicating blocks by priority, as blanket nominations on large areas are not useful in the analysis of industry interest. Areas where interest has been indicated but on which respondents have not indicated priorities will be considered priority 3 (low).

Respondents may also submit a detailed list of blocks nominated (by Official Protraction Diagram and Leasing Map designations) to ensure correct interpretation of their nominations. Specific questions may be directed to the Chief, Leasing Activities Section at (504) 736-2761. Official Protraction Diagrams and Leasing Maps can be purchased from the Public Information Unit referred to above.

Comments are sought from all interested parties about particular geological, environmental, biological, archaeological and socioeconomic conditions or conflicts, or other information which might bear upon the potential leasing and development of particular areas. Comments are also sought on possible conflicts between future OCS oil and gas activities that may result from the proposed sales and State Coastal Management Programs (CMP's). If possible, these comments should identify specific CMP policies of concern, the nature of the conflict foreseen, and steps that the MMS could take to avoid or mitigate the potential conflict. Comments may either be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the standard Call for Information Map.

Use of Information from Call

Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area. This information will be used to make a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the

region and the Nation. A third purpose for this Call is to use the comments collected to initiate the scoping process for the Environmental Impact Statement (EIS) and analyze alternatives to the proposed action. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore operations. Fifth, comments may be used to point out potential conflicts between offshore oil and gas activities and a State CMP.

Existing Information

An extensive environmental studies program has been underway in this area since 1973. The emphasis, including continuing studies, has been on environmental characterization of biologically sensitive habitats, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. A complete listing of available study reports and information for ordering copies can be obtained from the Public Information Unit referenced above. The reports may also be ordered, for a fee, directly from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Telephone: (703) 487-4650.

In addition, a program status report for continuing studies in this area can be obtained from the Chief, Environmental Studies Section, Gulf of Mexico OCS Region (see address under "Description of Area") or by telephone at (504) 736-2896.

Summary Reports and Indices and technical and geological reports are available for review at the MMS, Gulf of Mexico OCS Region (see address under "Description of Area"). Copies of the Gulf of Mexico OCS Regional Summary Reports may also be obtained from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070.

Tentative Schedule

Final delineation of the areas for possible leasing will be made at a later date only after compliance with established departmental procedures, all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and the OCS Lands Act (43 U.S.C. 1331-1356) (1988).

The following is a list of tentative milestone dates preceding CGOM Sale 142 and WGOM Sale 143:

	CGOM Sale 142	WGOM Sale 143
Comments due on the Call	July 1991	July 1991
Notice Of Intent Comments Due (Scoping)	July 1991	July 1991
Area Identification	August 1991	August 1991
Draft EIS published	April 1992	April 1992
Public Hearings held on Draft EIS	May 1992	May 1992
Proposed Notice Issued	May 1992	May 1992
Governors' Comments Due on Proposed Notice	July 1992	July 1992
Final EIS published	September 1992	September 1992
Final Notice of Sale published	February 1993	July 1993
Sale Date	March 1993	August 1993

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT
(Comments Due in 30 Days)

Purpose of Notice of Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et. seq.), the MMS is announcing its intent to prepare an EIS on the oil and gas leasing proposals known as Sale 142 in the CGOM, and Sale 143 in the WGOM, off the States of Texas, Louisiana, Mississippi, and Alabama. The Notice of Intent also serves to announce the scoping process that will be followed for this EIS. Throughout the scoping process, Federal, State, and local governments and other interested parties have the opportunity to aid the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the areas defined in the Area Identification procedure as the proposed areas of the Federal actions. Alternatives to the proposal which may be considered for each sale are to delay the sale, cancel the sale, or modify the sale.

Instructions on Notice of Intent to Prepare an EIS

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated under "Description of Area." Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the proposed 1993 Lease Sales in the Gulf of Mexico." Comments are due no later than 30 days from publication of this Notice. Scoping meetings will be held in appropriate locations to obtain additional comments and information regarding the scope of the EIS.

Director, Minerals Management Service

Approved:

Barry Williamson

Richard Roldan

Assistant Secretary, Land and Minerals Management

Richard Roldan

6 10 91

Date

[FR Doc. 91-14064 Filed 6-12-91; 8:45 am]
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Thursday
June 13, 1991

Part VII

Department of Health and Human Services

Public Health Service

Policies and Procedures for Dealing With Possible Scientific Misconduct in Extramural Research; Notice

Department of Health and Human Services

Public Health Service

Policies and Procedures for Dealing with Possible Scientific Misconduct in Extramural Research

AGENCY: Public Health Service, HHS.

ACTION: Notice of Policies and Procedures.

SUMMARY: The Public Health Service (PHS) is announcing and seeking public comment on its policies and procedures for dealing with possible scientific misconduct in extramural research. These policies and procedures focus on the responsibilities of Federal officials and the relationships among Federal agencies that deal with possible misconduct in science and should be read in conjunction with the regulations previously promulgated which govern the responsibilities of applicant and awardee institutions, 42 CFR part 50, subpart A, "Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science," 54 FR 32449, August 8, 1989.

DATES: Comments on these policies and procedures are invited and must be submitted by August 12, 1991.

ADDRESSES: Written comments should be mailed to Dr. Lyle W. Bivens, Office of Scientific Integrity Review, 5515 Security Lane, Rockwall II Building, suite 11–13, Rockville, MD 20852, 301–443–5300, or delivered to the same location between 9 a.m. and 4 p.m. on weekdays, Federal holidays excepted. Comments received may be inspected at the same location during these hours.

FOR FURTHER INFORMATION CONTACT: Dr. Lyle W. Bivens, 301–443–5300.

SUPPLEMENTARY INFORMATION:

Background

These policies and procedures apply to all instances of possible scientific misconduct involving research, research training, or research-related activities for which funds have been provided or requested under the PHS Act and describe the respective roles and responsibilities of PHS offices and officials in monitoring, investigating, and resolving instances of possible scientific misconduct. They are issued under the authority of sections 201, 493(b), and 501(f) of the Public Health Service (PHS) Act, as amended, 42 U.S.C. 202, 42 U.S.C. 289b(b), and 42 U.S.C. 290aa(f). Notice of the availability of these policies and procedures was previously announced in the **Federal Register** on Oct. 19, 1990, at 55 FR 42490.

Subsequent to publication of that notice, the United States District Court for the Western District of Wisconsin reached a decision in *Abbs and Board of Regents of the University of Wisconsin* v. *Sullivan*, C.A. No. 90–C–0470–C (Dec. 28, 1990), a suit in which Professor Abbs and the Board of Directors of the University of Wisconsin sought to enjoin PHS from investigating alleged scientific misconduct by Professor Abbs. The court ruled in favor of PHS on several issues involving due process, equal protection, and administrative res judicata. The court also ruled on the Administrative Procedure Act (APA) rulemaking requirements under 5 U.S.C. 553 and concluded that PHS failed to follow these requirements in establishing its policies and procedures for investigating possible scientific misconduct in extramural research. However, the decision does not indicate that the court considered the policies and procedures in the context of 42 CFR part 50, subpart A, which sets forth the PHS rules which apply to extramural institutions and scientists, adopted in accordance with APA requirements after consideration of extensive public comments received in response to an advance notice of proposed rulemaking and a notice of proposed rulemaking. The PHS disagrees with the court's ruling on the APA issue and is appealing its decision to the United States Court of Appeals for the Seventh Circuit.

The PHS believes that its policies and procedures, which provide guidance and instructions to PHS offices and officials for monitoring, investigating, and resolving instances of possible scientific misconduct in extramural research, are exempt from APA rulemaking requirements because they are interpretative rules and also fall within the exceptions for agency management, general policy or rules of procedure stated in 5 U.S.C. 553 and because they are based on provisions of 42 CFR part 50, subpart A, which have already been subject to notice and comment rulemaking. However, in order to remove any uncertainty regarding the legal basis for their adoption while the *Abbs* appeal is pending, the PHS has decided to proceed with immediate publication of the proposed policies for public comment. We also invite comments on the consistency of these policies and procedures with the provisions of 42 CFR part 50, subpart A. Following receipt and consideration of such comments as are submitted and adoption of appropriate amendments, the PHS will publish in the **Federal Register** a notice of its final policies and procedures.

In the interim the PHS will continue to follow these policies and procedures in investigating and resolving all instances of possible scientific misconduct in extramural research that do not involve incidents of possible scientific misconduct occurring in the Western District of Wisconsin. This is consistent with the PHS view that the *Abbs* decision on the APA issue is only controlling in the Western District of Wisconsin and is incorrect as a matter of law. Furthermore, the PHS believes that it is essential to proceed with existing and future investigations of possible scientific misconduct in order to protect subjects of misconduct investigations by resolving outstanding allegations against them as soon as possible, and to assure the public of the scientific integrity of research conducted with PHS funds. This approach is consistent with the short time frames for the inquiries and investigations which have been established by the regulations at 42 CFR part 50, subpart A, and these policies and procedures.

Request for Comments

The proposed policies and procedures are essentially the same in substance as the revised policies and procedures which were adopted on August 29, 1990, and for which a notice of availability was published at 55 FR 42490, Oct. 19, 1990. However, editorial and clarifying changes have been made and the document has been reformatted and provided with section numbers to facilitate its use and to make it easier to reference. Note that additional references to existing regulations have been added to clarify that requirements applicable to institutions and individuals outside the PHS are imposed through existing regulations and practices, not the policies and procedures contained in this document.

Language has also been added at several points throughout the document to clarify and explain the role of the Office of Scientific Integrity Review in monitoring the implementation by PHS agencies of these policies and procedures. Finally, the PHS has added a new § 1.13 which states that future revisions to the policies and procedures may be made without notice and comment, where PHS determines that immediate adoption of the revisions are in the public interest or where the revisions are unlikely to elicit substantial public comment or interest. This section is consistent with the PHS position that the APA does not require notice and comment for the proposed policies and procedures and is included in the document in anticipation that the

Abbs decision to the contrary will be reversed on appeal.

The PHS has received a number of informal comments in response to the revised policies and procedures adopted August 29, 1990, expressing disagreement with the PHS policy of publishing findings of misconduct in the **Federal Register**. That policy, announced in the **Federal Register** on December 21, 1990, 55 FR 52327, had been adopted in response to some suggestions from the scientific community asking PHS to provide a regular procedure for notifying grantee institutions, the scientific community, and the general public of PHS findings and actions where scientific misconduct has been found. Upon further consideration, PHS has decided not to publish scientific misconduct findings in the **Federal Register** and to adopt more limited discretionary procedures for appropriate notification to grantee institutions and the scientific community, contained in § 1.11(c) of the proposal. The PHS specifically solicits comments on this issue, including the issue whether interested parties would prefer regular publication in the **Federal Register** of confirmed findings of misconduct. In addition, the PHS welcomes comments and suggestions regarding an appeal structure that should be incorporated in the policies and procedures. Interested parties should provide written comments on the following proposed policies and procedures no later than August 12, 1991, sent to the address set forth above.

Pubic Health Service Policies and Procedures for Dealing With Possible Scientific Misconduct in Extramural Research

Sec.
1.1 Applicability.
1.2 Guiding Principle.
1.3 Assurance.
1.4 Definitions.
1.5 Responsibilities.
1.6 Policy.
1.7 Procedures.
1.8 Interim Administrative Actions.
1.9 Post-investigational Actions.
1.10 Sanctions.
1.11 Sharing of PHS Findings of Misconduct.
1.12 Protection of Records from Release Under FOIA.
1.13 Future Revisions.

Public Health Service—Policies and Procedures for Dealing With Possible Scientific Misconduct in Extramural Research

1.1 Applicability

The policies and procedures described to this document apply to all instances of possible scientific misconduct involving research, research training, or research related activities for which funds have been provided or requested under the Public Health Service (PHS) Act. This guidance is focused on the responsibilities of Federal officials and the relationships among Federal agencies that deal with possible misconduct in science. Responsibilities of applicant/awardee institutions are described in the Final Rule on "Responsibilities of Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science" (42 CFR part 50, subpart A; 54 FR 32446, August 8, 1989). The Final Rule and these policies and procedures describe the respective roles and responsibilities of institutions receiving PHS support and the PHS components providing support under the PHS Act. This guidance does not apply to Food and Drug Administration (FDA) regulated research which is covered by the FDA Bioresearch Monitoring Program (21 CFR parts 50, 56, 312, 812, and 813).

1.2 Guiding Principle

All actions taken by the PHS in response to instances of alleged, apparent, or actual scientific misconduct will be coordinated by the Office of Scientific Integrity (OSI) and take into consideration: (a) Safeguards for the affected parties, e.g., maximum feasible confidentiality, prompt and thorough inquiry and/or investigation, and opportunity to comment on or rebut all relevant allegations and/or findings; (b) the rights of informants, e.g., protection of their privacy to the maximum extent possible; (c) the need to ensure that the interests of the Government and the public are protected and (d) a commitment to ensuring the integrity of scientific research.

1.3 Assurance

The OSI is responsible for maintaining a list of institutions with satisfactory assurances under 42 CFR 50.103, and for making this information available to review, program, and grants management staff. No award may be made to an institution unless it has submitted a satisfactory assurance.

1.4 Definitions

"Misconduct" or "misconduct in science" is defined at 42 CFR 50.102 as fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting or reporting research. It does not include honest error or honest differences in interpretations or judgments of data.

"Funded by" means the provision of monetary support for grants, cooperative agreements, fellowships, contracts, or interagency agreements, and includes subgrantees, subcontractors and individuals who work on the funded research project even though they do not receive compensation from the Federal funds.

"Institution", as defined at 42 CFR 50.102, means the public or private entity or organization (including Federal, state, and other agencies) that is applying for or is a recipient of financial assistance from the PHS, e.g. through grants or cooperative agreements, including continuation awards, whether competing or noncompeting. The organization assumes legal and financial accountability for the awarded funds and for the performance of the supported activity.

"Investigator" means the principal investigator, the coinvestigator(s), the program director or trainee(s) on a training grant, the recipient of a career award or fellowship or any other individual who conducts or is responsible for research or research training funded under the PHS Act.

"Inquiry", as defined at 42 CFR 50.102, means information-gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

"Investigation", as defined at 42 CFR 50.102, means the formal examination and evaluation of all relevant facts to determine if misconduct has occurred. As carried out by the OSI, investigations evaluate the seriousness of misconduct, and, if possible, determine responsibility. If misconduct has already been confirmed, an investigation may nonetheless be necessary to determine the extent of any adverse effects resulting from the misconduct and any necessary remedial or follow-up actions (e.g., publications requiring retraction).

The "PHS ALERT" or "Public Health Service ALERT Records Concerning Individuals Under Investigation for Possible Misconduct in Science or Subject to Sanctions for Such Misconduct" is a system of records under the purview of the Privacy Act (47 FR 20381, May 12, 1982 (original publication), 56 FR 1310, January 11, 1991 (last publication)). The PHS ALERT is used for collecting, controlling, and disseminating to PHS officials on a need-to-know basis information that an individual applying for or currently (1) is under investigation for possible misconduct or a decision has been made to undertake such an investigation, or (2) has been subjected to a sanction at the conclusion of an investigation for

misconduct (e.g. debarment by the Secretary, DHHS, from government-wide eligibility, including for research funding, for non-procurement activities under non-procurement debarment and suspension common rule and for procurement activities under the Federal Acquisition Regulations; disqualification by the Food and Drug Administration (FDA) from use of investigational drugs or other restrictions placed on such use; or in the case of scientists employed by the PHS, termination of employment). The information is used to aid PHS officials in making informed decisions regarding PHS funds or other benefits to that individual, but such information does not automatically result in a withholding of funds or other benefits. More detailed information on this system may be requested from the Director, OSI.

"Agency" or "funding agency" means each of the PHS agencies, as well as the awarding units within the Office of the Assistant Secretary for Health (OASH).

"Component" refers to the organizational units within an agency that have the delegated authority to conduct and/or make awards for scientific activities, e.g., Bureaus, Centers, Institutes, Divisions, or Offices.

"Program" is a set of plans and activities for a specific area of scientific or technical subject matter within the mission of a component.

"MPO" means Misconduct Policy Officer, i.e., the official designated by the agency administrator or component director to oversee and coordinate PHS, agency, or component implementation of policies related to misconduct in science. Such designation need not entail creation or change in title of a position, provided the functions described in this issuance can be appropriately discharged.

"OSI", as defined at 42 CFR 50.102, means the Office of Scientific Integrity, a component of the Office of the Director, of the National Institutes of Health (NIH), which oversees the implementation of all PHS policies and procedures related to scientific misconduct; monitors the individual investigations into alleged or suspected scientific misconduct conducted by institutions that receive PHS funds for biomedical or behavioral research projects or programs; and conducts investigations as necessary. OSI conducts inquiries or investigations upon request by the institution or, if in the judgment of the OSI, an institution cannot conduct or has not conducted an investigation that adequately resolves the issue(s). (See 54 FR 11080, March 16, 1989, for a statement of organization, functions, and delegations of authority relating to OSI).

"OSIR", as defined at 42 CFR 50.102, means the Office of Scientific Integrity Review, a component of the Office of the Assistant Secretary for Health (OASH), which is responsible for establishing overall PHS policies and procedures for dealing with misconduct in science, overseeing the activities of PHS research agencies, including the OSI, to ensure that these policies and procedures are implemented, and reviewing all final reports of investigations to assure that any findings and recommendations are sufficiently documented. The OSIR also makes final recommendations to the Assistant Secretary for Health on whether any sanctions should be imposed and, if so, what they should be in any case where scientific misconduct has been established. (See 54 FR 11080, March 16, 1989, for a statement of organization, functions, and delegations of authority relating to OSIR).

1.5 Responsibilities

(a) Applicant and awardee institutions have primary responsibility for preventing, detecting, investigating, reporting and resolving possible or alleged scientific misconduct. However, it is expected that there will be a close working relationship between institutions and the PHS in fulfilling these responsibilities in accordance with 42 CFR part 50, subpart A, and these policies and procedures.

(b) The Director of the Office of Scientific Integrity (OSI) is responsible for overseeing the implementation of all PHS policies and procedures related to scientific misconduct, monitoring the individual investigations into alleged or suspected scientific misconduct conducted by institutions that receive PHS funds for biomedical or behavioral research projects or programs, and conducting investigations upon request by an institution or if an institution cannot conduct or has not conducted an adequate investigation.

(c) The Director of the Office of Scientific Integrity Review (OSIR) is responsible for establishing overall PHS policies and procedures for dealing with misconduct in science, overseeing the activities of OSI and the PHS research agencies to ensure that these policies and procedures are implemented, and reviewing all final reports of investigations to assure that any findings and recommendations are sufficiently documented. The OSIR also makes final recommendations to the Assistant Secretary for Health on whether any sanctions should be imposed and, if so, what they should be in any case where scientific misconduct has been established. When in OSIR's judgment it is necessary to do so, OSIR may conduct its own investigation.

(d) The Assistant Secretary for Health (ASH), DHHS, is responsible for making final decisions regarding sanctions in cases of confirmed misconduct. In cases where debarment is recommended, the ASH will forward his recommendations to the DHHS debarment official.

(e) The Head of each PHS agency will:

(1) Provide leadership to ensure prompt reporting to the OSI of alleged or apparent misconduct in scientific activities currently or previously funded by the agency, or for which support has been requested;

(2) In consultation with the OSI, decide whether or not interim administrative actions should be taken to protect Federal interests during investigations of possible scientific misconduct;

(3) Identify an agency MPO.

(f) The Director of each awarding component will:

(1) Provide leadership to ensure implementation of these policies and procedures;

(2) Contribute to recommendations, as appropriate, to the Agency Head and the OSI on specific cases;

(3) Decide, in consultation with the agency head and OSI, on interim administrative actions to protect Federal interest during investigations of possible misconduct;

(4) Identify an individual to be the MPO for the component.

(g) The OSI shall maintain, update (as necessary), and distribute a list of names of individuals who have been appointed as agency-level and/or component-level MPOs.

(h) The OSI, in coordination with the OSIR, will work with MPOs to:

(1) Implement and, as appropriate, revise policies and procedures for dealing with possible scientific misconduct;

(2) Provide guidance to Agency staff regarding policies and procedures for dealing with possible misconduct in science;

(3) Coordinate intra- and inter-agency activities as necessary:

(4) Recommend to the agency head interim administrative actions, where appropriate;

(5) Provide guidance in collaboration with the Office of Extramural Research, NIH, (or comparable office(s) at other PHS agencies) and grants management staff to awardee institutions regarding their responsibilities for promoting adherence to high ethical standards in science and for dealing with instances of possible misconduct.

(i) Agency-level MPOs will:

(1) Make available to staff within the agency information on policies and procedures related to scientific misconduct;

(2) Notify the administrator of the agency, and when appropriate, other officials within the agency, of possible scientific misconduct;

(3) Ensure prompt reporting to the OSI of suspected or alleged misconduct;

(4) As requested, consult with the OSI on strategies for investigating alleged misconduct and/or recommendations for sanctions in cases of confirmed misconduct. Component-level MPOs will perform comparable functions with their respective components and will ensure prompt reporting of possible misconduct to the agency MPO.

(j) The Director of the OSI will create, maintain, and update records in the PHS ALERT. Entries will be made when there is:

(1) An investigation into possible scientific misconduct, and

(2) Implementation of sanctions based on the findings of an investigation. Immediately upon the completion of an investigation that does not confirm misconduct or justify continuance in the system, and upon the expiration of sanctions when misconduct has been found, the Director, OSI will remove the name from the PHS ALERT, and notify the named individual of the action.

(k) The OSI will promptly bring cases exclusively involving allegations other than scientific misconduct, e.g., possible misuse of Federal funds or other possible illegal acts, to the attention of the agency or department unit that has jurisdiction for such matters. Cases that also involve possible scientific misconduct will generally be handled jointly by the OSI and the other cognizant unit.

(l) The Office for Protection from Research Risks (OPRR), Office of Extramural Research, NIH, is responsible for investigating alleged or apparent violations of either DHHS regulations governing the protection of human subjects or PHS animal welfare policies by recipients of PHS research funds. Cases also involving alleged scientific misconduct will require coordination between the OSI and OPRR.

(m) The OSI shall consult throughout all aspects of its operations with the Office of General Counsel (OGC) on matters that involve current or potential litigation, require legal interpretation, or relate to other potential legal issues.

(n) The OSI shall refer all matters arising during an inquiry or investigation that involve a potential criminal violation to the Office of Inspector General (OIG). Where the OIG or another law enforcement agency is conducting a related investigation into potential criminal violations (or when it is likely that such an investigation will be conducted), that agency must be consulted during the scientific misconduct inquiry/investigation.

(o) The OSI shall consult promptly with non-PHS Federal agencies, e.g., the Department of Veterans Affairs or the National Science Foundation, on investigations that involve funding from those agencies to assure that the agencies are properly informed and investigations are effectively coordinated.

(p) The Division of Public Information, Office of Communication, NIH, will coordinate with the OSI (and where appropriate, other funding agency public inquiry offices) concerning inquiries from the media regarding cases of possible or confirmed misconduct. Any information provided in response to media requests should conform to the Freedom of Information Act policies as stated in section 1.12; "Protection of Records from Release Under the FOIA". Thus, information about scientific misconduct investigations will be provided only in those cases where there was a finding of misconduct, and the case has been closed. Press releases related to misconduct in science must be cleared by the agency's public affairs office, the OSI, OSIR, and the Office of the Secretary, DHHS, and if a release contains adverse information about an individual or an organization it must be issued in accordance with 45 CFR part 17.

(q) The OSI, in consultation with the funding agency and appropriate legislative offices, shall coordinate responses to Congressional inquiries directed to funding agencies regarding scientific misconduct policies and/or investigations. These responses shall be forwarded, through OSIR and the PHS Executive Secretariat, to the Deputy Assistant Secretary for Legislation (ASL) (Health) for approval before submission to Congress. In cases where the inquiry is directed to the PHS, the OSIR will consult with OSI, as appropriate, and will develop a response and forward it through the PHS Executive Secretariat to the Deputy ASL (Health).

(r) The OSI will provide to OSIR information on ongoing investigations that have been reported to OSI or that are being conducted by OSI. This information will include the date the investigation was begun, who is conducting the investigation, the name of the subject(s), the institution(s) involved, the nature of the allegation, and any special circumstances or concerns surrounding the case. OSI will also provide to OSIR completed inquiry reports which conclude that an investigation is not warranted. Additional information will be provided upon request or as special circumstances arise, such as litigation, significant and controversial new issues, or matters likely to come to the attention of the Assistant Secretary for Health or the Secretary. This includes information on ongoing inquiries which have special significance in terms of level of staff effort, public visibility or sensitivity, or are otherwise likely to come to the attention of senior Department staff. OSI will also provide to OSIR any information needed for reports to senior departmental officials, other Federal agencies, or to Congress or needed to conduct any special reviews or studies of the implementation of PHS misconduct policies.

1.6 Policy

(a) General

(1) The OSI, the OSIR and MPOs throughout the PHS will make a continuing effort to inform agency staff, scientific review groups, national advisory councils/boards (or equivalents) and the scientific community of the regulations, policies and procedures applicable to misconduct in science and to emphasize the importance placed on this matter by PHS.

(2) The OSI shall coordinate all PHS actions taken in response to instances of alleged or actual scientific misconduct. Actions taken by the PHS will be guided by the following principles:

(i) Safeguarding the interests and rights of respondents in scientific misconduct inquiries and investigations through maintaining maximum feasible confidentiality, conducting a prompt and thorough inquiry/investigation, providing the respondent(s) ample opportunity to suggest witnesses and present evidence, timely access to significant information pertinent to the misconduct issues being pursued in an inquiry/investigation (unless such disclosure would violate individual confidentiality or significantly impair the inquiry/investigation), right to representation by an attorney, and opportunity for reviewing, and providing written comments on, and written rebuttal of, the findings of an inquiry/investigation as well as on any proposals for sanctions in cases where misconduct has been confirmed;

(ii) Protecting to the maximum extent possible the rights of informants, e.g.,

protecting them against retaliation for allegations brought in good faith, protecting their privacy to the maximum extent feasible; and

(iii) Safeguarding the interests of the Government and the public.

(b) Conduct of Inquiries/Investigations

OSI conducts inquiries or investigations into allegations of misconduct in science upon request by the institution(s) that would otherwise have responsibility for the inquiry/investigation under 42 CFR part 50, subpart A, or, if in the judgment of the OSI, an institution cannot conduct or has not conducted an investigation that adequately resolves the issues(s). In this regard, see 42 CFR 50.104 (a) (6). The procedures that would normally be followed by the OSI in conducting inquiries/investigations are set forth below.

(1) *Dealing with subjects of an inquiry/investigation.* When the OSI decides to initiate an inquiry or investigation, the individuals who are to be the subjects of the inquiry or investigation, the institutions where the subjects are currently employed and the institutions where they were employed at the time of the alleged misconduct, shall be notified of that fact before the inquiry or investigation commences, unless the OIG or a law enforcement agency conducting a related investigation requests otherwise. (See also § 1.7 (c)(2).) This notification will include information on the nature of the allegations or concerns and the focus of the inquiry or investigation. Subjects will also be informed of all allegations and issues that are being pursued in the inquiry/investigation and the opportunity to provide comments and other relevant information to the OSI, and, to be personally interviewed by OSI. Interviews are transcribed and interviewees are provided with a copy of the transcript and an opportunity to correct it and provide additional comments. Subjects of the inquiry or investigation may be represented by counsel, may propose witnesses to be interviewed, and may recommend members of any expert advisory panel convened by OSI to assist with the inquiry or investigation. No opportunity is provided for subjects to confront and cross-examine other witnesses interviewed by OSI. During the course of the inquiry or investigation, the subjects are provided access to any research data under review, may freely submit evidence to the OSI, both orally and in writing, and rebut issues and evidence under review by the OSI in the same manner, and are provided with an opportunity to review and comment on significant investigatory documents identified by OSI unless such disclosure would violate individual confidentiality or significantly impair the investigation. At the conclusion of the inquiry or investigation, subjects are provided with an opportunity to comment on and rebut the report and findings and subsequently to comment on proposed sanctions, if any.

(2) *Dealing with informants.* (i) If an informant requests anonymity, the OSI will make every effort to honor that request.

(ii) When an informant has made allegations to the OSI instead of to the pertinent institution, the OSI will review those allegations to determine if there are grounds for opening an inquiry. If so, the OSI will provide all pertinent information to the institution, requesting that the institution conduct an inquiry (the source of the allegation(s) will not be identified if he or she requests anonymity). If the institution is unable or unwilling to initiate its own inquiry, the OSI will conduct the inquiry and investigation, as appropriate, and maintain contact with and seek further information from the informant, as necessary.

(iii) The OSI will also maintain contact with and seek further information from informants when it otherwise conducts inquiries and/or investigations as provided in these policies and procedures.

(iv) When the OSI concludes an inquiry or investigation, the person who made the allegations will normally be provided with the parts of the draft report pertinent to his or her allegations, and provided an opportunity to review and comment on it. This is done in part to ensure the accuracy and completeness of the inquiry or investigation.

(c) Independent Review of Investigations

At the conclusion of an investigation, subjects are provided by OSI with an opportunity to comment on and rebut the proposed investigative findings and sanctions, if any. Following incorporation of any changes made in response to such comments, OSI will forward proposed findings and sanctions and any comments and rebuttal made by the subject(s), to OSIR for its independent review. OSIR will review this material for thoroughness, completeness and objectivity. If OSIR believes that any changes in investigative conclusions or proposed sanctions are appropriate, OSIR will consult with OSI to reach a final conclusion. OSIR will then prepare a decision memorandum for the ASH containing final recommendations for findings and sanctions for those found culpable of scientific misconduct. Fine decisions on misconduct findings and sanctions are made by the ASH, except for any proposed debarment which must be approved by the Deputy Assistant Secretary for Management and Acquisition and at the request of the individual is subject to review de novo at an administrative hearing as set forth at 45 CFR part 76.

(d) Availability of Information on Ongoing Inquiries or Investigations

(1) As a general rule, allegations or information developed in the course of an ongoing inquiry or investigation will be available only to the appropriate agency-level or component MPO, agencies conducting related investigations, the OSIR, and individuals who are involved in or associated with the actual conduct of an investigation or have direct responsibility for an ongoing or pending award. The OSI will inform other PHS agencies and/or other Federal organizations if OSI knows that such agencies have an active or pending award that might be affected; the information is pertinent to a decision to appoint an individual as an advisor, consultant, or reviewer; or the information is relevant to the regulatory responsibilities of another agency.

(2) Review of grant/cooperative agreement applications and contract proposals for scientific merit will ordinarily not be delayed by concerns about possible misconduct or by a pending or ongoing inquiry or investigation. To avoid influencing the review process, PHS awarding units generally will not inform members of scientific or objective review groups about instances of possible misconduct or the status of ongoing investigations. However, if certain instances have received such extensive publicity that the review may be compromised, the agency-level MPO should consult with the OSI as to whether the review should be deferred or the reviewers be informed about the status of activities with regard to the possible misconduct. Findings from completed investigations should be shared with scientific review groups whenever an accurate disclosure of the facts in the case is necessary to the objectivity and thoroughness of the review process.

(3) Directors of awarding components will normally consult with the OSI and the agency-level MPO and seek the advice of their national advisory councils/boards (or equivalents) on a potential competing grant, cooperative

agreement, or contract award to an individual under investigation by the awardee institution or by the OSI. When a non-competing award is involved, the OSI and component agency-level MPOs will be consulted.

(4) In responding to any request(s) from a non-DHHS source for information about ongoing investigations, agency staff shall maintain the confidentiality of such information to the greatest extent possible under the provisions of the Freedom of Information Act (FOIA), the Privacy Act, and other applicable law. To the extent permitted by law, agency personnel will protect the identity, if desired by the subject, of any person who is the subject of an inquiry that is terminated without triggering an investigation or any person for whom an investigation fails to confirm misconduct. Also, to the extent permitted by law, it is PHS policy to protect the identities, if desired by the persons affected, of those who in good faith report apparent misconduct or furnish information about such apparent misconduct.

1.7 Procedures

(a) Reporting of Possible Misconduct

(1) PHS staff who receive a report or suspect an instance of possible misconduct shall immediately and confidentially inform the OSI and the component level MPO. The component-level MPO will then notify the director of the awarding component and the agency MPO. Documentation regarding possible scientific misconduct should not be placed in the official grant or contract file.

(2) The awarding component's MPO should document and assemble all information the component has received or that is deemed to be important to the full understanding of the possible misconduct, and should forward all such information immediately to the OSI.

(3) To the extent possible, the indentity of informants who do not wish to be known will be kept confidential.

(4) During the conduct of the initial review of applications, the Initial Review Group (IRG) may identify instances of suspected or possible misconduct, e.g., suspicions regarding possible plagiarism or questionable data in support of the proposed research.

The Executive Secretary of the IRG, in consultation with the IRG chairperson, his or her supervisor, and Section Chief (or Institute, Center or Division (ICD) Review Branch Chief) as necessary, must first determine, from the discussions of the IRG, if the review may proceed. Generally, what appears to be a relatively "minor" impropriety such as the unattributed use of small amounts of textbook material in the Background section of the application would not prevent the IRG from providing a fair review. The general principle is that if the IRG is able to provide an unbiased technical/scientific merit review, unaffected by the suspicions of misconduct, it should do so. Subsequently, the concerns of the IRG will be forwarded by the Executive Secretary to the OSI and the cognizant MPO for resolution.

In all such cases of suspected misconduct, it is essential that the Executive Secretary stress to the reviewers the seriousness of such allegations and the potential harm that may result if confidentiality is not strictly maintained. In addition, it is important for the Executive Secretary to assure the consultants that the suspicions identified will be taken seriously and pursued by the PHS.

In no instance shall the Executive Secretary or an IRG member communicate the IRG's concerns to the principal investigator or applicant institution. Instead immediately following the initial review group meeting, it is the responsibility of the Executive Secretary to communicate these concerns to the OSI and the cognizant MPO. As soon as possible thereafter, formal written communication of the concerns and the precise details of the IRG discussion will be forwarded to the OSI by the Executive Secretary through the Section Chief (or ICD Review Branch Chief or other PHS equivalent) and the cognizant MPO. Any subsequent communications with the principal investigator and/or applicant institution will be done only through the OSI.

It is important that the preparation of the summary statement be carefully monitored by the Section Chief (or the ICD Review Branch Chief or other PHS equivalent), in consulation with the OSI, to ensure that only appropriate details of the IRG's concerns are expressed in that document. In addition, the Executive Secretary should carefully monitor the priority scoring of the reviewers for that application. If it appears that the scoring has been influenced by concerns of possible misconduct, the Executive Secretary, in consultation with the Section Chief (or ICD Review Branch Chief or other PHS equivalent) and the OSI, should administratively defer the application for resolution of the identified issues.

During the conduct of the initial review, if it is determined that a fair review of an application cannot be carried out by any appropriate initial review group because of the existence of reviewers' concerns about possible misconduct, immediate deferral of the application is the correct course of action. The procedures for notifying the OSI and the MPO are the same as outlined above. The OSI will attempt to resolve the concerns so that the review may be completed during the next review cycle. If the IRG'S concerns are subsequently allayed, review of the application should proceed to conclusion at the subsequent meeting. However, if the concerns remain, and if it is not appropriate or possible for the review to proceed, the application should be deferred while the OSI proceeds with the necessary steps to examine the identified issues.

(5) The OSI will gather all pertinent information available within the Federal sector and review all information available on the reported possible misconduct to determine if the matter appears to fall under the responsibility of the OSI and whether substantive information is available to warrant further action. When the OSI is not responsible for all or parts of the matter, it will be transferred to the appropriate agency or office for further evaluation and possible action. If the information reveals a possible situation of misconduct, it will be referred to the extramural institution for action under the provisions of the Final Rule, or, if the institution is unable or unwilling to pursue the matter, pursued directly by the OSI.

(6) The OSI, in consultation with other offices as appropriate, will review all reports and allegations to determine if there is a possibility of criminal misconduct. If this possibility exists, the OSI shall ensure that the matter is referred through appropriate channels to the OIG and shall coordinate efforts if a related investigation is initiated. If the applicant/awardee institution obtains a reasonable indication of possible criminal violations, the OSI must be informed within 24 hours. OSI will immediately notify the OIG.

(b) Inquiries

(1) If an allegation is brought to the attention of an institution, and it conducts an inquiry that indicates there is no need for an investigation, there is no requirement that this be reported to the OSI other than in aggregate form in the institution's annual report or as requested by OSI consistent with 42 CFR 50.103(d)(6).

(2) If an allegation is brought to the attention of the OSI, and an inquiry is warranted, the institution will be expected to carry out this responsibility,

but if, in the judgment of OSI, there is demonstrable unwillingness or inability of the institution to conduct a thorough and fair inquiry, then the OSI will conduct the inquiry. In such instances, the rationale for this decision will be documented in the case file. If the institution conducts the inquiry at the request of the OSI, a copy of the inquiry report shall be provided to the OSI as soon as it is completed.

(3) When OSI conducts an inquiry or requests an institution to do so, the OSI shall direct that a search be made to identify all ongoing or pending PHS awards or applications involved in the case so that:

(a) As appropriate, all awarding components within each agency potentially involved, including review staff, may be informed; and

(b) The potential effects of any misconduct on the investigator's eligibility for ongoing or pending research support is duly considered.

(4) As a general rule, no more than 60 days should elapse between the reporting of an instance of possible misconduct and the completion of an inquiry, whether the inquiry is conducted by the institution or the OSI. However, in some circumstances 60 days may not be sufficient time. If the inquiry takes longer than 60 days to complete, the record of the inquiry shall include documentation of the reasons for exceeding the 60-day period. At the conclusion of an inquiry conducted by the OSI, the determination as to whether to proceed with an investigation shall be documented. In the case of a report of an inquiry conducted by an institution at the request of the OSI, the OSI will review the Inquiry Report for objectivity, thoroughness and fairness. If the OSI accepts an institutional inquiry finding that an investigation is not warranted, that decision shall be documented and the institution appropriately notified. The OSI will provide the Inquiry Report to the OSIR.

(5) The determination of whether an inquiry justifies a formal investigation will be made on a case-by-case basis, and will consider the following factors:

(i) An evaluation of the composition of the institution's inquiry panel for scientific expertise and objectivity;

(ii) The accuracy and reliability of the source of information about the possible misconduct;

(iii) The scope of the incident(s) and the context in which it (they) became known;

(iv) The extent to which the alleged misconduct was thoroughly and expertly reviewed;

(v) Explanations and information, if any, provided by the subject(s) of the inquiry or other individuals interviewed;

(vi) Other information developed during the inquiry; and

(vii) The weight of the evidence.

The OSI will keep the cognizant agency and component MPOs fully informed of its decisions with respect to the need for an inquiry or investigation.

(c) Investigations

(1) As provided at 42 CFR 50.104(a)(1), an awardee institution's decision to initiate an investigation must be reported to the OSI on or before the date the investigation begins. The OSI will notify OSIR that an institutional investigation is being initiated. The OSI generally will defer formal fact-finding of its own pending receipt of the results of the institutional investigation. The OSI may request and review the institution's policies and procedures for dealing with possible scientific misconduct. The OSI will work with the institution as necessary to assist it in planning and carrying out an objective and thorough investigation.

(2) When the OSI decides to initiate an investigation, individuals that are to be investigated, and their institutions will be notified immediately in writing by the OSI. The written notification will include identification of the issues that are the focus of the investigation, together with a description of the process by which the investigation will be conducted. The respondent will be informed of the procedures to be followed; the institution will be advised about its responsibilities relative to the OSI investigation. The OSI will also inform OSIR that it is beginning an investigation.

(3) As a general rule, every reasonable effort should be made to complete an investigation and the report of findings within 120 days of initiation of the investigation. This time frame will, however, depend heavily on such factors as whether or not the instance of possible misconduct was an isolated event or part of a repeated pattern, whether the subject has already admitted culpability or disputes the allegations or other information suggesting his/her culpability, and other circumstances and complexities that may require time-consuming pursuit of facts. If an institution's investigation and the attendant report of findings cannot be completed in 120 days, the institution must notify the OSI and request an extension, which includes a progress report and an estimated date for completion. If an OSI investigation cannot be completed within 120 days, an interim report and an estimated schedule for completion of the final report must be prepared for OSIR, at the 120-day point. In both instances, a status report must be provided (by the institution to the OSI; by the OSI to the OSIR) every 60 days thereafter until the report of investigative findings is completed.

(4) If the matter involves an investigation of possible scientific misconduct and a concurrent investigation of criminal or other allegations is conducted by the Department of Justice, the Federal Bureau of Investigation or the Office of Inspector General (OIG), without the knowledge of the individual or institution, the OSI will consult with the agency's unit in whose jurisdiction the case falls, and will notify both the awarding component's MPO and its director as to what information, if any, may be disclosed to the subject(s) of the investigation. Disclosure should be made only after consultation with the OSI and appropriate OIG or other law enforcement officials. Depending upon the circumstances, the OSI may suspend or terminate its investigation in favor of the concurrent investigation.

(5) At the time of the decision to conduct an investigation, the OSI shall enter the name of the individual under investigation and the name of the relevant institution(s) in the "PHS ALERT".

(6) The methods and procedures for conducting an investigation will necessarily vary depending on a number of factors, including but not limited to: the nature of the allegation/evidence; the source(s) of information; the extent to which a pending application or current award(s) may be involved; whether an awardee institution has already conducted and documented its own investigation, and the extent to which documentation is available; the degree of publicity associated with the case; and any involvement of law enforcement agencies.

(7) An investigation may consist of a combination of activities such as, but not limited to:

(i) Review of readily available documents that the agency has already received from involved individuals and/or the institution;

(ii) Review of documents from the awarding component, the awardee institution or elsewhere;

(iii) Review of administrative procedures and/or methods at the awardee institution, including whatever investigative process the institution followed in dealing with the instance at hand;

(iv) Inspection of laboratory or clinical facilities, research materials, notebooks, research records or other products of research, and/or administrative records at the awardee institution;

(v) Interview of parties involved in or knowledgeable about the case; and

(vi) prompt receipt and evaluation of original primary data that form the basis for formal reports or are used as preliminary data on PHS applications. (Normally, institutions will be asked to promptly secure the original primary data, providing the investigator reasonable, but controlled, access to that data.)

(8) The draft report of an OSI investigation will be made available to the subject(s) of the investigation and to cognizant institutional officials who will be given 30 days to review and comment on it. Extension of the 30-day period may be granted if circumstances warrant. The comments of the subject(s) will be appended to the investigative report, but any material that would constitute an unwarranted invasion of privacy will be deleted. Comments will be given full consideration, and where appropriate, the investigative report will be revised or expanded. In addition, the subject(s) of the investigation will be given an opportunity to comment on proposed sanctions.

If they can be identified, the person(s) who raised the allegation should normally be provided with the parts of the draft investigative report normally pertinent to their allegation, and provided an opportunity to review and comment on it.

(9) The OSI shall be responsible for ensuring that appropriate consultation takes place among representatives of the involved awarding component(s), OGC, review staff and any other involved offices or agencies.

(10) If individuals who are not Federal employees are to be asked to participate in an OSI investigation as expert advisers, site visitors to the awardee institution, or in some other capacity, they must be appointed in a manner that ensures the official nature of their involvement and provides them with such legal protection as is available to Federal employees.

1.8 Interim Administrative Actions (For Pending Applications and Active Grants)

(a) Prior to completion of an investigation and consistent with 42 CFR 50.103 (d)(4) and 50.104 (a)(7) and (b), the component-level MPO may, on the basis of facts established in the investigation, recommend to the director of the awarding component that interim administrative actions be taken to protect the welfare of human or animal subjects or research, prevent inappropriate use of federal funds, or otherwise protect the public interest and safety. This recommendation shall be made only after consultation with the OIS, OGC, the agency MPO, and senior grants and/or contract management officials.

Interim actions affecting more than one awarding component should be discussed with the agency head(s) and senior grants and/or contract officials.

If an investigation is being conducted by a law enforcement agency or the OIG, the MPO should:

(1) Consult with OSI and OGC before recommending any action that might disclose or otherwise compromise the investigation, and

(2) Consult with the OSI, OGC, and OIG prior to implementing any administrative actions.

(b) The following principles should guide the selection of any interim administrative actions:

(1) Any interim restriction should be taken with a view toward protecting the rights of all involved parties and minimizing disruption to the project, the institution, and the activities of those involved in the project. It is particularly important to ensure the proper use of public funds, i.e., to ensure the fitness of the investigator to carry out PHS-supported research. Any interim action must comply with the procedures that would normally apply to the action, including appropriate notification to the institution.

(2) Interim action should be taken promptly if an investigation reveals serious failure to comply with the requirements for the protection of human or animal subjects, or the welfare of such subjects of research is or has been jeopardized. In such cases, the OSI will consult immediately with OPRR to determine how the human and/or animal subjects issues will be handled.

(3) An interim action may be initiated when information established during the course of an investigation indicates the need for such action. Temporary restrictions that are imposed should be reviewed periodically and modified, if warranted by additional facts or findings.

(c) To the extent permitted by law, interim administrative actions may include, but are not limited to, the following:

(1) Total or partial suspension of an award in accordance with 45 CFR 74.114 or Sec. 92.43;

(2) Total or partial suspension of eligibility of the subject(s) of an investigation for financial assistance (grants or cooperative agreements) in accordance with DHHS debarment regulations (45 CFR part 76) and for contracts in accordance with applicable regulations (48 CFR part 9, subpart 9.4 and 48 CFR part 309, subpart 309.4).

(3) Proscription or restriction of certain research activities, i.e., restrictions to protect any human or animal subjects of research whose welfare may be in jeopardy, such action to be taken in accordance with respectively, 45 CFR part 46 and the PHS Policy on the Humane Care and Use of Laboratory Animals.

(4) Grant conditions requiring special certification, assurances or other administrative arrangements to ensure that specific activities are carried out in a manner reflecting the responsible conduct of research and/or in compliance with applicable regulations or terms of the award and providing for recovery of funds if the conditions are not met (see 42 CFR 52.9 authorizing the imposition of conditions on grant awards when necessary to protect the public health or ensure the conservation of grant funds);

(5) More restrictive requirements for prior approval imposed as a condition of any grant awards in accordance with 42 CFR 52.9 and 45 CFR 74.103;

(6) Deferral of funding a noncompeting grant or cooperative agreement see 42 CFR 52.6(b)(3);

(7) Delay of award of a competing grant or cooperative agreement [see 42 CFR 52.5(b)];

(8) Delaying a contract award (see 48 CFR 52.214–10 and 52.215–16); and

(9) Restriction or suspension of the use of individuals under investigation as advisors or consultants to the agency [see 42 USC 282 (b)(6) and 42 CFR 52.5, 52h.3, and 52h.4].

(d) If not otherwise provided in the procedures governing the interim actions OSI and the awarding component will ensure that the subject(s) of the inquiry-investigation and the institution involved will be notified in writing in advance of the action and given an opportunity to make a written response unless there is an imminent risk of loss of Federal funds or of injury to humans or animal subjects of research.

(e) All interim administrative actions that are taken, and the reasons for taking them, must be fully and promptly recorded in the investigative files of the OSI. Information recorded in the official grant or contract files shall be limited to the minimum necessary to implement the action(s) and maintain confidentiality.

1.9 Post-Investigational Actions

(a) As provided at 42 CFR 50.104 (a) and (b), upon receipt of an institution's final report of investigation, the OSI will review the investigative report and supporting documentation to determine if the investigation was performed in a timely manner and with sufficient objectivity, thoroughness, and competence. The OSI may ask the institution to provide additional information and if necessary perform its own investigation. In making decisions on pursuing its own investigations, the OSI will be guided by the statutory and regulatory direction that primary responsibility for the conduct of investigations and inquires lies with the institution, but the OSI reserves the right to perform its own investigation at any time prior to, during, or following an institution's investigation.

(b) In the case of an investigation conducted by an institution, the OSI will assemble a panel consisting of the Director, OSI, Deputy Director, OSI, and appropriate agency and/or component: level MPOs to evaluate the findings of the investigation and where appropriate, to make recommendations for sanctions (see 42 CFR 50.104 (a)(7) authorizing the imposition of sanctions by PHS). The Director, OSI may add other senior agency officials or other individuals to the panel as appropriate to accomodate the complexity and seriousness of the situation. The OSI will prepare a decision memorandum regarding disposition of the case, and will forward this memorandum and the proposed final report of investigative findings for concurrence to the Director, OSIR, routed through the agency head.

(c) Upon completion of an OSI investigation, the investigative team, after receiving comments on a "draft report" and proposed sanctions, as appropriate, from the complainant, respondent(s), and institution(s) shall prepare a final written report summarizing its findings. This report shall be provided to the cognizant MPO(s) and (where appropriate) the director(s) of the awarding component(s) for review and comment. The report, and any essential documentation to support the findings, together with the OSI recommendations for disposition of the case, including sanctions, where appropriate, will then be forwarded to the OSIR through the agency head.

(d) If there is an ongoing related law enforcement investigation, the OSI will provide the OIG an opportunity to review the report prior to releasing it.

(e) OSIR will independently review the proposed final report and recommendations prepared by OSI, any comments, rebuttal and relevant documentation submitted by the subject(s) of the investigation, and any other documentation from the OSI file deemed material by OSIR, in determining whether to concur with the proposed report and recommendation. OSIR may request investigation, if warranted, or ask OSI to communicate directly with the subject(s) of the investigation if there are any questions regarding comments or documentation submitted by the subject(s) or other parties to the investigation. If OSIR does not agree with any part of the report or recommendations, it will consult with OSI regarding any needed modifications to the report and recommendations. Following this review, OSIR will prepare a decision memo for the ASH, containing final recommendations regarding investigative findings and sanctions for those found culpable of scientific misconduct. Any proposed debarment must also be approved by the Deputy Assistant Secretary for Management and Acquisition.

(f) An investigation is not considered closed until concurrence with the OSI recommendations has been obtained from the OSIR, final decisions have been made by the ASH regarding sanctions (if any) or by the Deputy Assistant Secretary for Management and Acquisition if debarment or suspension of eligibility for financial assistance or contracts is the proposed sanction, and the subject(s) of the investigation and cognizant institutional officials have been notified in writing about the outcome of the decision-making process on sanctions. Notification shall be made by the Director, OSI.

(g) When an investigation confirms an instance of misconduct, the following procedures shall apply:

(1) When the ASH has taken final action on the investigation, the OSI will notify in writing the subject(s) of the investigation and appropriate institutional official(s) of the disposition of the case.

If the case involves an OSI review of an institutional investigation, the notification shall include a summary, or copy, of the PHS decisions made regarding the investigation and the sanctions imposed by the ASH. If a debarment is involved, the notification shall explain the debarment process.

If the case involves an OSI investigation, the notification shall include the final report and a summary, or copy, of the PHS decisions made regarding the investigation and the sanctions imposed by the ASH. If a debarment is involved, the notification shall explain the debarment process.

(2) OSI shall provide a copy of the notification to the component-level and agency-level MPO(s), the director of the awarding component, the person making the allegation (if known), members of the OSI investigative team, if any, and the OSIR.

(3) The director of the awarding component shall terminate any interim administration actions imposed during the investigation and apply the sanctions approved by the ASH.

(4) The OSI shall ensure that PHS ALERT system file(s) on the case are updated for the duration of any approved sanctions.

(5) The OSI shall prepare a notice that identifies publications found in the investigation to require correction or retraction for publication in the NIH Guide for Grants and Contracts.

(h) When an investigation fails to confirm an instance of misconduct, the following procedures shall apply:

(1) After concurrence from the OSIR has been received, the OSI shall notify in writing the subject(s) of the investigation, and appropriate institutional official(s).

If the case involves an OSI review of an institutional investigation, the notification shall include a summary, or copy, of the PHS decisions made regarding the investigation.

If the case involves an OSI investigation, the notification shall include the OSI report of the investigation and a summary, or copy, of the PHS decisions made regarding the investigation.

(2) The OSI shall provide a copy of the notification to the component-level and agency-level MPO(s); the director of the awarding component; the person making the allegation (if known); members of the OSI investigative team, if any, and the OSIR.

(3) The director of the awarding component shall terminate any existing interim administration actions.

(4) The OSI shall ensure that any files created on the case are removed promptly from the PHS ALERT System.

(5) If a competing application or proposal is pendng or anticipated in the near future, the component-level MPO will consult with the OSI and officials responsible for review in order to identify any actions needed to ensure the objectivity of the review, e.g., informing the Executive Secretary and reviewers of the outcome of the investigation. Generally, such an action should be taken only if there is reason to believe that reviewers have received incomplete or misleading information

about the case, or have knowledge of the alleged misconduct from other sources.

(6) The OSI may prepare a notice on the findings and final disposition of the case for publication in the **Federal Register** if the accused desires such action.

(7) The OSIR shall prepare a case summary for the ASH.

1.10 Sanctions

Factors that should be considered in determining appropriate sanctions include but are not limited to the following:

(a) Need for reasonable consistency in the application of sanctions, i.e., violations of the same type or degree generally would call for the same kind of sanction(s);

(b) The nature of the misconduct, i.e., was the violation deliberate, the result of carelessness, or was it caused by factors that might not have been reasonably foreseen or controlled;

(c) Whether the incident of misconduct was an isolated event or part of a pattern; and

(d) The degree of seriousness or gravity of the violation (e.g., were data fabricated or falsified, or was human life or well-being jeopardized).

The sanctions listed below are not all-inclusive, and are provided for guidance. They are classified by degree of severity, ranging from those that constitute minimal restrictions (Group I) to those that are the most restrictive (Group III). They do not include possible criminal sanctions and/or civil monetary penalties, which may be applicable in some cases. In addition to the following sanctions, PHS may also seek to recover funds if they were expended for research that was fabricated, falsified or otherwise invalid because of misconduct in science and recovery from the institution is otherwise deemed appropriate. In accordance with statutory and regulatory authority, such recovery may be sought through cost disallowances, negotiation with the institution, offset against other PHS grants to the institution or through a civil recovery action in Federal Court.

Group I Sanctions

- Send a letter of reprimand for improper action to the individual and/or institution (see 42 CFR 50.104 (a)(7)).
- Require, for a specified period of time, that an individual, department, and/or institution obtain from the funding agency special prior approval of particular activities as a condition of award (see 42 CFR 52.9 and 45 CFR 74.7).
- Require, for a specified period of time, that an institutional official other than the individual found culpable of misconduct certify the accuracy and integrity of information provided in applications and/or reports generated under an award (see 42 CFR 52.9 and 45 CFR 74.7).
- Require, for a specified period of time, for any application or award, that the institution must provide a plan for supervision or oversight of scientific activities of the individual found guilty of misconduct (see 42 CFR 52.4 (f) and 52.9 and 45 CFR 74.7).

Group II Sanctions

- Pursuant to 42 CFR 52.6 and 52.9 and 45 CFR 74.7, restrict, for a specified period of time, specific activities or expenditures under an active award.
- Pursuant to 42 CFR 52.5 and 52h.8, require, for a specified period of time, special reviews of all requests for funding from the affected individual and/or institution to ensure that all reasonable steps have been taken to prevent repetition of the misconduct.
- Pursuant to the discretionary appointment authority of PHS components, restrict participation of involved individuals on peer review committees, advisory groups or in other related PHS activities for a specified period of time (see 42 CFR 52.5, 52h.3, and 52h.4).

Group III Sanctions

- Immediately suspend/terminate (an) active award(s) in accordance with 45 CFR 74.110–74.116.
- Withhold funding for specific future non-competing grants or contracts in accordance with 45 CFR 52.6 (b) (2)(and (3).
- Debar or suspend the individual for specified period of time, declaring him or her ineligible, pursuant to 45 CFR part 76, for any participation in Federal grants and cooperative agreements, and, pursuant to 48 CFR subparts 9.4 and 309.4, contracts. (This action may be taken only by the Deputy Assistant Secretary for Management and Acquisition, OS.)

1.11 Sharing of PHS Findings of Misconduct

(a) The PHS ALERT should be used to implement post-investigational sanctions. Information retained in the official grant or contract file shall be limited to the minimum necessary to implement the action(s), in order to avoid unintended damage to individual reputations and prospects for funding. More detailed information will be maintained by the OSI.

(b) To ensure timely notice to the scientific community, the OSI shall prepare a notice for publication in the NIH Guide for Grants and Contracts identifying any publications found in a formal investigation to require correction or retraction. These notices will be indexed by the National Library of Medicine in the "comments" section of its Medline service.

(c) OSI may share investigational findings, including associated commentaries/rebuttals from the involved individual(s), department(s), and/or institution(s), with other PHS agencies, HHS agencies and non-Federal agencies or organizations, e.g., licensing boards, professional associations and journals, in accordance with the relevant provisions of the Privacy Act, Privacy Act System notice (pending publication), and the Freedom of Information Act. These actions should be reserved for cases of confirmed misconduct in which the seriousness of the misconduct, e.g., widespread dissemination of fabricated research findings, warrants sharing of information about the involved individual(s) and/or institution(s) with other Federal or non-Federal groups and/or organizations. These actions are not mandatory, but may be taken when the circumstances warrant. Decisions concerning such actions should be made jointly by the OSI and OSIR, in consultation with the OGC and the cognizant MPO(s).

1.12 Protection of Records From Release Under the FOIA (See also "Policy" item 12)

1. While an inquiry and/or investigation is pending, all records will be withheld from disclosure to the extent permitted by the FOIA. An inquiry is considered closed when a finding is made by the OSI that no investigation is warranted and that finding is communicated in writing to the subject(s) of the inquiry. An inquiry also is considered closed when a decision is made to conduct an investigation. However, the inquiry records automatically become part of the investigation records, and thus, are handled as indicated below.

An investigation is considered closed when one of the following events occurs:

(a) The investigative findings fail to confirm misconduct, and the subject(s) of the investigation is notified in writing of that finding.

(b) The investigative findings confirm misconduct; all final actions on the imposition of sanctions, including debarment if proposed, are completed; and the findings and final decisions are

communicated in writing to the subject(s) of the investigation and the institution involved in the investigation. An investigation will not be considered closed where a civil recovery action or criminal prosecution is proposed, and the Department of Justice or the Office of the Inspector General has requested that the confidentiality of the records be maintained.

2. Records of closed inquiries in which there is not a finding of scientific misconduct will be withheld from disclosure to the extent permitted by the FOIA, unless a written request or written consent for disclosure is made by the subject(s) of the inquiry.

3. Records of closed investigations in which there is not a finding of scientific misconduct will be withheld to the extent permitted by the FOIA, unless a written request or written consent for disclosure is made by the subject(s) of the investigation.

4. The following records will be disclosed under the FOIA where there is a finding of misconduct in a closed investigation: The inquiry report of the OSI, if one has been prepared, and the final report of the OSI; all decision documents; all transcripts of any debarment hearing and legal briefs filed in debarment proceedings. Portions of these records may be withheld as specified below, and case-by-case determination will be made regarding the disclosure of other records requested under the FOIA. The PHS will normally withhold internal communications that are within a generally recognized evidentiary privilege and other records or portions of records if their disclosure (a) would constitute an unwarranted invasion of personal privacy or (b) would disclose investigative techniques, would interfere with enforcement proceedings or with an impartial adjudication, or would reveal confidential sources or endanger the physical safety of any individual.

1.13 Future Revisions

Future revisions to these policies and procedures may be made without advance notice and comment, where the Public Health Service determines that their immediate adoption is in the public interest or that such revisions are unlikely to elicit substantial public comment or interest. Such revisions will be published in final as a notice in the **Federal Register**.

Accordingly, the Public Health Service proposes to adopt the foregoing policies and procedures for dealing with possible scientific misconduct in extramural research.

Dated: April 15, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91-14063 Filed 6-12-91; 8:45 am]

BILLING CODE 4160-17-M

federal register

Thursday
June 13, 1991

Part VIII

The President

Proclamation 6303—National Scleroderma Awareness Week, 1991

Proclamation 6304—Independence Day, 1991

Executive Order 12765—Delegation of Certain Defense Related Authorities of the President to the Secretary of Defense

Federal Register
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Thursday, June 13, 1991

Presidential Documents

Title 3—

The President

Proclamation 6303 of June 11, 1991

National Scleroderma Awareness Week, 1991

By the President of the United States of America

A Proclamation

Scleroderma, which literally means "hard skin," is a connective tissue disorder in which excessive amounts of the protein collagen accumulate in the skin. In addition to the skin, scleroderma affects small blood vessels, muscles, and joints. It may also damage internal organs such as the esophagus, lungs, kidneys, and heart.

Although scleroderma can strike men and women of any age, it occurs most often in women during their childbearing years. The disease is often painful, and it may cause disfigurement, disability, and even death. The impact on victims and their families—in terms of both physical and emotional suffering—is enormous.

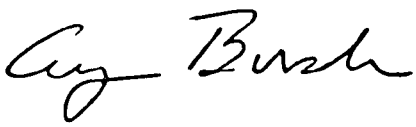
Fortunately, progress is being made in determining the cause of scleroderma and in developing more effective treatments for the disease. Researchers have developed an animal model that will help them to understand more about the nature and the progression of scleroderma. They have also made an important finding in the discovery of abnormalities in collagen-producing cells, known as fibroblasts, among scleroderma victims. Furthermore, they have found that treatment with specific agents, such as d-penicillamine, may retard the hardening of collagen in the skin.

As is the case with any other disease, it is very important to diagnose scleroderma in its early stages. Timely intervention, coupled with sound treatment, can improve the quality of life enjoyed by people with scleroderma until research yields a cure.

To enhance public awareness of scleroderma, the Congress, by House Joint Resolution 219, has designated the week beginning June 9, 1991, as "National Scleroderma Awareness Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning June 9, 1991, as National Scleroderma Awarness Week. I encourage the people of the United States to observe this week with appropriate programs and activities that will enhance their understanding of scleroderma and the need for continued research.

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



[FR Doc. 91-14323
Filed 6-12-91; 11:45 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 6304 of June 11, 1991

Independence Day, 1991

By the President of the United States of America

A Proclamation

On July 4, 1776, with a firm reliance on the protection of Divine Providence, our Nation's Founders boldly declared America's Independence and affirmed the truth "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." They did so knowing that they risked nothing less than their lives, their fortunes, and their sacred honor. On this occasion, we celebrate that profound act of faith and courage and give thanks for the rich legacy of freedom that this country has enjoyed ever since.

That legacy has enabled us to enjoy unparalleled levels of security and prosperity, and it has inspired millions of people around the world in their own struggles for liberty and self-government. Thus, every picnic and parade, every backyard barbecue and public display of fireworks that makes the Fourth of July a favorite summer holiday carries deeper symbolism and meaning. Each resonates with the singular joy of a free people.

This year we are particularly grateful for the blessings of liberty because we have been reminded of the price that many brave and selfless individuals have been willing to pay to secure them. Just months ago, when forces led by a brutal tyrant invaded a small, defenseless country—raping, pillaging, and threatening not only the stability of an entire region but also vital interests of all freedom-loving peoples—thousands of courageous Americans answered the call of duty. Our celebration of Independence Day, 1991, is dedicated in a special way to them—to the regulars, reservists, National Guardsmen, and members of the United States Merchant Marine who helped to liberate Kuwait.

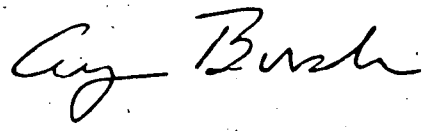
Of course, as we honor our Persian Gulf veterans, we also remember in prayer each of their comrades who made the ultimate sacrifice in service to our country. We salute with great pride and gratitude the military personnel who offered vital support for our mission from bases here at home and around the world, and we pay due tribute to all those who have served in the United States Armed Forces.

The Americans who fought tyranny and lawlessness in the Persian Gulf have upheld, once again, the principles that were first affirmed on these shores 215 years ago when our Nation's Founders elected "between submission or the sword." On this Independence Day—a day marked by triumphant homecomings and by the promise of a safer, more peaceful world—it is fitting that we recall the words that Thomas Jefferson wrote shortly before his death on July 4, 1826:

> All eyes are opened, or opening, to the rights of man . . . . These are grounds of hope for others. For ourselves, let the annual return of this day forever refresh our recollections of these rights, and an undiminished devotion to them.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby ask all Americans to join in celebrating this 215th anniversary of our Nation's Independence with appropriate ceremonies and activities.

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



[FR Doc. 91-14324
Filed 6-12-91; 11:46 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12765 of June 11, 1991

Delegation of Certain Defense Related Authorities of the President to the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, and my authority as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

Section 1. The Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by section 749 of title 10 of the United States Code to assign the command without regard to rank in grade to any commissioned officer otherwise eligible to command when two or more commissioned officers of the same grade or corresponding grades are assigned to the same area, field command, or organization.

Sec. 2. The Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by section 7299a(a) of title 10 of the United States Code to direct that combatant vessels and escort vessels be constructed in a Navy or private yard, as the case may be, if the requirement of the Act of March 27, 1934 (ch. 95, 48 Stat. 503) that the first and each succeeding alternate vessel of the same class be constructed in a Navy yard is inconsistent with the public interest.

Sec. 3. For vessels, and for any major component of the hull or superstructure of vessels to be constructed or repaired for any of the armed forces, the Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by section 7309(b) of title 10 of the United States Code to authorize exceptions to the prohibition in section 7309(a) of title 10 of the United States Code. Such exceptions shall be based on a determination that it is in the national security interest of the United States to authorize an exception. The Secretary of Defense shall transmit notice of any such determination to the Congress, as required by section 7309(b).

Sec. 4. The Secretary of Defense may redelegate the authority delegated to him by this order, in accordance with applicable law.

Sec. 5. This order shall be effective immediately.

THE WHITE HOUSE,
June 11, 1991.

[FR Doc. 91-14322
Filed 6-12-91; 11:45 am]
Billing code 3195-01-M

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