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January 9, 1992

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

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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: January 31, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202-523-5240.
DIRECTIONS: North on 11th Street from Metro Center to southwest corner of 11th and L Streets

Contents

Federal Register
Vol. 57, No. 6
Thursday, January 9, 1992

Agricultural Marketing Service
See Packers and Stockyards Administration

Agriculture Department
See also Animal and Plant Health Inspection Service; Farmers Home Administration; Packers and Stockyards Administration; Rural Electrification Administration
NOTICES
Agency information collection activities under OMB review, 875

Alcohol, Tobacco and Firearms Bureau
NOTICES
Commerce in explosives:
Explosive materials list, 950

Animal and Plant Health Inspection Service
RULES
Agricultural quarantine and inspection services; user fees (Hawaii and Puerto Rico), 755
Interstate transportation of animals and animal products (quarantine):
Poultry affected by salmonella enteritidis, 776
PROPOSED RULES
Plant-related quarantine, domestic:
Apricots, persimmons, and pomegranates from Sonora, Mexico, 846

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control
NOTICES
Meetings:
Challenge of multidrug-resistant tuberculosis; building a coalition, 917

Central Intelligence Agency
NOTICES
Nondisclosure obligations and prepublication review; access to and release of Official information, 876

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Florida, 876

Commerce Department
See Export Administration Bureau; International Trade Administration; National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Export visa requirements; certification, waivers, etc.:
Yugoslavia, 884

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 953
(2 documents)

Conservation and Renewable Energy Office
NOTICES
Consumer product test procedures; waiver petitions:
Armstrong Air Conditioning, Inc., 899
Consolidated Industries Corp., 901
Thermo Products, Inc., 903
Trane Co., 904

Defense Department
See also Navy Department
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 884–886
(5 documents)

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Olefsky, Alan H., M.D., 928

Employment and Training Administration
NOTICES
Adjustment assistance:
General Motors Corp., 931
Johnson & Johnson Consumer Products, Inc., et al., 931
Stroehmann Bakeries, Inc., 932
Teledyne Wisconsin Motor, 933
Unemployment compensation:
Ex-servicemembers; remuneration schedule, 933

Energy Department
See also Conservation and Renewable Energy Office; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department
PROPOSED RULES
Nuclear safety management; contractor and subcontractor activities; and radiation protection for occupational workers, 955
NOTICES
Environmental statements; availability, etc.:
St. Louis Site, MO, 887
Powerplant and industrial fuel use; new electric powerplant coal capability; compliance certifications:
United Technologies Corp. et al., 906

Environmental Protection Agency
PROPOSED RULES
Hazardous waste:
Land disposal restrictions—
Newly identified and listed wastes and contaminated debris, 958
NOTICES
Air pollution control; new motor vehicles and engines:
California pollution control standards
Hearing, 909
Meetings:
Environmental Policy and Technology National Advisory Council, 912
Science Advisory Board, 912
Toxic and hazardous substances control:
Premanufacture notices receipts, 913
(2 documents)

Executive Office of the President
See Central Intelligence Agency

Export Administration Bureau
NOTICES
Meetings:
Militarily Critical Technologies List Implementation Technical Advisory Committee, 876

Farmers Home Administration
RULES
Program regulations:
Servicing and collections—
Loans secured by real estate; final payment, 774

Federal Aviation Administration
RULES
Airworthiness directives:
Air Cruisers Co., 779
Boeing, 780–783
(3 documents)
British Aerospace, 784, 786
(2 documents)
Dassault Aviation, 787
McDonnell Douglas, 789, 791
(2 documents)
Turbomeca, 792
PROPOSED RULES
Airworthiness directives:
Airbus Industrie, 855
General Electric Co., 857
NOTICES
Airport noise compatibility program:
Noise exposure map—
Albuquerque International Airport, NM, 949

Federal Communications Commission
RULES
Common carrier services:
Public mobile services—
Cellular service; unserved areas applications, 829
Domestic public cellular radio service; cellular telephones use in aircraft, airborne and on ground; and cell enhancers use, 830
Radio stations; table of assignments:
Texas, 831
PROPOSED RULES
Radio stations; table of assignments:
Louisiana, 866
Texas, 867, 868
(2 documents)
Virginia, 867
Television broadcasting:
Cable television systems—
National television networks; common ownership prohibition elimination, 868
Television stations; table of assignments:
Arkansas, 866

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 953

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Marshall Islands, 914
Texas, 914

Federal Energy Regulatory Commission
RULES
Electric utilities (Federal Power Act):
Generic determination of rate of return on common equity for public utilities; CFR Part removed, 802
Natural Gas Policy Act and natural gas companies (Natural Gas Act):
Facilities construction and replacement
Technical conference; questions, 794
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
UtiliCorp United Inc. et al., 891
Environmental statements; availability, etc.:
Northwest Pipeline Corp. et al., 892
Hydroelectric projects relicensing:
Indiana Michigan Power Co. et al., 893
Natural gas certificate filings:
Arkla Energy Resources et al., 894
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 896
Columbia Gas Transmission Corp., 896
East Tennessee Natural Gas Co., 897
El Paso Natural Gas Co., 897
Granite State Gas Transmission, Inc., 898
(2 documents)
Mississippi River Transmission Corp., 898, 899
(2 documents)
Pacific Gas Transmission Co., 899
Transwestern Pipeline Co., 899

Federal Maritime Commission
NOTICES
Agreements filed, etc., 915
Organization, functions, and authority delegations:
Trade Monitoring and Analysis Bureau et al., 915

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Bank of Montreal et al., 915
NGLC, Inc., et al., 916
Valley Bancorporation, 916
Western Commerce Bank, 916

Fish and Wildlife Service
NOTICES
Meetings:
Klamath River Basin Fisheries Task Force, 921
Migratory birds, protocol on subsistence hunting; agreement on interpretation and implementation, 922

Food and Drug Administration
PROPOSED RULES
Human drugs:
Antimicrobial products, topical (OTC)—
First aid antiseptic products; tentative final monograph; correction, 858

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 884–886
(5 documents)

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration; National Institutes of Health; Social Security Administration

Health Care Financing Administration
NOTICES
Medicaid:
State plan amendments, reconsideration; hearings—Tennessee, 917

Hearings and Appeals Office, Energy Department
NOTICES
Special refund procedures; implementation, 907

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
PROPOSED RULES
Income taxes:
Securities lending transaction payments, 860
Hearing, 859

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Administrative protective orders; violations sanctions, 877
Countervailing duties:
Chrome-plated lug nuts and wheel locks from China, 877
Steel wire nails from—Thailand, 879
Export trade certificates of review, 883

International Trade Commission
NOTICES
Import investigations:
Potassium hydroxide from Canada, Italy, and United Kingdom, 924

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Norfolk & Western Railway Co.; correction, 956

Justice Assistance Bureau
NOTICES
Grants and cooperative agreements; availability, etc.:
Mariel Cubans, incarcerated; State reimbursement program, 927

Justice Department
See also Drug Enforcement Administration; Justice Assistance Bureau
PROPOSED RULES
Practice and procedure rules:
Foreign Corrupt Practices Act opinion procedure; antibribery provisions, 862
NOTICES
Pollution control; consent judgments:
Accurate Partitions et al., 925
Asarco, Inc., 925
Dixon, William C., et al., 926

Labor Department
See also Employment and Training Administration
NOTICES
Agency information collection activities under OMB review, 930

Land Management Bureau
NOTICES
Meetings:
Idaho Falls District Grazing Advisory Board, 921
Resource management plans, etc.:
Medicine Lodge Resource Area, ID, 921

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 953, 954 (4 documents)

Minerals Management Service
PROPOSED RULES
Royalty management:
Gas product valuation
Valuation benchmark system, 865
NOTICES
Agency information collection activities under OMB review, 924

National Aeronautics and Space Administration
RULES
Acquisition regulations:
Miscellaneous amendments, 831
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 884–886 (5 documents)

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 954

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Challenge/Advancement Advisory Panel, 934
Media Arts Advisory Panel, 934

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Child restraint systems—
Built-in child restraint system; definition expansion, 870

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 919
National Institute of Allergy and Infectious Diseases, 918, 919 (2 documents)
National Institute of Diabetes and Digestive and Kidney Diseases, 920
National Institute of Environmental Health Sciences, 920
National Institute on Aging, 918
National Library of Medicine, 920, 921 (2 documents)

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic surf clam and ocean quahog, 844
NOTICES
Marine mammals:
Commercial fishing operations; tuna (yellowfin) caught with purse seines in eastern tropical Pacific Ocean; incidental taking and importation—
Ecuador et al., 883
Meetings:
New England Fishery Management Council, 883

National Science Foundation
NOTICES
Meetings:
DOE/NSF Nuclear Science Advisory Committee, 934
Engineering Centers Division Advisory Panel, 934
Federal Network Council Advisory Committee, 935

Navy Department
NOTICES
Environmental statements; availability, etc.:
Marine Corps Base, Camp Lejeune, NC; wastewater treatment system upgrade, 886

Nuclear Regulatory Commission
PROPOSED RULES
Fee schedules; revision, 847
NOTICES
Agency information collection activities under OMB review, 935
Environmental statements; availability, etc.:
Detroit Edison Co., 935
Regulatory guides; issuance, availability, and withdrawal, 937
(2 documents)
Applications, hearings, determinations, etc.:
Arizona Public Service Co. et al., 938
Baltimore Gas & Electric Co., 938
Portland General Electric Co., 940
Southern California Edison Co. et al., 941

Packers and Stockyards Administration
NOTICES
Red meat packing industry; concentration study design, 875

Public Health Service
See Centers for Disease Control; Food and Drug Administration; National Institutes of Health

Railroad Retirement Board
RULES
Railroad Unemployment Insurance Act:
Sickness benefits, 806

Rural Electrification Administration
RULES
Electric and telephone loans:
General and pre-loan policies and procedures common to insured and guaranteed electric loans, 1044

Securities and Exchange Commission
NOTICES
Agency information collection activities under OMB review, 941
Meetings; Sunshine Act, 954
Self-regulatory organizations; proposed rule changes:
Government Securities Clearing Corp., 942
National Association of Securities Dealers, Inc., 946
Participants Trust Co., 947

Social Security Administration
RULES
Blood donor locator service; information and records availability; correction, 956

State Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Man and biosphere program, 948

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
North Dakota, 807

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

Transportation Department
See also Federal Aviation Administration; National Highway Traffic Safety Administration
NOTICES
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 948

Treasury Department
See Alcohol, Tobacco and Firearms Bureau; Internal Revenue Service

United States Information Agency
PROPOSED RULES
Exchange visitor program:
General provisions; and training programs
Meetings, 859

Veterans Affairs Department
RULES
Loan guaranty:
Lender participation fees, 827
PROPOSED RULES
Vocational rehabilitation and education:
Veterans education—
Changing programs of education, 865
NOTICES
Meetings:
Wage Committee, 952
Senior Executive Service:
Performance Review Board; membership, 952

Separate Parts In This Issue

Part II
Environmental Protection Agency, 958

Part III
Department of Agriculture, Rural Electrification Administration, 1044

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
354 755
1710 1044
1866 774
1951 774
1965 774
Proposed Rules:
319 846

9 CFR
82 776
130 755

10 CFR
Proposed Rules:
170 847
171 847
820 855
830 855
835 855

14 CFR
39 (10 documents) 779–792
Proposed Rules:
39 (2 documents) 855–857

18 CFR
2 794
37 802
154 794
157 794
284 794
375 794
380 794

20 CFR
335 806
401 956

21 CFR
Proposed Rules:
333 858
369 858

22 CFR
Proposed Rules:
514 859

26 CFR
Proposed Rules:
1 (2 documents) 859, 860

28 CFR
Proposed Rules:
50 862
80 862

30 CFR
934 807
Proposed Rules:
206 865

38 CFR
36 827
Proposed Rules:
21 865

40 CFR
Proposed Rules:
148 958
260 958
261 958
262 958
264 958
265 958
268 958
270 958
271 958

47 CFR
22 (2 documents) 829, 830
73 831
Proposed Rules:
73 (5 documents) 866–868
76 868

48 CFR
1801 831
1806 831
1807 831
1812 831
1815 831
1816 831
1823 831
1825 831
1830 831
1831 831
1832 831
1842 831
1844 831
1852 831
1853 831

49 CFR
Proposed Rules:
571 870

50 CFR
652 844

Rules and Regulations

Federal Register
Vol. 57, No. 6
Thursday, January 9, 1992

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

9 CFR Part 130

[Docket No. 91-135]

RIN 0579-AA43

User Fees—Agricultural Quarantine and Inspection Services, Phytosanitary Certificates, Animal Quarantine Services, Veterinary Diagnostics, Export Health Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending 7 CFR part 354 and 9 CFR chapter I to establish user fees for certification, inspection and testing services we provide. These user fees are authorized by sections 2509 (b) and (c) of the Food, Agriculture, Conservation and Trade Act of 1990, as amended by the Omnibus Budget Reconciliation Act of 1990 (21 U.S.C. 136a) and by the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Pub. L. 102-237).

The effect of these regulations will be to require certain persons to pay fees for services they receive.

EFFECTIVE DATE: February 9, 1992.

FOR FURTHER INFORMATION CONTACT: For information concerning agricultural quarantine and inspection (AQI), plant inspections, and additional inspections, contact Charles A. Havens, Chief Operations Officer, Port Operations, PPQ, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

For information concerning animal imports and exports, contact Louise R. Lothery, Director, Resource Management Support Staff, VS, APHIS, USDA, room 740, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7517.

For information concerning veterinary diagnostics, contact Dr. Robert M. Nervig, Director, National Veterinary Services Laboratory, S&T, APHIS, USDA, 1800 Dayton Road, P.O. Box 844, Ames, Iowa 50010, 515-239-8266.

SUPPLEMENTARY INFORMATION:

Background

User Fees Authorized Under the Farm Bill

The Food, Agriculture, Conservation and Trade Act of 1990, as amended by the Omnibus Budget Reconciliation Act of 1990 (Budget Reconciliation Act) and the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (technical amendments), referred to below as the Farm Bill, authorizes the Secretary of Agriculture, within certain limits, to prescribe and collect fees to cover the cost of providing certain agricultural quarantine and inspection services. The services are "agricultural quarantine and inspection services in connection with the arrival at a port in the customs territory of the United States,[1] or the preclearance or preinspection at a site outside the customs territory of the United States, of an international passenger, commercial vessel, commercial aircraft, commercial truck, or railroad car" (section 2509 of the Farm Bill). We refer to these services as AQI services.

The Farm Bill, as amended by the technical amendments, limits the amount of money which APHIS can collect for services provided in certain categories. One category is user fees collected for "airport inspection services," which are limited to $69 million in fiscal year 1992 and $75 million in fiscal 1993 "from international airline passengers and commercial aircraft operators." (See section 1015 of the technical amendments, amending section 2509(a)(1)(B) of the Farm Bill). In addition, the Farm Bill, as amended, states that "Fees, including fees from international airline passengers and commercial aircraft operators, may only be collected to the extent that the Secretary reasonably estimates that the amount of the fees are commensurate with the costs of agricultural quarantine and inspection services with respect to the class of persons or entities paying the fees. Costs of such services with respect to passengers as a class include the cost of related inspections of the aircraft." (See section 2509(a)(1)(D) of the Farm Bill, as amended.)

The Farm Bill establishes a fund in the Treasury of the United States, known as the "Agricultural Quarantine Inspection User Fee Account" (the Account), for the Secretary of Agriculture to use for quarantine or inspection services. All fees collected for agricultural quarantine and inspection services are to be deposited in the Account. Fees collected within a calendar quarter are to be deposited no later than 31 days after the close of that quarter. The Farm Bill further requires the Secretary of the Treasury to reimburse, from the Account, any appropriation accounts that incur costs associated with agricultural quarantine services for which the Secretary of Agriculture is authorized to collect user fees and "all other activities carried out by the Secretary at ports in the customs territory of the United States and at preclearance or preinspection sites outside the customs territory of the United States in connection with the enforcement of the animal quarantine laws." (See section 2509(a)(3)(B)(ii) of the Farm Bill, as amended).

The Farm Bill also authorizes the Secretary of Agriculture "to prescribe and collect fees to recover the costs of providing for the inspection of plants and plant products offered for export of transiting the United States and certifying to shippers and interested parties as to the freedom of such plants and plant products from plant pests according to the phytosanitary requirements of the foreign countries to which such plants and plant products may be exported, or to the freedom from exposure to plant pests while in transit through the United States * * *." (Section 2509(b) of the Farm Bill). This section further provides that "[t]he Secretary of Agriculture shall, pursuant to regulations as prescribed by the Secretary of Agriculture, suspend performance of services to persons who have failed to pay such fees, late payment penalty and accrued interest."

In addition to the above authority, the Farm Bill authorizes the Secretary of

[1] The Farm Bill defines "customs territory of the United States" as "[t]he 50 States, the District of Columbia, and Puerto Rico." (section 2509(f)(2))

Agriculture to "prescribe and collect fees to reimburse the Secretary for the cost of carrying out the provisions of the Federal Animal Quarantine Laws that relate to the importation, entry, and exportation of animals, articles, or means of conveyance" (section 2509(c)(1) of the Farm Bill).

Further, the Farm Bill authorizes the Secretary "to prescribe and collect fees to recover the costs of carrying out the provisions of [21 U.S.C. 114a, as amended], which relate to veterinary diagnostics" (section 2509(c)(2) of the Farm Bill). 21 U.S.C. 114a concerns control and eradication of livestock and poultry diseases. Section 2509(c) also provides procedures for the Secretary to follow in the case of nonpayment, late payment penalties, or accrued interest. The section states that "[t]he Secretary shall suspend performance of services to persons who have failed to pay fees, late payment penalty, or accrued interest * * *".

Section 2509(d) of the Farm Bill provides in addition that "[t]he Secretary may prescribe such regulations as the Secretary determines necessary to carry out the provisions of [section 2509]."

Finally, the Farm Bill authorizes the Secretary "in carrying out regulations prohibiting or restricting the entry of materials that may harbor pests, or diseases, * * * to enter into agreements with operators or owners of vessels or aircraft for the purpose of providing inspection services at points of entry in the United States in addition to the regular or on-call basis currently available in connection with such vessels or aircraft." The section states that such agreements shall "provide for the payment by the operator or owner of an amount determined by the Secretary to be necessary to defray the costs of providing additional service pursuant to such agreement" (section 2508 of the Farm Bill).

Previously Published Regulations

On February 27, we proposed to amend 7 CFR parts 318, 320, 330, 352 and 354 (56 FR 8148–8156. Docket No. 90–247), to establish user fees for services we provide in connection with airline passengers departing Hawaii and Puerto Rico for other parts of the United States, and in connection with the arrival at ports in the customs territory of the United States of commercial vessels, commercial trucks, commercial railroad cars, and passengers on commercial aircraft.[2]

We made a portion of these regulations final in a document published April 12, 1991 (56 FR 14837–14846, Docket No. 91–028). It covered user fees for commercial vessels, commercial trucks, commercial railroad cars, and passengers on commercial aircraft arriving in the United States from outside the country. We began charging user fees for these services May 13, 1991.

The second final rule was published April 23, 1991 (56 FR 18496–18502, Docket No. 91–054). It covered user fees for passengers on commercial airlines departing Hawaii and Puerto Rico for other parts of the United States. We originally scheduled these regulations to be effective August 1, 1991. However, in a subsequent document published August 1, 1991 (56 FR 36724, Docket No. 91–113), we postponed the effective date until October 1, 1991. Then, on September 30, 1991, we published a document, Docket No. 91–138 (56 FR 49389), postponing indefinitely the effective date of these rules.

Proposed Rule

On August 7, 1991, we published a document in the **Federal Register** (56 FR 37481–37499, Docket 91–021) in which we proposed to amend 7 CFR part 354 and 9 CFR chapter I to establish user fees for certification, inspection and testing services we provide. On August 21, 1991, and September 24, 1991, documents were published in the **Federal Register** (56 FR 41805 and 56 FR 48270) making various corrections.

The services for which we proposed to charge an APHIS user fee fall into five categories.

The first category of services is the inspection services we provide to commercial aircraft, both aircraft arriving at a port within the customs territory of the United States and aircraft departing Hawaii or Puerto Rico for other locations within the United States, and commercial vessels departing Hawaii or Puerto Rico for other locations within the United States.

The second category of services relates to the issuance of phytosanitary certificates for plants and plant products being exported from the United States. These certificates are issued in accordance with the regulations at 7 CFR 353.1. They certify agricultural products moving from one country to another as being "free from quarantine pests, and practically free from other injurious pests."

The third category includes services which relate to the export or import of animals or birds. In this category are: (1) Services provided in connection with animals or birds in quarantine facilities, including Animal Import Centers operated by APHIS and privately-operated facilities; (2) endorsing health certificates needed to export animals or birds; (3) inspecting export isolation facilities for animals or birds; (4) inspecting animals and birds in isolation facilities; (5) supervising rest periods for animals and birds prior to export; and (6) supervising loading and unloading of animals or birds from a means of conveyance.

The fourth category of services relates to veterinary diagnostics. Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism is present in body tissues or cells. The services in this category are: (1) Performing laboratory tests required to import or export animals or birds; (2) conducting diagnostic testing on tissue samples referred to APHIS by State animal health officials who want assistance in establishing or confirming a diagnosis (referred to in this document as reference assistance testing); (3) providing certain diagnostic reagents. Diagnostic reagents are substances used in diagnostic tests to detect disease antibodies by causing an identifiable reaction.

The fifth category of services includes inspection services provided, at the request of operators or owners of vessels or aircraft, in addition to regular or on-call services currently available at points of entry in the United States.

We solicited comments concerning our proposal for a 30-day period ending September 6, 1991. We received 176 comments by that date. They were from shipping interests, both international and domestic, Members of Congress, airlines, State governments, representatives of agricultural industries, importers, exporters, veterinarians, and producers.

This document, Docket No. 91–135, covers all of the APHIS user fees we proposed in our proposed rulemaking, except (1) the user fees proposed for inspecting commercial aircraft and commercial vessels departing Hawaii and Puerto Rico for other parts of the United States, (2) the user fees for veterinary diagnostic services and diagnostic reagents, and (3) the user fees for export health certificates for animal products and byproducts.

As mentioned above, we indefinitely postponed the effective date of user fees under the User Fee Statute (31 U.S.C. 9701) for agricultural quarantine and inspection (AQI) services provided in

[2] The authority for the proposed regulations concerning passengers on certain domestic airline flights from Hawaii and Puerto Rico was 31 U.S.C. 9701, not the Farm Bill.

connection with the departure of passengers from Puerto Rico and Hawaii on certain domestic airline flights. Since then, Congress has passed the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies appropriations act for fiscal year 1992. This Act, among other things, prohibits APHIS from developing, establishing, or operating any user fee program for agricultural quarantine and inspection to prevent the movement of exotic pests and diseases from Hawaii and Puerto Rico as authorized by 31 U.S.C. 9701. Consequently, we plan to publish documents in the **Federal Register** to withdraw both the previous published regulations that would have established user fees for AQI services provided in connection with the departure of passengers from Puerto Rico and Hawaii on certain domestic airline flights, and that part of our recent proposed rulemaking concerning user fees for inspecting commercial aircraft and commercial vessels departing Hawaii and Puerto Rico for other parts of the United States. Our reasons for not adopting user fees for veterinary diagnostic services and diagnostic reagents or for export health certificates for animal products and byproducts, are explained elsewhere in this document.

In addition, technical amendments to the Farm Bill limit, among other things, the total amount of money we can collect in user fees from international airline passengers and commercial aircraft operators. The technical amendments provide that the cost of services with respect to passengers include the cost of related inspections of the aircraft. As explained below, based on these amendments, we have changed the fee we proposed for aircraft inspection services. We have also recalculated the costs to be funded by the passengers fee.

We have carefully considered all of the comments we received. All the comments that apply to the user fees made final in this document are discussed below by topic.

General Comments

Increased Costs to APHIS

Some commenters pointed out that collecting user fees will raise APHIS's own administrative costs. One commenter charged that no real savings would be realized.

We agree that APHIS's administrative costs will rise when we start collecting user fees. However, we have attempted to minimize the increase, which is already factored into the proposed fees.

With regard to savings realized by charging user fees, the intent of the Farm Bill was not to save money, but to shift the burden of paying for services from the general public to the recipient of the services. We believe our APHIS user fees accomplish this goal.

Public v. Private Benefit

Numerous commenters stated that we do not have the authority to charge user fees for any service which is not clearly a "private benefit." Other comments stated that we should not charge a user fee for any service which benefits the public. Many of these comments referred to the User Fee Statute (31 U.S.C. 9701), which provides that agencies "may prescribe regulations establishing the charge for a service or thing of value provided by the agency."

We are making no changes in the proposed regulations based on these comments. The user fees we are adopting in this document are authorized by the Farm Bill, not by the User Fee Statute.

Our authority under the Farm Bill, which is explained more extensively above, does not require us to consider the issue of private or public benefits at all. The Farm Bill states simply that we may charge a user fee for certain listed services. Whether those services provide public or private benefits, or a combination of the two, is irrelevant under the Farm Bill.

Length of Comment Period

Numerous comments expressed dissatisfaction with the length of the comment period. Many of these comments requested that the comment period, which was 30 days, be extended. As we explained in the proposal, the Animal and Plant Health Inspection Service (APHIS) must institute user fees as soon as possible. Time considerations do not allow for a longer comment period. We believe the comment period provided was reasonable under the circumstances. Moreover, the fact that we received 176 comments on the proposal, many of which were extensive, leads us to believe that the comment period was adequate.

Use of Fees—Deficit Reduction versus Improved APHIS Service

Many comments stated that APHIS user fees should be used to augment the APHIS budget and improve services. Many comments also stated that APHIS user fees should not be used for general Federal budget deficit reduction.

All user fees collected under the regulations adopted in this final rule will be collected under authority of the Farm Bill. This money will be available to APHIS to apply directly to APHIS programs, as explained above.

The Farm Bill does not require Congress to reduce our appropriation. Whether to increase or decrease our funding is a decision made by Congress as part of the budget process. For fiscal year 1992, the APHIS appropriation has been reduced. We anticipate that the loss of direct funding will be made up by APHIS user fees we collect.

Cost Cutting versus User Fees

Several commenters suggested that APHIS, and other agencies within the Federal government, reduce costs and thereby avoid charging user fees. We have not made any changes based on these comments. Implementing user fees is not a substitute for cost-cutting. We are constantly trying to reduce costs and minimize necessary cost increases. Also, because APHIS user fees reflect the actual cost of providing a service, up to any limit which may have been imposed by Congress, if we can reduce the cost of a service, we can reduce the user fee for that service.

Future Review and Revision of User Fees

Many commenters stated that our proposed fees were either too high or too low, and should be adjusted. Others stated that we will collect money in excess of our costs. We are making no changes based on these comments.

We have determined, using the best data available, the cost of each of the services for which we will charge an APHIS user fee. In addition, the services we provide and the cost of providing those services will change over time. Therefore, as stated in our proposal, we intend to monitor our fees throughout the year and review them at least annually. We will propose to adjust the fees up or down as the review warrants, and we will publish, for public comment, any proposed fee changes in the **Federal Register.**

In addition, as explained elsewhere in this document, through technical amendments to the Farm Bill, the amount of money we can collect in user fees for certain services has been limited. Regardless of the cost of providing these services, we cannot collect more in user fees than allowed by the Farm Bill.

Increased Cost of Doing Business

Some comments stated that the fees would increase their cost of doing business. We realize that payment of the user fees will increase the up-front cost of doing business. However, as stated in our proposal, having the user, or immediate recipient, of the service pay

for it directly will allow a reduction in general tax receipts.

General Economic Situation and Other Factors To Be Considered

Many comments objected in general terms to the proposed APHIS user fees. Many maintained the proposed APHIS user fees would be detrimental to specific industries, such as international trade in horses, lumber exports, tobacco, wool exports, semen and embryo transfer, and tourism. Some comments proposed that we exempt certain industries or classes of users from the proposed user fees. Among those mentioned were the tobacco industry, germplasm industry, "companion animal (pet)" owners, and food animal producers. Commenters maintained that our user fees will discourage "young" industries, inhibit exports, and harm small businesses. Commenters also argued that we should consider the current economic situation, both in the United States and abroad, and the financial health of affected industries, before adopting APHIS user fees. One commenter suggested that instead of user fees, we should implement export credits to encourage exports.

We are not exempting any industries or businesses from APHIS user fees based on these comments. Because of budget constraints, we do not have the option to charge user fees which recover less than the full cost of providing a service. If we did so, we would not collect enough money to support the service. However, we have attempted to minimize the cost of our services, thereby keeping APHIS user fees at the lowest possible level. In addition, we are adjusting our proposed user fees for phytosanitary certificates, which will minimize the impact on shippers of "low value" commercial shipments.

Rounding of Fees

Several comments objected to our proposal to round up our fees. We are not making any changes in the regulations based on these comments. As explained in our proposal, we "proposed to round these fees up, rather than down, in order to ensure that we collect enough revenue to cover the costs of providing these services. If we were to round down, many fees would be lower than the cost of the service. As we would not have a reserve fund (for non-AQI services), there would be no funds for us to draw on to make up the deficiency (see 56 FR 37491)." We cannot recover any shortfall by charging a higher fee for another service category.

Also, as we stated in the proposal, we intend to review, at least annually, the user fees we are adopting in this document. We will publish any necessary adjustments in the **Federal Register**.

Request for Delay of Effective Date

Many other comments stated that the effective date of the regulations should be delayed. Most of these comments suggested no particular length of time, but one requested we delay implementation a full year. One other letter suggested that the proposed APHIS user fees should be phased in gradually over time.

We are making no changes based on these comments. We believe publication of our proposed regulations has given affected persons adequate time to prepare. Also, as explained in this docket, our appropriation for fiscal year 1992 has been reduced. We must begin collecting APHIS user fees to continue providing services at or near the same level as provided previously.

Proliferating User Fees

Several comments complained that federal user fees are proliferating. Unfortunately, APHIS has not control over other user fees which may be authorized or mandated by Congress.

Calculation of Fees

According to many comments, certain user fees as proposed are too high, too low, or inconsistent with other proposed user fees. Comments asserted that we did not include sufficient data in our proposed rules to justify our proposed user fees. Comments compared our proposed user fees with fees charged by other facilities for similar services. Comments also questioned whether we should include certain cost factors, for example, agency-level overhead charges, in calculating fees. Comments also stated that we would recover more money from our proposed fees than it costs to provide APHIS services.

We did not make any changes in the regulations based on these comments. The proposed APHIS user fees were based, in part, on estimates of the traffic volume in various service categories: Aircraft arrival, air cargo inspection, vessel inspection, maritime cargo clearance, and others. Costs were assigned directly to a category when the cost directly related to providing the service. Where a cost benefits all categories of service, it was pro-rated among the categories based on historic direct labor staff hours.

The total cost in each service category was divided by activity volume to arrive at a final fee. We estimated activity volume for 1992 by obtaining data for prior years from the Department of Transportation, Customs, and our own records. We adjusted these figures for anticipated changes in volume, based on past changes and on current world conditions which could affect volume, such as wars and economic conditions. This calculation provided the "raw fee."

We rounded the "raw fees" up to the nearest quarter. We rounded them off to simplify collection and accounting. We rounded our fees up, rather than down, because if we were to round down, even if only by pennies, the fees would not fully recover our costs. If there is a shortfall for a service category, we cannot recover it by charging a higher fee for another service category.

The technical amendments to the Farm Bill provide that the cost of services with respect to passengers include the cost of related inspections of the aircraft. As explained below, no changes in the amount of the passenger user fee are necessary to effectuate this change.

The technical amendments to the Farm Bill also limit the amount of money APHIS can collect in user fees for certain categories of services. For these services, we have adjusted our user fees, if necessary, to a level that would generate no more money than allowed. We will monitor receipts monthly, and if it appears the fees will exceed the applicable revenue limitations, we will revise our fees.

Each service category was considered separately. Each category must, through user fee receipts, return enough money to APHIS, up to the maximum allowed for certain categories under the Farm Bill, to cover the cost of providing AQI services to that particular category. Therefore, when computing fees for one category, we cannot take into account the amount of the fees calculated for other service categories.

We would like to point out that as a government agency, our cost categories for providing any given service may be similar, but not the same as, the costs for non-government entities to provide the same service. For example, both APHIS and any non-governmental entity have personnel costs. But APHIS, unlike some non-governmental entities, has no advertising cost. However, even where cost factors are the same, the actual dollar amounts may be very different.

We put as much of our supporting data in the proposed rulemaking as possible. However, it was not possible to publish all the material. Therefore, as stated in the proposed rulemaking, we made it available for inspection at our headquarters in Hyattsville, Maryland. Only one individual came to our office to inspect the supporting data.

Relationship of User Fee to Service Provided, Risk Posed, or Value of Item Receiving Service

There were several comments suggesting different approaches to fee setting. Comments suggested that the higher the disease or pest risk, the higher the applicable user fee. Comments suggested user fees be tied to the duration of inspection or the amount of service provided. Comments also suggested that user fees be tied to the value of the item receiving service. For example, one commenter stated that someone exporting a $40 box of plants should not have to pay the same fee for a phytosanitary certificate as the shipper of a $20,000 load of lumber.

We have carefully considered these comments.

We realize that the degree of pest or disease risk posed by individual means of conveyance or cargo varies. However, the number of variables which determine the actual risk, and, therefore, determine the amount of service or length of time required to provide service, is virtually infinite. A system which attempted to account for the variables would be unwieldy and expensive to administer and would require that the additional expenses would have to be included in the fee calculated. We are making no changes in our user fees on this basis.

The service we provide is also not directly related to the value of the items being inspected, or receiving some service. For example, using the commenter's example, the box of plants and the lumber require similar APHIS inspection. The dollar value of the items being inspected is not directly related to the time or effort required of APHIS personnel to issue a phytosanitary certificate. However, there is an indirect relationship. As we stated in our proposed regulations (55 FR 37484), it takes APHIS personnel less time and effort to issue a certificate for a noncommercial shipment because shippers usually bring the items to the APHIS office to be inspected. This is also true of low value commercial shipments. Therefore, in order to reflect this difference in cost to APHIS, we are amending the regulations to charge the same user fee for phytosanitary certificates for low value commercial shipments as for phytosanitary certificates for noncommercial shipments. We are specifying in the regulations that "low value" means less than $1,250.

We have chosen this figure to distinguish low value shipments from others, because it is a standard recognized by the exporting and importing industry. Most shippers, brokers, and others in the export business are also importers, or are familiar with this standard. This includes exporters who obtain phytosanitary certificates from APHIS. All importers must comply with the United States Customs Service (Customs) regulations. Under those regulations, all imported goods must "enter" the United States. This is true regardless of the type, quantity, or value of the goods. However, customs regulations distinguish between minor, low value importations, and others. Low value importations are allowed to make "informal entry" into the United States. This requires less paperwork and documentation, and processing is faster. Customs regulations state that to qualify for "informal entry" importations must, among other things, be valued at less than $1,250. (See 19 CFR 143.21)

In connection with the amendment, we are specifying in the regulation that commercial shippers can take advantage of this lower user fee only if: (1) The shipper requests the lower fee; (2) the items to be inspected are the same ones identified on the phytosanitary certificate; and (3) the shipment is accompanied by an invoice stating that the shipment is worth less than $1,250.

Discounts and Fee Caps

Several comments mentioned discounts. Several requested discounts for small businesses. One asked that we give discounts to large businesses.

Capping APHIS user fees was also suggested by several comments. As pointed out by a commenter, we have fee caps already in place for loaded commercial railroad cars (if prepaid for an entire year), commercial trucks (if prepaid for an entire year), and commercial vessels arriving in the United States.

In addition, as explained above, since our proposed regulations were published on August 7, 1991, Congress enacted technical amendments to the Farm Bill. These amendments, among other things, limit the amount of revenue APHIS may collect in user fees for airport inspection services.

We have carefully considered both the comments we received and the amendments to the Farm Bill. We have determined that only an adjustment to the aircraft inspection user fee is necessary to stay within the revenue limitations imposed by the amended Farm Bill.

Generally speaking, inspections or other services for a small entity cost the same as an inspection or other services for a large entity. The service provided is not related to the size of the business receiving it. Therefore we cannot justify a discount based on size of the business.

The commenters are correct that we already have fee caps in place for certain means of conveyance arriving in this country. In these situations the United States Customs Service or some other entity is collecting APHIS's user fees for us. As explained in the user fee document we published February 27, 1991 (Docket number 90-247, 56 FR 8140-8156), we adopted these fee caps to make our user fee collection regulations the same as United States Customs Service's regulations which applied to the same users and which were already in place. To do differently would have created needless confusion and would have raised the cost of our services.

However, this reasoning does not apply to any of the user fees we proposed adopting in our user fee document of August 7, 1991, as the United States Customs Service or other entity will not be collecting for us the APHIS user fees proposed in that document. Also, our proposed user fees were calculated based on the actual number of times we anticipate a service will be provided during one year. Our calculations did not take into account fee caps. As explained above, we must recover enough money from APHIS user fees to recover the full cost of providing our services. Therefore, we are making no changes based on these comments.

However, we are amending our proposed user fees to shift passenger-related inspection costs from the aircraft user fee to the airline passenger user fee. We have also recalculated the user fees for airport inspection services pursuant to the technical amendments to the Farm Bill. Therefore, we are lowering our proposed user fees for inspection of commercial aircraft arriving at a port in the customs territory of the United States. The user fee proposed for this service was $117.50. The final amended user fee for this service is $76.75.

We still must collect enough in user fees to cover the full cost of providing services. In this situation, though the total amount of money we can collect is limited, we estimate that user fees collected for these inspections will cover our costs. As explained in our proposal of August 7, 1991 (56 FR 37481-37499), our proposed user fee included the cost of inspections related to the presence of passengers on aircraft, such as inspection of the passenger cabin. The cost of these inspections will now be covered in the APHIS user fee for aircraft passengers. That fee was adopted April 12, 1991, and was effective May 13, 1991. The passenger fee was not originally intended to cover

the cost of these services. However, the fee was rounded up, as explained in the proposal, and therefore will generate some extra money. We believe this extra income is sufficient to cover the cost of passenger-related aircraft inspections. Therefore, the airline passenger user fee and the aircraft inspection user fee together should recover enough money to cover the full cost of airport inspection services and stay within the revenue limitations of the Farm Bill.

Originally, the airline passenger user fee covered inspection of the passenger, his or her baggage, and all related administrative and overhead expenses. The cost of these services was $1.73 per passenger. In addition to these costs, the airline passenger user fee will now also cover inspection of the aircraft galley, including garbage, the passenger compartment, the baggage hold, and all related administrative and overhead expenses. The cost of these additional services is $0.25 per passenger, raising the total cost of passenger-related inspection services to $1.98 per passenger. In both instances, the fee is rounded up to $2.00 per passenger.

User Fees for Services During Normal Business Hours

Many comments suggested that we should not charge a user fee for any service we provide during normal business hours. We are sympathetic to the feelings of these commenters. However, charges for services we provide during normal business hours are exactly the services for which the Farm Bill now authorizes us to charge a user fee. However, one advantage to our charging an APHIS user fee for these services is that we will be able to directly apply the fees to fund our programs and services. The Farm Bill requires that APHIS user fees be applied to APHIS programs.

User Fee or Tax?

Other comments stated that the APHIS user fee is a tax, not a fee. We do not agree with this comment. A tax is money paid to support general government operations. A fee is money paid for a specific service. The APHIS user fees herein are designed to recover and fund the cost of providing specific services. As such, the APHIS user fee is a user fee, not a tax.

Advisory Committee

One comment suggested that as part of the regulations APHIS should establish an Advisory Committee to monitor operations and use of the APHIS user fee/review performance of APHIS. We are taking no action based on this comment at this time. The establishment of an Advisory Committee is outside the scope of this rulemaking proceeding.

Economic Analysis

Of the many comments received, one requested that "the USDA do a study of how much the proposed user fees would produce for income to the USDA in relation to how much it would cost the producers in lost sales or reduced-priced sales due to the fees * * *." Another comment asked if we had "engaged in any formal, systematic effort to determine the economic impact of (phytosanitary certificate) fees * * *." A third commenter stated that the preliminary economic analysis did not state what method was used to determine discounted values or discuss the monetary ramifications of detecting a foreign animal disease before it spread.

In our proposed rulemaking we included a summary of our preliminary economic analysis. That analysis, which was made available for public inspection, includes the analyses and information the commenters request. As part of this final rule, we have included a summary of our final economic analysis. That analysis, along with numerous other documents pertaining to this final rule, is available for public inspection. Documents, including economic analyses performed in connection with other APHIS user fees may also contain relevant information and are, and were, available for public inspection.[3]

Administrative Procedure Act

One comment maintained that the proposed regulations violate the Administrative Procedure Act (5 U.S.C. 553, *et seq.*) because, according to the commenter, we have not conducted an adequate cost analysis. We believe, as discussed above, that we have conducted an adequate cost analysis. The analysis, which was summarized in the proposed rulemaking (56 FR 37492–37493) has been available for inspection since the rulemaking was published.

[3] General background documents such as prior proposed regulations, comments received in response to proposed regulations, and preliminary and final economic analyses, can be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC. Economic data supporting individual APHIS user fees may be inspected at APHIS, Budget and Accounting Division, User Fee Branch, room 263, Federal Building, 6505 Belcrest Road, Hyattsville, MD. Both offices are open 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

Miscellaneous General Comments

One commenter pointed out that a statement in our proposed rulemaking, that the regulations would have no effect on the family (see 56 FR 37493), did not take into account "the many economic problems that delays in detection of an important disease outbreak will cause." We stand by our earlier statement. We agree with the commenter that delay in detecting an important disease outbreak does have economic consequences. However, those consequences are spread over society and the economy at large. Under our proposed regulations, the impact on the family would be difficult to quantify, would vary depending on the disease, the amount of delay, the location where the disease was introduced, and a number of other factors.

Several comments noted that some foreign governments subsidize exports indirectly by not charging for tests, inspections, or export certificates. Some of these commenters suggested that APHIS also do this; and that our charges will put American businesses at a competitive disadvantage.

We are making no changes in the regulations based on these comments. We have no basis for exempting shipments destined to any specified country from our export-related user fees. Other countries require various export certificates, which in turn require inspections and tests, to accompany plants and plant products and animals, animal products, and germplasm imported into their countries. We issue certificates, including performing tests and inspections, as a service to exporters in this country. We cannot provide these services without incurring various costs. Under authority of the Farm Bill, we can recover these costs by collecting user fees from those who request the services.

Whether other countries should charge their exporters a user fee for issuing various health certificates is a matter for the governments of those countries to decide. Their decisions have no bearing on whether we should charge a user fee for the same services provided by us in the United States.

One comment stated that we should institute a user fee for performing the "pink juice" test on meat transiting the United States. This is a test designed to help ensure that meat is not infected with foot-and-mouth disease or rinderpest. APHIS requires the test under 9 CFR 94.4. However, as the commenter correctly observed, "it is anticipated that transshipment (of meat subject to the test) would occur only

occasionally." At this time we have not calculated a user fee for the "pink juice" test. Any user fee we propose to adopt will be published for public comment in the **Federal Register**.

One comment suggested we guarantee that APHIS always maintain staffing at authorized levels. There is always turnover among staff, and time unavoidably passes before replacements can be hired and start to work. Also, hiring freezes and local shortages of qualified personnel can keep staffing below authorized levels. Therefore, it is not possible to guarantee constant staffing at authorized levels.

Proposed Amendments to Title 7, Code of Federal Regulations

Movement of Plants Without Phytosanitary Certificates

If APHIS adopts user fees for endorsing phytosanitary certificates, according to one comment, some people will be tempted to move plants out of the United States without the certification required by the receiving country. We are aware of this possible problem. However, we believe the potential loss of plant shipments and penalty actions taken by foreign governments against individuals who attempt this will deter such activities. For these reasons we are making no changes in the regulations based on this comment.

Exemption for Exports to Canada

Plant exports to Canada should be exempt from APHIS user fees for phytosanitary certificates, according to one commenter. The commenter cited the Free Trade Agreement with Canada as their reason.

We are making no changes in the regulations based on this comment. Canada requires phytosanitary certificates to accompany imported plants and plant products. We issue certificates as a service to exporters in this country. We cannot provide this service without incurring various costs. Under authority of the Farm Bill, we can recover these costs by collecting user fees from those who request phytosanitary certificates. The Free Trade Agreement with Canada has no bearing on APHIS charges for services we provide to American citizens in the United States.

Issuance of Phytosanitary Certificates/ State-Federal Relationship

Two comments questioned whether we will charge an APHIS user fee if State personnel perform a phytosanitary certificate inspection, but APHIS personnel issue the certificate. One commenter wanted to know further that if APHIS did charge a fee in this situation, how we would split it, if we would, with the State. The answer is that we would charge an APHIS user fee in the situation described, but we would not split the fee with the State. As explained in the proposal of August 7, 1991, (56 FR 37484–37485), we will charge the applicable APHIS user fee when a certificate is signed by APHIS personnel. However, the State has the option of charging its own fee for any services it provides. This is true even if the State does not issue a certificate. For example, if State personnel conduct an inspection for a certificate signed by APHIS personnel, the State may charge a fee for the inspection. State fees are allowed under 7 CFR 354.3(g)(4).

One of the commenters also asked several hypothetical questions about a shipper who pays for a block of Federal phytosanitary certificates at an APHIS office, receives the required inspection from a State inspector, and the State inspector signs a certificate from the block. The commenter's questions all concerned fees associated with the certificate.

However, the situation described by the commenter should never arise. Administrative controls over issuance of Federal phytosanitary certificates do not allow block certificates to be signed in any office other than the one where the certificates are obtained. For example, if a shipper pays for a block of certificates in APHIS's Portland, OR, office, then the shipper must get each certificate in the block signed by an APHIS inspector from our Portland, OR, office. An APHIS inspector from our Seattle, WA, office may not sign the certificate. Neither may any State inspector. Likewise, if a shipper obtains a block of phytosanitary certificates from a State office, the shipper must return to that State office to get the certificates signed.

Calculation of State Fees for Phytosanitary Certificates

Two comments questioned our statutory authority to prescribe guidelines for setting State fees for phytosanitary certificates.

Our authority for prescribing fee-setting guidelines is the Talmadge-Aiken Act (7 U.S.C. 450). That Act provides that:

> In order to avoid duplication of functions, facilities, and personnel, and to attain closer coordination and greater effectiveness and economy in administration of Federal and State laws and regulations relating to the marketing of agricultural products and to the control or eradication of plant and animal diseases and pests, the Secretary of Agriculture is authorized, in the administration and enforcement of such Federal laws within his area of responsibility, whenever he deems it feasible and in the public interest, to enter into cooperative arrangements with State departments of agriculture and other State agencies charged with the administration and enforcement of such State laws and regulations and to provide that any such State agency which has adequate facilities, personnel, and procedures, as determined by the Secretary, may assist the Secretary in the administration and enforcement of such Federal laws and regulations to the extent and in the manner he deems appropriate in the public interest.
>
> Further, the Secretary is authorized to coordinate the administration of such Federal laws and regulations with such State laws and regulations wherever feasible. However, nothing herein shall affect the jurisdiction of the Secretary of Agriculture under any Federal law, or any authority to cooperate with State agencies or other agencies or persons under existing provisions of law, or affect any restriction of law upon such cooperation.

As explained in our August 7, 1991, proposed rulemaking, issuance of phytosanitary certificates is a Federal function under Federal law (7 U.S.C. 147a) and regulations (7 CFR 353.1 *et seq.*). APHIS inspectors issue many certificates directly to exporters. However, in some States which cooperate with APHIS, certain State employees are designated to issue Federal certificates. Designated State employees issue approximately 47 percent of all certificates. These State inspectors are vital to the success of our program. There are more State inspectors than APHIS inspectors, and in many instances they are able to provide services more efficiently, including at remote portions of the country.

To ensure that United States plants and plant products move in international commerce, it is in the public's interest that APHIS cooperate with States to ensure that phytosanitary certificates are issued.

The Secretary of Agriculture, through APHIS, believes that one aspect of cooperation with the States is to allow them to recover the cost of services they perform in issuing phytosanitary certificates. However, we also believe that administration of Federal regulations concerning issuance of phytosanitary certificates should be coordinated with the States. We have the authority to do this under the Talmadge-Aiken Act. One aspect of coordination is to ensure that Federal and State fees for this Federal function have a similar cost basis. Therefore, we are adopting fee-setting guidelines for States to follow. We are not prescribing

each individual item for which they may charge or prescribe the exact amount they may charge.

Missing Phytosanitary Certificate Fees

We received one comment pointing out that we did not include a user fee for re-export certificates for noncommercial shipments. As explained above, we are amending our proposed regulations to change "noncommercial shipments" to "noncommercial and low-value shipments." Where it is clear and appropriate, we will use the new terminology in discussing this comment.

As the commenter pointed out, we were incorrect when we stated we had never issued a phytosanitary certificate for re-export certificate for noncommercial shipments (see proposed rulemaking published on August 7, 1991, 56 FR 37484), and therefore did not need to propose a user fee for the service.

We do in fact issue phytosanitary certificates for re-export of noncommercial shipments, though they are rare. An example is a phytosanitary certificate for a shipment of imported fruit being re-exported by the United States Department of Defense to a United States military installation overseas.

Based on this comment, we have decided to publish a proposed APHIS user fee covering phytosanitary certificates for re-export of noncommercial and low-value shipments in another document. The proposed user fee, which we will publish as soon as practicable, will appear in the **Federal Register** and the public will be invited to comment on it.

While considering this comment, we also realized we had neglected to include an APHIS user fees in our proposed regulations for processed product certificates for commercial shipments. This proposed APHIS user fee was explained in the background portion of our proposed rulemaking (see 56 FR 37484) and a proposed fee of $30.00 was listed. In the proposed regulations, we included a definition of "processed product certificate," but we did not include the $30.00 user fee (see 56 FR 37494.)

Therefore, we are amending 7 CFR 354.3(g)(5) to add a $30.00 user fee for processed product certificates for commercial shipments.

Efficiency of Issuing and Collecting User Fees for Phytosanitary Certificates

One comment stated that "[t]he necessity for issuing phytosanitary certificates expediently has not been considered. The proposal does not offer any viable method for collecting these fees * * *"

We are making no changes based on this comment. However, we agree with the comment that phytosanitary certificates need to be issued efficiently and user fees collected efficiently. Over the years we have developed our current system for issuing phytosanitary certificates. We welcome any suggestions for improving it. With regard to collecting user fees, we believe the collection system we proposed is practical and efficient. However, it is a new system. We will be working to improve it. Again, we welcome any suggestions.

Conflict with California Fee

Under authority of the Torres Bill, the State of California has recently instituted an $85 fee which must be paid by commercial aircraft arriving in California. Several commenters stated that it would constitute "double-billing" if they had to pay both the California user fee and the proposed Federal user fee. We do not agree, and have made no changes in the regulations based on these comments.

The California fee covers the cost of providing enhanced AQI inspections in that State. An APHIS user fee is not being assessed for these additional personnel. In calculating the APHIS user fee, the inspection cost was based on the level of funding requested in the fiscal year 1992 budget. Therefore, carriers are not being double-billed for inspection services provided in California because the cost of the enhanced inspection was excluded from our user fee calculations.

Difference in User Fees for Inspection of International and Domestic Aircraft

Two comments asked us to explain the apparent "discrepancy" between the proposed user fees for inspecting commercial aircraft arriving in the United States from other countries and the proposed user fee for inspecting commercial aircraft departing Hawaii and Puerto Rico for other parts of the United States.

As explained above, we are not adopting any user fee at this time for inspecting aircraft departing Hawaii and Puerto Rico for other parts of the United States. When we do publish a document adopting such rules, we will repeat our explanation.

The proposed user fee for inspecting certain domestic aircraft is lower because: (1) The scope of the inspection is narrower, being concerned only with certain plant materials, as opposed to all plants and plant materials, noxious weeds, endangered species, certain animal products and byproducts, and other items under APHIS regulation; (2) airlines are prohibited from accepting uncertified regulated cargos without bringing them to APHIS for certification; (3) no prohibited materials are allowed on the aircraft; therefore no garbage needs to be monitored; and (4) we can control materials loaded on the aircraft at domestic ports, which we cannot do at foreign ports, because we have inspectors stationed at domestic ports. As a result, we can charge a lower fee for inspecting these domestic aircraft.

Violation of International Agreements

Several commenters stated that our proposed user fees for inspection of aircraft arriving in the United States from foreign countries would be in violation of various international agreements. The agreements mentioned by commenters were: The Convention on International Civil Aviation (Chicago Convention) (Dec. 7, 1944, 61 Stat. 1180, 3 Bevans 944); the International Civil Aviation Convention (ICAO); the General Agreements on Trade and Tariffs (GATT); Bermuda 2 bilateral aviation agreement; Air Transport Services Agreements between the United States and Paraguay, Switzerland (11 Bevans 946), the United Kingdom, and Japan (Agreement of August 11, 1952 (4 U.S.T. 1948); and the United States-Japan Treaty of Friendship, Commerce and Navigation. We have carefully reviewed all of these agreements and have determined that no changes in the regulations are necessary. Each agreement is discussed individually below.

Chicago Convention. Several comments listed the Convention on International Civil Aviation as being violated by the proposed APHIS user fees.

According to the comments, Article 15 of the Convention provides that:

> Any charges that may be imposed or permitted to be imposed by a Contracting State for the use of such airports and air navigation facilities by the aircraft of any other Contracting State shall not be higher * * *
>
> (a) * * *
>
> (b) As to aircraft engaged in scheduled international air services, than those that would be paid by its national aircraft engaged in similar international air services.
>
> All such charges shall be published and communicated to the International Civil Aviation Organization [ICAO]: * * * 61 Stat. at 1184–85)

According to the commenters, user fees "other than those related to airport and airway facilities (are) not contemplated by the scheme of international regulations of civil aviation." This commenter also states that the "network of international

aviation agreements obligates APHIS to consult with the Departments of State and Transportation, and through those agencies with appropriate foreign air transportation officials, regarding the proposed imposition of this fee."

We do not believe the Chicago Convention applies to APHIS. The Convention applies to "airport operator(s) or other competent authorit(ies)." APHIS is not an airport operator. Neither do we believe APHIS is an "other competent authority" within the intended meaning of the Convention.

We also do not believe that the "network of international aviation agreements" obligates APHIS to consult with other Departments of the Federal government, as suggested by the commenter. However, by publishing our proposed rule for public comment in the Federal Register, we have solicited comments from all interested parties, including other Departments of the Federal government. We received no comments on our proposed rules from any other Federal government agency.

ICAO. One commenter states that ICAO Document 9082/3 "specifically required airport operators or *other competent authorities* (emphasis added by commenter) to provide adequate notification (4 to 6 months) when contemplating the imposition of new charges."

As explained above with regard to the Chicago Convention, we do not believe APHIS is either an "airport operator (* * *) or (an) other competent authority" within the intended meaning of the document. Therefore we do not believe this document applies to APHIS.

GATT. The GATT does not apply to persons or means of conveyance; the GATT does apply to cargo. However, the GATT permits user fees imposed on or in connection with importations, for inspection and quarantine services, if such fees are limited in amount to the approximate cost of the services rendered.

Various Bilateral Air Transport Services Agreements. Based on the comments we received, it appears that the many bilateral Air Transport Services Agreements to which the United States is a party are similar, if not identical, in wording and contain virtually the same provisions. In this discussion we quote from several different agreements. They are representative of the wording and contents of the other agreements.

The Air Transport Agreement between the United States and Switzerland requires that user fees be "established at reasonable and non-discriminatory levels, consistent with the costs of providing the relevant services and facilities, and be equitably apportioned among categories of users." According to the comments, the proposed APHIS user fees for aircraft inspection do not meet these criteria.

The APHIS user fees do not violate this agreement. It is not clear that the APHIS user fees proposed are encompassed by this provision of the agreement. However, even if they are, they are in compliance. As explained elsewhere in this document, the user fees have been established to reflect the cost of providing certain APHIS services to individual users of those services. Within each category of service, the user fee is the same. Under these circumstances, we conclude that the APHIS user fees meet the criteria of this agreement.

Accordingly, to another commenter, APHIS is in violation of the Air Transport Agreement between the United States and the United Kingdom because, among other things, APHIS "failed to consult the airlines using (APHIS) services or their representative organizations" before proposing the APHIS user fee. The provision which the commenter asserts has been violated is paragraph (5) of Article 10 (T.I.A.S. No. 8461 at 10–11). It states: "each Contracting Party shall use its best efforts to encourage the competent charging authorities and the airlines to exchange * * * information."

We do not believe APHIS is in violation of any requirement to report proposed fees. The provision in question only requires that "best efforts (be used) to encourage * * * exchange" of information. This does not appear to be a requirement. Therefore we do not believe APHIS can be in violation of it.

United States-Japan Treaty of Friendship, Commerce and Navigation. According to a commenter, the United States-Japan Treaty of Friendship, Commerce and Navigation provides, at paragraph 1, Article V, that:

> Neither party shall take unreasonable or discriminatory measures that would impair the legally acquired rights or interests within its territories of nationals and companies of the other Party in the enterprises which they have established.

The commenter believes that the proposed APHIS user fees violate this clause because they exceed APHIS's authority and are therefore unreasonable. As we have explained elsewhere, we do not believe the proposed user fees exceed our authority under the Farm Bill. Therefore, we do not believe that we are in violation of this Treaty.

Nationality of Airlines

It appears that several commenters believe our user fees will apply to non-United States airlines, but not to United States airlines.

This is incorrect. The nationality of the airline is irrelevant—we will impose APHIS user fees on all aircraft arriving in the United States from other countries. We will except some aircraft from paying user fees, as listed in the regulations (see 7 CFR 354.3(e)(2)). However, the exceptions apply to any aircraft which meet the requirements, regardless of what country's flag the aircraft flies.

User Fees Exemption for Commercial Aircraft Arriving in the United States from Canada

One commenter objected to the "arbitrary exemption of Canada" from user fees proposed for commercial aircraft arriving in the United States. According to the commenter, our explanation that aircraft from Canada "pose little animal or plant disease or pest risk to the United States" (see 56 FR 37483) was unconvincing because the statement "likely also applies to aircraft from Great Britain, Norway and numerous other countries" which are not exempted from the proposed user fees.

We do not agree that the exemption is arbitrary. APHIS applies many quarantine restrictions on plants and animals and plant and animal products from countries other than Canada (including those mentioned by the commenter). By contrast, very few restrictions apply to plants and animals and plant and animal products from Canada. In addition, because of close cooperation between APHIS and Agriculture Canada, only materials which can be imported into the United States without restrictions are allowed by Canadian authorities to be placed on aircraft leaving Canada for the United States. Under these circumstances it is not necessary for APHIS to provide inspection services for commercial aircraft from Canada, and APHIS, therefore, incurs no expenses for such services.

Double-Billing: User Fees for Aircraft Passenger Inspection and Aircraft Inspection

Several comments expressed the opinion that for us to charge a user fee for foreign aircraft passenger inspection (see 56 FR 14837–14848, user fees effective May 13, 1991) and a user fee for inspection of the aircraft itself, including cargo, is "double-billing." We do not agree. Passengers pose a different risk of

bringing foreign diseases and pests into the United States than do the aircraft and cargo it carries. For example, passengers may have walked through dirt infested with parasites, or they may be carrying infested fruits or vegetables or infected meat on their person or in their baggage. Aircraft may be infested with a pest which has escaped from infested cargo. Aircraft or cargo may need to be fumigated or disinfected. Also, passengers are responsible for themselves and their baggage; the airline is responsible for the aircraft and the cargo. For all these reasons, passengers and their baggage must be inspected separately and in a different manner than the aircraft and its cargo.

It is also relevant that passengers themselves pay the APHIS user fees for passengers. Airlines are not responsible for paying passenger fees, though they collect the fee along with the price of the ticket, taxes, and any other charges that apply, and then remit the APHIS user fee to APHIS.

In addition, APHIS is authorized under the Farm Bill to charge separate user fees for inspecting foreign arriving commercial aircraft and foreign arriving commercial aircraft passengers.

In view of these facts, we have decided to make no changes in the regulations based on this comment. However, we want to point out that the APHIS user fee for aircraft inspection has been recalculated, and lowered. Passenger-related services, such as inspection of the aircraft's passenger compartment, will be covered by the APHIS passenger user fee. This change is explained more fully elsewhere in this document.

Calculation of User Fee for Aircraft Inspection

Several comments questioned the method and data we used to calculate the proposed APHIS user fee for aircraft inspection. Commenters raised several issues. One observed that our administrative cost figure for air cargo inspection was incorrect in the preliminary economic impact analysis. The commenter is correct that the figure should have been $1,250,000, not $209,000, as we reported in our preliminary economic analysis. However, we have recalculated our administrative cost figure at $179,000, based on the fact that aircraft inspection user fees will not be billed, but instead will be remitted.

Among other things, commenters stated that APHIS will receive "excessive" revenue from aircraft-related user fees. Some provided figures purporting to show this.

First, it is apparent that at least some of the commenters incorrectly included the APHIS user fee for passenger inspection as an aircraft fee, thereby inflating the apparent impact of APHIS user fees on airlines. However, the APHIS user fee for airline passengers is paid by passengers, not by airlines.

Second, a commenter asked what we considered user fee administrative costs. As we noted in our proposed rulemaking (56 FR 37485), user fee administrative costs include the cost to develop, implement, and properly account for AQI user fees. These are costs we would not incur if APHIS did not have user fees. Activities and costs included in this category are rate-development, cost and aircraft tracking systems, fee collection and processing systems, regulatory processes, and audit functions.

Third, one commenter charged that we did not reveal management support costs we included in the cost of program delivery. We believe APHIS clearly explained that the cost of providing service includes program delivery, program support, and agency level (or management support) costs. Management support, or overhead costs, are appropriate costs to include in user fees. No government program or business entity can operate without overhead, and including such costs in pricing goods or services is a standard cost accounting principle.

APHIS conducts a variety of activities, including the AQI program. All our activities are funded through "line item" appropriations. APHIS receives no direct Congressional appropriation for program support costs. Each APHIS "line item" must contribute to administrative support in order to fund costs. In the past, a portion of all administrative support has been funded through the AQI "line item." The funding process is the same under our proposed user fee regulations. All AQI user fees include amounts to support the AQI share of APHIS administrative costs.

Fourth, one commenter stated that APHIS has included various "non-administrative" program delivery costs. This is correct. We have included costs such as risk analysis and methods development which directly benefit users of AQI services. We have documented these costs, and they have been made available for public inspection.

Fifth, according to one comment, "APHIS has overstated the costs of its AQI services." The commenter has calculated a cost per inspector of approximately $183,000 to provide AQI services. We do not agree with the figures provided by the commenter. The commenter has estimated $30 million for APHIS aircraft clearance costs. At the time we published our proposed user fees, we estimated our costs at $23 million. However, based on the recent technical amendments to the Farm Bill, explained above, and the fact that aircraft inspection user fees will not be billed, but instead remitted, we have recalculated APHIS aircraft clearance costs at $18.8 million. This figure includes amounts for recomputed administrative costs and reserves. The reserve fund will remain in our user fee account to cover expenses when user fee collections are low.

Finally, one commenter stated that our data is from 1984 and our economic analysis is therefore invalid. As we have stated elsewhere in this document, our user fee program is new. In the past, we collected only data that was necessary for AQI program operations. Therefore, this data was the only data available when we developed our user fees. The data came from many sources, including detailed work load studies from 1984. However, contrary to the comment, we also have Workload Based Budgeting information from fiscal year 1990 and APHIS Work Accomplishment Data from 1985 to 1990, and the most recent Department of Transportation Air Travel Statistics available, from 1989.

Reimbursable Overtime for Arriving Commercial Aircraft

Several comments suggested that aircraft subject to the commercial aircraft user fee should be exempt from overtime charges.

We intended to exempt aircraft from overtime charges for aircraft inspection if they are subject to the commercial aircraft user fee. This will be true no matter what time of day the aircraft arrives. This exception is similar to the exception we adopted in our document of April 12, 1991 (56 FR 14840), concerning APHIS user fees for various AQI services, including inspection of passengers arriving in the United States aboard commercial aircraft. That exception provides that airlines will not be charged reimbursable overtime for required passenger inspection if the passenger has paid the APHIS passenger user fee for that flight.

With one exception, charging overtime for cargo inspection would also be excessive, as the cost of cargo inspection performed concurrently with inspection of the aircraft is already covered in the APHIS aircraft user fees. Only when cargo is off-loaded and inspected, by request of the shipper or aircraft owner or operator outside of normal business hours, is reimbursable

overtime justified. We are adding a new 7 CFR 354.3(e)(5) to clearly exempt aircraft from reimbursable overtime charges for aircraft or cargo inspection, if the aircraft is subject to the APHIS user fee for international arrivals.

The regulation will be applied as follows: If an aircraft arrives at any hour, even outside of normal business hours, and is inspected at that time, the standard APHIS user fee for aircraft will apply. If the cargo is inspected at that time, or is off-loaded and inspected later, but during normal business hours, we will not charge reimbursable overtime. The cargo inspection is included in the aircraft inspection fee. However, if an aircraft arrives and is inspected, but the cargo is off-loaded and inspected, by request, outside of normal business hours, then reimbursable overtime charges will apply to the cargo inspection. Normal business hours are 8:00 am to 4:30 pm, Monday through Friday.

User Fees for Intransit Aircraft

Some comments questioned how the regulations would apply to intransit aircraft. Implicit in these comments is the issue of multiple user fees, that is, more than one user fee for the same trip. Intransit aircraft are aircraft which arrive at a port of entry, without going through any portion of the Federal clearance process, which includes APHIS, United States Customs Service, and Immigration and Naturalization Service inspections and clearance, and then continues to another destination. In the airline industry, this type of stop is known as a "technical stop." An example would be an aircraft which lands for refueling only—no cargo is placed on the aircraft or removed from it, no passengers get on or off the aircraft, no crew members get on or off the aircraft, no food is placed on the aircraft, no garbage is removed from the aircraft. In these situations, we will not charge an APHIS user fee. We have therefore amended the regulations to add this exception in a new 7 CFR 354.3(e)(2)(vi).

Multiple User Fees

Aircraft arriving in the United States, and the cargo they carry, may be subject to multiple inspections as they are processed through Federal clearance procedures. Federal clearance procedures include inspections and clearances by APHIS, the United States Customs Service, and the Immigration and Naturalization Service. Under our proposed regulations, at each port where they are subject to APHIS inspection, they would pay the appropriate APHIS user fee.

Reserve Fund

A few comments stated that we should not establish a reserve fund.

We have made no changes based on this comment. The Farm Bill allows for a "reasonable balance" in the AQI user fee account. Our reserve fund is consistent with the size of reserve funds established by other agencies within the Department. The reserve fund will ensure that APHIS has sufficient operating funds in cases of bad debt, user insolvency, and fluctuation in activity volumes.

Miscellaneous Comments Concerning Title 7

Several commenters suggested changes in regulations which are not connected with the proposed APHIS user fees. One suggested that we establish a standard clearance time for aircraft. The commenter continued to suggest that if an aircraft was not cleared within the standard time, it would not have to pay the APHIS user fee.

We have considered this comment. We conclude that such a regulation would be inappropriate, as conditions outside our control affect the clearance time of individual aircraft.

Missing Provisions in Proposed Regulations

One comment stated that our proposed rulemaking did not address either APHIS's plans to document and substantiate its fee assessments to carriers (airline) or procedures for administrative appeals.

We are making no changes in the regulations based on this comment. Proposed 7 CFR 354.3(e)(3) contains requirements for carriers to remit user fees to APHIS. We did not propose to bill carriers for the APHIS user fees they owe. They will be responsible for remitting the correct amount to us. We will be responsible for ensuring the remittances are accurate. We currently maintain records of aircraft flights arriving in the United States which are subject to our inspection. Also, the Debt Collection Act of 1982 (31 U.S.C. 3717), referred to in 7 CFR 354.3(e)(3), applies to user fees remitted by carriers to APHIS. United States Department of Agriculture regulations implementing the Debt Collection Act of 1982 contain provisions for administrative appeals. Those regulations appear in 7 CFR 3.21 *et seq.*

Proposed Amendments to Title 9, Code of Federal Regulations Definitions

One commenter pointed out an error in our proposed definition of "export health certificate". The commenter correctly explained that export health certificates are issued, or filled in, by USDA accredited veterinarians, whom we had left out of our definition. However, it is the endorsement of the certificate, not its issuance, for which we are going to charge an APHIS user fee. The endorsement indicates that APHIS officially has reviewed the certificate and believes it to be accurate and reliable. Export health certificates are endorsed only by APHIS veterinarians. Therefore, we are adjusting the definition of "export health certificate" to clarify this. The new definition, in 9 CFR 130.1, will read as follows:

Export health certificate. An official document endorsed by an APHIS veterinarian which, as required by the importing country, states that animals or birds to be exported from the United States are free of certain diseases and pests.

Import versus Export Animal Quarantine Fees

A large number of commenters asked whether the daily animal quarantine charges we proposed applied both to animals being imported into the United States and to animals being exported from the United States, or only to animals being imported.

We proposed to charge a daily user fee for animals in quarantine. The only animals officially in "quarantine" are animals being imported into the country. Therefore, these are the only animals for which an APHIS user fee will be payable.

However, many commenters referred to animals being held in isolation prior to export, and animals resident in artificial insemination and embryo transfer centers, as being in "quarantine." Under our regulations, these animals are not technically in "quarantine."

To eliminate any possible confusion, we have amended the heading and text of 9 CFR 130.4 and 130.5 to refer to "import-quarantine facilities."

Fee for Use of Entire Quarantine Building at Animal Import Centers

In our proposed regulations we included a provision allowing importers, at their option, to utilize an entire Animal Import Center quarantine building and pay a single user fee. This option would be available only for designated buildings. In our August 7, 1991, proposal we designated one building each at our Newburgh, NY, and Honolulu, HI, Animal Import Centers as available for exclusive use.

We received one comment requesting that we not designate the Honolulu, HI, building for such use. The commenter pointed out that our Animal Import Center in Hawaii is small, and due to the high demand for space, allowing one importer to utilize an entire building would deprive numerous other importers of any opportunity to import animals through the facility. In addition, the space in the building we proposed to designate for such use has already been reserved for the next 2 years.

In view of these facts, we are amending proposed 9 CFR 130.3 to delete this building from the list of designated buildings. If, in the future, we determine that this or some other building can be made available for exclusive use, we will propose to amend the regulations.

Daily Fees at Animal Import Centers

Another commenter wrote to say that our daily fees for both partridges and large birds quarantined in our Animal Import Centers are too high. While the commenter presented some cost figures for feed, he did not take into account other costs which we must recover through APHIS user fees. Therefore, we are not adjusting our fee schedule based on this comment. However, as explained elsewhere in this document, we will review our fees at least annually, and, if we determine that our fees for partridges and for large birds, or any of our other fees, are either too high or too low, we will propose to adjust these fees in the **Federal Register.**

Conflict of Interest for APHIS

A few comments questioned whether APHIS could remain impartial or whether there would be a conflict of interest, when the proposed user fees become effective. The commenters did not give specific examples of potential conflicts of interest. However, the endorsement of export certificates presented to APHIS for endorsement are not endorsed, either because they are incomplete, incorrect, or have other problems.

When our user fees become effective, we will collect a fee only for actually endorsing a certificate. If a certificate presented to us cannot be endorsed, we will not collect an APHIS user fee. The commenter appears to be concerned that the potential loss of revenue will encourage APHIS employees to endorse certificates, whether correct or not, merely to collect the user fee.

While this may be a potential problem, we believe it is very unlikely to occur, for the following reasons. First, APHIS employees will not be paid directly from the user fees they collect. Individuals will not keep any fees they collect, as suggested by one comment, nor will salaries be dependent on the fees collected. In addition, employees will have no knowledge of the portion of their salaries attributable to user fee collections. Second, APHIS employees are responsible for maintaining the value of APHIS services and the Agency's reputation. Demand for some APHIS services would decrease if such services were inferior or the Agency's reputation was not maintained. Third, we attempt, through our personnel system, to hire and retain employees of demonstrated integrity. Fourth and finally, endorsing export health certificates which should be refused, or performing any other service in a fraudulent manner, is grounds for dismissal.

Financial Questions re: User Fees for Endorsing Export Health Certificates

One commenter asked questions about export health certificates: (1) How much additional revenue will be generated; (2) how many additional employees will be needed to account for billing and collection; and (3) will any of the funds be used to hire additional staff where needed.

No additional revenue will be generated. As we have explained, our appropriation has been reduced. The APHIS user fees we collect will replace the lost funds.

Until we implement these proposed APHIS user fees, we will not know if additional staff will be needed or not. For example, we do not know how many users will choose to be billed, and we therefore cannot predict the amount of billing work. We also do not know, if additional staff are needed, where they might be needed. We will have to wait until the user fees are implemented and assess their impact. We intend to adjust our staffing as necessary.

Basis of User Fees for Export Health Certificates

One comment asked why the user fees for export health certificates increase as the number of required tests increases. The commenter correctly states that the "function of this duty does not change regardless of the number of tests required." That is true, but the time it takes to perform the duty does change. As explained elsewhere in this document, one of the factors we used to determine the user fee for each service is the amount of staff time it takes to perform the service. Each test on a certificate must be verified. Therefore, certificates that involve more tests will require more staff time, and therefore the fee for endorsing such certificates will be higher.

Determining Correct User Fee for Export Health Certificates

One commenter asked what the user fee will be if a certificate lists several animals not requiring the same number of tests. The answer is that the user fee is the fee which would be due if all the animals on the certificate required the same number of tests as the animal which requires the greatest number of tests. For example, if 5 animals are listed on the certificate and the animal which requires the greatest number of tests requires 4 tests, the user fee for the certificate is $41.50, plus $1.25 for each of the additional 4 animals, for a total $46.50. We have amended proposed 9 CFR 130.6(b) to clarify this.

We would like to note that the situation described by the commenter is very rare. Consequently, we believe this method of determining the fee will be the easiest to administer and the most equitable. The reason for this is as follows. There are certain fixed costs involved with issuing an export certificate regardless of the number of animals on a certificate. Those fixed costs are for researching the test requirements for the country the animals will be exported to. The countries requiring more tests require more time to research since their import requirements are more stringent. This is reflected in the way the fees are structured—with the first animal on the certificate bearing those fixed costs. Therefore, in a case where there are animals on a certificate requiring different numbers of tests, the cost for the animals from the country requiring more tests must be used in order for APHIS to recover the full cost of issuing the certificate.

Multiple and Overtime Charges in Connection with Export Health Certificates

One commenter asked whether exporters who have health certificates endorsed outside of normal business hours will have to pay reimbursable overtime in addition to the export health certificate user fee.

Another commenter requested that we charge only one APHIS user fee if an APHIS veterinarian endorses the export health certificate during the course of supervising or inspecting export animals. The commenter is concerned that his business will have to pay two fees: An hourly fee for the inspection service and a separate fee for endorsement of the health certificate.

As proposed, our regulations required two fees—one user fee for the inspection

and another user fee for the endorsement. Depending on when the inspection was conducted, reimbursable overtime could apply.

We have carefully considered these comments and have decided to amend proposed 9 CFR 130.6 by adding a new paragraph (c). The regulations will now provide that if an APHIS veterinarian endorses an export health certificate in the course of conducting supervision or inspection services concerning the export animals listed on the certificate, only the hourly rate will apply. We will not charge a separate APHIS user fee for the endorsement. However, under our regulations, if the export health certificate is endorsed at another time, not during the course of supervision or inspection services described above, a separate APHIS user fee will apply to the endorsement. Similarly, if inspection or supervision services are conducted outside of normal business hours, regardless of whether or not the veterinarian endorses a health certificate at that time, the reimbursable overtime hourly rate will apply.

User Fees for Endorsing Export Health Certificates for Semen and Embryos

Numerous commenters needed clarification regarding APHIS user fees for endorsing export health certificates for semen and embryos. Commenters were obviously confused by our explanation and some were unclear what fee would be due for these certificates. Commenters also explained why they believe the user fee we proposed for these certificates should be calculated differently than the user fees we proposed for other export certificates. Some commenters suggested other approaches.

We have carefully reviewed all of these comments. We must agree that the explanation we published in our document of August 7, 1991, was confusing. Also in light of the comments we received, we believe we should reconsider our approach to calculating the fee for these export health certificates.

Therefore, we are not including in this final rule a user fee for export health certificates for animal semen or embryos. We will reconsider this issue and will publish a new proposal for public comment in the **Federal Register** as soon as feasible.

In connection with this issue, one commenter wanted to know whether semen and embryos are animal products or animal byproducts. We do not, under these regulations, consider semen and embryos to be either animal products or byproducts.

User Fees for Endorsing Export Health Certificates for Animal Products and Byproducts

We did not receive any comments which specifically addressed our proposed user fee for export health certificates for animal products and byproducts (see proposed 9 CFR 130.6(a).) However, as we explained above, at least one commenter was confused as to whether semen and embryos were animal products or byproducts, and other comments we received indicated that our explanations concerning semen and embryos was not clear.

These comments indicate to us that there may be general confusion concerning this issue. Rather than adopting a user fee which may not be clear to the public, we have decided to reconsider our proposed user fee for export health certificates for animal products and byproducts, and have deleted all references to such animal products and byproducts in this final rule. We will publish a new proposal for public comment in the **Federal Register** as soon as feasible.

Billing for Export Health Certificates

One comment stated that requiring export health certificates to be paid for at the time of endorsement would be extremely inconvenient for many users. We have considered this comment, and have decided to amend the proposed regulations to provide optional billing for users who meet certain criteria (see 9 CFR 130.50(a)(6)).

Under the amended regulations, users who request export health certificates may either pay for the certificates at the time of endorsement, or if they have established an acceptable credit history, as determined by APHIS, may choose to be billed for the service. These requirements are similar to those which apply to overtime services at border ports, sea ports, and airports under 7 CFR 354.1(c). If a user chooses to be billed, we will endorse its certificates and bill the user at the end of the month in which services are rendered. Payment will be due within 30 days after receipt of the bill. If bills are not paid within that time, we will take action under 9 CFR 130.51.

User Fees for Diagnostic Reagents and for Services at the National Veterinary Services Laboratories and the Foreign Animal Disease Diagnostic Laboratory

We received numerous comments objecting to the proposal to charge user fees for tests performed at the National Veterinary Services Laboratories (NVSL) and the Foreign Animal Disease Diagnostic Laboratory (FADDL). Many commenters also objected to the proposal to charge for diagnostic reagents obtained from NVSL.

Some commenters believe NVSL and FADDL services will deteriorate or be curtailed because APHIS is imposing user fees for tests and reagents. Several comments expressed the opinion that the proposed user fees for reference assistance testing are not comparable or consistent with the fees proposed for import and export testing.

Some commenters felt that if NVSL charges for program disease tests, people will stop using NVSL for these tests and NVSL will no longer get the data it needs to compile its statistics. These commenters are concerned that if practitioners and laboratories stop requesting reference assistance testing from NVSL, valuable data will be lost and the NVSL will not be able to continue effective surveillance of disease.

One commenter is of the opinion that the NVSL will become increasingly dependent on user fees for its funding, and will, as a result, "perform more and more of the procedures whereby it generates the fees it needs to operate at the expense of diagnostic investigation and new method development."

One commenter expressed concern that "when it becomes widely known that NVSL is charging fees which cover the full cost of that lab's operation, there * * * will be a push from State officials for a similar fee structure in the State diagnostic labs." According to the commenter, this would mean a tripling of charges for animal disease diagnostic testing in his State. He is concerned that animal owners could not afford such an increase.

After considering these comments, we have decided not to adopt, at this time, the user fees we proposed for NVSL and FADDL test services and for diagnostic reagents obtained from NVSL. Proposed 9 CFR 130.9 through 130.12 are therefore not included in this final rule.

We will consider further the comments we received on this issue and decide what action to take as soon as feasible.

Misellaneous Comments Concerning Title 9

A commenter questioned why credit cards cannot be used at Veterinary Services Area Offices to pay APHIS user fees. At this time, Veterinary Services Area Offices are not equipped to accept credit card payments. If in the future this changes, we will amend the regulations to reflect that fact.

One commenter inquired if proposed 9 CFR 130.7 applies to "semen storage or distribution sites or the sealing of semen for international shipment." As of this time we have not proposed any APHIS user fees as described by the commenter. Proposed 9 CFR 130.7 does not apply to these services.

A commenter stated that we should include an APHIS user fee for inspecting animals crossing our land borders with Canada and Mexico. In fact, we are considering such an APHIS user fee. A document proposing that and other user fees will be published in the **Federal Register** as soon as feasible.

Several commenters suggested changes in regulations which are not connected with the proposed APHIS user fees. One change relates to reserving quarantine space at Animal Import Centers. We are considering this request. If we determine that an amendment to the regulations is warranted, we will publish proposed regulations in the **Federal Register** as soon as feasible.

One commenter expressed concern that many State agencies would be unable to comply with the 30-day payment limitation we proposed. The commenter stated that it is "unworkable * * * given the restrictions of working within a State system subject to fiscal deadlines etc."

Since thirty days is the standard time allowed for bill payment, we will not change the proposed regulations at this time. If we find that in practice 30 days is impractical, we will consider extending the amount of time we allow for payment.

Additional Changes to the Regulations

We have made minor non-substantive changes for clarity.

We are also amending proposed 7 CFR 354.3(i) and proposed 9 CFR 130.50 to clarify that we will accept payment only for the exact amount due. Most of our offices are not equipped to make change. Therefore we cannot accept any payment, including checks, which is for other than the exact amount due.

In order to clarify that we are charging a user fee for "endorsing" export health certificates, we are amending proposed 9 CFR 130.6 to insert "endorsing" in the heading, and to replace the word "issued" with the word "endorsed" in the text of that section.

We are also amending proposed 9 CFR 130.8 to clarify our intention that "an inspection" includes a bundle of related services—the inspection itself, testing, and supervision services. We are revising the first sentence in proposed 9 CFR 130.8(a) to read: "If inspection services, including inspection, testing, and supervision services, are performed outside the United States, in accordance with this title, and the regulations do not contain a provision for payment of the cost of the service, the person requesting the service must pay a user fee under this section."

Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, it has been determined that this rule is part of a series of documents which are being considered as a "major rule." This final rule is one of several rules requiring certain persons to pay user fees for APHIS services they receive. We have already published, in two separate documents, final rules adopting user fees for various passengers and means of conveyance. One final rule covered user fees for commercial vessels, commercial trucks, commercial railroad cars, and passengers on commercial aircraft arriving in the United States from outside the country. It was published April 12, 1991 (56 FR 14837–14846), and was effective May 13, 1991. The other final rule covered user fees for passengers on commercial airlines departing Hawaii and Puerto for other parts of the United States. It was published April 23, 1991 (56 18496–18502). As explained above, its effective date has been postponed indefinitely.

The Final Regulatory Impact Analysis indicates that the implementation of user fees on the three service categories (inspection of international commercial aircraft, issuance of phytosanitary certificates, and export/import of animals and birds) is expected to save taxpayers over $26 million per year. The total discounted value at 10 percent over 5 years is estimated to be about $108 million. Total administrative costs to the Department associated with fee collection for the inspection of international commercial aircraft and the issuance of phytosanitary certificates are estimated to be about $1.6 million annually, or a discounted value of about $6.5 million over 5 years.

The implementation of user fees for the inspection of international commercial aircraft is expected to provide tax savings of $19 million a year (a discounted value over 5 years of about $79 million). User fees for the issuance of phytosanitary certificates are expected to accrue savings of at least $3 million annually (a discounted value over 5 years of about $13 million).

Administrative costs associated with the collection and implementation of user fees for the inspection of international commercial aircraft is estimated at about $179,000 annually (a discounted value over 5 years of about $746,000). Administrative costs associated with the collection and implementation of fees for phytosanitary certificates are estimated at about $300,000 a year (a discounted value over 5 years about $1.3 million).

The implementation of user fees for services related to the export and import of animals or birds is expected to yield savings to taxpayers of $4 million per year (a discounted value over 5 years of about $17 million).

The two final user fee rules that have already been published (one for international air passengers and commercial trucks, rail cars and foreign vessels, and one for domestic air travel) were estimated to have a combined annual impact of $93 million in the form of savings to taxpayers. The savings estimated to accrue from the first rule on international air passengers and commercial vehicles comprise 83 percent of this total while the remaining 17 percent in savings is attributed to passenger fees for domestic travel.

These previous rules and the regulations proposed in this document are expected to provide a combined total savings of about $119 million annually. The discounted value of this amount is estimated at about $496 million over 5 years. The fees on the three categories of service proposed in this rule are expected to contribute 22 percent of the total savings.

Total administrative costs associated with implementing all user fee rules are estimated at about $2 million annually (a discounted value in the amount of $9 million). Only 20 percent of this amount is expected to be incurred in implementing the fees proposed in this rule.

The Regulatory Flexibility Act requires that APHIS specifically consider the economic impact of imposing user fees on "small" affected entities. The number of entities which may be qualified as small in each category is not available. However, except for airlines, it is likely that the majority of exporters of agricultural goods and importers of animals and birds can be categorized as small. The impact of user fees on all these groups is expected to be minor since the fee in each category represents a small fraction of the total operating costs for each small entity.

Our final Regulatory Impact Analysis is available for inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday,

except holidays, or by telephoning (202) 382-1368.

Executive Order 12606

We have analyzed these regulations in accordance with Executive Order 12606, and have determined that this rule has no potential impact on the family well-being. We have determined that this rule: does not affect the stability of the family, and particularly, the martial commitment; does not affect the authority and rights of parents in the education, nurture, and supervision of their children; does not help or hinder the family to perform its functions; does not substitute governmental activity for family functions; and does not affect family earnings. We have also determined that the benefits of this action justify and impact it may have on the family budget, and that this activity cannot be carried out by a lower level of government or by the family itself. This rule sends no message, intended or otherwise, to the public concerning the status of the family or to young people concerning the relationship between their behavior, their personal responsibiltity, and the norms of our society.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection provisions that are included in this final rule have been submitted for approval to the Office of Management and Budget.

Executive Order 12372

This program activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Lists of Subjects

7 CFR Part 354

Agricutural commodities, Exports, Government employees, Imports, Phytosanitary certificates, Plants (agriculture), Quarantine, Transportation.

9 CFR Part 130

Animals, Birds, Exports, Imports, Poultry, Quarantine, Tests.

Accordingly, we are amending 7 CFR part 354 and 9 CFR chapter I as follows:

7 CFR PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 21 U.S.C. 136 and 136a; 49 U.S.C. 1741, 7 CFR 2.17, 2.51, and 371.2(c).

§ 354.3 [Amended]

2. In § 354.3, paragraph (a) is amended to add, in alphabetical order, the following definitions:

* * * * *

Commercial purpose. The intention of receiving compensation, or making a gain or profit.

* * * * *

Commercial shipment. A shipment for gain or profit.

* * * * *

Designated State inspector. A State employee designated by APHIS to conduct inspections for phytosanitary export certification and to sign certificates on behalf of APHIS.

* * * * *

Phytosanitary certificate. A document certifying that agricultural products moving from one country to another are free from quarantine pests, and particularly free from other injurious pests.

Phytosanitary certificate for reexport. A document certifying that agricultural products which moved into the United States from another country and which are now moving from the United States to another country, remained free from quarantine pests, and practically free from other injurious pests while in the United States.

Processed product certificate. A document certifying that processed agricultural products moving from the United States are believed to be free from injurious plant pests.

3. In § 354.3, paragraph (e) is redesignated as paragraph (f), and a new paragraph (e) is added to read as follows:

§ 354.3 User fees for certain international services.

* * * * *

(e) *Fee for inspection of commercial aircraft.* (1) Except as provided in paragraph (e)(2) of this section, an APHIS user fee will be charged for each commercial aircraft which is arriving, or which has arrived and is proceeding from one United States airport to another under a United States Customs Service "Permit to Proceed," as specified in title 19, Code of Federal Regulations, §§ 122.81 through 122.85, or an "Agricultural Clearance or Safeguard Order" (PPQ Form 250), used pursuant to title 7, Code of Federal Regulations, § 330.400 and title 9, Code of Federal Regulations, § 94.5, and which is subject to inspection under part 330 of this chapter or 9 CFR chapter I, subchapter D. Each carrier is responsible for paying the APHIS user fee. The APHIS user fee is $76.75 for each arrival.

(2) The following categories of commercial aircraft are exempting from paying an APHIS user fee:

(i) Any aircraft moving solely between the United States and Canada;

(ii) Any aircraft used exclusively in the governmental services of the United States or a foreign government, including any Agency or political subdivision of the United States or a foreign government, so long as the aircraft is not carrying persons or merchandise for commercial purposes;

(iii) Any aircraft making an emergency or forced landing when the original destination of the aircraft was a foreign port;

(iv) Any aircraft with 30 or fewer seats, which is not carrying cargo and which is not equipped to offer inflight food service;

(v) Any aircraft moving from the United States Virgin Islands to Puerto Rico; and

(vi) Any aircraft making an intransit stop at a port of entry, during which the aircraft does not proceed through any portion of the Federal clearance process, such as inspection or clearance by APHIS, by the United States Customs Service, or by the Immigration and Naturalization Service, no cargo is removed from or placed on the aircraft, no passengers get on or off the aircraft, no crew members get on or off the aircraft, no food is placed on the aircraft, and no garbage is removed from the aircraft.

(3) *Remittance and statement procedures.* (i) Each carrier must remit the appropriate fees to the United States Department of Agriculture, National Finance Center, COD Field Office, P.O. Box 73562, Chicago, IL 60673, for receipt no later than 31 days after the close of the calendar quarter in which the vessel arrivals occurred. Late payments will be subject to interest, penalty, and handling charges as provided in the Debt Collection Act of 1982 (31 U.S.C. 3717).

(ii) At the same time a remittance is submitted the remitter must mail a written statement to the United States Department of Agriculture, National Finance Center, Billings and Collections Branch, P.O. Box 60950, New Orleans, LA 70160. The statement must include the following information:

(A) Name and address of the person remitting payment;

(B) Taxpayer identification number of the person remitting payment;

(C) Calendar quarter covered by the payment;

(D) Ports of entry at which inspections occurred;

(E) Number of arrivals at each port; and

(F) Amount remitted.

(iii) Remittances must be made by check or money order, payable in United States dollars, through a United States bank, to "The Animal and Plant Health Inspection Service."

(4) *Compliance.* Each carrier subject to this section must allow APHIS personnel to verify the accuracy of the APHIS user fees remitted and to otherwise determine compliance with 21 U.S.C. 136a and this paragraph. Each carrier must advise the United States Department of Agriculture, National Finance Center, Billings and Collections Branch, P.O. Box 60950, New Orleans, LA 70160, of the name, address, and telephone number of a responsible officer who is authorized to verify APHIS user fee calculations and remittances. The United States Department of Agriculture, National Finance Center, Billings and Collections Branch, P.O. Box 60950, New Orleans, LA 70160, must be promptly notified of any changes in the identifying information submitted.

(5) *Limitations on charges.* (i) Airlines will not be charged reimbursable overtime for inspection of aircraft if the aircraft is subject to the APHIS user fee for arriving aircraft as prescribed by this section.

(ii) Airlines will not be charged reimbursable overtime for inspection of cargo from an aircraft if:

(A) the aircraft is subject to the APHIS user fee for arriving aircraft as prescribed by this section; and

(B) the cargo is inspected between 8 a.m. and 4:30 p.m., Monday through Friday; or

(C) the cargo is inspected concurrently with the aircraft.

§ 354.3 [Amended]

4. In § 354.3(f)(1), the words "paragraph (e)(2)" is removed and "paragraph (f)(2)" is added in their place.

5. In § 354.3, new paragraphs (g), (h), and (i) are added to read as follows:

§ 354.3 User fees for certain international services.

* * * * *

(g) *Fees for export certification of plants and plant products.* (1) For each certificate issued by APHIS personnel, the recipient must pay the applicable APHIS user fee at the time and place the certificate is issued, or, in the case of a block of certificates, at the time the certificates are given to the shipper.

(2) There is no APHIS user fee for a certificate issued by a designated State inspector.

(3) If a designated State inspector issues a certificate, the State where the certificate is issued may charge for inspection services provided in that State.

(4) Any State which wishes to charge a fee for services it provides to issue certificates must establish fees in accordance with the following guidelines:

(i) The State must:

(A) Estimate the annual number of certificates to be issued;

(B) Determine the total cost of issuing certificates by adding together delivery,[2] support,[3] and administrative [4] costs; and

(C) Divide the cost of issuing certificates by the estimated number of certificates to be issued to obtain a "raw" fee.

(ii) The State may round the "raw" fee up to the nearest quarter, if necessary for ease of calculation, collection, or billing.

(5) The APHIS user fees are:

(i)(A) $30 for a certificate for a commercial shipment; or

(B) $19 for a certificate for a low-value commercial shipment, if the following criteria are met:

(*1*) the items being shipped are identical to those identified on the phytosanitary certificate;

(*2*) the shipment is accompanied by an invoice which states that the items being shipped are worth less than $1,250; and

(*3*) the shipper requests that user fee charged be based on the low value of the shipment;

(ii) $19 for a certificate for a noncommercial shipment;

(iii) $30 for a certificate for reexport of a commercial shipment;

(iv) $30 for a processed product certificate for a commercial shipment;

(v) $6 for reissuing any certificate or certificate for reexport; and

[2] Delivery costs are costs such as employee salary and benefits, transportation, per diem, travel, purchase of specialized equipment, and all costs associated with maintaining filed offices.

[3] Support costs are costs at supervisory levels which are similar to delivery costs, and costs such as training, automated data processing, public affairs, enforcement, communications, postage, budget and accounting services, and payroll, purchasing, billing and collection services.

[4] Administrative costs are costs incurred as a direct result of collecting and monitoring federal phytosanitary certificates.

(h) *Refunds of APHIS user fees.* (1) A shipper who pays for a block of certificates to cover commercial shipments may obtain a refund or a credit against future APHIS user fees under the following circumstances:

(i) If a certificate from the block is voided;

(ii) If a certificate from the block is returned unused;

(iii) If the shipper pays for inspection outside of normal business hours (8 a.m. to 4:30 p.m.) under § 354.1 of this part.

(iv) If a certificate from the block is used for a noncommercial shipment; or

(v) If a certificate from the block is used to reissue another certificate.

(2) The amount of any refund or credit will be the amount overcharged, less $6 to cover APHIS administrative expenses.

(i) *Payment methods.* For payment of any of the APHIS user fees required in paragraph (g) of this section, we will accept personal checks for amounts less than $100, and checks drawn on commercial accounts, cashier's checks, certified checks, traveler's checks, and money orders for any amount. All payments must be for the exact amount due.

6. In § 354.4 new paragraph (c) is added to read as follows:

§ 354.4 User fees for certain domestic services.

* * * * *

(c) *Individual agreements for inspection services at ports of entry.* (1) Operators and owners of vessels or aircraft, or their agents, may enter into agreements with APHIS to receive, at points of entry in the United States inspection services in addition to the regular or on-call services available in connection with such vessels or aircraft.

(2) Agreements may be made to cover the following types of services;

(i) Opening and operating a new inspection station at a port of entry; and

(ii) Providing one-time or occasional inspection services at a location where APHIS does not normally provide such services.

(3) Owners and operators of vessels or aircraft, or their agents, must contact the Regional Director, USDA, APHIS, Plant Protection and Quarantine,[2] for

[2] A list of the Regional Directors, USDA, APHIS, Plant Protection and Quarantine and the States for which they are responsible, may be obtained from the Deputy Administrator, Plant Protection and Quarantine, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

the State where they want APHIS to provide services, to make an agreement.

(4) All agreements must include the following:

(i) Name, mailing address, and telephone number of the operator or owner of the vessel or aircraft, or, if applicable, the operator's or owner's agent;

(ii) Explanation of inspection services to be provided;

(iii) Date(s) and time(s) inspection services will be provided;

(iv) Location (street address, port of entry, berth, dock, gate, etc.) and if applicable, identity (identification number, name, etc.) of vessel or aircraft or other thing to be inspected;

(v) An estimate of the actual cost, as calculated by APHIS, to provide the described inspection services for 6 months;

(vi) A statement that APHIS agrees to provide the described inspection services;

(vii) A statement that the owner or operator of the vessel or aircraft, or if appropriate, his or her agent, agrees to pay, at the time the agreement is entered into, a user fee equal to the estimated cost of providing the described inspection services for 6 months;

(viii) A statement that APHIS will credit an amount equal to all user fees received for services provided at the location to the owner or operator's account, until the total amount of user fees credited to the account is equal to the amount of money paid into the account by the owner or operator of the vessel or aircraft, or if appropriate, his or her agent, at the time the agreement was entered into; and

(ix) A statement that the owner or operator of the vessel or aircraft, or if appropriate, his or her agent, agrees to maintain a balance in the user fee payment account equal to the cost of providing the services described for 6 months, as calculated monthly by APHIS.

(5) APHIS will enter into an agreement only if qualified personnel can be made available to provide the services to be provided.

(6) An agreement can be terminated by either party on 30 days written notice.

(7) If, at the time an agreement is terminated, any unobligated funds remain in the user fee account, APHIS will return them to the owner or operator, or his or her agent.

7. A new § 354.5 is added to read as follows:

§ 354.5 Penalties for nonpayment or late payment of user fees.

(a) If a person requesting a service for which an APHIS user fee is payable, is delinquent in paying any APHIS user fee due under either title 7 or title 9, Code of Federal Regulations, or is delinquent in paying the interest on any delinquent APHIS user fee, then APHIS will not provide the service requested.

(b) If APHIS is in the process of providing a service for which an APHIS user fee is due, and the user has not paid the fee within the time required, or if the payment offered by the user is insufficient or not in compliance with the regulations in this part, then APHIS will take the following action:

(1) If an APHIS user fee is due for a certificate or a certificate for reexport, APHIS will not issue the certificate.

(2) If an APHIS user fee is past due by more than 30 days, APHIS will impose a late payment penalty and interest charges in accordance with 31 U.S.C. 3717.

9 CFR CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

8. Chapter I is amended by redesignating subchapters F, G, H, I, J and K as subchapters G, H, I, J, K and L, and a new subchapter F consisting of part 130 is added to read as follows:

SUBCHAPTER F—USER FEES

PART 130—USER FEES

Sec.

130.1 Definitions.
130.2 User fees for individual animals and birds quarantined in APHIS Animal Import Centers.
130.3 User fees for exclusive use of buildings at APHIS Animal Import Centers.
130.4 User fees for services at privately operated permanent import-quarantine facilities.
130.5 User fees for services at privately operated temporary import-quarantine facilities.
130.6 User fees for endorsing export health certificates.
130.7 User fees for inspection and supervision services provided within the United States for export animals and birds.
130.8 User fees for inspection services outside the United States.
130.9 through 49 [Reserved]
130.50 Payment of user fees.
130.51 Penalties for nonpayment or late payment of user fees.

Authority: 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(d).

§ 130.1 Definitions.

As used in this part, the following terms shall have the meaning set forth in this section.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal. All animals except birds, but including poultry.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Animal Import Center. Quarantine facilities operated by APHIS in Newburgh, New York; Miami, Florida; and Honolulu, Hawaii.[1]

APHIS animal health technician. An animal health technician employed by APHIS, who is authorized to perform services required by Title 9, Code of Federal Regulations, Chapter I.

APHIS veterinarian. A veterinarian employed by APHIS, who is authorized to perform the services required by Title 9, Code of Federal Regulations, Chapter I.

Bird. Any member of the class aves, other than poultry.

Domestic animal. Any animal imported into the United States for any purpose other than exhibition in a zoo, park or other place maintained for the exhibition of live animals for recreational or educational purposes.

Equine. Any horse, ass, mule, or zebra.

Export health certificate. An official document endorsed by an APHIS veterinarian which, as required by the importing country, states that animals or birds to be exported from the United States are free of certain diseases and pests.

Game cock. Any chicken bred, trained, or imported for cock fighting.

Person. An individual, corporation, partnership, trust, association, or any other public or private entity, or any officer, employee, or agent thereof.

Poultry. Chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, and turkeys.

Standard feed. Seed, or dry feeds such as dog food or monkey biscuits, whether soaked in water or not.

Zoo animal. Any animal, including poultry, intended for exhibition in a zoo, park or other place maintained for the

[1] The addresses of Animal Import Centers may be obtained from the Deputy Administrator, Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

exhibition of live animals for recreational or educational purposes.[2]

Zoo bird. Any bird intended for exhibition in a zoo, park or other place maintained for the exhibition of live animals or birds for recreational or educational purposes.[3]

Zoo equine. Any equine intended for exhibition in a zoo, park or other place maintained for the exhibition of live animals for recreational or educational purposes.[4]

§ 130.2 User fees for individual animals and birds quarantined in APHIS Animal Import Centers.

(a) The following user fees, which include standard care, feed, and handling, must be paid for each animal or bird quarantined in an Animal Import Center: [5]

Animal or bird	Daily fee
Birds (including zoo birds):	
0–250 grams	$0.75
251–1,000 grams	2.75
over 1,000 grams, and any bird in nonstandard housing or receiving non-standard care and handling	6.50
Poultry (including zoo poultry):	
A. doves, pigeons, quail	1.75
B. chickens, ducks, grouse, guinea fowl, partridge, pea fowl, pheasants	3.00
C. game cocks, geese, swans, turkeys, any poultry housed in non-standard housing or receiving non-standard care and handling	7.00
Equines (including zoo equines):	
1st through 3rd day	128.50
4th through 7th day	93.25
8th and later days	79.00
Zoo animals (except equines, birds, and poultry)	28.00
Domest animals:	
Camels, cattle, bison, buffalo	49.00
All others:	13.00

(b) The importer may, at his or her option, request that birds or poultry be housed in nonstandard housing. Nonstandard housing is individual housing, any housing not normally available at the Animal Import Center, any housing constructed or purchased at the request of the importer, any housing with blinds, dense foliage, or plants, and any housing where the temperature can be adjusted.

(c) The importer may, at his or her option, request that birds or poultry be given nonstandard care and handling. Nonstandard care and handling includes hand-feeding, more than one feeding a day, frequent observation, and any handling or observation which requires personnel to attend to the birds or poultry outside of normal business hours.[6]

(d) If any bird or poultry is fed a diet other than seed, including but not limited to diets of fruit, insects, nectar or fish, the importer must either provide feed or pay for it on an actual cost basis, including the cost of delivery to the Animal Import Center.

(e) Any reservation fee paid by the importer under part 92 of this chapter, will be applied to the APHIS user fees due for animals or birds quarantined in an Animal Import Center.

§ 130.3 User fees for exclusive use of buildings at APHIS Animal Import Centers.

(a) An importer may, at his or her option, occupy entire quarantine buildings at the Animal Import Centers specified below. A user fee will be charged for each building as follows:

Animal Import center	Building size	Montly fee
Newburgh, New York.	72 feet x 82 feet	$39,450

(b) Users must provide APHIS personnel at the Animal Import Center, at the time they make a reservation for quarantine space, with the following information:

(1) Species of animals and birds to be quarantined;

(2) Ages of animals and birds to be quarantined; and

(3) Sizes of animals and birds to be quarantined.

(c) APHIS personnel at the Animal Importer Center will determine, based on the information provided by the importer under paragraph (b) of this section, and on routine husbandry needs, the maximum number of animals and birds permitted in the requested building.

(d) The importer must provide feed, or pay for it on an actual cost basis, including cost of delivery to the Animal Import Center.

§ 130.4 User fees for services at privately operated permanent import-quarantine facilities.

A daily user fee of $49.25 must be paid for each animal quarantined in a privately operated permanent import-quarantine facility.

§ 130.5 User fees for services at privately operated temporary import-quarantine facilities.

(a) A user fee must be paid for each animal quarantined in a privately operated temporary import-quarantine facility.

(b) The user fees are:

(1) $33.50 per hour for service performed by an APHIS veterinarian;

(2) $21.75 per hour for service performed by an APHIS Animal Health Technician.

§ 130.6 User fees for endorsing export health certificates.

(a) The following user fees must be paid for each export health certificate requested [7] for the following types of animals, regardless of the number of animals covered by the certificate:

Certificate categories	User fee
Slaughter animals, of any type, moving to Canada or Mexico	$10.00
Non-slaughter horses to Canada	10.00
Poultry	2.00
Hatching eggs	2.00
Other animals and birds	4.00

(b)(1) The following user fees must be paid for each export certificate requested for animals and birds, depending on the number animals or birds covered by the certificate and the number of tests required:

Number of tests required	Number of animals on certificate	Fee
1–2	First animal	$38.00
	Each additional animal.	1.00
3–6	First animal	41.50
	Each additional animal.	1.25
7 or more	First animal	44.00
	Each additional animal.	1.50

(2) If an export certificate covers more than one animal, but the number of tests required for different animals are not the same, the user fee for the certificate is the fee which would be due if all the animals on the certificate required the same number of tests as the animal which requires the greatest number of tests.

(c) The user fees prescribed in this section will not apply to an export health certificate if it is endorsed by an APHIS veterinarian in the course of performing inspection or supervision

[2] Regulations concerning approval of zoos and requirements for importing wild animals are found in part 9i2 of this chapter.

[3] See footnote 2.

[4] See footnote 2.

[5] APHIS Animal Import Centers are located in Honolulu, HI, Miami, FL, and Newburgh, NY. The addresses of these facilities are published in part 92 of this chapter.

[6] Normal business hours at the Animal Import Centers are: 7:30 a.m. to 11:30 a.m., Honolulu, HI; 7 a.m. to 3:30 p.m., Miami, FL; and 8 a.m. to 4:30 p.m., Newburgh, NY.

[7] An export certificate may need to be endorsed for an animal being exported from the United States if the country to which the animal is being shipped requires one. APHIS endorses export certificates as a service to the public.

services for the animals listed on the certificate, and an APHIS user fee is payable under § 130.7 of this part for the inspection or supervision services performed by the veterinarian.

§ 130.7 User fees for inspection and supervision services provided within the United States for export animals or birds.

(a) A user fee must be paid for the following APHIS services provided within the United States for export animals or birds:

(1) Inspect an export isolation facility;

(2) Supervise animal or bird rest periods prior to export; and

(3) Supervise loading or unloading of animals or birds for export shipment.

(b) The user fees are:

(1) $33.50 per hour for service performed by an APHIS veterinarian;

(2) $21.75 per hour for service performed by an APHIS Animal Health Technician.

§ 130.8 User fees for inspection services outside the United States.

(a) If inspection services (including inspection, testing, and supervision services) are performed outside the United States, in accordance with this title, and the regulations do not contain a provision for payment of the cost of the service, the person requesting the service must pay a user fee under this section.

(b) Any person who wants APHIS to provide inspection services outside the United States must contact the Import/Export Staff, USDA, APHIS, Veterinary Services, Federal Building, Hyattsville, MD 20782, to make an agreement.

(c) All agreements must include the following:

(1) Name, mailing address, and telephone number of either the person requesting the inspection services, or his or her agent;

(2) Explanation of inspection services to be provided, including the regulations in Title 9, Code of Federal Regulations which provide for the services;

(3) Date(s) and time(s) the inspection services are to be provided;

(4) Location (including street address) where inspection services are to be provided;

(5) An estimate of the actual cost, as calculated by APHIS, to provide the described inspection services for 6 months;

(6) A statement that APHIS agrees to provide the inspection services;

(7) A statement that the person requesting the inspection services, or, if appropriate, his or her agent, agrees to pay, at the time the agreement is entered into, a user fee equal to the estimated cost of providing the described inspection services for 6 months; and

(8) A statement that the person requesting the inspection services, or, if appropriate, his or her agent, agrees to maintain a user fee payment account equal to the cost of providing the described inspection services for 6 months, as calculated monthly by APHIS.

(d) APHIS will enter into an agreement only if qualified personnel can be made available to provide the inspection services.

(e) An agreement can be terminated by either party on 30 days written notice.

(f) If, at the time an agreement is terminated, any unobligated funds remain in the user fee payment account, APHIS will refund the funds to the person who requested the inspection services, or his or her agent.

§§ 130.9 through 130.49 [Reserved]

§ 130.50 Payment of user fees.

(a) All user fees must be paid as follows:

(1) User fees for animals in Animal Imports Centers or privately-operated permanent import-quarantine facilities must be paid at the time the animals are released from quarantine;

(2) User fees for animals in privately-operated temporary import-quarantine facilities must be paid when billed;

(3) User fees for supervision and inspection services specified in § 130.7 must be paid when billed; and

(4) User fees for export health certificates must be paid either prior to receipt of endorsed certificates or when billed. Payment prior to receipt of endorsed certificates must continue until APHIS determines that the user has established an acceptable credit history, at which time payment may, at the option of the user, be made when billed.

(b) User fees may be paid by the following methods:

(1) Cash, if payment is made at an area office [8] or an Animal Import Center;

(2) All types of checks, including traveler's checks;

(3) Money orders; or

(4) Credit cards (VISA and Master Card) if payment is made at the Animal Import Centers in Newburgh, NY, or in Miami, FL, or at the USDA, APHIS, VS, office at John F. Kennedy International Airport, Jamaica, NY.

[8] A list of APHIS Area Offices may be obtained from the Deputy Administrator, Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

(c) Payment must be for the exact amount due.

§ 130.51 Penalties for nonpayment or late payment of user fees.

(a) If a person requesting a service for which an APHIS user fee is payable, is delinquent in paying any APHIS user fee due under either title 7 or title 9, Code of Federal Regulations, or is delinquent in paying the interest on any delinquent APHIS user fee, then APHIS will not provide the service requested.

(b) If APHIS is in the process of providing a service for which an APHIS user fee is due, and the user has not paid the fee within the time required, or if the payment offered by the user is inadequate or unacceptable, then APHIS will take the following action:

(1) If an APHIS user fee is due for animals or birds in quarantine at an Animal Import Center or at a privately-operated import-quarantine facility, APHIS will not release them; and

(2) If an APHIS user fee is due for an export health certificate, APHIS will not release the certificate.

(c) If user fees are paid later than 30 days after payment is due, APHIS will impose a late payment penalty and interest charges as in accordance with 31 U.S.C. 3717.

(d) Animals or birds left in quarantine at an Animal Import Center for more than 30 days after the end of the required quarantine period will be deemed to be abandoned.

(1) After APHIS releases the abandoned animals or birds from quarantine, APHIS may seize them and sell or otherwise dispose of them, as determined by the Administrator, provided that their sale is not contrary to any Federal law or regulation, and may recover all expenses of handling the animals or birds from the proceeds of their sale or disposition.

(2) If animals or birds abandoned in quarantine at an Animal Import Center cannot be released from quarantine, APHIS may seize and dispose of them, as determined by the Administrator, and may recover all expenses of handling the animals or birds from the proceeds of their disposition.

Done in Washington, DC, this 6th day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-536 Filed 1-8-92; 8:45 am]

BILLING CODE 3410-34-M

Farmers Home Administration

7 CFR Parts 1866, 1951, and 1965

Final Payment on Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation regarding final payments on loans secured by real estate and redesignates and revises part 1866 (FmHA Instruction 451.4) as subpart D of part 1951 of this Chapter. The present regulation is outdated and does not recognize some existing authorities. The intent is to give the authority to release documents to the appropriate servicing officials and create uniformity within FmHA in the processing of final payoffs.

EFFECTIVE DATE: February 10, 1992.

FOR FURTHER INFORMATION CONTACT: Lucia A. McKinney, Loan Specialist or William M. Toney, Chief, Servicing Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, South Agriculture Building, room 5309, Washington, DC 20250, telephone: (202) 720-1452.

SUPPLEMENTARY INFORMATION: This action is necessary to update the criteria for satisfaction and release of security documents upon receipt of final payoff balances on loans. 7 CFR part 1951, subpart D—Final Payment on Loans, is a new regulation and a rewrite of 7 CFR part 1866 (FmHA Instruction 451.4). This regulation identifies the acceptable forms of payment for release of security documents upon receipt of final payment. With the automation of loan account status information, previous procedures used for obtaining payoff balances are no longer appropriate. Field offices may now obtain payoff balances by accessing accounts under the Automated Data Processing System (ADPS). These revisions will be effective in minimizing errors in obtaining final payoff balances on rural housing accounts and in providing more efficient service to the public. Following are the major revisions incorporated in this rulemaking action: 1. Section 1951.154 provides authorization to appropriate servicing officials to execute and release security instruments and related documents when an account has been satisfactorily paid in full. 2. Section 1955.155(a) provides for disposition of funds remaining in a supervised bank account when the borrower is ready to pay off the loan. 3. Section 1955.155(c)(2) identifies acceptable forms of payments upon which documents can be released at the time of payoff.

Classification

This action has been reviewed under USDA procedures in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, there will be no 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. This action is not expected to substantially affect budget outlay or affect more than one agency or to be controversial. The net result is to provide better service to rural communities.

Intergovernmental Consultation

The programs to which this activity is related are listed in the Catalog of Federal Domestic Assistance under the following numbers and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

10.404 Emergency Loans.
10.405 Farm Labor Housing Loans and Grants.
10.406 Farm Operating Loans.
10.407 Farm Ownership Loans.
10.410 Low Income Housing Loans (Section 502 Rural Housing Loans).
10.411 Rural Housing Site Loans.
10.414 Resource Conservation and Development Loans.
10.415 Rural Rental Housing and Water Loans.
10.416 Soil and Water Loans.
10.417 Very Low-Income Housing Repair Loans and Grants (Section 504 Rural Housing Loans and Grants).
10.418 Water and Waste Disposal Systems for Rural Communities.
10.419 Watershed Protection and Flood Protection Loans.
10.420 Rural Self-Help Housing Technical Assistance (Section 523 Technical Assistance).
10.421 Indian Tribes and Tribal Corporation Loans.
10.422 Business and Industrial Loans.
10.423 Community Facilities Loans.
10.427 Rural Rental Assistance Payments (Rental Assistance).

Environmental Impact Statement

This action has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969 (Pub. L. 91-190), an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not directly involve small entities nor does it add or remove any authorities which would affect small entities.

Discussion of Comments

The proposed rule published in the **Federal Register** (56 FR 11520) on March 19, 1991, provided for a 60-day comment period ending May 20, 1991. There were no comments received.

List of Subjects in 7 CFR Parts 1951 and 1965

Accounting, Administrative practice and procedure, Foreclosure, Grant programs—Housing and community development, Loan programs—Agriculture, Low and moderate income housing—Rental, Mortgages, Reporting requirements, Rural areas.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1866—[REMOVED]

1. Part 1866 is removed and reserved.

PART 1951—SERVICING AND COLLECTIONS

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

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

3. Subpart D of part 1951 is added to read as follows:

Subpart D—Final Payment on Loans

Sec.
1951.151 Purpose.
1951.152 Definition.
1951.153 Chattel security or note-only cases.
1951.154 Satisfaction and release of documents.
1951.155 County and/or District Office Actions.
1951.156-1951.200 [Reserved].

Subpart D—Final Payment on Loans

§ 1951.151 Purpose.

This subpart prescribes authorizations, policies, and procedures of the Farmers Home Administration (FmHA) for processing final payment of all loans.

§ 1951.152 Definition.

As used in this subpart:

Mortgage. Includes real estate mortgage, deed of trust or any other form of security instrument or lien on real property.

§ 1951.153 Chattel security or note-only cases.

(a) If a loan secured by both real estate and chattels is paid in full, the chattel security instrument will be satisfied or released in accordance with subpart A of part 1962 of this chapter.

(b) When a loan is evidenced by only a note and the note is paid in full, FmHA will deliver the note to the borrower in the manner prescribed in § 1951.155(c) of this subpart.

§ 1951.154 Satisfaction and release of documents.

(a) *Authorization.* FmHA is authorized to execute the necessary releases and satisfactions and return security instruments and related documents to borrowers. Satisfaction and release of security documents takes place:

(1) Upon receipt of payment in full of all amounts owed to the Government including any amounts owed to the loan insurance account, subsidy recapture amounts, all loan advances and/or other charges to the borrower's account;

(2) Upon verification that the amount of payment received is sufficient to pay the full amount owed by the borrower; or

(3) When a compromise or adjustment offer has been accepted and approved by the appropriate Government official in full settlement of the account and all required funds have been paid.

(b) [Reserved]

(c) *Lost note.* If the original note is lost FmHA will give the borrower an affidavit of lost note so that the release or satisfaction may be processed.

§ 1951.155 County and/or District Office actions.

(a) *Funds remaining in supervised bank accounts.* When a borrower is ready to pay an insured or direct loan in full, any funds remaining in a supervised bank account will be withdrawn and remitted for application to the borrower's account. If the entire principal of the loan is refunded after the loan is closed, the borrower will be required to pay interest from the date of the note to the date of receipt of the refund.

(b) *Determining amount to be collected.* FmHA will compute and verify the amount to be collected for payment of an account in full. Requests for payoff balances on all accounts will be furnished in writing in a format specified by FmHA (available in any FmHA office).

(c) *Delivery of satisfaction, notes, and other documents.* When the remittance which paid an account in full has been processed by FmHA, the paid note and satisfied mortgage may be returned to the borrower. If other provisions exist, the mortgage will not be satisfied until the total indebtedness secured by the mortgage is paid. For instance, in a situation where a rural housing loan is paid-in-full and there is a subsidy recapture receivable balance that the borrower elects to delay repaying, the amount of recapture to be repaid will be determined when the principal and interest balance is paid. The mortgage securing the FmHA debt will not be released of record until the total amount owed the Government is repaid. To permit graduation or refinancing by the borrower, the mortgage securing the recapture owed may be subordinated.

(1) If FmHA receives final payments in a form other than cash, U.S. Treasury check, cashier's check, certified check, money order, bank draft, or check issued by an institution determined by FmHA to be financially responsible, the mortgage and paid note will not be released until after a 30-day waiting period. If other indebtedness to FmHA is not secured by the mortgage, FmHA will execute the satisfaction or release. When the stamped note is delivered to the borrower, FmHA will also deliver the real estate mortgage and related title papers such as title opinions, title insurance binders, certificates of title, and abstracts which are the property of the borrower. Any water stock certificates or other securities that are the property of the borrower will be returned to the borrower. Also, any assignments of income will be terminated as provided in the assignment forms.

(2) Delivery of documents at the time of final payment will be made when payment is in the form of cash, U.S. Treasury check, cashier's check, certified check, money order, bank draft, or check issued by an institution determined by FmHA to be responsible. FmHA will not accept payment in the form of foreign currency, foreign checks or sight drafts. FmHA will execute the satisfaction or release (unless other indebtedness to FmHA is covered by the mortgage) and mark the original note with a paid-in-full legend based upon receipt of the full payment balance of the borrower's account(s), computed as of the date final payment is received. In unusual cases where an insured promissory note is held by a private holder, FmHA can release the mortgage and deliver the note when it is received.

(d) [Reserved]

(e) [Reserved]

(f) *Cost of recording or filing of satisfaction.* The satisfaction or release will be delivered to the borrower for recording and the recording costs will be paid by the borrower, except when State law requires the mortgagee to record or file satisfactions or release and pay the recording costs.

(g) *Property insurance.* When the borrower's loan has been paid-in-full and the satisfaction or release of the mortgage has been executed, FmHA may release the mortgage interest in the insurance policy as provided in subpart A of part 1806 of this chapter (FmHA Instruction 426.1).

(h) [Reserved]

(i) *Outstanding Loan Balance(s).* FmHA will attempt to collect any account balance(s) that may result from an error by FmHA in handling final payments according to paragraph 1951.155(b) of this section. If collection cannot be made, the debt will be settled according to subpart B of part 1956 of this chapter or reclassified to collection-only. A deficiency judgment may be considered if the balance is a significant amount ($1,000 or more) and the borrower has known assets.

§§ 1951.156–1951.200 [Reserved]

Subpart E—Servicing of Community and Insured Business Program Loans and Grants

§ 1951.220 [Amended]

4. Section 1951.220(a) is amended in the first sentence by changing the reference from "Part 1866 of this chapter (FmHA Instruction 451.4)" to "Subpart D of Part 1951 of this chapter."

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

PART 1965—REAL PROPERTY

5. The authority citation for part 1965 continues to read as follows:

Authority: 7 CFR 2.23; 7 CFR 2.70.

§ 1965.13 [Amended]

6. Section 1965.13(a) is amended in the last sentence by changing the reference from "Part 1866 of this chapter (FmHA

Instruction 451.4)" to "Subpart D of Part 1951 of this chapter."

Subpart B—Security Servicing for Multiple Housing Loans

§ 1965.90 [Amended]

7. Section 1965.90(c) is amended in the first sentence by changing the reference "Part 1866 of this chapter (FmHA Instruction 451.4" to "Subpart D of Part 1951 of this chapter."

Dated: November 13, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92-434 Filed 1-8-92; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket No. 91-193]

Post-Release Flock Testing for Chickens Affected by Salmonella Enteritidis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending our regulations concerning chicken disease caused by *Salmonella enteritidis* serotype *enteritidis* (SE) by establishing authority for the Animal and Plant Health Inspection Service to perform post-release testing of poultry flocks and poultry houses that have been released from regulatory restrictions imposed due to SE. We are also changing the requirement that flocks and houses may be released from test status only through negative tests for SE, to allow their release alternatively through depopulation, cleaning, and disinfection. These changes are necessary to reduce further the risk that poultry flocks and poultry houses declared free of SE may become reinfected. These changes affect persons in control of poultry flocks or poultry houses that were determined to be in test or infected status under the regulations, by making their flocks subject to additional testing for SE and by providing depopulation as an alternative for release from test status.

DATES: Interim rule effective January 6, 1992. Consideration will be given only to comments received on or before March 9, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-193. Comments may be inspected at room 1141 of the South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. John Mason, Director, Salmonella Task Force, VS, APHIS, USDA, room 205, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, 301-436-4363.

SUPPLEMENTARY INFORMATION:

Background

In a final rule published in the **Federal Register** on January 30, 1991 (56 FR 3730-3743, Docket No. 90-134) (referred to below as the final rule), we promulgated regulations to address the problem of chicken disease caused by *Salmonella enteritidis* serotype *enteritidis* (SE). At that time we established a system to test egg production flocks, and separate poultry houses in such flocks, in order to identify those containing chickens infected with SE.

The final rule focused on those flocks and houses that were implicated as the most probable source of outbreaks of SE in chickens or humans. This system involved classification of egg production flocks in the categories of study, test, or infected flocks or houses, and included requirements for testing of environmental, blood, and internal organ samples for evidence of SE under certain circumstances. Interstate movement restrictions were also imposed on articles from test and infected flocks and houses. Restricted articles include live chickens, eggs, manure, cages, coops, containers, troughs, and other equipment. Some of these articles are prohibited from moving, and some are allowed movement under a permit and special conditions. Eggs may be moved interstate from infected and test flocks or houses only for pasteurization, hard-boiled cooking, or for export under certain circumstances.

According to § 82.32(e) of the final rule, a flock or house may be released from infected status if it tests negative for SE, or if the flock or house is depopulated and cleaned and disinfected in accordance with the final rule. The final rule allows a flock or house to be released from study or test status only through negative testing for SE, not through depopulation. We are changing the provision of the rule allowing release from test status only through negative testing to allow release of test flocks or houses that are depopulated, cleaned, and disinfected. Depopulation is an effective and preferred alternative for many flock owners in test status, and limiting release from test status to flocks and houses with negative tests appears to be unnecessary.

Upon further consideration, APHIS has determined that the *Salmonella* control program would be more effective in preventing the spread of SE if we perform post-release testing of flocks and houses that were in test or infected status and were later released. SE can enter a flock through avenues that may continue to exist even after a flock is released from test or infected status because it has tested negative for SE or been depopulated. For example, if the flock uses a source of feed that is contaminated with SE, or has a serious rodent control problem, the flock could easily become reinfected with SE. Also, although the current regulations provide, in § 82.37, that depopulated test or infected flocks and houses must be cleaned, washed, and disinfected, the disinfection procedures are not always completely effective in destroying SE. Incomplete disinfection of a depopulated test or infected house could lead to infection of the poultry used to restock it.

To control this type of reinfection problem, we are beginning a program to test, at the discretion of the Administrator, test and infected flocks and houses that were released from such status under the regulations, for: (1) A period of 18 months following repopulation if they were released due to depopulation, cleaning, washing, and disinfection pursuant to § 82.37, or (2) a period of 18 months following their release if they were released due to testing negative for SE pursuant to § 82.32(c) and (d). Based on our study of the epidemiology of SE spread in poultry flocks, we believe that if a flock is exposed to sources of SE contamination sufficient to infect the flock, the flock is likely to become infected within 18 months. Also, in situations where repopulation is carried out, 18 months is the approximate time period required for a full cycle in an egg production house, from introduction of new chickens through their depopulation as spent hens.

The post-release testing program we are establishing will allow us to identify former test and infected flocks and houses that become reinfected with SE during the 18 months following their release from test or infected status, or

during the 18 months following repopulation, and to impose restrictions to prevent further spread of SE. Flocks and houses that test positive for SE in this post-release testing period will be determined to be in test status if manure or egg transport machinery tests positive for SE, and to be in infected status if internal organs of chickens test positive for SE.

In addition to enforcing our *Salmonella* regulations, APHIS is also working with the poultry industry to develop voluntary programs to test for and control SE in egg production flocks. Flocks that participate in such a voluntary program would be under a regular schedule of testing for SE that would make the post-release tests allowed by this rule redundant. Therefore, we are exempting former test and infected flocks and houses from the post-release test requirements of this rule if the flocks participate, during the 18 months following their release or repopulation, in a voluntary program approved by the Administrator to control SE.

Currently, no voluntary program to control SE in egg production flocks has been approved by the Administrator. If such a program is approved, we will publish details of the voluntary program's standards and application procedures for comment in the **Federal Register**.

To establish the post-release testing requirement, we are amending § § 82.32(b)(2) and (e) of the regulations. Section 82.32(b)(2) currently reads as follows:

(2) *Release from test poultry house or test flock status.* A Federal or State representative shall determine that a separate poultry house is no longer a test poultry house, or that a flock is no longer a test flock, and shall notify in writing the person in control of the house or flock of that determination, after the Federal or State representative determines that blood and internal organ samples from the house or flock have been collected and tested twice in accordance with paragraphs (c) and (d) of this section with no recovery of *Salmonella enteritidis* serotype *enteritidis*.

We are revising this paragraph to read as follows:

(2) *Release from test poultry house or test flock status; post-release sampling and testing.* (i) A Federal or State representative shall determine that a separate poultry house is no longer a test poultry house, or that a flock is no longer a test flock, and shall notify in writing the person in control of the house or flock of that determination, after the Federal or State representative determines that, after the house or flock has been determined to be in test status:

(A) the house or flock has been depopulated, and cleaned, washed, and disinfected in accordance with § 82.37 of this subpart; or,

(B) blood and internal organ samples from the chickens in the house or flock have been collected and tested in accordance with paragraphs (c) and (d) of this section with no recovery of *Salmonella enteritidis* serotype *enteritidis*.

(ii) For 18 months following the repopulation of a flock or house released from test status, due to depopulation, cleaning, washing, and disinfection pursuant to paragraph (b)(2)(i)(A) of this section, or for 18 months following release of a flock or house from test status, due to testing negative for *Salmonella enteritidis* serotype *enteritidis* pursuant to paragraph (b)(2)(i)(B) of this section, the Administrator may make such periodic collection and testing of samples from the flock or house as he or she determines to be necessary to ensure that the house or flock is free of *Salmonella enteritidis* serotype *enteritidis*; *provided:* that such sample collection and testing will not be performed if the flock or house is participating in a voluntary program approved by the Administrator to control *Salmonella enteritidis* serotype *enteritidis*. If one or more manure or egg transport machinery samples collected and tested in accordance with the provisions of paragraphs (b)(1) and (d) of this section test positive for *Salmonella enteritidis* serotype *enteritidis*, the flock or house from which the sample was taken shall be determined to be a test flock or test poultry house. If one or more internal organ samples collected and tested in accordance with the provisions of paragraphs (c)(2) and (d) of this section test positive for *Salmonella enteritidis* serotype *enteritidis*, the flock or house from which the sample was taken shall be determined to be an infected flock or infected poultry house. If the person in control of the flock or poultry house has refused to schedule sample collection within 48 hours of the time a Federal or State representative requests such sample collection, or has refused to allow completion of sample collection according to the schedule set by the Federal or State representative, the flock or poultry house shall be determined to be in test status.

This revision allows the Administrator to subject former test flocks and test poultry houses to post-release testing for 18 months following their release from test status or repopulation. It also provides that test flocks and test poultry houses may be released from test status if depopulated, cleaned, washed, and disinfected, in addition to the former procedure by which they could be released if the internal organs of their poultry tested negative for SE. Finally, it provides that owners who refuse to allow post-release testing will have their flocks or houses placed in test status and be subjected to the restrictions and testing requirements which the regulations provide for that status.

We are making similar changes to § 82.32(e) concerning infected flocks and infected poultry houses. Section 82.32(e) currently reads as follows:

(e) *Release from infected poultry house status or infected flock status.* A Federal or State representative shall determine that a house or flock is no longer an infected poultry house or an infected flock, and shall notify in writing the person in control of the house or flock of that determination, if the Federal or State representative determines that, after the house or flock has been determined to be infected:

(1) the house or flock has been depopulated, and cleaned, washed, and disinfected in accordance with § 82.37 of this subpart; or,

(2) internal organ samples have been collected from the chickens in the house or flock and tested in accordance with paragraphs (c) and (d) of this section, with no recovery of *Salmonella enteritidis* serotype *enteritidis*.

We are revising this paragraph to read as follows:

(e) *Release from infected poultry house status or infected flock status; post-release sampling and testing.* (1) A Federal or State representative shall determine that a house or flock is no longer an infected poultry house or an infected flock, and shall notify in writing the person in control of the house or flock of that determination, if the Federal or State representative determines that, after the house or flock has been determined to be infected:

(i) the house or flock has been depopulated, and cleaned, washed, and disinfected in accordance with § 82.37 of this subpart; or,

(ii) internal organ samples from the chickens in the house or flock have been collected and tested in accordance with paragraphs (c) and (d) of this section, with no recovery of *Salmonella enteritidis* serotype *enteritidis*.

(2) For 18 months following the repopulation of a flock or house released from infected status, due to depopulation, cleaning, washing, and disinfection pursuant to paragraph (e)(1)(i) of this section, or for 18 months following release of a flock or house from infected status, due to testing negative for *Salmonella enteritidis* serotype *enteritidis* pursuant to paragraph (e)(1)(ii) of this section, the Administrator may make such periodic collection and testing of samples from the flock or house as he or she determines to be necessary to ensure that the house or flock is free of *Salmonella enteritidis* serotype *enteritidis*; *provided:* that such sample collection and testing will not be

performed if the flock or house is participating in a voluntary program approved by the Administrator to control *Salmonella enteritidis* serotype *enteritidis*. If one or more manure or egg transport machinery samples collected and tested in accordance with the provisions of paragraphs (b)(1) and (d) of this section test positive for *Salmonella enteritidis* serotype *enteritidis*, the flock or house from which the sample was taken shall be determined to be a test flock or test poultry house. If one or more internal organ samples collected and tested in accordance with the provisions of paragraphs (c)(2) and (d) of this section test positive for *Salmonella enteritidis* serotype *enteritidis*, the flock or house from which the sample was taken shall be determined to be an infected flock or infected poultry house. If the person in control of the flock or poultry house has refused to schedule sample collection within 48 hours of the time a Federal or State representative requests such sample collection, or has refused to allow completion of sample collection according to the schedule set by the Federal or State representative, the flock or poultry house shall be determined to be in test status.

Emergency Action

Robert Melland, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment.

SE is a communicable disease of poultry and is a serious public health concern. It is also a cause of economic concern for the United States egg-type chicken industry. Immediate action is necessary to prevent the spread of SE in chickens and to protect public health.

Losses due to SE currently represent a serious adverse economic effect, particularly to the $3.2 billion egg industry. The current SE control program is helping to reduce the spread of SE in poultry flocks and reduce the incidence of human disease outbreaks caused by SE, but for the program to be effective, it must address the continued freedom of flocks from SE after they are released from regulatory restrictions. By addressing post-release testing of former infected and test poultry flocks and houses, this rule will allow APHIS to immediately address the possible existence of SE infection in these previously regulated poultry flocks and houses. Any delay would allow the opportunity for increased spread of SE among and from possibly infected former test and infected poultry flocks and houses.

Under these circumstances, prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest. Therefore, there is good cause under 5 U.S.C. 553 to make the interim rule effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect 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.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

As an alternative to the provisions of this rule, we have considered taking no action, and allowing the current regulations to remain in effect unchanged. The alternative of no action was rejected because it would not fulfill the APHIS mandate to prevent the dissemination of communicable poultry disease.

This rule would affect only flocks and houses that have been or are determined to be in test or infected status under the regulations. There are currently fewer than 20 such flocks in the United States, although continued enforcement of our SE regulations could increase this number.

As discussed in the preamble of the final rulemaking document (56 FR 3730–3743), any poultry flocks or houses that test positive for SE as a result of testing under this rule and are placed in test or infected status will suffer economic impacts, in the form of revenue loss due to the restrictions on interstate movement of chickens and eggs (eggs may be moved interstate for breaking and pasteurization, boiling, or export) for the period they are considered to be from test or infected flocks or houses. Based on the rate at which we have been identifying test and infected flocks and houses, the total number of egg production flocks that will be subjected to post-release testing in accordance with this rule will probably be fewer than 20 each year, of which fewer than 5 may be owned by small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 82

Animal diseases, Chlamydiosis, Exotic Newcastle disease, Ornithosis, Poultry and poultry products, Psittacosis, Salmonella, Quarantine, Transportation.

Accordingly, the regulations in subpart B of part 82 are amended as follows:

PART 82—EXOTIC NEWCASTLE DISEASE IN ALL BIRDS AND POULTRY; PSITTACOSIS AND ORNITHOSIS IN POULTRY; POULTRY DISEASE CAUSED BY SALMONELLA ENTERITIDIS SEROTYPE ENTERITIDIS

Subpart B—Poultry Disease Caused By Salmonella enteritidis Serotype enteritidis

The authority citation for part 82 continues to read as follows:

Authority: 21 U.S.C. 111-113, 115, 117, 120, 123-126, 134a, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 82.30 [Amended]

2. In § 82.30, the definitions of "Infected flock" and "Infected poultry house" would be amended by adding "or (e)(2)" immediately following the reference to "§ 82.32(c)".

3. In § 82.30, the definitions of "Test flock" and "Test poultry house" would be amended by adding "or (b)(2)(ii)" immediately following "§ 82.32(b)".

§ 82.32 [Amended]

4. Paragraphs (b)(2) and (e) of § 82.32 are revised to read as follows:

§ 82.32 Identification of study flocks, test poultry houses, test flocks, infected poultry houses, and infected flocks.

* * * * *

(b)* * *

(2) *Release from test poultry house or test flock status; post-release sampling and testing.* (i) A Federal or State representative shall determine that a separate poultry house is no longer a test poultry house, or that a flock is no longer a test flock, and shall notify in writing the person in control of the house or flock of that determination, after the Federal or State representative determines that, after the house or flock has been determined to be in test status:

(A) the house or flock has been depopulated, and cleaned, washed, and disinfected in accordance with § 82.37 of this subpart; or,

(B) blood and internal organ samples from the chickens in the house or flock have been collected and tested in accordance with paragraphs (c) and (d) of this section with no recovery of *Salmonella enteritidis* serotype *enteritidis*.

(ii) For 18 months following the repopulation of a flock or house released from test status, due to depopulation, cleaning, washing, and disinfection pursuant to paragraph (b)(2)(i)(A) of this section, or for 18 months following release of a flock or house from test status, due to testing negative for *Salmonella enteritidis* serotype *enteritidis* pursuant to paragraph (b)(2)(i)(B) of this section, the Administrator may make such periodic collection and testing of samples from the flock or house as he or she determines to be necessary to ensure that the house or flock is free of *Salmonella enteritidis* serotype *enteritidis*; *provided:* that such sample collection and testing will not be performed if the flock or house is participating in a voluntary program approved by the Administrator to control *Salmonella enteritidis* serotype *enteritidis*. If one or more manure or egg transport machinery samples collected and tested in accordance with the provisions of paragraphs (b)(1) and (d) of this section test positive for *Salmonella enteritidis* serotype *enteritidis*, the flock or house from which the sample was taken shall be determined to be a test flock or test poultry house. If one or more internal organ samples collected and tested in accordance with the provisions of paragraphs (c)(2) and (d) of this section test positive for *Salmonella enteritidis* serotype *enteritidis*, the flock or house from which the sample was taken shall be determined to be an infected flock or infected poultry house. If the person in control of the flock or poultry house has refused to schedule sample collection within 48 hours of the time a Federal or State representative requests such sample collection, or has refused to allow completion of sample collection according to the schedule set by the Federal or State representative, the flock or poultry house shall be determined to be in test status.

* * * * *

(e) *Release from infected poultry house status or infected flock status; post-release sampling and testing.* (1) A Federal or State representative shall determine that a house or flock is no longer an infected poultry house or an infected flock, and shall notify in writing the person in control of the house or flock of that determination, if the Federal or State representative determines that, after the house or flock has been determined to be infected:

(i) The house or flock has been depopulated, and cleaned, washed, and disinfected in accordance with § 82.37 of this subpart; or,

(ii) Internal organ samples from the chickens in the house or flock have been collected and tested in accordance with paragraphs (c) and (d) of this section, with no recovery of *Salmonella enteritidis* serotype *enteritidis*.

(2) For 18 months following the repopulation of a flock or house released from infected status, due to depopulation, cleaning, washing, and disinfection pursuant to paragraph (e)(1)(i) of this section, or for 18 months following release of a flock or house from infected status, due to testing negative for *Salmonella enteritidis* serotype *enteritidis* pursuant to paragraph (e)(1)(ii) of this section, the Administrator may make such periodic collection and testing of samples from the flock or house as he or she determines to be necessary to ensure that the house or flock is free of *Salmonella enteritidis* serotype *enteritidis*; *provided:* that such sample collection and testing will not be performed if the flock or house is participating in a voluntary program approved by the Administrator to control *Salmonella enteritidis* serotype *enteritidis*. If one or more manure or egg transport machinery samples collected and tested in accordance with the provisions of paragraphs (b)(1) and (d) of this section test positive for *Salmonella enteritidis* serotype *enteritidis*, the flock or house from which the sample was taken shall be determined to be a test flock or test poultry house. If one or more internal organ samples collected and tested in accordance with the provisions of paragraphs (c)(2) and (d) of this section test positive for *Salmonella enteritidis* serotype *enteritidis*, the flock or house from which the sample was taken shall be determined to be an infected flock or infected poultry house. If the person in control of the flock or poultry house has refused to schedule sample collection within 48 hours of the time a Federal or State representative requests such sample collection, or has refused to allow completion of sample collection according to the schedule set by the Federal or State representative, the flock or poultry house shall be determined to be in test status.

Done in Washington, DC, this 6th day of January, 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-534 Filed 1-8-92; 8:45 am]

BILLING CODE 3410-34-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-ANE-36, Amendment No. 39-8093, AD 91-24-07]

Airworthiness Directives: Air Cruisers Company, TSO-C69 Evacuation Slide System, Part Number (P/N) D31005-( ) and D30543-( )

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Air Cruisers Company, TSO-C69 Evacuation Slide Systems, which requires modifications to the Air Cruisers Evacuation Slides P/N D31005-( ) and D 30543-( ). This amendment is prompted by the failure of an evacuation slide to properly deploy as a result of an incorrectly routed slide valve release cable. This condition, if not corrected, could result in an evacuation slide not inflating properly, hampering an emergency evacuation of the aircraft.

DATES: Effective February 10, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 1992.

ADDRESSES: The applicable service information may be obtained from Air Cruisers Co., P.O. Box 180, Belmar, NJ 07719-0180. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803-

5299, or the New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. D. Kramar, Aerospace Engineer, Systems and Equipment Branch, ANE-173, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone no. (516) 791-6427.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive that is applicable to Air Cruisers Company, TSO-C69 Evacuation Slide System, Part Numbers (P/N) D31005-( ) and D30543-( ), was published in the **Federal Register** on March 1, 1991 (56 FR 8732). That action proposed to require the replacement of the inflation cable, and to reidentify the emergency evacuation slides in accordance with Air Cruisers Co., Service Bulletin (SB) 201-25-15, dated September 17, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The economic analysis paragraph that is discussed below has been revised to reflect an increase in the specified hourly labor rate from $40 an hour, that was cited in the preamble of the notice of proposed rulemaking to $55 an hour. Therefore, it is necessary to increase the estimated total cost impact of the AD.

There are approximately 939 slides of the affected design in the worldwide fleet. It is estimated that the modification kit of each affected slide will cost approximately $60, and the modification would take approximately 0.3 manhours at $55 per manhour. Based on these figures the total maximum cost impact of the AD is estimated to be $71,834.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

91-24-07. Air Cruisers Co.: Amendment 39-8093, Docket No. 90-ANE-36

Applicability: Air Cruisers Co., TSO-C69 Emergency Evacuation Slide systems P/N D31005-( ), Serial Numbers 0001 through 0870, and P/N D30543-( ), Serial Numbers 0001 through 0067, installed on but not limited to British Aerospace Model BAe-146 series airplanes.

Compliance: Required within the next 3 months after the effective date of this AD, unless already accomplished.

To prevent the possibility of the emergency evacuation slide from inflating improperly which could result in hinderance of the emergency evacuation of the airplane, accomplish the following:

(a) Replace the inflation cable, and reidentify the emergency evacuation slide in accordance with paragraph 2, of the Accomplishment Instructions of Air Cruisers Co., Service Bulletin (SB) 201-25-13, dated September 17, 1990.

(b) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, operations or avionics, as appropriate), an alternate method of compliance with the requirements of this AD or adjustments to the compliance time specified in this AD may be approved by the Manager, New York Aircraft Certification Office, ANE-170, Engine & Propeller Directorate, Aircraft Certification Service, FAA, 181 South Franklin Avenue, Valley Stream, New York.

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

(d) The modification procedure shall be done in accordance with the following Air Cruisers Co. Service Bulletin:

Document No.	Pages	Date
201-25-13	1-6	9/17/90
Total Pages: 6		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Air Cruisers Co., P.O. Box 180, Belmar, New Jersey 07719-0810. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, room 311, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment (39-8093, AD 91-24-07) becomes effective February 10, 1992.

Issued in Burlington, Massachusetts, on December 16, 1991.

Jack A. Sain,

Manager Engine & Propeller Directorate, Aircraft certification Service

[FR Doc. 92-485 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-153-AD; Amendment 39-8130; AD 92-01-06]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires a visual inspection or functional test of the fuel shutoff valves (spar valves) and fuel crossfeed valve; and, if necessary, removal and re-installation of the valve. This amendment is prompted by a report of a fuel crossfeed valve that was incorrectly installed during factory assembly and would not close fully. This condition, if not corrected, could result in a valve which could not close fully, thereby allowing fuel to flow to the nacelle during an engine fire.

DATES: Effective February 17, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of February 17, 1992.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey E. Duven, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2688. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 757 series airplanes, was published in the **Federal Register** on October 4, 1991 (56 FR 50298). That action proposed to require a visual inspection or functional test of the fuel shutoff valves (spar valves) and fuel crossfeed valve and, if necessary, removal and re-installation of the valve.

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

All commenters supported the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 352 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 129 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $42,570.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

92-01-06. Boeing: Amendment 39-8130. Docket No. 91-NM-153-AD.

Applicability: Model 757 series airplanes, as listed in Boeing Service Letter 757-SL-28-8-A, dated June 5, 1991, certificated in any category.

Compliance: Required within the next 3,000 hours time-in-service after the effective date of this AD, unless previously accomplished.

To assure that the fuel crossfeed valve and fuel shutoff valves close fully, accomplish the following:

(a) Perform a visual inspection or a functional test of the fuel crossfeed valve and fuel shutoff valves to determine if the valves are correctly installed, in accordance with Boeing Service Letter 757-SL-28-8-A, dated June 5, 1991. If an incorrectly installed valve is found, prior to further flight, remove and re-install it correctly, in accordance with the service letter.

(b) Within 30 days after accomplishing the inspection or functional test required by paragraph (a) of this AD, submit a report of the inspection or test findings from which it is determined that the fuel crossfeed valve or fuel shutoff valves were incorrectly installed, to: Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055; rapid fax: (206) 227-1181; telex 756366. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reductions Act of 1980 (PL 96-511) and have been assigned OMB Control Number 2120-0056.

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

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

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

(e) The inspection/test requirements of this AD shall be done in accordance with Boeing Alert Service Letter 757-SL-28-8-A, dated June 5, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(f) This amendment (39-8130), AD 92-01-06, becomes effective February 17, 1992.

Issued in Renton, Washington, on December 18, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-483 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-214-AD; Amendment 39-8129; AD 91-22-51]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 91-22-51, which was made effective previously to all known U.S. owners and operators of Boeing Model 757 series airplanes by individual telegrams. This AD requires repetitive inspections to detect delamination of or physical damage to the trailing edge wedges on the leading edge wing slats, and repair, if necessary. This amendment is prompted by reports of skin separation on trailing edge wedges on wing leading

edge slats. The actions specified by this AD are intended to prevent separation of one or more of the trailing edge wedges from the airplane, which could adversely affect the controllability of the airplane.

DATES: Effective January 24, 1992, to all persons except those persons to whom it was made immediately effective by telegraphic AD T91-22-51, issued October 17, 1991, which contained this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 1992.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Rodriguez, Aerospace Engineer, Airframe Branch, ANM-120S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2779.

SUPPLEMENTARY INFORMATION: On October 17, 1991, the FAA issued telegraphic AD T91-22-51, applicable to Boeing Model 757 series airplanes, which requires repetitive inspections to detect delamination of or physical damage to the trailing edge wedges on the leading edge wing slats, and repair, if necessary. That action was prompted by reports from four operators of indications of skin separation of the upper skin on the forward part of the trailing edge wedge on a wing leading edge slats on five Model 757 series airplanes. On two of the slats, inboard pieces of the upper skin were lost from the wedge. This condition, if not corrected, could result in separation of one or more of trailing edge wedges from the airplane, which could adversely affect controllability of the airplane.

The FAA reviewed and approved Boeing Alert Service Bulletin 757-57A0045, dated October 16, 1991, which describes procedures for a close detailed visual inspection, followed by repetitive detailed visual and "coin-tap" inspections, of the trailing edge wedges on the wing leading edge slats to detect delamination and physical damage.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued telegraphic AD T91-22-51 to require repetitive close visual and "coin tap" inspections of the trailing edge wedges on the wing leading edge slats to detect delamination and physical damage. The required inspections are to be accomplished in accordance with the alert service bulletin previously described. If damage or defective parts are found, they must be repaired in accordance with an FAA-approved procedure or replaced with new parts.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on October 17, 1991, to all known U.S. owners and operators of Boeing Model 757 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

This is considered to be interim action until the manufacturer develops non-destructive inspection (NDI) procedures, at which time the FAA may consider further rulemaking.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

91-22-51. Boeing: Amendment 39-8129. Docket 91-NM-214-AD.

Applicability: Model 757 series airplanes, line numbers 140 through 335, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent the separation of the trailing edge wedges from the airplane, accomplish the following:

(a) Perform a close detailed visual inspection of the trailing edge wedges of slats 1 through 4 and 7 through 10, for delamination and physical damage in accordance with Boeing Alert Service Bulletin 757-57A0045, dated October 16, 1991, at the times specified below:

(1) For airplanes that have accumulated 5,000 or more flight hours as of the effective date of this AD: Within the next 10 calendar days after the effective date of this AD, and thereafter at intervals not to exceed 300 flight hours.

(2) For airplanes that have accumulated less than 5,000 flight hours as of the effective date of this AD: Within the next 300 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 300 flight hours.

(b) Within the next 300 flight hours after the effective date of this AD, perform a "coin-tap" inspection of the trailing edge wedges of slats 1 through 4 and 7 through 10 for delamination and physical damage, in accordance with Boeing Alert Service Bulletin 757-57A0045, dated October 16, 1991. Repeat this inspection at intervals not to exceed 1,500 flight hours.

(c) If delamination and/or physical damage are found as a result of the inspections required by paragraph (a) or (b) of this AD, prior to further flight, repair in accordance with an FAA-approved procedure or replace with new parts. If a repair is accomplished or if new parts are installed, the inspections required by paragraphs (a) and (b) of this AD must be continued.

(d) An alternative method of compliance or adjustment of the compliance time, which

provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

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

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

(f) The inspections required by this AD shall be done in accordance with Boeing Alert Service Bulletin 757-57A0045, dated October 16, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(g) This amendment (39-8129), AD 91-22-51, becomes effective January 24, 1992, to all persons except those persons to whom it was made immediately effective by telegraphic AD T91-22-51, issued October 17, 1991, which contained the requirements of this amendment.

Issued in Renton, Washington, on December 18, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-482 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-262-AD; Amendment 39-8142; AD 92-02-06]

Airworthiness Directives: Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747-400 series airplanes. This action requires inspection and, if necessary, replacement or rerouting of the oxygen hose supplying oxygen to the captain's and first officer's oxygen mask stowage boxes. This amendment is prompted by a report of a captain's oxygen mask with restricted oxygen flow because of a damaged hose. The actions specified in this AD are intended to prevent pilot incapacitation during an emergency situation requiring supplemental oxygen to the flight crew.

DATES: Effective January 24, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 1992.

Comments for inclusion in the Rules Docket must be received on or before March 9, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-262-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Clayton R. Morris, Jr., Aerospace Engineer, Seattle Aircraft Certification Office, Systems & Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2794; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: One operator of a Boeing Model 747-400 series airplane reported that the oxygen flow rate to the captain's oxygen mask was below specification. Troubleshooting determined that a damaged oxygen hose restricted the flow of oxygen. The manufacturer performed a check of four production airplanes and found three of eight hose assemblies with similar damage. The damage is a bend, kink, or soft spot in the oxygen hose adjacent to the elbow fitting at the base of the oxygen mask stowage box. This condition, if not corrected, could result in pilot incapacitation during an emergency situation requiring supplemental oxygen to the flight crew.

Investigation of the problem identified two possible sources of damage. The first occurs during removal of the oxygen mask stowage box. Excessive tension is applied to the oxygen hose if the oxygen hose is routed under the air conditioning duct or is not disconnected from the stowage box during removal of the box.

A second source of damage occurs during installation of the oxygen mask stowage box. The oxygen hose can be pressed between the stowage box and the cabin floor if the elbow fitting at the base of the box is oriented towards the floor. Orientation of the elbow fitting away from the direction of the oxygen hose routing can result in the oxygen hose being bent over the elbow fitting.

The "Press-to-Test" button is only an indication of oxygen pressure in the oxygen mask stowage box and not an indication of oxygen flow rate to the oxygen mask. Tests have indicated that if the stowage box is pressurized and the hose is kinked or blocked, the button can be depressed 5 to 6 times before enough pressure is released to indicate low or not oxygen flow.

The FAA has reviewed and approved Being Alert Service Bulletin 747-35A2075, Revision 1, dated September 19, 1991, which describes procedures for inspection, replacement, and rerouting of the oxygen hoses to the captain's and first officer's oxygen mask stowage boxes.

Since the unsafe condition described is likely to exist or develop on other Boeing Model 747-400 series airplanes of the same type design, this AD is being issued to prevent pilot incapitation during an emergency situation requiring supplemental oxygen to the flight crew. This AD requires removal of the captain's and first officer's oxygen mask stowage boxes, removal and inspection of the oxygen hoses, replacement of damaged or shorter length hoses, verification of the elbow fitting orientation, proper routing of the oxygen hoses, installation of the stowage boxes, and an operational test of the crew oxygen system. The required actions are to be accomplished in accordance with the service bulletin previously described.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comment

received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-262-AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

92-02-06. **Boeing:** Amendment 39-8142. Docket No. 91-NM-262-AD.

Applicability: Model 747-400 series airplanes, listed in Boeing Alert Service Bulletin 747-35A2075, Revision 1, dated September 19, 1991, certificated in any category.

Compliance: Required within the next 30 days after the effective date of this AD, unless accomplished previously.

To prevent pilot incapacitation during an emergency situation requiring supplemental oxygen to the flight crew, accomplish the following:

(a) Inspect the captain's and officer's oxygen hoses below the oxygen mask stowage boxes in accordance with Boeing Alert Service Bulletin 747-35A2075, Revision 1, dated September 19, 1991. Replace damaged or short hoses before further flight, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

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

(d) The inspection and replacement requirements of this AD shall be done in accordance with Boeing Alert Service Bulletin 747-35A2075, Revision 1, dated September 19, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment (39-8142), AD 92-02-06, becomes effective January 24, 1992.

Issued in Renton, Washington, on December 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-421 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-253-AD; Amendment 39-8124; AD 92-01-01]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP series airplanes. This action requires de-activation of the automatic alternative three-phase power supply to each transformer rectifier unit (TRU), an operational test to ensure that the auto-changeover system is inoperative, and inclusion of an associated temporary revision in the Airplane Flight Manual (AFM). This amendment is prompted by an incident in which both AC generators failed at the same time. The actions specified in this AD are intended to prevent the loss of primary electric power sources.

DATES: Effective January 24, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 1992.

Comments for inclusion in the Rules Docket must be received on or before March 9, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-253-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA) recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model ATP series airplanes. The United Kingdom CAA advises that an incident has occurred in which the transformer rectifier unit (TRU) changeover contactor failed, resulting in the failure of both AC generators at the same time. This condition, if not corrected, could result in the loss of primary electric power sources.

British Aerospace has issued Service Bulletin ATP-24-42-10244A, Revision 1, dated November 7, 1991, which describes procedures to de-activate the automatic alternative three-phase power supply to each transformer rectifier unit (TRU), to perform an operational test to ensure that the auto-changeover system is inoperative, and to include an associated temporary revision to Section 0.25.0 of the Airplane Flight Manual (AFM). The United Kingdom CAA has classified this service bulletin as mandatory.

British Aerospace has also issued AFM (Document No. ATP 004) Temporary Revision No. 22 (T/22), Issue 1, dated November 1, 1991, which provides revised flight crew procedures associated with certain equipment failures/ malfunctions involving the TRU.

This airplane model is manufactured in the United Kingdom and type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the United Kingdom CAA has kept the FAA totally informed of the above situation. The FAA has examined the findings of the United Kingdom CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent the loss of primary electric power sources. This AD requires de-activation of the automatic alternative three-phase power supply to each transformer rectifier unit (TRU), an operational test to ensure that the auto-changeover system is inoperative, and the inclusion of associated temporary revision in the FAA-approved AFM. The required actions are to be accomplished in accordance with the service bulletin previously described.

The revisions to the AFM that are required by this AD action are with regard to the Emergency Procedures and Abnormal Procedures Sections (rather than the Limitations Section). The effect of the requirement is to ensure that flight crews are advised of the correct procedures to address certain equipment failures/malfunctions.

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

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **"ADDRESSES."** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-253-AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [AMENDED]

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

92-01-01. **British Aerospace:** Amendment 39-8124. Docket No. 91-NM-253-AD.

Applicability: Model ATP series airplanes, as listed in British Aerospace Service Bulletin

ATP-24-42-10244A, Revision 1, dated November 7, 1991, certificated in any category.

Compliance: Required within 30 hours time-in-service after the effective date of this AD, unless accomplished previously.

To prevent the loss of primary electric power sources, accomplish the following:

(a) Trip and lock out the alternative three-phase circuit breaker to each transformer rectifier unit (TRU), and perform an operational test to ensure that the auto-changeover system is inoperative, in accordance with British Aerospace Service Bulletin ATP-24-42-10244A, Revision 1, dated November 7, 1991.

(b) Revise the Emergency Procedures and Abnormal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) to include AFM (Document No. ATP 004) Temporary Revision No. 22 (T/22), Issue 1, dated November 1, 1991.

(c) Amend the AFM, Section 0.25.0, in accordance with paragraph 2.(6) of British Aerospace Service Bulletin ATP-24-42-10244A, Revision 1, dated November 7, 1991.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

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

(f) The circuit breaker de-activation and operational test, and revision to Section 0.25.0 of the AFM, required by this AD shall be done in accordance with British Aerospace Service Bulletin ATP-24-42-10244A, Revision 1, dated November 7, 1991. The AFM revision required by this AD shall be done in accordance with AFM (Docket No. ATP 004) Temporary Revision No. 22 (T/22), Issue 1, dated November 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington; or at the Office of the Federal Register, 1100 L Street N.W., Room 8401, Washington, D.C.

(g) This amendment (39-8124), AD 92-01-01, becomes effective January 24, 1992.

Issued in Renton, Washington, on December 12, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-424 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-266-AD; Amendment 39-8133; AD 92-01-09]

Airworthiness Directives; British Aerospace Model 125-600A, -700A, and -800A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain British Aerospace Model 125-600A, -700A, and -800A series airplanes. This proposal would require a one-time inspection to detect misalignment of fuel feed pipe joints and realignment, if necessary. This proposal is prompted by a recent incident report wherein the tailcone inside area of a British Aerospace Model 125-800A series airplane was soaked with fuel that leaked out of fuel feed pipe joints during a high altitude transatlantic flight. The actions specified in this AD are intended to prevent an in-flight fire hazard in the rear equipment bay.

DATES: Effective January 24, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 1992.

Comments for inclusion in the Rules Docket must be received on or before March 9, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-266-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA., Transport Airplane Directorate, 1601 Lind Avenue SW., Renton Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2113; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority of the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model 125-600A, -700A, and -800A series airplanes. The CAA advises that there have been recent incident reports wherein the tailcone inside areas of certain British Aerospace Model 125 series airplanes were soaked with fuel that leaked out of fuel feed pipe joints during high altitude operations. The most recent occurrence involved a British Aerospace Model 125-800A series airplane. The apparent cause of the leakage was misalignment of the fuel feed pipe joints at the pipe entry into the associated coupling. This condition, if not corrected, could result in an in-flight fire hazard in the rear equipment bay.

Since the subject tailcone area, fuel feed assembly, and the capability for sustained high altitude operations on Model 125-600A series airplanes with Garrett engines and Model 125-700A series airplanes are similar to those of the Model 125-800A, the potential unsafe condition exists with regard to those models as well.

Bristish Aerospace has issued Service Bulletin SB 28-86, dated June 28, 1991, which describes procedures for inspection of fuel feed pipe joints for misalignment, and realignment of the pipe joints, if necessary. The CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the CAA has kept the FAA totally informed of the above situation. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent an in-flight fire hazard in the rear equipment bay. This AD requires a one-time inspection to detect misalignment of fuel feed pipe joints, and realignment, if necessary. The required actions are to be accomplished in accordance with the service bulletin previously described.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment

hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-266-AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

92-01-09 **British Aerospace:** Amendment 39-8133. Docket 91-NM-266-AD.

Applicability: Model 125-600A, -700A, and -800A series airplanes; as listed in British Aerospace Service Bulletin 28-86, dated June 28, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent an in-flight fire hazard in the rear equipment bay, accomplish the following:

(a) Within 60 days after the effective date of this AD, accomplish a visual inspection for proper alignment of fuel feed pipes at pipe joint couplings, in accordance with British Aerospace Service Bulletin SB 28-86, dated June 28, 1991. If misalignment is detected outside the specifications cited in the service bulletin, prior to further flight, correct the alignment by installing an "O" ring modification and a fuel pipe clamping modification, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and they send it to the Manager, Standardization Branch.

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

(d) The inspection and realignment required by this AD shall be done in accordance with British Aerospace Service Bulletin SB 28-86, dated June 28, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SE., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment (39-8133), AD 92-01-09, becomes effective January 24, 1992.

Issued in Renton, Washington, on December 20, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-422 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-256-AD; Amendment 39-8134; AD 92-01-10]

Airworthiness Directives; Dassault Aviation Model Fan Jet Falcon Series G and Mystere Falcon 200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Dassault Aviation Model Fan Jet Falcon Series G and Mystere Falcon 200 series airplanes. This action requires inspections and replacement, if necessary, of the hinges and fasteners on the engine cowls. An optional modification of the latches, hinge pins, and small aprons on the engine cowls terminates the requirement for the inspections. This amendment is prompted by reports of uncrimped hinge and clamp articulation pins on the engine cowls, and fatigue cracks on the small aprons of the engine cowls on in-service airplanes. The actions specified in this AD are intended to prevent in-flight separation of the engine cowls.

DATES: Effective January 24, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of January 24, 1992.

Comments for inclusion in the Rules Docket must be received on or before March 9, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-256-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, recently notified the FAA that an unsafe condition may exist on all Dassault Aviation Model Fan Jet Falcon Series G and Mystere Falcon 200 series airplanes. The French DGAC advises of reports of uncrimped hinge and clamp articulation pins in the engine cowls on several in-service airplanes. Additionally, fatigue cracks in the attachment screw area of the small aprons on the engine cowls on in-service airplanes have been reported. These conditions, if not corrected, could lead to in-flight separation of the engine cowls.

Dassault Aviation has issued the following service information:

a. Service Bulletin F200-59 (ATA Number F200-54-4), Revision 1, dated September 18, 1991, which describes procedures for reinforcement of the engine hinged cowl latches by installing an omega-shaped doubler on each of the latch bodies.

b. Service Bulletin F200-78 (ATA Number F200-54-7), Revision 1, dated September 18, 1991, which describes procedures for installation of a non-articulated latching system. This modification involves replacing the existing CAMLOC clamps with two bent sections.

c. Service Bulletin F200-87 (ATA Number F200-54-10), dated September 18, 1991, which describes procedures for reinforcement of the small aprons by increasing the thickness of the doublers in the area of apron-to-nacelle attachment strips. This service bulletin also describes procedures for modification of the hinged cowl attachment by attaching the hinged cowls to the air intake flange.

The French DGAC has classified these service bulletins as mandatory and has issued French Airworthiness Directive 91-197-018(B) in order to assure the airworthiness of these airplanes in France.

The Falcon 200 Maintenance Manual (Work Card 741-0, Revision A-1-b, dated December 1990) describes procedures to inspect the hinges and fasteners (latches and aprons) of the engine cowls.

This airplane model is manufactured in France and type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the French DGAC has kept the FAA totally informed of the above situation. The FAA has examined the findings of the French DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent in-flight separation of the engine cowls. This AD requires inspections and replacement, if necessary, of the hinges and fasteners on the engine cowls. An optional modification of the latches, hinge pins, and small aprons on the engine cowls terminates the requirement for the inspections. The required actions are to be accomplished in accordance with the service bulletins previously described.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-256-AD." The postcard will be date stamped and returned to the commenter.

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

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

Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

92-01-10. **Dassault Aviation** (formerly Avions Marcel Dassault-Breguet Aviation): Amendment 39-8134. Docket 91-NM-256-AD.

Applicability: Model Fan Jet Falcon Series G and Mystere Falcon 200 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight separation of the engine cowls, accomplish the following:

(a) Within 14 days after the effective date of this AD, and thereafter at intervals not to exceed 7 days, perform an inspection of the hinges and fasteners (latches and aprons) on the engine cowls to verify their integrity, in accordance with the airplane maintenance manual (refer to Work Card 741-0, Revision A-1-b, dated December 1990). Replace discrepant hinges or fasteners (latches or aprons) prior to further flight, in accordance with the airplane maintenance manual.

(b) Accomplishment of subparagraphs (b)(1), (b)(2), and (b)(3) of this AD constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(1) Reinforce the latches in accordance with Dassault Aviation Service Bulletin F200-59 (ATA Number F200-54-4), Revision 1, dated September 18, 1991.

(2) Install new hinge pin latching systems in accordance with Dassault Aviation Service Bulletin F200-78 (ATA Number F200-54-7), Revision 1, dated September 18, 1991.

(3) Reinforce the small aprons and modify the hinged cowl attachments in accordance with Dassault Aviation Service Bulletin F200-87 (ATA Number F200-54-10), dated September 18, 1991.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

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

(e) The modifications required by this AD shall be done in accordance with Dassault Aviation Service Bulletin F200-59 (ATA Number F200-54-4), Revision 1, dated September 18, 1991; Dassault Aviation Service Bulletin F200-78 (ATA Number F200-54-7), revision 1, dated September 18, 1991; and Dassault Aviation Service Bulletin F200-87 (ATA Number F200-54-10), dated September 18, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(g) This amendment (39-8134), AD 92-01-10, becomes effective January 24, 1992.

Issued in Renton, Washington, on December 20, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-425 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-136-AD; Amendment 39-8122; AD 91-26-09]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, and -50 Series Airplanes and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Model DC-9 series airplanes, which currently requires repetitive inspections and functional checks of the tailcone release system for proper operation. This amendment requires replacement or modification of internal and external tailcone release system cable and handle assemblies. This amendment is prompted by reports of the tailcone failing to drop away when release activation was attempted. This condition, if not corrected, could result in the inability of passengers and crew members to exit through the tail of the airplane during an emergency evacuation.

DATES: Effective February 17, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 17, 1992.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801, ATTN: Business Unit Manager, Technical Publications, Technical Administration Support, C1-L5B(45-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, ANM-131L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5338.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91-02-13, Amendment 39-6867 (56 FR 1911, January 18, 1991), was published in the **Federal Register** on August 5, 1991 (56 FR 37169). That action proposed to require replacement or modification of the internal and external tailcone release system cable and handle assemblies on McDonnell Douglas Model DC-9 series airplanes.

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

One commenter asked for a clearer definition of the repetitive functional tests of the tailcone release system once the replacement/modification of the cable and handle assembly is accomplished. This commenter stated that, although the proposal would require the repetitive functional tests to be performed in accordance with McDonnell Douglas Service Bulletin A53-243, parts of the test procedures outlined in that service document would no longer be applicable once the modification/replacement is finished. The commenter also suggested that the rule be revised to require instead that the continuing functional tests be performed in accordance with McDonnell Douglas Service Bulletin 53-245, Revision 1, dated June 12, 1991, which is more logical and is obviously a post-modification test congruent with

the FAA's intent. The FAA notes that the commenter is correct in that the accomplishment of portions of the functional test described in Service Bulletin A53-243 would no longer be necessary, which is why the proposal states that accomplishment of such replacement or modification constitutes terminating action for the repetitive inspections of the interior and exterior handles for cracks. Those procedures specified in paragraphs H. and L., and the second paragraph of the Notes of paragraphs F. and J. of the Accomplishment Instructions of Service Bulletin A53-243, Revision 1, and all of Service Bulletin A53-242, are no longer required after the accomplishment of paragraph (d) of this rule. The final rule has been revised to clarify this point. The FAA does not agree, however, that the procedures specified in Service Bulletin 53-245 (Revision 1) are sufficient for the intent of this rulemaking action; the procedures specified in Service Bulletin A53-243 contain additional steps that the FAA considers necessary in order to adequately monitor the integrity of the tailcone release system.

Another commenter stated that the proposed 90-day compliance time for replacement/modification of the cable and handle assembly is too short. The commenter requested that the compliance time be extended to 9 months, which would be comparable to the compliance time of a similar AD rulemaking action applicable to Model DC-9-80 (MD-80) series airplanes [see proposed rule, Docket 91-NM-137-AD (56 FR 36748, August 1, 1991)]. The commenter does not consider there to be any greater urgency for modification of the Model DC-9 series than for the Model DC-9-80 series, since both models are so similar. The FAA does not concur. Although the Model DC-9-80 and Model DC-9 are similar airplanes in many aspects, there is a major difference between their respective tailcone emergency exit release systems. For the Model DC-9-80, the system is designed to automatically drop the tailcone during an emergency evacuation as soon as the aft bulkhead door is opened; additionally, the tailcone interior handle exists as a backup system. This is not the same for the Model DC-9; its interior tailcone release handle is the only means of deploying the tailcone from inside the airplane. In light of this, the FAA has determined that the compliance time, as proposed, is warranted.

Another commenter pointed out that a conflict exists between McDonnell Douglas Service Bulletin 53-245, Revision 1, dated June 12, 1991, which is referenced in this proposed rule, and McDonnell Douglas Service Bulletin 53-199, Revision 2, dated March 17, 1989, which was referenced in a separate but related proposal [Docket 90-NM-97-AD (56 FR 28223, July 10, 1990)]. The conflict between these two service documents relates to the installation of two different designs of handle/support fitting assemblies. The commenter requested that this proposed rule be postponed until this issue is resolved. The FAA does not concur that postponement is necessary. Initially, a conflict did exist between the two service documents. However, subsequent to the issuance of the notice related to this AD action, the FAA reviewed and approved Revision 3 of McDonnell Douglas Service Bulletin 53-199, dated July 15, 1991, which contains corrected information that eliminates the previous conflict.

The same commenter requested that the FAA postpone any AD action pertaining to the Model DC-9 tailcone system until a comprehensive industry/FAA review is held and a consensus program developed. This commenter believes that a certain new McDonnell Douglas proposal may offer a better solution to the Model DC-9 tailcone emergency release system, and it would be prudent to postpone any pending AD activity and pursue a total system approach. The FAA disagrees with any postponement to this rule. The intent of this action is to correct a known airworthiness problem, which is a handle that cannot adequately support a sideload. The modification/replacement specified in this final rule will correct this design deficiency and ensure that the tailcone drops when release activation is attempted. Should additional design changes become available in the future, the FAA will review them as to their applicability to this and other issues.

Another commenter supported the proposed AD but asked for assurance that the proposed modified/replacement handle is designed to enable someone to open the tailcone from the floor, since it would be possible that people would be crawling on the floor to escape smoke. The FAA responds by noting that, during McDonnell Douglas functional tests of the improved handle design specified in this final rule, which were witnessed by the FAA, it was shown that an untrained person can activate the handle from a standing, kneeling, or crawling position.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

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

There are approximately 910 Model DC-9-10, -20, -30, -40, and -50 series airplanes and C-9 (Military) series airplanes of the affected design in the worldwide fleet. It is estimated that 590 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor cost will be $55 per work hour. The cost of parts to accomplish the modification is approximately $1,370 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $970,550.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6867 and by adding the following new airworthiness directive:

91–26–09. McDonnell Douglas: Amendment 39–8122. Docket No. 91–NM–136–AD. Supersedes AD 91–02–13, Amendment 39–6867.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (Military) series airplanes, operating in a passenger or passenger/cargo configuration, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

Note: The requirements of this AD become applicable at the time an airplane in an all-cargo configuration is converted to a passenger or passenger/cargo configuration.

To prevent failure of the tailcone release system, accomplish the following:

(a) Within 60 days after February 11, 1991 (the effective date of AD 91–02–13, Amendment 39–6867), unless previously accomplished within the last 60 days, inspect the interior and exterior tailcone release handles for cracks, in accordance with the Accomplishment Instructions of McDonnell Douglass Alert Service Bulletin A53–242, dated December 20, 1990, or Alert Service Bulletin A53–243, Revision 1, dated February 8, 1991; and accomplish a tailcone release system functional test in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A53–243, dated January 10, 1991, or Revision 1, dated February 8, 1991.

(1) Cracked or broken tailcone release handles must be replaced prior to further flight.

(2) Discrepancies in the operation of the tailcone release system found as a result of the functional test must be repaired prior to further flight.

(b) Repeat the inspection of the interior and exterior tailcone release handles and conduct the functional test required by paragraph (a) of this AD at intervals not to exceed 3,000 flight hours or 15 months, whichever occurs first.

(c) Within 30 days after discovery, report any cracked or broken tailcone release handles or any discrepancies found during the accomplishment of the inspection and functional tests required by paragraph (a) of this AD to the Manager, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

(d) Within 90 days after the effective date of this AD, replace or modify the internal and external tailcone release system cable and handle assemblies, in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin 53–245, Revision 1, dated June 12, 1991. Accomplishment of such replacement or modification constitutes terminating action for the repetitive inspections of the interior and exterior tailcone release handles for cracks, as required by paragraph (b) of this AD. However, the repetitive functional tests of the tailcone release system required by paragraph (b) of this AD must continue to be accomplished.

Note: The following portions of the continuing repetitive functional tests and inspections of the tailcone release system are not necessary to accomplish once the replacement/modification of the cable and handle assembly is completed: Those procedures specified in paragraphs H. and L., and the second paragraph of the Notes of paragraphs F. and J., of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A53–243, dated January 10, 1991 or Revision 1, dated February 8, 1991, and all of McDonnell Douglas Alert Service Bulletin A53–242 dated December 20, 1990.

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

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

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

(g) The inspection requirements of this AD shall be accomplished in accordance with McDonnell Douglas Alert Service Bulletin A53–242, dated December 20, 1990, or McDonnell Douglas Alert Service Bulletin A53–243, Revision 1, dated February 8, 1991. The functional test requirements of this AD shall be accomplished in accordance with McDonnell Alert Service Bulletin A53–243, dated January 10, 1991, or McDonnell Douglas Alert Service Bulletin A53–243, Revision 1, dated February 8, 1991. The replacement and modification requirements shall be accomplished in accordance with McDonnell Douglas Service Bulletin 53–245, Revision 1, dated June 12, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801, ATTN: Business Unit Manager, Technical Publications, Technical Administration Support, C1–L5B(45–60). Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(h) This amendment (39–8122), AD 91–26–09, becomes effective February 17, 1992.

Issued in Renton, Washington, on December 5, 1991.

James B. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–484 Filed 1–8–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–237–AD; Amendment 39–8127; AD 92–01–04]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes, Equipped With McDonnell Douglas Electronic Systems Company Central Aural Warning System, Part Number H05A0035–50 or Part Number H05A0035–51

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This action requires cycling of all three Central Aural Warning System (CAWS) circuit breakers prior to the first flight of the day, and the eventual replacement of the CAWS unit with an updated version as terminating action for the repetitive circuit breaker cycling. This amendment is prompted by the report of an anomaly in certain CAWS units which can cause the loss of multiple aural alert functions. This condition, if not detected and corrected, could result in the failure of numerous aural warning alerts that are needed to provide critical information to the flight crew during flight.

DATES: Effective January 24, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 1992.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Brett Portwood, Aerospace Engineer, ANM-132L, FAA, Northwest Mountain Region, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5347.

SUPPLEMENTARY INFORMATION: One operator of Model MD-11 series airplanes recently experienced the loss of multiple aural alert functions while using the rotary test dial that is located on the front of the Central Aural Warning System (CAWS) unit. This operator had been performing the rotary test as a return-to-service operation any time a CAWS unit is installed on an airplane. When selected units were taken from the airline storage facility and installed on the airplane, the aural alerts for Windshear, Altitude, Radio Altitude, Autopilot Disconnect, and Stabilizer in Motion were not annunciated. Upon further analysis, it was determined that the tolerances of the circuitry on certain CAWS units may cause an anomaly that prevents the proper resetting of the unit upon application of power. When this anomaly occurs, the airplane will lose aural warning alerts that denote Autopilot Disconnect, Windshear, Altitude, Stabilizer in Motion, Radio Altitude, and Overspeed. The information provided by such warning alerts is critical to the flight crew for continued safe flight.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A31-18, dated November 11, 1991, which describes procedures for the replacement of the CAWS with an updated version that alleviates the reset anomaly.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires cycling of all three CAWS circuit breakers prior to the first flight of the day (with the airplane's power active), and the eventual replacement of the CAWS unit with an updated version. When this replacement is accomplished, the required repetitive cycling of the CAWS circuit breakers may be terminated. The replacement action is required to be accomplished in accordance with the alert service bulletin previously described.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

92-01-04. **McDonnell Douglas:** Amendment 39-8127. Docket No. 92-NM-237-AD.

Applicability: Model MD-11 series airplanes; equipped with McDonnell Douglas Electronic Systems Company Central Aural Warning System (CAWS), Part Number H05A0035-50 or Part Number H05A0035-51; certificated in any category.

Compliance: Required as indicated unless previously accomplished.

To eliminate the loss of Autopilot Disconnect, Windshear, Altitude, Stabilizer in Motion, Radio Altitude, and Overspeed aural alerts, accomplish the following:

(a) Within 5 days after the effective date of this AD, and thereafter prior to the first flight of each day, with the aircraft power active, accomplish the following:

(1) Position or verify that CAWS circuit breakers B1-1018, B1-1381, and B1-1019 are closed.

(2) Cycle all three CAWS circuit breakers to the open position. Leave the circuit breakers open for a minimum of five seconds.

(3) Return all three circuit breakers to the closed position.

(b) Within 60 days after the effective date of this AD, replace the CAWS unit in accordance with McDonnell Douglas Alert Service Bulletin A31-18, dated November 11, 1991. Such replacement constitutes terminating action for the requirements of paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Avionics Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

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

(e) The replacement requirement of this AD shall be done in accordance with McDonnell Douglas Alert Service Bulletin A31-18, dated November 11, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California, 90846. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(f) This amendment (39-8127), AD 92-01-04, becomes effective on January 24, 1992.

Issued in Renton, Washington, on December 17, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-423 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-ANE-35; Amendment 39-8087, AD 91-24-02]

Airworthiness Directives; Turbomeca (TM) Arriel Series Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Turbomeca Arriel series turboshaft engines, which requires incorporation of a certain free wheel clutch, and installation of a free wheel shaft with improved free wheel shaft balancing. This amendment is prompted by four confirmed events of free wheel clutch failure that prevented power transmission to the main rotor drive shaft. This condition, if not corrected, could result in free wheel clutch failure and the inability to transmit engine power to the main rotor drive shaft.

DATES: Effective January 21, 1992.

Comments must be received no later than April 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 21, 1992.

ADDRESSES: Send comments in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ANE-35, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, or deliver in duplicate to room 311 at the above address.

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

The applicable service information may be obtained from Turbomeca, Technical Publication Department, 64511 Bordes Cedex, France. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

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

SUPPLEMENTARY INFORMATION: There have been four confirmed events of free wheel clutch failure on TM Arriel services turboshaft engines. The failures have resulted in the inability to transmit power from the engine to the main rotor drive shaft resulting in subsequent emergency helicopter autorotation landing. The FAA has determined that the combined effect of certain free wheel clutch manufacturing tolerances and current free wheel shaft balancing limits can result in free wheel clutch failure, resulting in power loss to the main rotor drive shaft.

Since this condition is likely to exist or develop on other engines of the same type design, this AD requires installation of a specific free wheel clutch and installation of a free wheel shaft with an improved balancing operation.

The FAA has reviewed and approved the technical contents of Turbomeca Service Bulletin 292.72.0146, dated August 5, 1991, and Turbomeca Service Document 72.292.0141, dated July 13, 1990, which describe the removal, replacement, and installation requirements for a free wheel clutch and a free wheel shaft.

Since this failure condition could result in loss of power to the main rotor, a situation exists that requires immediate adoption of this regulation and it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ANE-35, 12 New England Executive Park, Burlington, Massachusetts 01803-5299. All communications received by the deadline date indicated above will be considered by the Administrator, and the AD may be changed in light of the comments received.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

91-24-02. Turbomeca: Amendment 39-8087, Docket No. 91-ANE-35

Applicability: Turbomeca Arriel 1B, 1D, Arriel 1D, and Arriel 1D1 turboshaft engines, installed on but not limited to, Aerospatiale AS350 Ecureuil aircraft.

Compliance: Required as indicated, unless already accomplished.

To prevent free wheel clutch failure and the inability to transmit power from the engine to the main rotor drive shaft, accomplish the following:

(a) For engines that have not incorporated the modifications contained in either Turbomeca Service Document 72.292.0140 (Modification TU 211), dated June 14, 1990, or Turbomeca Service Document 72.292.0141 (Modification TU 212), dated July 13, 1990, and have a free wheel assembly serial number (S/N) of 793 or higher; or a S/N less than 793 and have had a maintenance action performed on the free wheel assembly, accomplish the following:

(1) Install a free wheel clutch in accordance with Turbomeca Service Document 72.292.0141 (Modification TU 212), dated July 13, 1990, within 20 days from the effective date of this AD.

(2) Install a free wheel shaft in accordance with Turbomeca Service Bulletin 292.72.0146 (Modification TU 221), dated May 8, 1991, within 20 days from the effective date of this AD.

(3) Engines equipped with free wheel assemblies having a S/N lower than 793 that have not had a maintenance action

performed on the free wheel assembly, are not required to incorporate the above modifications.

Note: Information regarding free wheel clutch assembly S/N and free wheel clutch repair history may be found on the equipment Log Card and in the engine logbook.

(b) For engines that have incorporated the modifications contained in Turbomeca Service Document 72.292.0140 (Modification TU 211), dated June 14, 1990, comply with paragraphs (b)(1) and (b)(2) of this AD. For engines that have incorporated Turbomeca Service Document 72.292.0141 (Modification TU 212), dated July 13, 1991, comply with paragraph (b)(2) only, as follows:

(1) Install a free wheel clutch in accordance with the requirements of Turbomeca Service Document 72.292.0141 (Modification TU 212), dated July 13, 1990, at next shop visit or by March 31, 1992, whichever occurs first.

(2) Install a free wheel shaft in accordance with the requirements of Turbomeca Service Bulletin 292.72.0146 (Modification TU 221), dated May 8, 1991, at next shop visit or by March 31, 1992, whichever occurs first.

(c) For the purpose of this AD, a shop visit is defined as exposure of the free wheel assembly at a shop capable of performing the modification.

(d) For the purpose of this AD, maintenance action is defined as any maintenance performed on any free wheel assembly component.

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

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

(g) The modification shall be done in accordance with the following Turbomeca service documents:

Document No.	Page No.	Date
292.72.0146	1-7	August 5, 1991.
Total Pages: 7		
72.292.0141	1-4	July 13, 1990.
Total Pages: 4		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Turbomeca, Technical Publications Department, 64511 Bordes Cedex, France. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street, NW, room 8401, Washington, DC.

This amendment (39-8087, AD 91-24-02) becomes effective January 21, 1992.

Issued in Burlington, Massachusetts, on December 26, 1991.

Jay J. Pardee,

Acting Manager, Manager Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92-481 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 154, 157, 284, 375, and 380

[Docket No. RM90-1-002]

Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities

Issued December 11, 1991.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final Rule; notice of questions arising from technical conference and request for comments.

SUMMARY: On November 12, 1991, the Federal Energy Regulatory Commission (Commission) convened a technical conference to examine issues related to the implementation of the environmental portions of Order No. 555, entitled "Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities." As a result of discussions which took place at the technical conference, various questions were identified for which further information would be helpful to inform Commission consideration of these matters.

DATES: Under an extension of time issued by the Commission on December 17, 1991, written comments must be filed with the Commission by January 15, 1992. Answers to comments must be filed by January 27, 1992.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary of the Commission, (202) (208-0400).

SUPPLEMENTARY INFORMATION:

Questions Arising From Technical Conference and Request for Comments

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

On November 12, 1991, the Commission convened a technical conference to examine issues related to the implementation of the environmental portions of Order No. 555, entitled "Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities," which was issued September 20, 1991.

As a result of discussions which took place at the technical conference, various questions have been identified relating to the environmental portions of the rule. Further information would be helpful to inform Commission consideration of these matters. Those questions are set forth below.

All interested persons may make filings with the Secretary of the Commission in response to the matters discussed at the technical conference and the questions contained below within 20 days of the date this notice is issued. Answers to such comments may be filed within 10 days thereafter.

Questions

1. What reviews embodied in the rule, undertaken either by the Commission or by other agencies, are duplicative and what procedures are recommended to reduce the alleged duplication and still comply with all of the procedural requirements of the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the National Historic Preservation Act (NHPA)?

2. Provide recommendations as to how the Commission should ensure appropriate recovery of costs incurred by a project sponsor to comply with environmental conditions.

3. With regard to the environmental procedures in general, and the Erosion Control, Revegetation, and Maintenance Plan and Stream and Wetland Construction and Mitigation Procedure in particular, identify those criteria which are potentially counterproductive (for example, the requirement to revegetate wetlands with ryegrass). Explain the basis for each conclusion and the specific circumstances which would lead to the criteria being counterproductive. Suggest alternative standards, or delineate those circumstances under which the existing standard should not be applied.

4. Identify criteria contained in the rule which may conflict with specific desires, goals, or requirements of other Federal, state, or local land managing and regulatory agencies.

5. Provide specific examples of instances where another agency or organization will not take action until a filing is made with the Commission, or the Commission takes a specific action. Identify the time limits that are triggered

by the Commission-related action, including the relevant statute or regulation.

6. Identify situations in which direct consultation is required between the Commission and another agency, and it is thought that the other agency would not enter into consultations with the project sponsor unless the Commission were also involved. Describe why these situations are unique under Order No. 555 and do not occur under existing regulations, for example, under current rules governing section 311 construction.

7. Identify those projects or circumstances in which it is felt that the environmental standards contained in the rule should be relaxed, or a lesser degree of information should be required to demonstrate compliance (for example, new facilities at existing locations, or facilities costing less than a given amount). Specify why the standard should be relaxed, or what information would not be needed, and why. Also, specify what types of projects are thought not to require the filing of *any* information and discuss why. Responses should specify how compliance with NEPA, the ESA, NHPA, and any other relevant statutes or regulations would be achieved under the revised or eliminated standard.

8. The window for stream crossing construction has been criticized as unduly restrictive. Identify broad-based examples which demonstrate why this window is inappropriate. Also, identify appropriate windows, or standards that should be used to determine such windows, and the circumstances under which their use would be appropriate.

9. Suggest classifications of projects (and the underlying rationale) for which newspaper publication is deemed unnecessary, taking into consideration the NEPA requirement of public input into the review process. Also, provide information concerning existing publication requirements that would render Commission-related publication unnecessary, including when such publication would occur relative to Commission action and whether that publication would inform the public how to become involved in the Commission review process. Discuss alternatives to Commission-required publication (for example, certified letters to landowners instead of newspaper publication).

10. Discuss the circumstances under which it would be appropriate to move forward with construction, for all or part of the project, prior to resolving all issues, including those for which reconciliation is sought. Address conditions that should be placed on such construction.

11. Discuss modifications to the reconciliation procedure which could reduce the frequency with which it is felt reconciliation would be required (for example, initiate meetings at the outset of project planning to resolve potential problems).

12. Identify procedural alternatives to the reconciliation process and how such alternatives would be structured in contrast to the current procedure.

13. Assume that a project does not satisfy all the standard environmental conditions in § 157.103(c). Therefore, the reconciliation procedures would be used, and the project would not qualify for a NEPA categorical exclusion. What procedure/approach would you suggest the Commission adopt as an alternative to the reconciliation process (or in addition to the reconciliation process) to allow the project to qualify for a categorical exclusion? For example, can project-specific mitigation be developed and still qualify the project for categorical exclusion? Please explain why the alternative(s) suggested would be preferable.

14. Detail instances in which the criteria contained in the self-implementing environmental procedure will restrict the use of activities that would otherwise be allowed by other agencies.

15. Discuss ways in which flexibility can be added to the self-implementing environmental process to best accommodate site-specific needs or emergency situations. Include, as appropriate, a discussion of how the Commission would be informed of such action before it was taken.

16. Explain why pipelines have been able for the most part to comply with § 157.206(d), but anticipate problems complying with the similar provisions of § 157.103(c).

17. Discuss what would constitute appropriate review by the Commission of the compliance report and explain how the recommended action would be consistent with the Commission's statutory obligations.

18. Suggest environmental compliance procedures which would not require case-by-case staff participation and that would also be consistent with existing statutory requirements.

19. Identify non-DOT mandated facility replacement activities which should be exempted from certificate regulation pursuant to § 2.55(b); for each example explain why it should be exempt and why there would be no potential for significant environmental impact.

20. Discuss how the mandates of NEPA and other laws would be met if the Commission were to merely establish performance standards with no indication of what specific actions or mitigation measures would be undertaken by a project sponsor.

21. Which items in § 157.103(c) for which compliance could be deferred until after the prior notice period? How could such activities be reported to and approved by the Commission prior to the commencement of construction? Alternatively, what minimum requirements should be embodied in § 157.103?

By the Commission. Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,

Secretary.

Trabandt, Commissioner, *concurring*:

I concur in the instant order setting forth the questions arising from technical conference and request for comments. Since I was unable to attend the environmental technical conference because of attendance at the Annual Meeting of the National Association of Regulatory Utility Commissioners in San Antonio, Texas, I concur here for the purpose of discussing the environmental portions of Order No. 555, raising certain issues and posing a series of additional questions.

I. General

As the rehearing petitions demonstrate, Order No. 555 is a very tough environmental rule, which adopts a series of new substantive standards for environmental compliance and a new so-called "menu" approach to certificate authorization. There will no longer be a self-implementing process under section 311 of the Natural Gas Policy Act or any other authority for construction of any project of significant size or controversy (*i.e.*, protested). Rather, any such project will have to be reviewed by FERC staff and will have to receive a certification that the project is in compliance with all the environmental requirements before construction can commence. To that extent, the Final Rule effectively restores the affirmative review of such proposed projects prior to construction, that was the essence of the certificate process prior to the effectiveness of Order No. 436 on November 1, 1985.

For me, the central and quite crucial issue on rehearing of this Final Rule is whether the Commission has successfully streamlined its certificate procedures and requirements to achieve a more expeditious, less costly, and more flexible certification process for interstate pipeline construction. That objective was not only the

Commission's stated objective in the Notice of Proposed Rulemaking (NOPR) in this docket, it also is a key element of the Administration's National Energy Strategy (NES) as approved by President Bush. Additionally, legislative action already taken in our jurisdictional Committees in the Senate and House of Representatives demonstrate clearly that Congress intends that the Commission expedite significantly the pipeline construction certification process.

A similar concern has been expressed repeatedly in the ongoing Congressional oversight review of the Commission's certificate program being conducted by the Subcommittee on Environment, Energy, and Natural Resources of the House Committee on Government Operations. A study of the certificate program prepared by the General Accounting Office for the Subcommittee's oversight review also emphasized the need for expedited processing of pipeline construction applications. And, public hearings held by the Subcommittee included extensive testimony about the problems in the current program. So, it is abundantly clear that there is a well-established national energy policy imperative associated with the practical results of this Final Rule.

Unfortunately, for the reasons discussed below, it is now obvious that the new certification process for pipeline construction in the Final Rule will definitely not be more expeditious, less costly and more flexible for most projects. While it is possible that that result may be achieved for a few (particularly smaller) projects, it also is quite clear that larger projects and smaller controversial projects will not be expedited at all, and will in fact require longer and more costly processing. It also is quite likely that some future projects will not be able to be authorized at all, because of certain new requirements imposed in the Final Rule. I also suspect that some more recent, existing projects could not have been authorized or built under this new certification process.

In the end, the Commission in the Final Rule attempted to strike a delicate and, for me, quite tenuous balance between stronger environmental regulations and increased Commission staff control, on one hand, and increased expedition and flexibility on the other. Perhaps, there is no better demonstration of that result than the fact that there no longer is a truly self-implementing environmental review process, as has been available for any construction project under section 311 of the Natural Gas Policy Act, and as implemented by the regulations promulgated by Order No. 436 in 1985. Despite the generally acknowledged success of those section 311 self-implementing procedures for many large and small pipeline projects constructed since 1985, the Final Rule requires affirmative Commission staff participation, review and *prior* approval for almost any new project of any significance authorized under either sections 311 or 7(c) of the Natural Gas Act. Additionally, the Final Rule also requires the active participation, review and prior approval of Federal and state agencies for various types of public lands and under various circumstances. Consequently, there is no doubt that self-implementing environmental review, as such, is a dead letter under the Final Rule. And, it is quite probable that the new procedures, dubbed "semi-automatic" by a Commission spokesperson, will be very complicated and far from automatic.

I would suggest that one analytical difficulty in assessing the most probable result of the Final Rule is that the actual effect of the new regulations may largely be determined by how the Rule is implemented by the Commission's technical staff. That is an analytical imponderable not clear at this juncture and which in all likelihood will not be clear at the time of our final decision on rehearing. For example, the Commission adopted a new reconciliation procedure, which I championed in the development of the Final Rule, to provide some degree of flexibility to attempt to resolve environmental issues and filed protests prior to triggering a full blown, traditional section 7(c) process. The practical effect of the reconciliation procedure, however, is to delegate considerable discretionary authority to the Commission staff in terms of whether and how to proceed with reconciliation in any given case.

I do not doubt that today the Commission staff and at least a majority of the Commission would intend that the new reconciliation procedure lead to a successful resolution of environmental issues and protests whenever possible, thus avoiding the necessity of completing the full blown section 7(c) process. But, the proof of the pudding, so to speak, would come in the months ahead, as the Commission staff proceeded with actual implementation. And, it may even turn out that despite the best, good-faith efforts by the Commission staff, the reconciliation mechanism itself may not be as effective as we hope in the face of any concerted opposition by Federal agencies, state agencies or protesting parties. So, it is analytically challenging to make an informed assessment of exactly how the Final Rule will affect future projects, because of the form of the new certificate process and the substance of the new environmental requirements.

Nevertheless, I recognize that the Commission will need to make such an assessment in short order for purposes of making decisions about the Final Rule on rehearing. Also, I have often remarked that the results of such assessments of the Final Rule, when issued, would be important for gauging the actual need for statutory amendments to existing law. The Final Rule seemingly captured the most expedition and flexibility available to the Commission consistent with our environmental responsibilities under existing law (or at least as much as a majority of the current Commission was willing to support). The forthcoming order on rehearing, therefore, should be a bell-weather test of whether and how the governing statutes should be amended to satisfy the well-established national energy policy objective discussed previously. I hope the following sections on specific provisions in the Final Rule help facilitate such timely assessments.

II. Menu of Authorization Options for Pipelines

The Final Rule adopts the menu approach for certificate authorizations. The menu includes 5 basic options, as follows.

A. Part 2, § 2.55(G). Replacement of Facilities, limited to existing right of way with local permitting required.

B. Section 311, part 284. There is no restriction on type or extent of the Facility, but there also is no eminent domain. Additionally, the project is limited in operation to transportation services satisfying the so-called "on behalf of" test under Order No. 537. Among other requirements, there must be a 30 day prior notification to the Commission, and there must be a demonstration there that there will be compliance with the environmental requirements of § 157.103. New, so-called "reconciliation procedures" may be available (at the discretion of FERC staff) to attempt to resolve any compliance issues. In the absence of compliance, the project must file a full-blown, case-specific application under part 157, subpart A for a traditional sec. 7(c) certificate (option 5, below).

C. Automatic, part 157, subpart F. Project cost is limited to $10 million. There is eminent domain. But, each "Automatic" project must comply with

the environmental requirements of § 157.103, even though there would only be a semi-annual report addressing the facts of compliance for previously constructed "automatic" projects. The reconciliation procedures may be available (at the discretion of FERC staff) to attempt to resolve any compliance issues. Nevertheless, if a proposed automatic project cannot achieve compliance with § 157.103 requirements, the project still must file a full-blown, case-specific application under part 157, subpart A for a traditional 7(c) certificate.

D. Prior Notice, part 157, subpart F. There is no restriction on type or extent of the facility and eminent domain is available. There must be a 30-day prior notification to the Commission, and there must be a demonstration then that there will be compliance with the environmental requirements of § 157.103. An unresolved protest triggers a requirement for the part 157, subpart A case-specific procedures. The reconciliation procedures may be available (at the discretion of FERC staff) to attempt to resolve any compliance issues and any outstanding protest. In the absence of compliance with § 157.103, as well as in the event of an unresolved protest, the project must file a full-blown, case-specific application under part 157, Subpart A for a traditional section 7(c) certificate.

E. Case-Specific, part 157, subpart A. This procedure would be available for all types of projects, and it approximates the traditional section 7(c) certificate process. Eminent domain is available. The environmental requirements of § 157.103 form the basis for the more traditional environmental review process by Commission staff, including either an Environmental Assessment or an Environmental Impact Statement under the Commission's NEPA regulations. To the extent that a project proposed under the Automatic, section 311, or Prior Notice procedures was required to file a part 157, subpart A application because of an unresolved protest or an area of non-compliance with the requirements of § 157.103, there would be an effort to avoid duplication in the part 157, subpart A processing in areas where compliance had already been demonstrated.

This brief summary of the menu of authorization options provides a basis for further comments and analysis about several aspects of this particular menu approach. First, any unresolved protest for the Prior Notice option and any unreconciled environmental non-compliance under § 157.103 for the Automatic, the section 311 and the Prior Notice options will trigger a requirement for a full-blown, case-specific, traditional section 7(c) application and subsequent processing by the FERC staff. And, the availability of the new reconciliation procedure is a matter committed to the discretion of the Commission staff. And, if for any reason, the Commission staff is unwilling to proceed with the reconciliation process for any unresolved protest or any issue of environmental non-compliance, there would be no viable alternative to the part 157, subpart A application. And, in the end, even if the reconciliation procedure is initiated, the protest must be resolved under the Prior Notice option, and full environmental compliance must be achieved under the Automatic, the Prior Notice and the section 311 options. Consequently, those three options may in practice be quite fragile and of little value for many projects, particularly given the rigid substantive standards adopted in § 157.103.

Under these circumstances, it is quite probable (as noted previously) that any project of any significance and any protested project will have to file a part 157, subpart A application for processing under traditional section 7(c) procedures. That potential result has been a serious concern of mine since the original Task Force recommendations leading to the development of the NOPR in this docket. If, in fact, the only viable option for most projects of any consequence under the Final Rule is the part 157, subpart A application, the Commission will have repealed the self-implementing procedures under section 311 and Order No. 436 as a practical matter. And further, if that is the practical result, the Commission would now be forcing any and all significant projects through the full-blown, case-specific traditional section 7(c) process, with few conceivable exceptions. That result, in turn, would potentially add to the environmental processing demands on the Commission staff, entailing additional costs and delays in processing. Under those circumstances, it is difficult to conclude how the Final Rule can satisfy the national energy policy objectives discussed at the beginning of this opinion.

III. Effective Date

The effective date of the Final Rule was sixty days after issuance on September 20, 1991, or November 19, 1991. The sixty days delay in effectiveness was intended to provide sufficient opportunity for potential project sponsors to become familiar with the new procedures and standards prior to choosing a particular authorization option. The sixty days also was intended to give reviewing parties adequate time to analyze this complex rule and file rehearing petitions deemed necessary for Commission review prior to the effectiveness.

Numerous parties concluded that there are serious flaws in the Final Rule that should be fixed before effectiveness and they sought a further delay in the effectiveness of the rule pending the Commission's review of those flaws on rehearing. I am pleased that the Commission granted those requests, as we have done on several occasions in the past. For me, it is absolutely critical that the Final Rule in this docket be workable and have a high probability of achieving the stated objectives, as an important goal of our national energy policy, before it becomes legally effective. It is clear that the Commission must fix the identified serious flaws, and we should proceed a pace to do so.

It also is clear that the change from current certificate rules and practice to those of the Final Rule will impose significant new and time-consuming requirements leading to a virtual hiatus of new project proposals, as project sponsors are required to gear up to meet those requirements. Since that is the case, there may be some merit in further delaying the effectiveness on rehearing to provide additional time for such efforts after the order on rehearing issues. I believe the Commission should be sensitive to that possibility in acting on the rehearing petitions.

IV. Grandfather Provision

The Final Rule states, slip op. at 186, "Any construction project authorization under rules in effect prior to the effective date of this rule will be subject to those prior rules." There are several points to be made with regard to that formulation of a grandfather provision. First, those projects which already have an authorization for construction under current regulations as of the effective date may proceed with construction under the rules now in effect, rather than under the new or changed procedures and requirements adopted in the Final Rule on rehearing. For example, the existing requirements under § 157.206(d) for environmental compliance would apply as opposed to the new requirements under § 157.103. That will be important for the timely and orderly construction of authorized projects. Also, the term "authorization" should be interpreted broadly to encompass actual section 7(c) certificates and the self-implementing

authorization under section 311 and the existing implementing regulation.

Questions may arise, however, about how to handle, as a matter of law, proposed projects which have filed an application under the existing rules, but which have not yet received a certificate on the effective date. Similarly, proposed projects proceeding under the existing self-implementing authorization in the applicable regulations under section 311 may not have complied fully with all requirements of § 157.206(d) as of the effective date. The Final Rule does not address such projects in the grandfather provision, even though considerable cost and time has been expended under the existing rules. The application of the new procedures, requirements and standards to such projects could cause substantial delay, duplication of effort and increased costs.

Since the grandfather provision in the Final Rule is so skeletal in nature, I believe the Commission on rehearing should flesh out a more expansive and effective form of grandfathering projects in various stages of the authorization and actual construction activities. A liberal approach to grandfathering most projects now materially underway would prevent any potential hiatus of new pipeline construction. Such an approach also would possibly be a more equitable approach to the understandable concerns of proposed projects.

V. Reconciliation Procedures

A. General Discussion

Many parties have raised valid concerns about the degree of discretion delegated to the Director of OPPR, the length of the process and other aspects of the reconciliation procedures in the Final Rule. There have been recommendations for standards, more formality, and an appeal process.

It probably bears repeating that the initial proposal for a reconciliation procedure was motivated by the need (at least as I perceived it) to avoid the potential for a "guillotine" result in the initial formulation of the Final Rule. Under the original menu concept described at pages 4 and 5 above, the failure of a project sponsor to satisfy all requirements of the new § 157.103 at the time of filing a section 311 notice or a prior notice notification potentially could have led automatically to a requirement for a section 7 traditional application. The "guillotine" characterization of that result was based on the automatic "off with your head" effect for project sponsors forced into traditional section 7(c) processing for failure to satisfy any one of the myriad of rigid § 157.103 requirements.

And, it also seemed likely that the "guillotine" result of traditional section 7 processing would be triggered for many, if not most, projects (which based on the rehearing petitions was a reasonably accurate assessment). So, the theory of the initial reconciliation proposal was to give project sponsors at least some procedural opportunity to perfect their filing before the traditional section 7(c) "guillotine" dropped on them. And that theory appeared to have even more merit as the relative substantive impact of the § 157.103 requirements and standards became more apparent over time.

It also probably bears repeating that a truly self-implementing procedure for section 311 construction and section 7 prior notice construction, as has existed for the past six years under § 157.206(d), would be highly preferable to achieve the objectives of the NOPR in this docket. However, for better or for worse, the notion of truly self-implementing construction procedures has been the subject of a frontal attack since the original Task Force recommendations last year proposed eliminating altogether section 311 construction. The initial menu approach reflected the tension resulting from that particular reality, which continues to manifest itself in the rehearing debate.

Consequently, the concept of reconciliation was an effort to mitigate, or make less worse, the otherwise, apparently inevitable "guillotine" result of traditional section 7(a) processing for most projects, with all the additional delay, excessive costs, and lost projects which would occur. And, the form and substance of the reconciliation process as adopted in the Final Rule involved yet another series of compromises in its design and implementation. Another way of stating the proposition is that reconciliation should not be and would not be an appropriate or necessary feature of the Final Rule, but for the formulation of the menu approach and its total dependence on full satisfaction of the § 157.103 requirements, coupled with the very rigid and substantively harsh nature of those requirements.

I offer these observations not in defense of the reconciliation procedure *per se*, even though I did suggest and support it, but rather as an explanation of why it evolved as a pragmatic compromise (but not a preferred option) in the face of the frontal assault on truly self-implementing construction authorization. Reconciliation is only of potential value in the context of majority opposition to the retention of the § 157.206(d) approach or a suitable refinement of it. I would clearly prefer majority support for a § 157.206(d)-type approach on rehearing rather than the menu approach with dependency on § 157.103 satisfaction, including the reconciliation procedures, in the Final Rule. But, if there is no such majority support, those committed to expediting pipeline construction authorization are confronted as a practical matter with trying to make the best of a less preferable situation. And, it is in that context that interested parties should evaluate whether reconciliation has any value and, if so, how best to make it work effectively.

In any event, the objective should continue to be to avoid making traditional section 7(c) processing the inevitable "guillotine" result for most projects. A wholesale restructuring of § 107.103 might be successful in at least reducing the inevitability of section 7(c) processing for many projects, if not more hopefully retaining all of the procedural and substantive vitality of § 157.206(d). If, however, the industry is going to be collectively "stuck" with the menu approach and a more rigid formulation of § 157.103, then some form of procedural and substantive flexibility may be pragmatically attractive in order to provide some reasonable opportunity for a project sponsor to avoid traditional section 7(c) processing, the circumstances which spawned the original reconciliation proposal. Whether or not the procedural and substantive flexibility takes the form of the current reconciliation procedure, let alone what it's called, is far less important to me than the existence of some such flexibility as a much preferred alternative to the pre-November 1985 world of traditional section 7(c) processing for most projects.

If some form of reconciliation procedure is indeed considered to be desirable or essential under all these circumstances, interested parties should carefully consider the types of standards, formality and appeal procedures that are necessary to make the reconciliation process both effective and fair. Such consideration would involve of necessity the trade-offs in processing time, costs and resources associated with various formulations of formality, standards and appeals. As noted, there also appears to be an obvious trade-off between the formulation of any reconciliation procedures (if deemed desired) on one hand and the relative rigidity and substantive harshness of the final § 157.103 on rehearing. For example, if one assumes for purposes of analysis

that the current § 157.103 in the Final Rule remains largely unchanged in substantive effect on rehearing, then it might be desirable to retain and refine more formally the current form of reconciliation procedure. If, in the alternative, many or most recommendations for revision of § 157.103 back toward § 157.206(d) are adopted on rehearing, there might not be the need for anything like the current reconciliation procedure. Interested parties can gauge for themselves the likely disposition of the majority of the Commission for either alternative, or perhaps some middle ground in between. The key analytical point is that answers to the staff questions and more general recommendations about reconciliation should carefully consider the linkage to the substance of § 157.103, or its successor, or rehearing.

B. "Relatively Minor Issues"

The preamble and the regulatory text state that the reconciliation process is only supposed to be used for "relatively minor issues." Slip op. at 83 and 51 respectively. At the same time, the Final Rule requires that reconciliation be used on a *mandatory* basis in a number of situations, such as:

1. Pipeline crossing a designated fault area, land side, etc.
2. Pipeline crossing of hazardous waste site or contaminant.
3. Pipeline crossing of perennial water bodies or federally delineated wetlands.
4. Condemnation of any dwelling or permanent above ground structure.
5. Above ground facilities where more than 5 acres of prime agricultural land will be permanently disturbed or fenced.
6. New gas conditioning facility or new or modified LNG facility.
7. New or expanded gas storage.
8. Endangered Species Act compliance, where project may affect listed species or habitat.
9. National Historic Preservation Act compliance, where the project may affect an eligible historic property and where there is disagreement as to the need for a survey or the adequacy of a survey.
10. Alternative provisions for the Erosion Control, Revegetation and Maintenance Plan.
11. Alternative provisions for the Stream and Wetland Construction and Mitigation Plan.
12. Resolution of a land-owners protest. As this list demonstrates, the Final Rule not only contemplates, but it *requires*, the use of the reconciliation procedures for a whole series of very significant environmental matters and values. Consequently, I believe it is flatly inaccurate for the Rule to state that the reconciliation procedures should only be used for relatively minor issues, and that error should be corrected on rehearing.

C. Use of the Reconciliation Procedures

As I stated at the September 11, 1991, Commission Meeting when we voted on the Final Rule, any real hope of achieving the objectives discussed previously would depend directly on the success or failure of the reconciliation procedures, if they are retained on rehearing. Several points need to be made in that regard. First, the Director of the Office of Pipeline and Producer Regulation (OPPR) under the procedures in the Final Rule would have considerable discretion as to when, how and for how long the reconciliation procedure will be available for any proposed project under the Automatic, Prior Notice or section 311 options to resolve protests or issues of environmental compliance. I believe that all reasonable means should be utilized and exhausted by OPPR for any project in the reconciliation process to achieve expeditious and satisfactory resolution of any protests and any issues of environmental compliance, in order to avoid wherever possible the otherwise applicable requirement that the project file an application under part 157 subpart A. To that end, the Director will have to develop and implement the required OPPR organizational and processing approaches for such a concerted and focused effort on an individual project basis.

Also, OPPR would have to be prepared to proceed aggressively to address and attempt to resolve promptly protests under the Prior Notice option. The Final Rule requires that a protestant must at least make a *prima facie* showing in support of a protest. Thus, the Director should dismiss protests based on mere opposition to the project on a "Not In My Back Yard" (or NIMBY) basis. Additionally, affected landowners will be required to present concrete route modification proposals with substantial justification in order to avoid dismissal.

Similarly, OPPR would have to be prepared to proceed aggressively to address and attempt to resolve promptly issues of environmental compliance for proposed projects under the Automatic, Prior Notice, and section 311 options. Those environmental issues may involve compliance solely under FERC jurisdiction or compliance involving other federal and state agencies, as well as FERC, as set forth in the § 157.103(c) Standard Environmental Conditions. Therefore, OPPR will have to work closely and quickly with project sponsors and any such federal or state agencies involved in a particular issue to obtain a prompt resolution. It is important to note again that the § 157.103 environmental compliance requirement associated with the Automatic, Prior Notice, and section 311 options is a condition precedent for the authorization, as well as the commencement of construction in most circumstances. Consequently, extended delay in the reconciliation process would prevent authorization of the project (which could impact on financing the project) and would delay the timely commencement of construction for the project, as well as risking the triggering of the part 157, subpart A requirement, if reconciliation is not successful in the time available.

The Final Rule provides that the initial time for reconciliation is ninety days, subject to the possibility of an extension for an additional ninety days at the discretion of the Director. The Director should grant extensions for an additional ninety days on a very liberal basis, whenever there is the possibility that a protest or environmental issue can be resolved by further reconciliation efforts without traditional section 7(c) processing. If all else fails in reconciliation, as it were, the Final Rule then will require such traditional section 7(c) treatment, but the Director and OPPR must attempt to render that result a truly "last resort" alternative.

Careful study of the § 157.103(c) Standard Environmental Standards will demonstrate that a number of federal and state agencies, as well as unyielding protestants, could frustrate the reconciliation process if they fail to participate cooperatively and in a timely manner. The very best, good-faith efforts of the Director and OPPR could be to no avail for a number of potential environmental issues, if the other federal and state agencies fail to respond in a cooperative and timely manner in the reconciliation process. And, it goes without saying, that project sponsors will have to make a prompt and responsible effort to satisfy all of the Standard Environmental Conditions with OPPR and other federal and state agencies at the outset, as well as proceeding in reconciliation on an expeditious basis, when that process is initiated. In the absence of timely cooperation by the project sponsor with OPPR and other federal and state agencies in reconciliation, the part 157, subpart A "last resort" alternative will quickly become the only legally available option for a particular project, as a practical matter.

The Final Rule states that the Commission intends, if part 157, subpart A requirements are triggered by an unresolved protest or environmental compliance issue, that the environmental processing of the resulting subpart A application would examine only those portions of the project for which compliance with the requirements of § 157.103 has not been achieved. And, the new filing requirements for subpart A applications expressly provide that the project applicant can provide the appropriate certifications and documentation to demonstrate those areas where compliance has been previously achieved to facilitate focussed processing of the outstanding issues. In other words, the part 157, subpart A environmental processing need not, and decidedly should not, require starting all over, to conduct a full-blown, case-specific tradition section 7(c) environmental review, as if there had never been any prior demonstration of compliance with the § 157.103(c) Standard Environmental Requirements, either at the initiation of the Automatic, Prior Notice, or section 311 process or later during the subsequent reconciliation process.

Thus, there should not under any circumstances be any duplication of prior compliance efforts nor any necessity to "re-litigate" those issues previously demonstrated at the outset to be, or subsequently by reconciliation determined to be, in compliance with the § 157.103(c) requirements. No valid pubic policy purpose would be served by condoning, let alone inviting, any such duplication or re-litigation in the processing of the subpart A application. Further, under a worse case scenario where any significant or protested project under the Automatic, Prior Notice or section 311 options will trigger the part 157, subpart A requirement, it will be imperative that such duplication and re-litigation be rejected and avoided so that the Commission is not overwhelmed in the processing of subpart A applications. Clearly, were we to be overwhelmed as a result of duplication and re-litigation, proposed projects would again face extensive delays, additional costs, and extended uncertainty.

The Final Rule expressly authorizes the Director and Commission staff to meet informally during the reconciliation process with projects sponsors and other agencies to facilitate resolution of protests and environmental compliance issues. Such informal meeting, of course, would be subject to all applicable Commission regulations, such as those dealing with *ex parte* communications. The ability of the Commission staff to carry out the reconciliation mandate in seeking such resolutions under the Automatic, Prior Notice and section 311 options is dependent directly on the capability to have such an informal dialogue, albeit subject to applicable legal requirements. In the absence of such a capability, particularly in light of the relatively short deadlines for successful resolution before triggering part 157, subpart A, it would be unlikely that there would be much chance that reconciliation could be successful to satisfy the Automatic, Prior Notice or section 311 requirements. Therefore, the Director and the Commission staff should make full use of the informal meeting capability whenever possible.

The Final Rule requires that the Director issue a letter to the project sponsor stating simply that the project has satisfied the § 157.103(c) Standard Environmental Requirements under the Prior Notice and section 311 options. This letter would be issued after staff review of the initial compliance report filed with the prior notice/section 311 notification determines that compliance has been satisfactorily demonstrated. The letter also would be issued after successful resolution in reconciliation of any environmental compliance issues identified by the initial staff review. The Final Rule states that the Director's letter is a ministerial action not subject to judicial review.

I see no need for such a compliance letter in the first place, unless expressly requested by the project sponsor. If, however, there must be such a Director letter on a mandatory basis, it should not be subject to judicial review as a matter of policy. The theory of the Automatic, Prior Notice and section 311 options is that a project will have no significant impact on the environment if there is compliance with the § 157.103(c) Standard Environmental Requirements. The Final Rule itself will establish as a matter of law that a project in compliance with § 157.103(c) is accorded a finding of no significant impact. Consequently, the burden is placed on the project sponsor to demonstrate such compliance as a condition of the certificate authorization available under the Automatic, Prior Notice and section 311 options. If, in fact, a project is not in compliance at the time construction commences, the Final Rule contemplates a separate complaint procedure and grants authority for the issuance of a "stop work" order at that point. Consequently, the Director's letter should not be subject to judicial review, in that it is an intermediate step in the process and is largely ministerial in nature. If, however, a different analysis of the Automatic, Prior Notice and section 311 options would somehow lead to the conclusion that the Director's letter was an action subject to immediate judicial review, then the requirement for the letter should be removed from the rule.

VI. Questions for the Record

I have reviewed the petitions for rehearing filed in this proceeding and share many of the legal, policy and implementation concerns expressed in those petitions. I have also reviewed the transcript of the November 12, 1991 Technical Conference on environmental issues and agree with many of the points made by industry participants. However, there are additional concerns I have with respect to the permitting requirements, meanings of important environmental phrases, as well as other potential impediments to the expedited processing of pipeline projects. I'm also seeking views on the clarity of the grandfather provision contained in section XIII of the Preamble.

What follows is a series of questions that address my concerns. It is my sincere hope that the Commission on rehearing of this Final Rule will eliminate unnecessary impediments to the goal of developing a streamlined regulatory mechanism designed to facilitate the construction of needed pipeline facilities, as well as satisfy our environmental responsibilities. The answers to these questions will be useful in that effort.

A. Permit and Other Approval Requirements of § 157.103 (c)

1. Do the requirements of § 157.103 (c)(5) (requirement to satisfy Coastal Zone Management Act) give states *de facto* veto power over expedited process and does it frustrate reconciliation? If so, how should the requirements be modified?

2. What are the practical effects of § 157.103 (c)(6) (requiring project sponsors to evaluate all reasonable alternatives and make a finding that they are impracticable before construction) on pipeline construction in a floodplain? Does that provision effectively prohibit or prevent any or most construction in a flood plain? If so, how should the requirement be modified?

3. What does § 157.103 (c)(7) (above ground facility construction in wetlands) do to attempts to bring offshore platform production to the mainland? Does that provision effectively prohibit or prevent

any or most above ground facility construction in wetland areas? If the requirements have negative effects, how should they be modified?

4. With respect to § 157.103 (c)(11) (conditions subject to other agency or landowner approval, or specific installation methods) there are several subsections that contain phrases or requirements that may have a negative effect on pipeline construction or prohibit it altogether in certain designated areas. In that regard, please address the following:

Subsection (c)(11)(i): Is there substantial ambiguity in the phrase "ecologically unique or critical area?" Doesn't this provision requiring categorical exclusion or FONSI as a condition precedent effectively give other federal agencies *de facto* veto power? If so, how should it be modified?

It has been suggested that *all* public lands be designated as "environmentally sensitive" for purposes of § 157.103 (c)(11), so that the land managing agency would have to issue a FONSI or categorical exclusion, as well as impose any permitting requirements under its own regulations, as a condition precedent to construction authorization in § 157.103. What would be the effect of such a designation?

Subsection (c)(11)(ii): Is requiring approval by states to ensure protection of state listed endangered species or state designated sensitive areas (state parks, etc.) appropriate under federal law (*e.g.*, NGA, NGPA, *National Fuels* case, and NEPA)? Doesn't this provision effectively reverse the 2nd Circuit decision in the *National Fuels* case? And, doesn't this provision effectively give a state *de facto* veto power over any construction in any such area? If so, how should the requirement be modified?

Subsection (c)(11)(v): What is the effect of requiring approval from the appropriate agency before permitting a project to cross designated sole source aquifers extending to within excavation depth of a pipeline trench? Doesn't this provision effectively give a state *de facto* veto power over any construction in any such area? If so, how should the requirement be modified?

Subsection (c)(11)(vi): What is the effect of requiring approval from the appropriate water authority, before a pipeline may cross any water body within three miles upstream of the intake for a municipal water supply? Doesn't this provision effectively give a state *de facto* veto power over any construction in any such area? If so, how should the requirement be modified?

Subsection (c)(11) (viii) and (ix) requires landowner approval for new or additional easements as a condition precedent to any FERC authorization. Does that effectively extend a *de facto* veto power to all such landowners? If so, doesn't that provision defeat the *prima facie* protest requirement and also thereby frustrate the reconciliation process? If so, how should the requirement be modified?

5. Please address the effects of § 157.103(c)(12) (conditions for projects which require reconciliation) on the Commission's expedited construction program? Don't these provisions, as well as several other mandatory reconciliation requirements, effectively defeat any notion of self implementing activity? Would these requirements lead to mandatory reconciliation for most projects of any significance as well as many minor projects? Please discuss.

6. Please address more fully the effects of § 157.103(c)(16) (permits) on the Commission's expedited construction program. Does the requirement to have all permits for a discrete section of construction prior to any construction on that section effectively extend a *de facto* veto over *any* construction to a federal, state or local permitting authority? Doesn't this provision, coupled with the many other aforementioned "conditions precedent" to the NGA or NGPA authorization to commence construction, introduce additional opportunity for extended delay and increased costs, as well as such possible veto of the project? If so, how should the requirement be modified?

B. Procedures for Compliance with the Endangered Species Act

Does § 157.103(f) effectively limit construction of many western area projects because of some potential effect on some listed species or habitat or because of a disagreement over potential effects? In the event of such a potential effect or a disagreement, is the only practical alternative a subpart A application? If so, how should the requirement be modified? Please discuss.

C. Procedures for Compliance with National Historic Preservation Act

Does § 157.103(g) effectively limit construction of projects involving cultural resources, because the project may affect eligible properties (even if the effect is not adverse), or because there is disagreement with regards to surveys or potential effects? In the event of such a potential effect or a disagreement, is the only practical alternative a subpart A application? If so, how should the requirement be modified? Please discuss.

D. General Siting and Maintenance Requirements

Is the practical effect of the requirement in § 157.103(h) (to minimize effects on scenic, historic, wildlife, and recreational values to the maximum extent practicable and to the *maximum extent possible* to conform to the specified performance requirements for ROW and above ground facilities) to prohibit or make very difficult any pipeline construction where these values are raised in a proceeding? If so, how should these requirements be modified? Please discuss.

E. Grandfather Provisions

1. Should section XIII (effective date) contained in the Preamble to Order No. 555 be clarified or expanded to make clear that § 157.206(d) applies to all projects authorized or certified prior to the effective date?

2. Should section XIII (effective date) contained in the Preamble to Order No. 555 be clarified or expanded to provide that § 157.206(d) also applies to projects that have *not* received formal authorization, but have been subject to extensive activity before Order No. 555 becomes effective? (For example: those projects that have been given non-environmental approvals under FERC's "phasing" procedure.) Please discuss.

F. Conditions Precedent for Authorization

It now appears that a fundamental, and potentially fatal, flaw in Order No. 555 is the series of requirements (1) for obtaining various federal, state and local permits or approvals, (2) for resolving any contemplated, identifiable environmental issues under applicable statutes, and (3) for resolving various types of protests, including landowner opposition, which are imposed as *conditions precedent* to any construction authorization under § 157.103. As the parties at the technical conference pointed out, this feature of the Final Rule can create a virtual "Catch–22" for projects, because permitting agencies often won't act without a prior FERC authorization, and yet there could not be a FERC authorization unless the permitting agencies had already acted. Even without the Catch–22 result, these conditions precedent would in most case introduce significant delay and increased costs in pipeline construction. I remain convinced that there must be a clear distinction between (1) those requirements that must be satisfied in advance of authorization under section 7 of the NGA and section 311 of the NGPA and (2) those other requirements that

must be satisfied before actual construction can begin at a particular site after NGA or NGPA authorization has been granted by the Commission, either expressly or on a self-implementing basis.

The existing § 157.206(d) recognized such a distinction and effectively provided a procedure that has worked well and been affirmed by the DC Circuit Court as legally sufficient. In essence, Order No. 555 in § 157.103 has the practical effect of imposing all such requirements of both types as conditions precedent to authorization. Several of the staff questions in the instant order touch on this issue. I request that interested parties address this issue comprehensively and recommend an appropriate revamping of the authorization requirements as distinguished from the actual physical construction requirements, based on experience under the § 157.206(d) procedures.

I also would note that I believe the Commission has considerable legal discretion under NEPA and other applicable federal environmental statutes to formulate such an effective and streamlined procedure, as demonstrated in the opinions of the DC Circuit Court in *AGD* v. *FERC* and *CPUC* v *FERC*, Which reviewed aspects of the § 157.206(d) and the optional certificate procedures. For that reason, I believe it is inaccurate to conclude that the approach taken in Order No. 555 is necessary as a matter of law to satisfy NEPA or any other federal statute. For the same reason, I also believe it is inaccurate to suggest, as does question 13 in the instant order, that the use of the reconciliation procedure, in and of itself, means that the project does not qualify for a NEPA categorical exclusion. Reconciliation can be initiated because of a protest, rather than just a § 157.103 environmental problem. And, even with a § 157.103 problem, reconciliation can be used to resolve it and preserve the categorical exclusion under the Final Rule.

Finally, I would offer one last observation on this subject. The rehearing petitions and the discussion at the technical conference demonstrate that the effort to mechanically codify as conditions precedent for construction authorization the primary features of the Endangered Species Act, the National Historic Preservation Act, and other federal statutes potentially applicable to pipeline construction is a source of great difficulty. That mechanical codification has subsumed into FERC regulations both substantive standards and procedural requirements different from and more rigid and stringent than the standards and procedures that might otherwise apply to a project under the interpretations and practices of the primary agencies directly responsible for the implementation of those various statutes. While such codification has been defended as a way to provide uniform and predictable environmental requirements based on past experience, it now is clear that codification in the current form is counterproductive to the stated objectives for this rulemaking. Some parties have suggested more general guidelines and other parties have suggested general objectives (which was the approach taken in § 157.206(d)).

Whichever approach the Commission adopts on rehearing, I believe it is imperative that the resulting order not impose as a matter of FERC regulation, any different procedures or standards that otherwise would apply at any point in time under the interpretations and practices of the primary agencies. Furthermore, the order on rehearing must not adopt as FERC regulations more rigid procedures, premature requirements, or more stringent standards. I remain convinced that the Commission has the legal discretion and the policy mandate to fashion an approach that can be largely, and perhaps wholly, self implementing under flexible guidelines and general objectives for Section 311 authorizations and for section 7(c) automatic and prior notice authorizations and which will satisfy those other statutes in a manner supportive of a categorical exclusion under the generic FONSI, *without* such rigidity, prematurity and stringency. I urge interested parties to provide the Commission with appropriate recommendations in response to the instant order to achieve that result.

For these reasons, I concur.

Charles A. Trabandt,

Commissioner.

[FR Doc. 92-437 Filed 1-8-92; 8:45 am]

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18 CFR Part 37

[Docket No. RM91-17-000; Order No. 538]

Generic Determination of Rate of Return on Common Equity for Public Utilities; Final Rule

Issued January 2, 1992.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is abolishing its generic benchmark determination of rate of return on common equity for public utilities and is rescinding part 37 of its regulations, 18 CFR part 37. While the benchmark has produced some benefits, it has not produced many of the benefits envisioned for it in 1984. The failure to achieve these other benefits leads the Commission to conclude that its continuation is not merited. The resources devoted to this task can and should be used more productively in other endeavors.

EFFECTIVE DATE: The final rule is effective February 3, 1992.

FOR FURTHER INFORMATION CONTACT: For further technical information contact: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 208-1283.

For further legal information contact: Gary Cohen, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NW., Washington, DC 20426, (202) 208-2046.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting system (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

On August 9, 1991, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR)[1] inviting comments on two

[1] 56 FR 41098 (Aug. 19, 1991), 56 FERC ¶ 61,276 (1991).

issues relating to its generic benchmark determination of the cost of common equity for public utilities (Benchmark).[2] First, the Commission invited comments on the growth rate and the flotation cost adjustment. Second, the Commission invited comments on whether parties have found the existence of benchmark returns to be useful or not, and whether the Commission should retain, abolish, or alter the generic benchmark rate of return on common equity for public utilities.

After consideration of the comments received in response to the NOPR, the Commission has determined to abolish the benchmark and rescind part 37 of the Commission's regulations,[3] which prescribes the rules governing the generic benchmark rate of return on common equity for public utilities.

II. Background

Section 205(a) of the Federal Power Act (FPA) requires that all electric rates subject to the jurisdiction of the Commission be "just and reasonable."[4] An important component of just and reasonable rates are rates of return on common equity that are fair to both utility ratepayers and utility stockholders.

In July 1984, the Commission adopted procedures for the annual determination of a benchmark.[5] Benchmark rates were originally intended to provide guidance to parties in rate proceedings and to serve as a reference point for the Commission in setting allowed rates of return. However, since that time, the benchmark rates have remained advisory, with the allowed rate of return for each individual utility determined on a case-by-case basis.

In accordance with prior practice and part 37 of the Commission's regulations, the Commission issued the August 9, 1991 NOPR, which initiated this eighth annual proceeding to establish the growth rate and flotation cost adjustment factors to be used in the quarterly indexing formula for the year beginning February 1, 1992.[6] This year, however, the Commission also requested that parties submit their views as to whether the Commission's publication of benchmark returns has been useful and whether the Commission should continue publication.

Thirty-three comments were received in response to the NOPR. Timely comments were filed by the following parties: Allegheny Power System (Allegheny);[7] American Electric Power Service Corporation (AEP);[8] American Gas Association;[9] American Public Power Association (American Public Power);[10] AUS Consultants—Utility Services Group (AUS Consultants);[11] Carolina Power & Light Company (Carolina Power & Light); Central Illinois Public Service Company (Central Illinois); Consumer-Owned Systems;[12] Consumers Power Company (Consumers Power); Larry J. Dobesh (Dr. Dobesh);[13] Edison Electric Institute (EEI);[14] Florida Power Corporation, Montaup Electric Company, Northern States Power Company, and Wisconsin Public Service Corporation, filing jointly (collectively Commenting Utilities); the General Services Administration (GSA);[15] Gulf States Utilities Company; Stephen G. Hill (Mr. Hill);[16] Kansas Power and Light Company; J. Makowski Company (Makowski);[17] Nantahala Power and Light Company (Nantahala); New England Power Company (New England Power); the New Hampshire Office of the Consumer Advocate (New Hampshire Consumer Advocate Office); the New York State Consumer Protection Board (New York Consumer Board); Potomac Electric Power Company (Pepco); Public Service Company of Colorado; Public Systems;[18] James A. Rothschild (Mr. Rothschild);[19] the South Dakota Public Utilities Commission (South Dakota Commission); Southern California Edison Company (Southern California Edison); Southern Companies;[20]

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[2] The terms "public utilities" and "electric utilities" are used interchangeably in this document.

[3] 18 CFR part 37.

[4] 16 U.S.C. 824d(a).

[5] *See* Order No. 389, 49 FR 29946 (Jul. 25, 1984), FERC Stats. & Regs., Regulations Preambles 1982–1985 ¶ 30,582 (Jul. 18, 1984), *reh'g denied*, Order No. 389–A, 49 FR 46351 (Nov. 26, 1984).

[6] As previously noted, the annual proceedings were first established by Order No. 389, 49 FR 29946 (Jul. 25, 1984), FERC Stats. & Regs., Regulations Preambles 1982–1985 ¶ 30,582 (Jul. 18, 1984), *reh'g denied*, Order No. 389–A, 49 FR 46351 (Nov. 26, 1984). The first annual proceeding resulted in Order No. 420, 50 FR 21802 (May 29, 1985), FERC Stats. & Regs., Regulations Preambles 1982–1985 ¶ 30,644 (May 20, 1985), *reh'g denied*, Order No. 420–A, 50 FR 34086 (Aug. 23, 1985). The second annual proceeding resulted in Order No. 442, 51 FR 343 (Jan. 6, 1986), III FERC Stats. & Regs. ¶ 30,677 (Dec. 26, 1985), *reh'g granted in part, denied in part*, Order No. 442–A, 51 FR 22505 (Jun. 20, 1986). The third annual proceeding resulted in Order No. 461, 52 FR 11 (Jan. 2, 1987), III FERC Stats. & Regs. ¶ 30,722 (Dec. 24, 1986), *reh'g denied*, Order No. 461–A, 52 FR 5757 (Feb. 26, 1987). The fourth annual proceeding resulted in Order No. 489, 53 FR 3342 (Feb. 5, 1988), III FERC Stats. & Regs. ¶ 30,795 (Jan. 29, 1988), *reh'g denied*, Order No. 489–A, 53 FR 11991 (Apr. 12, 1988). The fifth annual proceeding resulted in Order No. 510, 53 FR 51752 (Dec. 23, 1988), III FERC Stats. & Regs. ¶ 30,843 (Dec. 19, 1988). The sixth annual proceeding resulted in Order No. 517, 55 FR 146 (Jan. 3, 1990), III FERC Stats. & Regs. ¶ 30,871 (Dec. 28, 1989). The seventh annual proceeding resulted in Order No. 532, 56 FR 10 (Jan. 2, 1991), III FERC Stats. & Regs. ¶ 30,909 (Dec. 26, 1990).

[7] Allegheny is filing on behalf of Monongahela Power Company, Potomac Edison Company, and West Penn Power Company, the operating companies comprising the Allegheny Power System.

[8] AEP is filing on behalf of the following electric utility operating companies of the American Electric Power system: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Michigan Power Company, Ohio Power Company, and Wheeling Power Company.

[9] American Gas Association is a national trade association comprising approximately 250 natural gas distribution and transmission companies.

[10] American Public Power is the national service organization of approximately 2000 local, publicly-owned electric utilities located throughout the United States.

[11] AUS Consultants filed comments on behalf of American Electric Power Service Corporation (and the electric utility operating companies of the American Electric Power system: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Michigan Power Company, Ohio Power Company, and Wheeling Power Company), Atlantic City Electric Company, Delmarva Power & Light Company, Duquesne Light Company, Pennsylvania Power & Light Company, and Philadelphia Electric Company.

[12] Consumer-Owned Systems represents: the Virginia Municipal Electric Association No. 1, whose members are the municipalities of Blackstone, Culpeper, Elkton, Franklin, Manassas, and Wakefield, Virginia, and the Harrisonburg Electric Commission of Harrisonburg, Virginia; the Northern California Power Agency, consisting of the municipalities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompac, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, California, the Plumas-Sierra Rural Electric Cooperative, and the Turlock Irrigation District; the Town of South Hadley, Massachusetts; and the Town of Belmont, Massachusetts.

[13] Dr. Dobesh is a Professor of Economics at the University of North Dakota.

[14] EEI is the association of the nation's investor-owned utilities.

Carolina Power & Light, Florida & Power & Light Company, Potomac Electric Power Company, and Public Service Company of Colorado all supported and/or incorporated by reference the comments filed by EEI.

[15] The CSA represents the consumer interests of the Federal executive agencies under the authority of section 201(a) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 481(a).

[16] Mr. Hill is a professional rate of return analyst who has testified in thirteen regulatory jurisdictions in more than ninety rate proceedings during the past decade.

[17] Makowski, a Boston-based energy project development and management firm, is a part owner and manager of the Ocean State Power Project.

[18] Public Systems consists of the National Rural Electric Cooperative Association, Golden Spread Electric Cooperative, Inc., Kansas Electric Power Cooperative, Inc., and Seminole Electric Cooperative, Inc.

[19] Mr. Rothschild has submitted testimony in over 150 rate cases. His comments are being sponsored by the Florida Office of the Public Counsel, the Illinois Citizens Utility Board, the Maine Consumer Advocate, and the Rhode Island Division of Public Utilities and Carriers.

[20] Southern Company Services, Inc. submitted these comments on behalf of the subsidiary operating companies of the Southern Companies electric system: Alabama Power Company, Georgia

Continued

Southwestern Public Service Company; the Wholesale Customer Group; [21] and Wisconsin Electric Power Company (Wisconsin Electric). Untimely comments were filed by Cincinnati Gas & Electric Company (Cincinnati Gas & Electric) and Florida Power & Light Company (Florida Power & Light).

III. Discussion

Notwithstanding that the comments filed by Cincinnati Gas & Electric and Florida Power & Light were untimely, the Commission will consider these comments in this proceeding, given the early stage of the proceeding and the apparent absence of any undue prejudice or delay.

A. Utility of and Continuation of the Benchmark

Although numerous comments were filed, the commenters shared mutual concerns. Accordingly, the Commission will address the comments by argument, rather than by party.

Most of the comments received responded to the specific request in the NOPR for comments on whether the benchmark has been useful in individual rate cases and whether the Commission should continue, abolish, or alter the benchmark. The comments were split between those parties favoring retention of the benchmark and those favoring its abandonment. In general, state agencies, customers (including the Federal Government, through the GSA, as a customer), and consumer protection organizations, support keeping the rule. Most utilities and trade associations favor abolishing the rule. However, two utilities and Makowski favor continuation of the rule.

The commenters disagree over whether the benchmark furthers settlements. Several parties argue that the benchmark hinders settlements because it is used at settlement conferences as an initial, "knee-jerk" substitute for company-specific risk profile analysis, and is ignored once serious settlement discussion or litigation begins.[22] However, other commenters maintain that the benchmark is a useful starting point that encourages more settlements, once the circumstances of an individual utility are taken into account. These parties argue that because the benchmark is impartially calculated, readily available, and constitutes an accepted and verifiable average return for the electric utility industry, it can help keep negotiations on an even keel, increase the predictability of outcome, and encourage settlement.[23]

Several commenters point out that the Commission must ensure just and reasonable rates for individual utilities. The benchmark, they note, fails to differentiate among risks encountered by different utilities and fails to translate the differences in risk into differences in rates of return.[24] Before the benchmark can be useful in individual cases, EEI explains, it must be adjusted to reflect: (1) The utility's specific risk factors; and (2) changes both in those risk factors and in the financial markets which occur after the close of the record in that case.

In contrast, other commenters state that the benchmark is useful in corroborating the results of company-specific rate of return studies,[25] especially as a tool to help potential intervenors decide whether to litigate a rate of return issue in any given proceeding.[26] Additionally, some commenters assert that the presence of the benchmark encourages utilities to apply for more realistic rates of return.[27]

There is also disagreement over the treatment of the benchmark by state commissions. Some commenters argue that the benchmark is susceptible to being misinterpreted and misused by state commissions, with some comments alleging that it has been a hindrance at state proceedings, where utilities are required to expend significant resources to rebut a presumption that the benchmark is applicable to each individual case.[28] Commenters supporting the benchmark, however, maintain that even though the benchmark is purely advisory, it provides valuable information to state commissions seeking to monitor industry trends and charged with determining the cost of equity in state utility rate cases.[29]

Many commenters attack the benchmark on economic grounds. Commenters allege that the calculation of the benchmark consistently understates the proper cost of equity.[30] Some of these parties maintain that the understatement results from the computation of the cost of equity based exclusively on the "unrealistic" assumptions of the DCF model.

Other commenters argue that the benchmark has provided a helpful mechanism for tracking industry changes in the cost of common equity, and has been useful in contract negotiations. They cite cases where utilities and their customers have agreed to use the benchmark as an index to modify rates without relitigation or renegotiation. Eliminating the benchmark, they conclude, would disrupt contracts accepted for filing by the Commission.[31]

Finally, those parties who oppose retention of the benchmark argue that it fails to accomplish the original goals set for the benchmark by the Commission: to provide a forum for the Commission periodically to review the condition of the electric industry, to save resources, and to provide greater accuracy and consistency. These commenters conclude that the annual development of the benchmark is a waste of resources by the utilities and by the Commission itself, because the benchmark provides no benefits.[32] Parties who support continuation of the benchmark, however, argue that the benchmark saves resources because the existence of the benchmark reduces the resources which need to be devoted to the

Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company.

[21] The Wholesale Customer Group consists of the Cities of Arcadia, Arma, Ashland, Attica, Augusta, Beloit, Blue Mound, Bronson, Cawker City, Cimarron, Coffeyville, Elsmore, Erie, Fredonia, Girard, Glasco, Glen Elder, Greensburg, Haven, Hoisington, Isabel, La Harpe, Lincoln, Lucas, Mankato, Montezuma, Moran, Mount Hope, Mulberry, Mulvane, Osborne, Oxford, Pratt, Russell, Savonburg, Washington, Wellington, and Winfield, Kansas; Mindenmines, Missouri; and the Towns of Concord, Norwood, and Wellesley Massachusetts.

[22] This position is taken by: Allegheny, AUS Consultants, Cincinnati Gas & Electric, Consumers Power, Gulf States, Pepco, and Southern Companies.

[23] This position is taken by: Consumer-Owned Systems, Central Illinois, Nantahala, and Public Systems.

[24] This position is taken by: Allegheny, American Gas Association, Consumers Power, Kansas Power and Light, Southern Companies, Southwestern, and Wisconsin Electric.

[25] This position is taken by: Consumer-Owned Systems, Mr. Hill, the New Hampshire Consumer Advocate Office, the New York Consumer Board, Mr. Rothschild, and the South Dakota Commission.

[26] Public Systems and the Wholesale Customer Group make this assertion.

[27] Consumer-Owned Systems and the Wholesale Customer Group make this argument.

[28] Various portions of this position are presented by: Allegheny, American Gas Association, AUS Consultants, Cincinnati Gas & Electric, Gulf States, and Pepco.

[29] This position is taken by: Dr. Dobesh, the GSA, the New Hampshire Consumer Advocate Office, the New York Consumer Board, Mr. Rothschild, and the South Dakota Commission.

[30] This argument is made by: Allegheny, AEP, American Public Power, AUS Consultants, Consumers Power, EEI, Southern Companies, and Southwestern.

[31] This issue is raised by: Consumer-Owned Systems, Central Illinois, the GSA, Makowski, and Nantahala, as well as Carolina Power & Light, which opposes continuation of the benchmark.

[32] The parties taking this position, in whole or in part, are: American Gas Association, AUS Consultants, Consumers Power, EEI, Commenting Utilities, Kansas Power and Light, New England Power, Southern California Edison, Southern Companies, Southwestern, and Wisconsin Electric.

contentious issue of rate of return on common equity. Commenters supporting this position maintain that the benchmark should be retained, regardless of whether the benchmark has accomplished the goals originally envisioned for it, because it currently performs useful functions.[33]

In the Commission's July 18, 1984 order, annual proceedings were established to determine a generic benchmark rate of return on common equity for public utilities. The order delineated three principal purposes for establishing generic procedures for determining the cost of common equity: (1) To reduce the commitment of staff and outside resources by reducing some of the duplication involved in the case-by-case approach; (2) to make more accurate and consistent determinations of the cost of common equity, principally by concentrating Staff and outside resources on a single generic proceeding, rather than dividing them among numerous cases;[34] and (3) to permit the Commission to evaluate the current status of the electric utility industry.[35] The Commission also hoped that the benchmark would narrow the focus in individual proceedings from that of cost of common equity to that of relative risk [36] and result in more settlements by reducing uncertainty as to final results.[37]

In 1984, the Commission thus balanced hopes that creation of an annual proceeding to establish a benchmark rate of return would result in improved analysis of industry trends, resource savings, and an improved determination by the Commission of the cost of common equity, against warnings by others that this proceeding would waste resources and create problems. Despite this disagreement, the Commission's judgment at that time was to promulgate part 37 of the Commission's regulations, based on hopes that the anticipated benefits of the benchmark proceedings would in fact materialize and outweigh all objections.

After seven years of experience, the Commission is now in a better position to evaluate the actual benefits and shortcomings of the benchmark. In this, the Commission's eighth annual proceeding regarding the benchmark, comments were invited on the possible advantages of disadvantages of retaining or abolishing part 37 of the Commission's regulations. In promulgating this final rule, the Commission has considered whether the benchmark has achieved the benefits it was designed to accomplish or has provided other unforeseen benefits which would justify the continued existence of the rule.

A review of prior decisions regarding the benchmark discloses that the benchmark has been a contested and controversial issue since its inception. For the past seven years, the Commission annually has reviewed comments split in their praise and condemnation of this procedure. Not surprisingly, the relative positions of the parties generally have remained unchanged. Although many commenters favoring retention of the benchmark assert that it assists them in settlement negotiations, commenters favoring abolition of the benchmark maintain that it is not useful, and some claim that it actually hinders settlement.

The same arguments raised in this proceeding were raised in prior generic benchmark rate of return proceedings. However, with the passage of time it is now possible to better evaluate the benchmark—based not on predictions and expectations but on the actual experience of the parties and the Commission. It is now appropriate to assess whether, in light of the resources devoted to the annual calculation and publication of the benchmark on an ongoing basis, the benchmark has accomplished either the goals originally envisioned for it or other unforeseen benefits which would justify its retention.

The Commission has learned from experience that, while some anticipated benefits have been realized, *i.e.*, adoption of the more standardized methodology to determine the return on equity now often used in rate cases,[38] other anticipated benefits of the benchmark have failed to materialize, and the annual benchmark proceedings have not saved resources.[39] Although the Commission annually devotes resources to calculating the benchmark return, and numerous parties devote resources to assisting the Commission in this effort, the resulting benchmark does not appear to have significantly reduced the contentiousness of the determination of the allowed rate of return for individual utilities.[40] Despite arguments to the contrary, in the Commission's experience, the benchmark has not reduced parties' uncertainty in rate cases as to what will be the Commission's ultimate determination. Thus, hopes of conserving resources and of enhanced certainty have not been fulfilled.

The Commission's experience also has shown that the annual generic benchmark proceedings have not provided the Commission with a significantly better understanding of industry trends, nor provided an appropriate forum to study the financial and operating circumstances of the electric utility industry. Moreover, the Commission does not believe that the benchmark provides any special protection to consumers from excessive rates and charges.[41]

In sum, while the benchmark has produced some benefits, it has not produced many of the benefits envisioned for it in 1984. The failure to achieve these other benefits leads the Commission to conclude that its continuation is not merited. The resources devoted to their task can and should be used more productively in other endeavors.

The Commission also declines to continue to publish its annual benchmark solely based on possible benefits in other forums—*i.e.*, state ratemaking proceedings. The Commission's policy in this matter is analogous to the policy underlying its burden-reduction program, which provides that as a general matter the Commission will only collect data which it needs for its own purposes.

Moreover, while recognizing that judgment is involved in the selection of a growth rate and flotation cost adjustment in particular, and that therefore only the Commission can produce the benchmark, it nevertheless is also true that anyone using the published formula and publicly

[33] The parties making this argument, in whole or in part, are: consumer-Owned Systems, Dr. Dobesh, the GSA, the New Hampshire Consumer Advocate Office, the New York Consumer Board, Public Systems, Mr. Rothschild, the South Dakota Commission, and the Wholesale Customer Group.

[34] The goal of increased consistency referred both to consistency over time and across companies. FERC Stats. & Regs., Regulations Preambles 1982–1985 at 31,019–20; *accord, id.* at 31,021.

[35] *Id.*; *accord, id.* at 31,021.

[36] *Id.* at 31,020.

[37] *Id.*

[38] The Commission does not intend, by its action here, to overturn its precedent regarding the proper computation of rate of return in individual rate cases.

[39] Resources are not being saved in the litigation context because, regardless of what the benchmark return is, the Commission sets the allowed return for an individual utility based on an analysis of the particular circumstances of that utility.

[40] It should be noted that the benchmark has only rarely been adopted or used in determining the allowed rate of return in individual cases.

[41] Sections 205 and 206 of the FPA, 16 U.S.C. 824d, 824e, require that rates and charges be just and reasonable. If, in the Commission's judgment, an individual utility's rates appear to be excessive, the Commission would review those rates in the context of a utility-specific proceeding.

available data could construct an industry-wide average rate of return on common equity approximating the Commission's benchmark. More to the point, the issue before the Commission is whether the public interest indicates that the Commission should continue to calculate and publish the benchmark. For the reasons given above, the Commission concludes that the Commission should not continue doing so. However, the Commission's action in this matter is not intended to preclude other institutions or individuals from continuing to calculate an average return in accordance with prior decisions.

Accordingly, based on the Commission's seven years of experience in implementing the benchmark mechanism, and based on a careful consideration of the comments, the Commission will rescind part 37 of its regulations and abolish the annual procedure for determining a generic benchmark rate of return.

Although several utilities currently have contracts on file which include formula rates which permit rate filings tied to the benchmark, the Commission's abolition of the benchmark should not create problems for such utilities or their customers. The parties may propose a revised procedure or a fixed rate of return to replace the current procedure.

B. DCF Methodology

Numerous comments were received on the current DCF methodology for estimating the rate of return on common equity. Some support the existing formula,[42] some suggest minor or major modifications,[43] some suggest use of an additional model or models,[44] and some favor replacement of the DCF methodology altogether.[45] Given the Commission's decision to abolish part 37 of its regulations, these comments are moot for the purposes of this rulemaking.

[42] This position was taken by the following parties: Consumer-Owned Systems, the GSA, Mr. Hill, and the South Dakota Commission.

[43] Mr. Rothschild suggests minor adjustments to the DCF model. AEP, Makowski, the New York Consumer Board, and Southern Companies all believe that the DCF methodology has more significant flaws.

[44] Allegheny, AUS Consultants, Makowski, Carolina Power & Light, Southern California Edison, and Southern Companies all protest exclusive reliance on the existing model.

[45] The following parties favor abandoning the DCF methodology: AEP, American Public Power, Consumers Power, EEI, Commenting Utilities, New England Power, and Wisconsin Electric.

IV. Regulatory Flexibility Act Statement

The Regulatory Flexibility Act [46] requires the Commission to describe the impact that a rule will have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. Nearly all of the jurisdictional utilities that would be affected by this final rule are too large to be considered "small entities" within the meaning of the Act.[47] Accordingly, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

V. National Environmental Policy Act

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.[48] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[49] The Commission has found that matters affecting rates for the purchase or sale of electricity are not major federal actions that have a significant environmental impact.[50] The generic benchmark rate of return is a factor considered in the determination of electric rates. Thus, no environmental assessment or environmental impact statement is required for promulgation of this final rule.

VI. Paperwork Reduction Act

The Paperwork Reduction Act [51] and Office of Management and Budget's (OMB's) regulations [52] require that OMB approve certain information collection requirements imposed by agency rule. The final rule in this proceeding does not impose any information collection requirement. Therefore, the Commission is not submitting this rule to OMB for review or approval.

VII. Effective Date of Rule

This rule will be effective February 3, 1992.

[46] 5 U.S.C. 601–612.

[47] The Act defines a "small entity" as a small business, a small not-for-profit enterprise or a small governmental jurisdiction. 5 U.S.C. 601(b). A "small business" is defined by reference to section 3 of the Small Business Act, as an enterprise which is "independently owned and operated" and which is not dominant in its field of operation. 15 U.S.C. 6.32(a).

[48] Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987); III FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987), *codified at* 18 CFR Part 380.

[49] *Id., codified* at 18 CFR 380.4.

[50] *Id., codified* at 18 CFR 380.4(a)(15).

[51] 44 U.S.C. 3301–3520 (1988).

[52] 5 CFR 1320.13.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission revokes part 37, chapter I, title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 37—[REMOVED]

Part 37 is removed in its entirety.

[FR Doc. 92–438 Filed 1–8–92; 8:45 am]

BILLING CODE 6717-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 335

RIN 3220-AA93

Sickness Benefits

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends § 335.4(c) of its regulations under the Railroad Unemployment Insurance Act (RUIA) to allow a claimant 30 days (instead of 15) to file a claim for sickness benefits under the RUIA for a particular claim period. Previously, a claim was denied if filed after 15 days but could be allowed subsequently, depending on the explanation given in response to the notice of denial. This change will improve service by expediting the payment of benefits that otherwise would be delayed for a delayed filing determination and will provide for more effective use of the agency's resources.

EFFECTIVE DATE: January 9, 1992.

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

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513 (FTS 386–4513), TDD (312) 751–4701, TDD (FTS 386–4701).

SUPPLEMENTARY INFORMATION: Section 5(a) of the RUIA provides that claims for benefits under the RUIA shall be made in accordance with such regulations as the Board shall prescribe. Section 5(b) of the RUIA authorizes the Board to establish by regulation or otherwise any procedure that it deems necessary or proper for the determination of a right to benefits.

Board regulations presently allow a claimant 15 days to file a claim for sickness benefits for a particular claim period (usually a period of 14 consecutive days). See 20 CFR 335.4(c). The 15-day period is measured from the ending date shown on the claim form, or the date on which the Board mailed the claim form to the claimant, whichever date is later. The Board initially denies benefits to any claimant who does not file his or her claim within that 15-day period. However, as explained in § 335.4(d)(3) of the regulations, failure to file within 15 days may be excused depending on the reason for the delay. To ascertain the reason requires consideration of the response made by the claimant to the notice of the initial denial of benefits.

A recent survey of claims filed after the 15-day time limit elapsed shows that the vast majority of claimants filed their forms late because of circumstances beyond their control, and not because of a lack of diligence. The finding parallels that of an earlier survey of applications that were filed late. These findings reflect the fact that sick and injured claimants are handicapped in their ability to conduct their business and financial affairs. The amended regulation acknowledges that handicap by allowing somewhat more time for filing claims for sickness benefits. This change will improve service by expediting the payment of benefits that otherwise would be delayed pending review and reconsideration of the delayed filing determinations and will provide for more effective use of the agency's resources. In addition, the change is consistent with the overall intent and purpose of the Railroad Unemployment Insurance Act to provide assistance in meeting the temporary financial needs of railroad employees who are out of work because of unemployment, sickness or injury.

Also, under the experience rating provisions of the 1988 amendments to the RUIA (title VII of Pub. L. 100-647), claims for sickness benefits are subject to prepayment verification with the applicable base year employer, which helps to assure the validity of claims filed by the employees of such employer.

On September 19, 1991, the Board published this rule as a proposed rule (56 FR 47430) and invited comments by October 21, 1991. No comments were received.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. The information collections contemplated by this part have been approved by the Office of Management and Budget under control number 3220-0039.

List of Subjects in 20 CFR Part 335

Railroad employees, Railroad sickness benefits.

For the reasons set out in the preamble, title 20, chapter II of the Code of Federal Regulations is amended as follows:

PART 335—SICKNESS BENEFITS

1. The authority citation for part 335 continues to read as follows:

Authority: 45 U.S.C. 362(i) and 362(l).

2. Section 335.4(c) is revised to read as follows:

§ 335.4 Filing statement of sickness and claim for sickness benefits.

* * * * *

(c) *Claim for sickness benefits.* An employee shall file a claim for sickness benefits within 30 days after the ending date shown on the claim form, or within 30 days after the date on which the Board mails the claim form to the employee, whichever date is later. Failure to comply with this provision shall bar the payment of sickness benefits with respect to any day included within the calendar period covered by the claim form.

Example: If a form for claiming sickness benefits is mailed to an employee on July 13, for the period from July 1 to July 14, the employee must file the claim within 30 days after July 14 [on or before August 13], to be paid benefits for the period July 1 to July 14. If the claim form was not mailed to the employee until July 16, the claim must be filed within 30 days after July 16 [on or before August 15].

* * * * *

Dated: January 3, 1992.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 92-494 Filed 1-8-92; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program

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

ACTION: Final rule, approval of amendment.

SUMMARY: OSM is announcing its decision to approve, with certain exceptions and additional requirements, a proposed amendment to the North Dakota permanent regulatory program (hereinafter referred to as the North Dakota program), as administered by the Public Service Commission (PSC) and Industrial Commission (IC) of North Dakota, under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Amendment XIV) pertains to definitions, rule promulgation procedures, areas unsuitable for mining, permit application and approval requirements, environmental protection performance standards, and inspection and enforcement. The amendment is intended to revise the North Dakota program to: Add rules that provide additional safeguards; incorporate additional flexibility afforded by revised Federal regulations; be consistent with SMCRA and the Federal regulations; correct minor editorial and typographical errors; and improve operational efficiency.

EFFECTIVE DATE: January 9, 1992.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Casper Field Office; telephone (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program as administered by PSC and IC. Information regarding the general background on the North Dakota program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval, can be found in the December 15, 1980 **Federal Register** (45 FR 82214). Actions concerning program amendments taken subsequent to the approval of the North Dakota program are found at 30 CFR 934.15, 934.16, and 934.30.

II. Submission of Proposed Amendment

By letter dated November 20, 1990 (Administrative Record No. ND-L-01), North Dakota submitted a proposed amendment to its regulatory program pursuant to SMCRA. The proposed amendment consists of revisions to the North Dakota Century Code (NDCC) and proposed revisions to the North Dakota Administrative Code (NDAC). North Dakota submitted the proposed amendment on its own initiative, to provide additional safeguards and allow additional flexibility, and also in

response to OSM's 30 CFR part 732.17(c) notifications of November 8, 1988; May 11, 1989; November 17, 1989; and June 22, 1990 (Administrative Record Nos. ND-L-03; ND-L-04; ND-J-01; and ND-L-06, respectively), that informed North Dakota of changes necessary to maintain its program in a form no less effective than the Federal regulations that implement SMCRA. Additionally, the amendment contains non-substantive revisions to eliminate editorial and typographical errors and accomplish necessary recodification required by the addition or deletion of provisions.

The sections of the program that North Dakota proposes for substantive addition or revision are: NDCC 28-32-02 (Rulemaking procedures); NDAC 69-05.2-01-02 (Definitions: Developed water resources; Fragile lands; Historic lands; Knowingly; Owned or controlled; Road; Violation, failure or refusal; Wetlands; and Willfully); NDAC 69-05.2-01-03 (Rulemaking procedures); NDAC 69.05.2-04-01 (Areas unsuitable for mining); NDAC 69-05.2-05-06 (Permitting coordination with other laws); NDAC Chapter 69-05.2-06 (Permit applications: section -01, identification of interests; section -02, compliance information); NDAC Chapter 69-05.2-08 (Permit applications: section -05, geology description; section -09, prime farmland reconnaissance; section -15, fish and wildlife resources); NDAC Chapter 69-05.2-09 (Permit applications, operations plans: section -01, general requirements; section -06, transportation facilities; section -09, surface water management, impoundments; section -17, fish and wildlife protection and enhancement plan; section -19, coal preparation plants not at a mine site); NDAC Chapter 69-05.2-10 (Permit applications: section -03, criteria for approval or denial; section -05, approval or denial actions); NDAC 69-05.2-11-03, applications for permit renewals; NDAC Chapter 69-05.2-12 (Performance bond and insurance: section -01, general requirements; section -12, bond release applications; section -18, amount to be forfeited; section -20, liability insurance); NDAC Chapter 69-05.2-13 (Performance standards: section -08, protection of fish and wildlife; section 12, auger mining; section -13, coal prep plants not at a mine site); NDAC 69-05.2-15-04 (redistribution of resoiling material); NDAC Chapter 69-05.2-16 (Performance standards, hydrologic balance: section -03, compliance with other state requirements; section -07, stream channel diversions; section -09, sedimentation ponds; section -12, permanent and temporary impoundments; section -14, ground water monitoring; section -20, steam buffer zones); NDAC Chapter 69-05.2-17 (Performance standards, use of explosives; section -01, general requirements; section -05, surface blasting procedures); NDAC 69-05.2-18-01 Performance standards, excess spoil disposal requirements; NDAC 69-05.2-20-03 Performance standards, coal processing waste dams and embankments, design and construction; NDAC 69-05.2-22-07 Performance standards, revegetation success standards; NDAC 69-05.2-23-01 Performance standards, determining premining land use; NDAC Chapter 69-05.2-24 (Performance standards, roads; section -01, general requirements; section -02, location; section -03, design and construction of primary roads; section -04, drainage; section -05, surfacing; section -06, maintenance; section -07, restoration; section -08, other transportation facilities; section -09, support facilities and utility installations); NDAC 69-05.2-25-03 Performance standards, alluvial valley floors, monitoring; NDAC 69-05.2-26-05 Performance standards, revegetation and restoration of productivity of prime farmland; and NDAC Chapter 69-05.2-28 (Inspection and enforcement: section -03, cessation orders; section -16, individual civil penalties; section -17, individual civil penalty, review; section -18, individual civil penalty, payment).

The Director announced receipt of the proposed amendment in the January 15, 1991, **Federal Register** (56 FR 1505), and in the same notice opened the public comment period and provided for a public hearing on its substantive adequacy (Administrative Record No. ND-L-08). The public comment period closed on February 14, 1991. A public hearing was not held because no one requested an opportunity to testify.

By letters dated March 26 and April 2, 1991 (Administrative Record Nos. ND-L-18 and ND-L-21, respectively), OSM notified North Dakota of a decision by the United States Court of Appeals for the District of Columbia Circuit overturning an earlier ruling by the United States District Court for the District of Columbia regarding state law limitations on correction of or compensation for subsidence-caused damages, and of concerns OSM had regarding the definition of wetlands and the payment of individual civil penalties. By a letter dated April 18, 1991 (Administrative Record No. ND-L-20), North Dakota responded with a clarification on the payment of individual civil penalties, by withdrawing the proposed new definition of wetlands, and with a statement that it wished to retain the proposed deletion of state law limitation on compensation for subsidence-caused damages, even though OSM was no longer requiring such a change. North Dakota further clarified some aspects of the proposed amendment in a telephone conversation dated September 6, 1991 (Administrative Record No. ND-L-24).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings for the proposed amendment submitted by North Dakota on November 20, 1990, and clarified on April 18, 1991 and September 6, 1991.

1. Provisions Not Discussed

North Dakota has proposed non-substantive revisions to correct editorial errors and implement recodification required by substantive additions and/or deletions. The Director finds these revisions render the North Dakota program no less effective than as already approved. North Dakota also proposes revisions to rules that are substantive in nature and contain language substantively the same as the corresponding Federal regulations. The Director, therefore, finds that these proposed rules and rule revisions are no less effective than the corresponding Federal regulations and is approving the proposed revisions. They include [Federal regulation counterparts indicated in brackets]:

Definitions, "fragile lands," "knowingly," "owned or controlled," and "willfully," NDAC 69-05.2-01-02(35), (52), (64), and (126) [30 CFR 762.5, 846.5, 773.5, and 846.5, respectively]; Identification of interests, NDAC 69-05.2-06-01(1)(d)-(f), (2)-(4) [30 CFR 778.13(b)-(d), (i)-(j)]; Transportation facilities, NDAC 69-05.2-09-06(1)(b), (d)-(h), (2) [30 CFR 780.37(a), (b)], NDAC 69-05.2-09-09(1)(e), (2)(i) [30 CFR 780.25(a)(3)(iv)]; Fish and wildlife protection and enhancement, NDAC 69-05.2-09-17(1)(a)-(d), (2) [30 CFR 780.16(b), (c)]; Preparation plants, NDAC 69-05.2-09-19(1) [30 CFR 785.21]; Permit conditions, NDAC 69-05.2-10-05(3)(e) [30 CFR 773.17(i)]; Permit renewals, NDAC 69-05.2-11-03(1)-(4) [30 CFR 773.11(a), 774.15(a)]; Filing performance bond, NDAC 69-05.2-12-01(4) [30 CFR 800.11(b)(4)]; Liability insurance duration, NDAC 69-05.2-12-20(1), (2) [30 CFR 800.60(a), (b)]; Preparation plant requirements, NDAC 69-05.2-13-13 (introduction) [30 CFR 827.1]; Sediment ponds, NDAC 69-05.2-16-09(9), (17), (18) [30 CFR 816.49(a)(8)(i), (3), (10),

respectively]; Use of explosives, NDAC 69-05.2-17-01(2) [30 CFR 816.61(b)]; Excess spoil disposal inspections, NDAC 69-05.2-18-01(12) [30 CFR 816.71(h)]; Coal processing waste dams and impoundments, NDAC 69-05.2-20-03(1)(b), (d) [30 CFR 816.49(a)(3) & 816.84(b)(1), 816.84(b)(2), respectively]; Determining premining land use, NDAC 69-05.2-23-01 [30 CFR 816.133(b)]; Roads, NDAC 69-05.2-24-01 (1), (2), (4)-(6) [30 CFR 816.150 (a), (b), (d), (e)]; Primary roads, NDAC 69-05.2-24-03 [30 CFR 816.151]; deletion of NDAC 69-05.2-24 Sections -02, -04, -05, -06 [no Federal equivalents]; Road restoration, NDAC 69-05.2-24-07(1) [30 CFR 816.150(f)]; Prime farmland productivity restoration, NDAC 69-05.2-26-05(3)(a), (c)-(f) [30 CFR 823.15(b)(1), (3)-(6)]; Cessation orders, notice to owners and controllers, NDAC 69-05.2-28-03(7) [30 CFR 843.11(g)]; and Review of individual civil penalties, NDAC 69-05.2-28-17 [30 CFR 846.17(b)].

2. Rulemaking procedures

North Dakota proposes revisions to the Administrative Agencies Practice Act, NDCC 28-32-02, regarding opportunities for public participation in administrative rulemaking. The revisions would amend subsection (3) to require that interested persons be allowed to submit data respecting the impact of a proposed rule; require that the agency conduct an oral hearing on substantive rules; require that the agency fully consider all submissions unless the rule is of an emergency nature; and require that the agency make a written record of its consideration of all submissions respecting a proposed rule. The proposal would also add a new subsection (4), that would require: the notice of proposed rulemaking must include a brief explanation of the purpose of the proposed rulemaking; the notice must identify locations where the public can view the proposed rule and where comments may be sent, and the time and place of any hearing; the notice must be filed with the office of the legislative council and published at least twice in each newspaper of general circulation, and must be provided to anyone who makes timely request; the agency may supply the notice to interested persons; and the agency must receive comments for at least 30 days after the first publication of the notice.

North Dakota also proposes, at NDAC 69-05.2-01-03, revised regulatory rules to implement the statutory changes. The revisions would require the PSC to issue notices of public hearing that furnish a brief explanation of purpose, specify locations where the proposed rule's text might be reviewed, and advise the public of opportunity to testify at the hearing and submit written comments. The notice would be required to be published twice in official county newspapers in locations in which coal mining operations occur, as well as in papers of general circulation in the state; the hearing must be at least 30 days after the later of the first publication or filing with the legislative council. North Dakota would also be required to make a written record of its consideration of all comments and testimony.

Section 102(i) of SMCRA states that one of the purposes of SMCRA is to

> * * * assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary or any State under this Act.

In addition, the criteria for the Director's approval of State programs amendments, at 30 CFR 732.15(b)(10), require that State programs

> provide for public participation in the development, revision, and enforcement of State regulations and the State program, consistent with the public participation requirements of the Act and this chapter * * *

Section 501 of SMCRA requires that interested persons be provided with at least 30 days to provide written comments after publication of proposed rules in the **Federal Register**.

As noted above, North Dakota's proposed statute and proposed rule both require a 30-day comment period. In the conditional approval of the North Dakota program, the Secretary noted that North Dakota has no official publication corresponding to the **Federal Register**, but that North Dakota provided information on locations where the proposed text may be read (45 FR 82214, 82232 (December 15, 1980)); the Secretary found this to be consistent with SMCRA. The proposed statute and rule retain this requirement.

The revised statute at NDCC 28-32-02(3) allows the PSC to omit consideration of public comment if a rule being adopted "is of an emergency nature." Emergency rulemaking procedures are further defined at NDCC 28-32-02(6); for an emergency rulemaking, the PSC would have to find an emergency rulemaking necessary because of imminent dangers to the public or because a delay in rulemaking would cause revenue loss that would prevent the PSC from fulfilling its mission. In either case, the emergency rule would remain valid for a maximum of six months.

OSM reviewed this provision for emergency rulemaking to determine whether it would constitute a substantial abrogation of the public participation requirements of SMCRA. OSM finds that the State provision for emergency rulemaking would not constitute a substantial abrogation of the public participation requirements of SMCRA for three reasons. First, emergency rulemakings would be limited to instances of imminent peril or loss of regulatory capability; this would be subject to oversight by OSM. Second, final rulemaking proceedings, with full public participation, would follow after no more than six months. Lastly, under 30 CFR 732.17(g), the Federal regulations require that no changes to State laws or rules are to take effect for purposes of a State program until approved as a program amendment. Therefore, any emergency rulemaking by North Dakota would have to be approved by OSM as an amendment to the North Dakota program; this would open the rulemaking to public comment under the rulemaking requirements of SMCRA. Therefore the Director finds that this proposed provision for emergency rulemaking is no less stringent than SMCRA, and no less effective than the Federal regulations.

The Director finds that the remaining provisions added in this proposal afford additional opportunities for public participation that are no less stringent than the requirements of SMCRA Section 501, and not inconsistent with the Federal regulations. The Director is therefore approving the proposals.

3. Definitions (NDAC 69-05.2-01-02)

a. "Developed Water Resources" (Land Use)

Subsection (22) of NDAC 69-05.2-01-02, the definition of "developed water resources," provides that, for land use purposes, "developed water resources" means land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, flood control, and water supply. North Dakota proposes to add "wildlife habitat" to the examples of beneficial uses for storing water. The North Dakota definition is substantively similar to the Federal definition at paragraph (i) of the definition of "land use" at 30 CFR 701.5. However, the Federal definition does not include wildlife habitat within the examples of beneficial uses.

OSM notes that the specified water uses in both the proposed State and the Federal definitions are intended as non-exhaustive examples, and agrees with North Dakota that creating or

maintaining fish and wildlife habitat is a beneficial use of stored water. Therefore, the Director is approving the proposal.

b. "Historic Lands"

Subsection (42) of NDAC 69-05.2-01-02 defines "historic lands" as meaning:

> historic or cultural districts, places, structures, or objects, including archeological and paleontological sites, national historic landmark sites, sites listed on or eligible for listing on the state historic sites registry or the national register of historic places, sites having religious or cultural significance to Native Americans or religious groups or sites for which historic designation is pending.

North Dakota proposes to revise the definition by replacing the phrase "historic or cultural districts, places, structures, or objects" with "areas containing historic, cultural or scientific resources," and move the reference to paleontological sites to the definition of "fragile lands" at subsection (35) of this section. In the subsequent list of examples, North Dakota proposes to: (1) Change the phrase "national historic landmark sites" to simply "national historic landmarks," and (2) in all other references, change the word "sites" to "places."

The proposed modifications to the North Dakota definition make the State definition substantively similar to the Federal definition of "historic lands" at 30 CFR 762.5. However, in the list of examples, the Federal definition refers to

> archeological sites, *properties* listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, *properties* having religious or cultural significance to Native Americans or religious groups, and *properties* for which historic designation is pending [emphasis added].

The Federal definition previously employed the term "sites," but this was revised on May 19, 1987, to "properties" in order to be consistent with other Department of the Interior regulations (52 FR 18792, 18793—18794).

The Director finds that North Dakota's proposed definition is limited to "places" only in the non-exhaustive examples, and that any "property" included under the Federal definition of "historic places" would be included, as an "historic, cultural, or scientific resource," under the proposed North Dakota definition of "historic lands." Therefore, the Director finds that the proposal is no less effective than the Federal requirements, and is approving the proposed revision.

c. "Road"

At subsection (92) of NDAC 69-05.2-01-02, North Dakota proposes to delete the current definition of "road" and replace it with a new definition. The proposed new definition is substantively similar to the Federal definition at 30 CFR 701.5, with one exception: The proposed definition does not include surface right-of-ways used in coal exploration.

In the North Dakota program, coal exploration is regulated by a different regulatory authority (IC) under different statutory (NDCC Chapter 38-12.1) and regulatory (NDAC Chapter 43-02-01) authorities. Therefore, the inclusion of coal exploration is not required in the definition of "road" in NDAC 69-05.2-01-02. For this reason, the Director is approving the proposed definition.

However, the Director notes that North Dakota must have, in the part of its program regulating coal exploration, provisions no less effective than those Federal regulations for coal exploration at 30 CFR Chapter VII, including definitions. Neither NDCC Chapter 38-12.1 nor NDAC Chapter 43-02-01 contain a definition for "road." The Director had previously notified North Dakota in accordance with 30 CFR 732.17, by letter dated November 17, 1989 (Administrative Record No. ND-J-1), that North Dakota must revise its rules regulating road performance standards on coal exploration operations. The Director now also finds that the North Dakota program lacks a definition of "road" applicable to coal exploration, and is requiring North Dakota to amend its program to include such a definition.

d. "Wetlands"

North Dakota proposed to add a definition for the term "wetlands" at NDAC 69-05.2-01-02(124). In its April 2, 1991, letter to North Dakota (Administrative Record No. ND-L-21), OSM stated its concern that, even though "wetlands" are not defined in the Federal regulations, the proposed North Dakota definition was not as effective as the Federal program requirements. North Dakota withdrew the proposed definition from the proposed amendment by letter dated April 18, 1991 (Administrative Record No. ND-L-20). The Director accepts this withdrawal and is therefore not considering the proposed definition in this rulemaking action.

4. Permit Applications: Areas Unsuitable for Mining

North Dakota proposes to revise the permit application requirements at NDAC 69-05.2-04-01(5)(b) regarding submission of documentation showing compliance with NDCC Chapter 38-18 [the Surface Owner Protection Act]. Currently, the rule requires this documentation of compliance if any proposed operations are to be conducted within 500 feet of a farm building; the proposed revision would require this only if "coal removal areas" are proposed within 500 feet of farm buildings. The Surface Owner Protection Act, at NDCC 38-18-07(2), requires that if any "coal removal area" comes within 500 feet of a farm building, the operator must compensate the building owner for the value of the building or the cost of relocating it, unless waived by the owner. Neither the North Dakota statute nor the North Dakota rules define either "coal removal area" or "farm building."

Another existing part of the North Dakota program, NDCC 38-14.1-07(5), prohibits among other things, surface coal mining operations within 500 feet of an occupied dwelling, unless approved by the owner. The State regulations at NDAC 59-05.2-01-02(60) [proposed to be recodified as subsection (61)] define "occupied dwelling" as any building currently used on a regular or temporary basis for human habitation. The statutory prohibition to mining within 500 feet of an occupied dwelling is implemented by the North Dakota rules at NDAC 69-05.2-04-01(1) and (5)(a). Neither the statutory provision at NDCC 38-14.1-07(5) nor the regulatory provisions at NDAC 69-05.2-04-01(1) and (5)(a) would be affected by this proposed revision to subsection (5)(b). Therefore, any farm building such as a barn that might be used for human habitation would be protected under the North Dakota program as an "occupied dwelling."

The Federal regulations do not prohibit or restrict mining operations in the vicinity of farm buildings. At 30 CFR 761.11(e), surface coal mining operations are prohibited within 300 feet of occupied dwellings except under certain circumstances, including where approved by the owner. The North Dakota program, both currently and as it would be revised, provides additional protection for farm buildings and additional protection for occupied dwellings. The Federal regulations at 30 CFR 731.11(b) provide that any State law or rule that provides for more stringent control and regulation of surface coal mining and reclamation operations shall not be construed to be inconsistent with the Federal regulations.

Therefore the Director finds that the proposed rule revision is in accordance

with the North Dakota Surface Owner Protection Act (NDCC Chapter 38-18), and is not inconsistent with SMCRA or the Federal regulations, and is therefore approving the proposed revision.

5. Permitting Coordination With Other Laws

At NDAC 69-05.2-05-06(1)(d), North Dakota proposes to require that permit review and issuance be coordinated with additional state permitting processes, namely those required by the State Water Commission and Water Resource Districts.

Section 503(a)(6) of SMCRA requires that state programs establish a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other State or Federal permitting processes that are applicable to the operation. This requirement is expressed in the Federal regulations at 30 CFR 731.14(g)(9). The Director finds that the proposed additions will facilitate the administration of the North Dakota program, and are not inconsistent with the Federal program. The Director is therefore approving the proposal.

6. Permit Applications: Compliance Information

At NDAC 69-05.2-06-02, North Dakota proposes to revise subsection (3) and add new subsections (4)-(6). As revised, these subsections are substantively similar to the Federal regulation requirements at 30 CFR 778.14(c) and (d), except as addressed below.

Proposed subsection (3) of NDAC 69-05.2-06-02, as revised, requires a permit application to include a list of violations as required by NDCC 38-14.1-14(1)(g), including violations by any person who owns or controls the applicant. That statutory provision, in turn, requires the submitted list to include:

> A schedule listing any and all notices of violation of this chapter [NDCC Chapter 38-14.1], [SMCRA], and any law, rule, or regulation of the United States or of the State of North Dakota, or of any department or agency in the United States or of the state of North Dakota pertaining to air or water environmental protection incurred in connection with any surface coal mining operation during the three-year period to the date of the application.

Proposed subsection (4) of NDAC 69-05.2-06-02 requires a permit application to also include:

> A list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant.

The Federal counterpart regulation, 30 CFR 778.14(c), requires, for any violation of the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation:

> [1] a list of all violation notices received by the applicant during the three year period preceding the application date; and
>
> [2] a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant.

a. Applicable Laws

References to "the Act" in 30 CFR 778.14(c) and section 510(c) of SMCRA, include, in addition to SMCRA and its implementing regulations, all State and Federal programs approved under SMCRA. See 48 FR 44389 (September 28, 1983). See also 45 FR 82223 (December 15, 1980). Thus, 30 CFR 778.14(c) requires information regarding violations received pursuant to SMCRA or any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA. In addition, 30 CFR 778.14(c) requires information regarding violations received pursuant to any non-SMCRA Federal law, rule or regulation, or any non-SMCRA State law, rule or regulation which was enacted pursuant to Federal law, rule or regulation, which pertain to air or water environmental protection and were received in connection with any surface coal mining and reclamation operation.

Proposed subsection (3) of NDAC 69-05.2-06-02 refers to notices of violations of: (1) NDCC Chapter 38-14.1; (2) SMCRA; (3) any law, rule or regulation of the United States or of the state of North Dakota, or any department or agency in the United States or of the State of North Dakota pertaining to air or water environmental protection incurred by the applicant (and by any person owning or controlling the applicant) in connection with any surface coal mining operation during the three year period prior to the date of the application. The reference in proposed NDAC 69-05.2-06-02(3) to any violations of SMCRA is interpreted to mean any violation of SMCRA, its implementing regulations, or any State or Federal program approved pursuant to SMCRA. This is in accordance with OSM's interpretation of the phrase "the Act" in section 510(c) of SMCRA and in 30 CFR 778.14(c). In addition, the reference in proposed NDAC 69-05.2-06-02(3) to "any law, rule, or regulation of * * * any department or agency in the United States * * *," any department or agency in the United States * * *," is also interpreted to mean the laws, rules or regulations of any State. This language is similar to language used in section 510(c) of SMCRA. The preamble to the Federal permanent program regulations at 30 CFR 778.14 (44 FR 14902, 15023 (March 13, 1979)) indicates that

> [t]he phrase "in the United States" is construed by courts to mean physically located within the United States * * *. Therefore, the preferred way to read section 510(c) is to construe "department or agency in the United States" to mean "any governmental department or agency" physically located within the United States, which would include State and local governmental entities.

Thus, the proposed North Dakota rule at NDAC 69-05.2-06-02(3) requires information relative to violations of the same laws covered by the Federal regulation: SMCRA, any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA, any non-SMCRA Federal law, rule or regulation, or non-SMCRA State law, rule or regulation enacted pursuant to Federal law, rule or regulation, pertaining to air or water environmental protection and incurred in connection with any surface coal mining operation.

At subsection (4) of NDAC 69-05.2-06-02, the North Dakota proposal would require submission of a listing "of *all* unabated cessation orders and unabated * * * violation notices" received prior to the application on "any surface coal mining and reclamation operation" under applicable ownership or control [emphasis added]. Other than the words "all" and "any," which are most readily interpreted as being without limit, the proposal does not indicate which laws, rules, etc., apply to this provision.

The corresponding Federal requirement, at 30 CFR 778.14(c), refers to violations of "the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation" pertaining to environmental protection.

Although proposed subsection (4) of NDAC 69-05.2-06-02 does not explicitly state which laws, rules, etc. apply, it does follow immediately after subsection (3), which specifies the same laws, rules, etc., as does the Federal regulation. Additionally, subsection (4), taken by itself, appears to be absolutely without limit; i.e., "all" unabated

violations on "any" operation would appear to be inclusive of all laws, rules, etc., of any governmental entity in the United States. As a result, subsection (4) must be at least as inclusive as subsection (3), which renders subsection (4) at least as inclusive as the Federal requirement at 30 CFR 778.14(c).

b. Applicable Violations

Under the Federal regulations at 30 CFR 778.14(c), information about all "violation notices" must be reported. The term "violation notice" is defined in the Federal regulations at 30 CFR 701.5 as any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication:

> While all notices of violation (NOV's) are violation notices, not all violation notices are NOV's * * *. Under § 778.14(c), the permit applicant must list all violation notices, including NOV's, cessation orders, notices of noncompliance, and other citations, regardless of terminology, for any violation of any provision of the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection in connection with any surface coal mining operation. [54 FR 8982, 8985 (March 2, 1989)]

The North Dakota program at NDAC 69-05.2-01-02(119) [proposed to be repromulgated as subsection (122)], contains a definition for the term "violation notice" which is identical to the Federal definition of that term at 30 CFR 701.5. However, the list of violations required by NDCC 38-14.1-14(1)(g), incorporated by reference into proposed NDAC 69-05.2-06-02(3), employs only the term "notices of violations." The proposed State rule does not explicitly interpret this to include the broader term "violation notice," as does the Federal regulation at 30 CFR 778.14(c). In order to be no less effective than the Federal regulations, North Dakota must further amend NDAC 69-05.2-06-02(3) to include all violation notices, rather than just the one type of violation notice.

c. Applicable Persons

The Federal regulations at 30 CFR 778.14(c) require permit applications to include two different types of information regarding violation notices. First, the permit application must include a list of "all violation notices received by the applicant during the three year period preceding the application date." Second, the permit application must include "all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant." As to the first type of required information, only those violation notices received directly by the applicant within the previous three-year period need be reported (54 FR 8982, (March 2, 1989)). The second type of information required has no time limitation, other than "prior to the date of the application." In addition, the second type of required information encompasses, in addition to violation notices received directly by the applicant, violation notices received by any surface coal mining and reclamation operations owned or controlled by the applicant or owned or controlled by any person who owns or controls the applicant. Thus, the second type of required information encompasses a much broader scope of persons than those encompassed by the first type of required information.

Proposed subsection (3) of NDAC 69-05.2-06-02, as revised, requires permit applications to include information regarding violations as required by NDCC 38-14.1-14(1)(g), "including violations received by any person who owns or controls the applicant." Thus, the proposed rule at NDAC 69-05.2-06-02(3) requires violation information about more persons than the Federal regulations require for the first type of required information. The Federal regulations at 30 CFR 731.11(b) provide that any State law or rule that provides for more stringent control and regulation of surface coal mining and reclamation operations shall not be construed to be inconsistent with the Federal regulations.

For the reasons discussed above, the Director finds the proposed provisions at NDAC 69-05.2-06-02(3)-(6) to be no less effective than the Federal regulations at 30 CFR 778.14(c)-(d), with one exception, and is approving the proposal. To address the exception, the Director is requiring North Dakota to further amend its program at NDAC 69-05.2-06-02(3) to require information for all violation notices.

7. Test Borings

a. Depth

At NDAC 69-05.2-08-05(2), North Dakota is proposing to revise the requirement that test borings or core samples be collected and analyzed through the stratum immediately below the lowest coal seam. The proposed revision would require borings or samples down through the lowest of either that stratum or any lower aquifer that might be adversely impacted by the operation.

The Federal regulations at 30 CFR 780.22(b)(2) also require the analysis of samples from the lower of either the stratum immediately below the lowest coal seam or any lower aquifer that might be impacted. The Director finds that the proposal is no less effective than the Federal regulations, and is therefore approving the proposal.

The Director notes that the approval of this provision satisfies the required program amendment at 30 CFR 934.16(k) that was placed on the North Dakota program in a January 19, 1990 rulemaking action (55 FR 1813, 1819), and is removing that amendment requirement.

Additionally, at a subsection (2)(e) of NDAC 69-05.2-08-05, North Dakota proposes to revise the requirement for geologic cross-sections. The proposed revision would require that the geologic cross sections show major subsurface variations down through the deeper of either the stratum immediately below the lowest coal seam or any lower aquifer that may be adversely impacted. The Federal regulations at 30 CFR 779.25(a)(3) require cross sections showing overburden strata, coal seams, and the stratum immediately below the lowest coal seam. Thus North Dakota's proposal imposes additional requirements beyond those in the Federal regulations.

The Federal regulations at 30 CFR 731.11(b) provide that any State rules that provide more stringent environmental controls or regulation than the Federal regulations shall not be construed to be inconsistent with the Federal regulations. Therefore the Director is approving the proposal.

b. Sample Interval

At NDAC 69-05.2-08-05(2)(c), the North Dakota rule currently requires that samples for physical and chemical analyses be taken at five-foot intervals within the overburden and the stratum immediately below the lowest coal seam to be mined. North Dakota proposes to revise this requirement so that samples would continue to be required at five-foot intervals down through the lowest coal seam to be mined; below this, physical and chemical analyses would have to include one sample from each stratum.

The Federal regulations at 30 CFR 780.22(b)(2) require the physical and chemical analysis of each stratum down to the deeper of either the stratum immediately below the lowest coal seam to be mined or any lower aquifer that might be adversely affected; they do not

specify any number of samples per stratum. The North Dakota proposed requirement for one sample per stratum is therefore not in conflict with the Federal requirement. The Director finds that the proposal is no less effective than the Federal regulations, and is therefore approving the proposal.

8. Prime Farmland Determination

At NDAC 69-05.2-08-09(3)(b), North Dakota proposes a revision to the procedure for determining whether land within a proposed permit area may include prime farmland historically used for cropland (PFL). The State rule at NDAC 69-05.2-08-09(3) currently requires that if the reconnaissance investigation indicates that any land within a proposed permit area may be PFL, then the applicant shall obtain a cooperative soil survey for those lands. If the cooperative soil survey indicates that PFL soil mapping units are present, the current State rule would automatically require the applicant to comply with the program requirements for PFL. The proposed revision would allow an applicant to avoid the program requirements for PFL where the cooperative soil survey indicates that prime farmland mapping units are present *if* the applicant presents information which demonstrates to the satisfaction of the State Conservationist (SC) of the United States Soil Conservation Service (SCS) that no prime farmland mapping units actually are present. That is, if the applicant can demonstrate satisfactorily to the SC that the cooperative soil survey is in error, then the applicant would not be subject to the program requirements for PFL.

North Dakota presents the argument that the soils information and maps required by NDAC 69-05.2-08-10 are often much more detailed than are the cooperative soil surveys, and often indicate that different soils mapping units are present; according to this argument, this proposed provision would allow the SC to determine whether PFL soils units are present, using the most detailed information (side-by-side portion of amendment submittal, Administrative Record No.ND-L-01). The definition of "prime farmland" at NDAC 69-05.2-01-02(70) [proposed to be recodified as subsection (72)] states, in part, that: "[p]rime farmlands are identified based on cooperative soil surveys and soil mapping units designated as prime farmland by the [SCS]."

The Federal regulations at 30 CFR 785.17(b)(3), together with the definition of "soil survey" at 30 CFR 701.5, specify that PFL mapping units be identified on soil surveys meeting the standards of the National Cooperative Soil Survey, which standards are established by the SCS. Further, under 30 CFR 785.17(d)(1), (2), and (3), certain responsibilities regarding PFL in each state are delegated to the SC, including the responsibility to identify PFL soils; the SC is also assigned to assist the state regulatory authority in defining the nature and extent of the reconnaissance inspection. In summary, these provisions of the Federal regulations require that PFL be defined and identified by the SCS in accordance with its expertise. North Dakota's proposal would also provide for the identification of PFL as an SCS responsibility. Therefore, the Director finds that the proposal is no less effective than, and not inconsistent with, the requirements of the Federal regulations, and is approving the proposals.

9. Fish and Wildlife Resources Information

At NDAC 69-05.2-08-15, North Dakota proposes to revise the requirements for information on fish and wildlife (F&W) resources to be included in permit applications. The revised requirements would retain the existing requirement that F&W habitats be identified on aerial photos, but otherwise are substantively the same as those required in the Federal regulations at 30 CFR 780.17(a) and (c), with the exceptions noted below. The Director is approving the proposal except as addressed below.

a. The North Dakota proposal requires the applicant to first submit, for PSC approval, a study plan for acquiring F&W information. The resulting study report must then be included in the permit application. The Federal regulations at 30 CFR 780.16(a) require the submission of F&W information in the permit application, at which time its adequacy is evaluated. Under the Federal rules, an applicant is not required to first submit, and obtain approval for, a study plan for acquiring F&W information. Prior consultation and/or approval regarding the scope and level of detail of F&W information is encouraged, but not required, under the Federal regulation.

The Director finds that the North Dakota proposal will ensure timely resolution of questions regarding the scope and level of detail of the required information early in the permitting process, and thereby assist in the administration of the North Dakota program; further, the proposal is not inconsistent with the requirements of the Federal regulations. The Director is therefore approving the proposal's two-stage process.

b. At proposed NDAC 69-05.2-08-15(1), North Dakota would require that the study plan for obtaining F&W information, including the scope and level of detail, be approved by the PSC; further, the PSC, in consultation with State and Federal F&W agencies, would ensure that the information resulting from the study plan is sufficient to design the protection and enhancement plan.

The Federal regulations at 30 CFR 780.17(a)(1) require that the regulatory authority consult with F&W agencies regarding the scope and level of detail of the information to be submitted. The preamble to the Federal rule clarifies that the clause regarding sufficiency for the protection and enhancement plan defines the minimum premissible scope and level of detail that the regulatory authority may approve (52 FR 47352, 47354-47355 (December 11, 1987)).

The North Dakota proposal requires consultation with F&W agencies regarding whether the study plan will produce information that is "sufficient to design the protection and enhancement plan"; it does not explicitly require consultation regarding the scope and level of detail to be included in the study plan. However, a F&W agency would not be able to address the question of whether a proposed plan would be sufficient to meet the needs of the protection and enhancement plan, without also addressing the scope and level of detail of the plan. Thus, consultation on the scope and level of detail of the required F&W information is implicitly included in the North Dakota proposal. Therefore the Director finds that the proposal is no less effective than the Federal regulation, and is approving the proposal.

c. At NDAC 69-05.2-08-15(3)(a), the North Dakota proposal would require site-specific information when the permit or adjacent areas are likely to include Federally-listed threatened or endangered species or their habitats. It does not extend this requirement to State-listed species or habitats, as does the Federal regulation at 30 CFR 780.16(a)(2)(i).

The likely presence of State-listed or proposed species or habitats would require site-specific information under proposed NDAC 69-05.2-08-15(3)(c) when they are identified, by Federal or other State agencies during interagency consultation or permit application review, as requiring special protection under state or Federal laws.

However, this provision would not require the submission of site-specific information when the PSC is informed of the presence of State-listed species

through other channels (such as, e.g., public comment). In most of these cases, the consultation process would also identify the likely presence. However, if interagency consultation did not also identify the likely presence, the requirement for site-specific information would not be triggered, as it would be by the Federal regulation. Because of this, the State regulatory authority must require site-specific information when informed by any source of the likely presence of State-listed species or habitats, not just when so informed through interagency consultation.

Therefore the Director is approving proposed NDAC 69-05.2-08-15(3)(a), but is requiring North Dakota to further amend the rule to explicitly require site-specific F&W resource information when the permit area or adjacent area is likely to include North Dakota-listed or proposed listed species or their habitats.

10. Plans for Transportation Facilities

a. The Federal regulations at 30 CFR 780.38 require the submission of maps, plans, etc., for each support facility, to demonstrate compliance with 30 CFR 816.181, that specifies the performance standards for support facilities. The Federal definition of "support facilities" has been deleted; however, the preamble to 30 CFR 816.181 makes it clear that the term support facilities includes all transportation facilities other than roads (53 FR 45190, 45197 (November 8, 1988)).

The North Dakota proposal was unclear as to where the equivalent State provisions, for transportation facilities other than roads, were located: whether they were intended to be included among "support facilities" in the proposed new rule at NDAC 69-05.2-09-01(4), or rather included with the "Operation Plans-Transportation Facilities" in the proposed revision of NDAC 69-05.2-09-06. North Dakota clarified in a telephone conversation dated September 6, 1991 (Administrative Record No. ND-L-24), that the application requirements for transportation facilities other than roads were intended to be retained at NDAC 69-05.2-09-06.

The proposed revision to NDAC 69-05.2-09-06 would delete the current provision, at NDAC 69-05.2-09-06(6), that requires a general operations description of each transportation facility (besides roads). An equivalent provision would be retained at subsection (1) which requires a detailed description of conveyors and rail systems to be constructed, used, or maintained; appropriate maps, descriptions profiles, and cross sections would be required. However, the subsequent list of design and performance standards required to be shown in the maps, descriptions, etc., is limited to roads; there is no mention of specific design and performance standards for other transportation facilities. Therefore, the designs, maps, plans, etc., for other transportation facilities would not be required to demonstrate compliance with the applicable performance standards, as required by the Federal regulation at 30 CFR 780.38 [North Dakota's applicable performance standards are located at NDAC 69-05.2-24-08].

Since the proposed revisions to NDAC 69-05.2-09-06 would not require the design, plans, etc. for other transportation facilities to demonstrate compliance with the applicable performance standards, the Director finds that the proposal is less effective than the Federal regulation. The Director is approving the proposed revisions, but is requiring North Dakota to further amend its program to explicitly require the designs, etc., for transportation facilities other than roads to demonstrate compliance with the performance standards at NDAC 69-05.2-24-08.

b. North Dakota proposes to revise NDAC 69-05.2-09-06(3) [proposed to be recodified as subsection (10(c)] by rewording "specifications for stabilization and erosion prevention" for road structures to "plans for stabilizing" these structures.

The Federal regulations do not require plans for stabilization to be included in permit applications, although there are performance standards requiring stabilization and erosion prevention (see, e.g., 30 CFR 816.150(b)(1)). The Director finds that requiring plans for stabilization to be included in permit applications will assist North Dakota in administering its program, and is not inconsistent with the Federal regulations. The Director is therefore approving the proposal.

c. North Dakota proposes to delete existing subsection (4) of NDAC 69-05.2-24-06, that requires geotechnical analyses where required under the road performance standards at NDAC 69-05.2-09-03. OSM notes that North Dakota is proposing to delete the detailed performance standards requiring these analyses (see Finding No. 27 of this notice), and that the Federal regulations at 30 CFR 780.37 do not require the submission of geotechnical analyses. Therefore the Director finds the proposed deletion to be no less effective than the Federal application requirements and not inconsistent with the appropriate North Dakota performance standards, and is therefore approving the deletion.

11. Permit Applications: Plans for Ponds and Impoundments

a. North Dakota proposes to delete requirements at NDAC 69-05.2-09-09(1)(c) (7) and (8) that require submitted plans to contain elevation-area-capacity curves and proposed calculated detention times to meet the criteria of the sedimentation pond performance standards.

OSM notes that the requirement regarding elevation-area-capacity curves is duplicated at subsection (2)(c) of NDAC 69-05.2-09-09, and the requirement regarding detention time and supporting calculations is duplicated at NDAC 69-05.2-16-09(3). Therefore the proposal would only delete unnecessary duplications; the requirements would remain in effect. For this reason, the Director finds the proposed deletions would render the North Dakota program no less effective than as already approved, and is approving the deletions.

b. At NDAC 69-05.2-09-09 (2) (c) and (d), North Dakota proposes to add requirements that the elevation-area-capacity curves include the top of the embankment, and that spillway descriptions include stage-discharge curves.

The Federal regulations at 30 CFR 780.25 do not include these requirements. However, the Director finds that the proposed additions will assist North Dakota in coordinating its activities with other state programs, particularly those of the State Water Commission, will assist in the review of permit applications, and are not inconsistent with the Federal regulations at 30 CFR 780.25. The Director is therefore approving these revisions.

c. At NDAC 69-05.2-09-09(2)(e), North Dakota proposes to revise the requirement to submit computed safety factors for each impoundment that "meets or exceeds the size criteria of [NDAC 69-05.2-16-09(17)]" by deleting the qualifying word "size." Thus, the rule as revised would require any impoundment that meets any of the cited criteria to have a computed safety factor submitted. The criteria cited in the referenced rule include both the criteria of 33 CFR 77.216(a) [requirements of the Mine Safety and Health Administration (MSHA)] and location of the impoundment where failure would be expected to cause loss of life or serious property damage (hereinafter, "size/hazard criteria"). Further, NDAC 69-05.2-16-09(17) specifies that these impoundments be

designed and constructed with a static safety factor of 1.5 and a seismic safety factor of 1.2.

The Federal regulations at 30 CFR 780.25(c)(2) require impoundments meeting the criteria at 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage to comply with 30 CFR 77.216–2. 30 CFR 77.216–2(a)(13) requires that the submitted plan include the computed minimum safety factor range. 30 CFR 816.49(a)(3)(i) requires that these impoundments have the same safety factors specified in North Dakota's proposed rule. The Director therefore finds that North Dakota's proposed revision is no less effective than the Federal regulations, for impoundments meeting the cited size/hazard criteria, and is approving it.

In a November 17, 1989, 30 CFR part 732 notification (Administrative Record No. ND–J–1, Item B–1), the Director informed North Dakota of deficiencies in its program regarding the requirements for stability (1) for impoundments that do meet the size/hazard criteria discussed above, and (2) for impoundments that do not meet those size/hazard criteria (hereinafter, "small and nonhazardous" impoundments). In the November 20, 1990, submission (Administrative Record No. ND–L–01), North Dakota addressed only the deficiency for impoundments that do meet the size/hazard criteria; the submission did not address the stability requirement for small and nonhazardous impoundments.

However, North Dakota subsequently informed OSM by telephone conversation dated September 6, 1991 (Administrative Record No. ND–L–24) that it wished OSM to evaluate the design criteria specified in NDAC 69–05.2–16–09(10)–(16) to determine whether they would ensure, for small and nonhazardous impoundments, a stability comparable to a 1.3 minimum static safety factor. The Federal regulations at 30 CFR 780.25(c)(3) allow State programs to specify stability requirements for small and nonhazardous impoundments in either of two ways: (1) By specifying the 1.3 minimum static safety factor; or (2) by specifying engineering design criteria, approved by OSM through the state program amendment process, that would ensure stability comparable to the minimum 1.3 static safety factor. Thus North Dakota has requested that OSM review its engineering design criteria to determine whether they would ensure a stability comparable to the 1.3 minimum static safety factor. If OSM finds that they do so ensure, and approve them as such, then North Dakota would not be required to specify the stability requirement for small and nonhazardous impoundments by requiring a 1.3 minimum static safety factor.

North Dakota's specified design criteria include: a minimum freeboard of 1 foot above the design flow depth of the emergency spillway, after allowance for settling; minimum top widths in feet of (H+35)/5 [H=height of embankment above the upstream toe]; maximum slopes of the upstream and downstream faces of 1v:2h, and maximum combined slopes of 1v:5h; foundation area may be no steeper than 1v:1h, with cutoff trenches if necessary; prohibition from including in the fill material any sod, large roots, frozen soil, or coal processing wastes; and placement and compaction of the fill material in horizontal lifts in the thicknesses required to facilitate compaction.

OSM has reviewed the design criteria specified in SCS Technical Guide 378–1 (SCS, Colorado; January 1989). As noted in the preamble to the Federal regulation (53 FR 43584, 43588 (October 27, 1988)), OSM considers these criteria adequate, in most cases, to indicate compliance with the 1.3 static safety factor, in lieu of engineering tests. SCS's criteria include: tables for minimum top widths [but embankment height is defined differently, making it difficult to compare directly to North Dakota's]; combined upstream and downstream embankment slopes of 1v:5h, with the maximum slope on the upstream side of 1v:2.5h; minimum elevation of settled embankment at 1' above the design flow depth of the emergency spillway; foundation surfaces must be no steeper than 1v:1h; a cutoff trench must be excavated at least 5' wide and 4' deep; excavation of fill material from the water basin is limited in some cases; and fill material must be relatively free of sod, roots, frozen soil, and stones larger than 6". Additionally, the following compaction criteria are specified: the fill must be constructed in continuous horizontal layers only thick enough to allow the required compaction; each layer shall be compacted by routing construction equipment, rollers (corrugated or sheep's-foot), or heavily loaded cultivators over the layer; a minimum of two longitudinal passes shall be made, with each pass consisting of at least one passage of wheel, track, or equipment surface (cultivator or roller) over the entire surface of the layer; and fill adjacent to pipe conduits, anti-seep collars, etc., shall be compacted by hand tamping or manually directed power tampers or plate vibrators.

Thus the North Dakota criteria contain most of the criteria specified by the SCS. There are, however, at least two notable exceptions. The slope on the upstream side of the embankment is allowed to be steeper in the North Dakota criteria; and North Dakota includes no compaction specifications. Additionally, while minimum top widths are difficult to compare, it appears as though SCS requires more top width than North Dakota for some of the higher embankments (e.g., for 20' height, the SCS requires 12' top width, while North Dakota would allow 11'). Also, the North Dakota criteria do not require cutoff trenches in all cases.

OSM's review indicates that the maximum embankment slope and the compaction specifications are two critical factors in achieving embankment stability; the other design criteria differences may also greatly affect embankment stability. For these reasons, the Director cannot find that North Dakota's existing design criteria are sufficient to ensure that embankments achieve stability comparable to a minimum 1.3 static safety factor.

Since the North Dakota program as proposed to be revised does not specify the stability requirement for small and nonhazardous impoundments by either requiring the achievement of a 1.3 minimum static safety factor or by including engineering design criteria adequate to ensure stability comparable to a 1.3 minimum static safety factor, the Director finds the North Dakota program to be less effective than the Federal regulations. The Director is requiring North Dakota to further revise its program to specify the stability requirements for small and nonhazardous impoundments in a manner no less effective than 30 CFR 780.25(c).

d. North Dakota has proposed to delete the requirement at NDAC 69–05.2–09–09(2)(h) that the submitted plan describe the maintenance and operation requirements for each structure. In the side-by-side portion of the submission, North Dakota indicates that it believes the requirement to be redundant.

The Federal regulations at 30 CFR 780.25(a)(2)(iii) and (3)(iii) require that the plans describe the operation and maintenance requirements for each impounding structure. OSM has reviewed the North Dakota program and has found no other provisions corresponding precisely to the requirements of the Federal regulations cited above.

However, the North Dakota program includes performance standards for the

maintenance and operation of impoundments (at, e.g., NDAC 69-05.2-16-09. -10, and -12). Also, an existing requirement at NDAC 69-05.2-09-09 (2) requires that the detailed design plans must meet "all applicable requirements"; this would include the operational and maintenance performance standards cited above. Thus, while not explicitly stated, the North Dakota rule as revised would implicitly require the submitted design plans to meet operation and maintenance requirements. Therefore, the Director finds that the proposed deletion would not render the North Dakota program any less effective than the Federal regulations, and is approving this proposed deletion.

12. Fish and Wildlife Protection and Enhancement Plan

At NDAC 69-05.2-09-17, North Dakota is proposing to delete existing subsections (1) and (2), and replace them with new language substantively the same as the Federal requirements at 30 CFR 780.16(b) and (c), with the following exception.

Proposed NDAC 69-05.2-09-17(1)(e) would require that the plan include monitoring of indicator species to assess the effects of the operation on fish and wildlife resources; the indicator species are to be selected in consultation with PSC and the State game and fish department. Existing subsection (2), proposed for deletion, imposes a similar requirement, but only if impacts are expected.

The Federal regulations at 30 CFR 780.16(b) do not require the monitoring of indicator species. However, the preamble to the Federal rulemaking of December 11, 1987 (52 FR 47352, 47356) indicates that biological monitoring is an additional possible protective measure, and might also be applied to determining whether enhancement has been achieved. The Director therefore finds that the proposed revision is no less effective than, and not inconsistent with, the Federal regulation requirements, and is approving the proposal.

13. Permit Approval/Denial: Review of Violations

At NDAC 69-05.2-10-03, North Dakota proposes to delete existing subsections (1) and (2), and replace them with new language (proposed subsections (1)-(5)) modelled largely after the Federal regulations at 30 CFR 773.15 (b) and (e) that provide for a review of violations and a final compliance review prior to permit issuance. The proposed requirements are substantively equivalent to the Federal regulation requirements, with the exceptions noted below. Except as noted below, the Director is approving the proposed revisions.

a. The Federal regulations at 30 CFR 773.15(b)(1) require that no permit be issued if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant (hereinafter, "any applicable operation") "is currently in violation of the Act [SMCRA] or any other law, rule or regulation referred to in this paragraph," as indicated by any available information, including the list of violation notices submitted in the application. Among the specified violations are:

> Federal and State failure-to-abate cessation orders, unabated Federal and State imminent harm cessation orders, delinquent civil penalties pursuant to section 518 of the Act [SMCRA], bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of Federal and State laws, rules and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation * * *.

The preamble to the Federal regulation (53 FR 38886 (October 3, 1988)) clarifies that all unabated violations are included, no matter when they were issued:

> The Act requires regulatory authorities to consider past conduct in the permitting process * * * In view of [sections 507 (b)(4), (b)(5), and 510(c)] of the Act, it is clear that the Congress both contemplated and authorized holding applicants responsible for past violations.

Further, permit denial is based on violations of any State or Federal program under SMCRA, and for delinquent civil penalties issued under any State or Federal program. As explained in the preamble to 30 CFR 778.14(c) (48 FR 44344, 44389 (September 28, 1983)) and in the conditional approval of the North Dakota program (45 FR 82214, 82223 (December 15, 1980); Finding No. 3(d)(iii)), the reference to "the Act" in SMCRA Section 510(c), on which these Federal regulations are based, includes all State and Federal programs approved under SMCRA. See also 53 FR 38868, 38882-38883 (October 3, 1988).

North Dakota proposes at NDAC 69-05.2-10-03(1) to require that the PSC will not issue a permit if any applicable operation is "currently in violation of [NDCC] Chapter 38-14.1," or if any of several specified violations are outstanding. The specified violations include:

(a) Delinquent civil penalties under [NDCC] section 38-14.1-32.

(b) Bond forfeitures where violations upon which the forfeitures were based have not been corrected.

(c) Delinquent abandoned mine reclamation fees.

(d) Unabated violations of federal and state laws, rules and regulations pertaining to air or water environmental protection, incurred in connection with any surface coal mining and reclamation operation.

(e) Unresolved federal and state imminent harm and failure-to-abate cessation orders.

(f) Unresolved imminent harm cessation orders.

Like the Federal regulations, the proposed North Dakota rule would encompass any surface coal mining and reclamation operation owned or controlled by either the applicant or anyone who owns or controls the applicant. However, the proposed North Dakota rule would limit the requirement that the regulatory authority deny permit applications to situations where any applicable surface coal mining and reclamation operation was in violation of the North Dakota surface mining program; violations of North Dakota's coal exploration program (governed by NDCC Chapter 38-12.1), violations of North Dakota's Surface Owner Protection Act (governed by NDCC Chapter 38-18), and violations of Federal programs and other State programs under SMCRA would not be included. As discussed in Finding No. 6a, the reference in the Federal regulation to "the Act" (SMCRA) encompasses all State and Federal programs approved under SMCRA. Therefore, pursuant to the Federal regulations, a permit application must be denied if any applicable operation is currently in violation of SMCRA, its implementing regulations, or any Federal or State program approved pursuant to SMCRA. Similarly, as to civil penalties, the North Dakota proposed rule explicitly requires denial of a permit application only where any applicable surface coal mining and reclamation operation has delinquent civil penalties under the North Dakota program. However, the Federal regulations require permit denial whenever an applicable operation has outstanding civil penalties under SMCRA, its implementing regulations, or any Federal or State program approved under SMCRA.

In the course of reviewing the proposal, OSM also noted an additional apparent deficiency in the North Dakota program. The existing North Dakota

statutory provision governing permit denial due to current violations, NDCC 38-14.1-21(5), requires permit denial when operations owned or controlled by the applicant are

currently in violation of this chapter [i.e., NDCC Chapter 38-14.1], the Surface Mining Control and Reclamation Act of 1977, or any law or rule of the United States or the state of North Dakota, or any department or agency in the United States or the state of North Dakota pertaining to air or water environmental protection, incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application * * *

As noted in the review of a previous program amendment (51 FR 5709 (February 18, 1986)), this provision limits the denial to unabated violations received within the three-year period prior to the application. So, while this statutory provisions would extend permit denial to all violations under SMCRA, which would include violations and delinquent civil penalties under all State and Federal programs, it contains a temporal limitation not present in either the Act or the Federal regulation requirements. The Director will separately undertake to notify North Dakota, in accordance with 30 CFR Part 732, of this apparent deficiency in the North Dakota program.

For the above reasons, the Director finds the proposed revision (NDAC 69-05.2-10-03(1)) to be less effective than the Federal regulations. The Director is approving the proposal, but is requiring North Dakota to further amend its program as follows. The Director is requiring North Dakota to revise its rules at NDAC 69-05.2-10-03(1) to require permit denial when any applicable operation is in violation of, or delinquent in paying civil penalties under, the North Dakota coal exploration program, the North Dakota Surface Owner Protection Act, or any Federal program or State program under SMCRA, regardless of when the violation was issued or the delinquency began, in a manner no less effective than the Federal regulation requirements at 30 CFR 773.15(b)(1).

b. At NDAC 69-05.2-10-03(2)(b), North Dakota proposes that a permit may be conditionally issued, when a current violation by any applicable person exists, if the applicant establishes that the applicable person has filed and is in good faith pursuing an administrative or judicial appeal of the validity of the violation. The proposal would require that operations conducted under a permit issued under this provision must immediately cease, until proof is provided that the violation is being abated, if the appeal authority affirms the violation or if "a stay applied for in the appeal" is denied. The North Dakota program does not elsewhere refer to "stays"; presumably, temporary relief under NDCC 38-14.1-30(4) is intended.

The Federal regulations at 30 CFR 773.15(b)(1)(ii) similarly allow for a permit to be issued when an appeal of the violation is being pursued. The regulation provides that if the initial appeal affirms the violation, the applicant must within 30 days provide evidence that the violation is being abated.

Regarding the time period during which a conditional permit may be exercised following an administrative or judicial affirmation of a violation, the North Dakota proposal would require immediate cessation of mining, until proof is provided, while the Federal regulation allows the applicant 30 days to provide the proof. The Federal regulations at 30 CFR 732.11(b) provide that any State regulations providing for more stringent regulation of surface coal mining operations shall not be construed to be inconsistent with the Federal regulations.

Regarding the application of this provision to denials of temporary relief, OSM notes that the Federal regulations at one time contained an equivalent provision; that provision was removed in an October 3, 1988, rulemaking (53 FR 38868, 38890). The preamble to that rulemaking explained that two considerations justified deletion of the provision: denial of a stay does not terminate a good-faith pursuit of an appeal, and the provision might discourage requests for temporary relief (53 FR 38868, 38887).

However, the preamble did not state that these considerations required removal of the provision; further, it noted that a State program need not even allow for any conditional permit issuance pending appeal of a violation: "[a] State program without a provision for conditional permit approval would be more stringent and no less effective than [30 CFR] 773.15(b)(2)" (53 FR 38868, 38888). Therefore, North Dakota's proposal to require cessation of mining (under a conditionally-issued permit) upon denial of a stay constitutes a more stringent, and no less effective, regulation of surface coal mining reclamation operations than does 30 CFR 773.15(b)(2). Under 30 CFR 732.11(b), this shall not be construed as being inconsistent with the Federal regulations.

For the reasons above, the Director finds that North Dakota's proposal is no less effective than, and not inconsistent with, the Federal regulations; he is therefore approving the proposed provisions at NDAC 69-05.2-10-03(2)(b).

c. The Federal regulations at 30 CFR 773.15(b)(3) require permit denial when the regulatory authority finds patterns of willful violations of SMCRA (thus including violations of all State and Federal programs under SMCRA) by the applicant, the operator, or any person owning or controlling the applicant.

At proposed NDAC 69-05.2-10-03(4), North Dakota proposes a requirement that PSC not issue a permit if it finds that the applicant, anyone who owns or controls the applicant, or the operator, have controlled surface coal mining operations with a pattern or willful violations of NDCC Chapter 38-14.1 of such an extent as to indicate an intent not to comply with that NDCC Chapter. Thus the proposal would not include for consideration of patterns any violations of the North Dakota coal exploration program (governed by NDCC Chapter 38-12.1), the Surface Owner Protection Act (governed by NDCC Chapter 38-18), or violations of Federal or other State programs under SMCRA.

The existing statutory requirement at NDCC 38-14.1-33(3) requires that no permit be issued if PSC finds a pattern or willful violations of SMCRA, and would thus include violations of all of the North Dakota program and violations of all State and Federal programs under SMCRA. However, this statutory requirement is limited to violations on surface mining operations controlled by the applicant or the operator; it does not include violations on operations owned or controlled by persons owning or controlling the applicant.

In summary, the proposed rule at NDAC 69-05.2-10-03(4) interprets the statutory provision at NDCC 38-14.1-33(3) to apply to operations controlled by persons owning or controlling the applicant or operator; this breadth of application is no less effective than the Federal regulation at 30 CFR 773.15(b)(3). However, the proposed rule interprets the statutory provision to apply only to violations under NDCC Chapter 38-14.1; this is less extensive than the Federal regulation, which requires for consideration (for patterns) violations of any State or Federal program under SMCRA.

Therefore, the Director finds the proposed rule at NDAC 69-05.2-10-03(4) to be less effective than the Federal regulation at 30 CFR 773.15(b)(3). The Director is approving the proposal, but is requiring North Dakota to further amend the rule to include, in considering patterns of violations prior to permit

issuance, violations of all State and Federal programs under SMCRA.

d. Existing subsection (3) OF NDAC 69-05.2-10-03 is proposed to be recodified as subsection (6) due to the addition of the proposed new language in proposed subsections (1)-(5). However, existing subsection (3) is cited in a cross-reference at NDAC 69-05.2-11-02(5)(d). The Director is approving the recodification of existing subsection (3) of NDAC 69-05.2-10-03 to subsection (6). However, he is requiring that North Dakota further amend its program to correct the cross-reference at NDAC 69-05.2-11-02(5)(d).

14. Bond Documents

Existing NDAC 69-05.2-12-01(10) specifies requirements for the signing of bond documents. North Dakota proposes to delete a provision requiring that any person signing a bond document who holds more than one position must also indicate the capacity in which that person is signing.

The Federal regulations at 30 CFR 800.4(a) allow for the regulatory authority to prescribe forms for bonds. In conducting oversight of state programs, OSM reviews the effectiveness of bonding documents to achieve their purpose. The Director finds that the proposed revision will assist in the administration of the North Dakota program and is not inconsistent with the Federal requirements, and is therefore approving the proposed revision.

15. Bond Release Applications

North Dakota proposes to revise NDAC 69-05.2-12-12(3) by adding the additional requirement that the public advertisement for application for bond release also include the name of the permittee. The same requirement is specified in the Federal regulations at 30 CFR 800.40(a)(2); therefore, the Director is approving the proposed revision.

In the course of reviewing the proposal, OSM also noted an additional requirement present in the Federal regulation at 30 CFR 800.40(a)(2) which is apparently not represented in the North Dakota program. This is the requirement that the public notice include the name and address of the regulatory authority to which the public may submit comments, objections, and requests for hearings or informal conferences. The Director will separately undertake to notify North Dakota, in accordance with 30 CFR Part 732, of this apparent deficiency in the North Dakota program.

16. Bond Forfeiture: Amount To Be Forfeited

North Dakota proposes to revise NDAC 69-05.2-12-18 to require that when PSC requires bond forfeiture, the total amount of all bonds "for the bonded area" for which liability is outstanding must be forfeited. If more than one bond has liability "for a bonded area," refunding of any proceeds remaining after reclamation will be proportional to the amounts forfeited.

North Dakota has defined neither "the bonded area" nor "a bonded area," rendering the effect of the proposal unclear. If "the bonded area" represented the whole area of an operation covered by bond or bonds, and "a bonded area" represented the area covered by a given bond, then the proposal would have required all bonds covering an operation to be forfeited; this would create questions regarding the liability of incrementally-filed bonds being extended to the entire operation.

However, in a telephone conversation dated September 6, 1991 (Administrative Record No. ND-L-24), North Dakota clarified that it intends both terms to refer to the area forfeited: all bonds with liability for a defined geographic section of an operation must be forfeited if the PSC orders bond forfeiture for that area; any proceeds remaining after reclamation of that geographic area are to be refunded among the bond holders in proportion to the amounts forfeited. For example, if both a surety bond and a collateral bond (e.g., a certificate of deposit) have been posted with liability for the forfeited area, then both must be forfeited, rather than only one or the other.

The Federal regulations at 30 CFR 800.50(a) and (c) allow the regulatory authority to forfeit any or all bonds posted to complete reclamation work for which the bonds were posted. At 30 CFR 800.50(d)(2), the Federal regulations require any forfeited funds in excess of the amount required to complete the reclamation to be refunded. The Director finds that North Dakota's proposal to forfeit all bonds with liability for the forfeited area is consistent with the Federal regulation; also, the proposal to refund excess monies in proportion to the amount forfeited is not inconsistent with the Federal regulation and represents an equitable approach for the regulatory authority to fulfill this duty. Therefore, the Director is approving the proposed revision.

17. Protection of Threatened and Endangered Species

a. At NDAC 69-05.2-13-08(2), North Dakota proposes to add a provision for the protection of threatened and endangered species that duplicates the Federal requirement at 30 CFR 816.97(b), with one minor exception. The Federal regulation requires the regulatory authority, when notified of the existence of a listed species, to consult with appropriate State and Federal fish and wildlife agencies, then identify whether and under what conditions the operation may continue. The North Dakota proposal would add to this the requirement that PSC also consult with the operator before making this determination.

Consultation with the operator in this instance would assist PSC in identifying possible revisions to the operation and reclamation plan, alternative locations of facilities, or changes in the permit boundary, that would prevent adverse effects on the listed species or critical habitat. Under the proposal, the operator would not be making the decision as to whether to continue the operation, but would only be providing additional possibilities for PSC to consider. If the operation would be allowed to continue, a permit revision would be required, and PSC would retain the responsibility, under NDAC 69-05.2-10-03(3)(d) [proposed to be recodified as NDAC 69-05.2-10-03(6)(d)] and 69-05.2-11-02(5)(d), to make a written finding that the revised operation, if allowed to continue, would not affect the species or its habitat. If PSC cannot make this finding, then the operation would be required to cease. Additionally, as noted in the preamble to the Federal regulation regarding written findings (30 CFR 773.15(c); 48 FR 44344, 44369 (September 28, 1983)), requiring the regulatory authority to make this finding does not relieve the operator of responsibility, under both SMCRA and the Endangered Species Act, not to adversely affect listed species or their habitats. For these reasons, the Director finds that the proposed revision is no less effective than the Federal regulation requirements, and is approving the proposal.

b. At NDAC 69-05.2-13-08(3), North Dakota proposes to delete certain notification and consultation requirements regarding threatened or endangered plants or animals. These notification and consultation provisions are proposed to be moved to subsection (2) of the rule (see Finding No. 3c above). Thus, as revised, subsection (3) of NDAC 69-05.2-13-08 would apply only to bald and golden eagles, and their nests and eggs. The permittee would be required to notify PSC when becoming aware of the presence of bald or golden

eagles, nests, or eggs; PSC would then be required to consult with the appropriate F&W agencies in accordance with subsection (2) of the rule.

The Federal regulations at 30 CFR 816.97(c) require a substantively idenitical notification and consultation process. In addition, the Federal regulations require that "no surface mining activity shall be conducted in a manner that would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs." At 30 CFR 816.97(d), the Federal regulations further provide that "[n]othing in this chapter shall authorize the taking of * * * a bald or golden eagle, its nest, or any of its eggs in violation of the * * * Bald Eagle Protection Act, as amended, 16 U.S.C. 668 *et seq.*" The Bald Eagle Protection Act also protects golden eagles.

The North Dakota proposal does not similarly forbid mining operations from resulting in unlawful takings, or specify that the North Dakota program does not authorize takings in violation of the Bald Eagle Protection Act. By including protection under the Endangered Species Act (ESA) in subsection (2) of the rule, the proposal would effectively protect bald eagles to the extent required by the Federal regulations at 30 CFR 816.97(c) and (d), since bald eagles are currently listed as threatened or endangered under ESA. However, *golden* eagles are not at this time listed under ESA; therefore, the North Dakota proposal does not afford golden eagles the protection required by 30 CFR 816.97(c) or (d). Additionally, the North Dakota proposal would no longer afford bald eagles the required protection if they were removed from listing under the Endangered Species Act. For this reason, the Director finds the North Dakota proposal to be less effective than the Federal regulations. The Director is approving the proposal, but is requiring North Dakota to further amend its program to include protections for bald and golden eagles no less effective then those specified in the Federal regulations at 30 CFR 816.97(c) and (d).

18. Correction/Compensation of Subsidence Damage

At NDAC 69-05.2-13-12(4), North Dakota proposes to delete the limitation "to the extent required under state law" from the requirement for correction of or compensation for subsidence damages caused by auger mining.

As a result of a February 12, 1990, decision by the United States District Court for the District of Columbia in the case of *National Wildlife Federation* v. *Lujan*, 733 F. Supp. 419 (D.D.C. 1990), the Director had notified North Dakota, by letter dated June 22, 1990 (Administrative Record ND-L-06), in accordance with 30 CFR part 732, of a need to amend its program to remove the limitation of required correction/compensation to the extent required by state law. Subsequently, on April 2, 1991 (Administrative Record No. ND-L-21), the Director notified North Dakota that due to a ruling on appeal by the United States Court of Appeals for the District of Columbia Circuit (*NWF* v. *Lujan*, 928 F.2d 453 (D.C. Cir. 1991) that overturned the district court ruling, the North Dakota program would not need to be amended in this respect. However, North Dakota, by letter dated April 18, 1991 (Administrative Record No. ND-L-20), stated that it wished the proposed deletions to remain as part of this proposed amendment.

The Director finds that removing the limitation of required correction/compensation to the extent required by state law is not inconsistent with the Federal regulations; further, it may result in potential increased protection of property and land productivity, and would thus render the North Dakota program more stringent than the Federal regulations. The Director therefore approves the proposed deletion.

19. Suitable Plant Growth Material: Required Depth Based on Spoil Characteristics; Time Extension

On October 21, 1986 (51 FR 37273, Finding No. 8), the Director approved an addition to the North Dakota program at NDAC 69-05.2-15-04(4)(a)(2) that allows an alternative method for determining the depth of suitable plant growth material (hereinafter, "resoiling material") required to be restored. Under the approved alternative method, the required depth is determined by the physical and chemical characteristics of the spoil. As originally approved, the rule allows use of this alternative only through 1991, to allow North Dakota to evaluate the effectiveness of the alternative before allowing it on a permanent basis. North Dakota now proposes to extend authorization for the alternative through 1996, to allow for additional data collection and analysis for evaluating the alternative.

On July 29, 1990 (Administrative Record No. ND-L-23), North Dakota provided the following information regarding the implementation of this alternative. Although the alternative was promulgated on January 1, 1987, no permits incorporated the alternative for almost a year after that date; hence, the oldest permit areas incorporating the alternative were resoiled less than four years ago. About 2500 acres have been resoiled pursuant to the alternative; on about one-third of these acres, the required depth under the alternative is the maximum 48 inches, which is about the same depth as would be required under the standard resoiling requirements. Further, two of the years since the alternative was incorporated have been drought years; hence, movement of toxic materials from spoils into the resoiling material would be less than normal, and any adverse effects that might result would not yet be evident. Also, areas to be reclaimed to cropland under the alternative have so far mostly been revegetated to a precrop mixture of grasses and legumes; hence, actual crops have not yet been exposed to the alternative, so any possible adverse effects of the alternative on crops would not yet be evident. For all of these reasons, North Dakota has not yet been able to obtain sufficient information on the success or possible adverse effects of the alternative depths; therefore, North Dakota wishes to keep the alternative in effect until the areas employing the alternative are well into the revegetation responsibility period.

OSM has reviewed North Dakota's reasons for proposing to extend the effective date of the alternative and agrees that insufficient information has been obtained to date to fully evaluate the effectiveness of this alternative. However, OSM notes that a primary factor limiting the amount of information obtained is the amount of time elapsed, not the number of acres involved; even were the authorization period not to be extended, North Dakota could, over the next five years, obtain data on the areas already resoiled under the alternative (i.e., on a minimum of 1600 acres). Further, any adverse effects might not evidence themselves until late into the responsibility period. In that scenario, third stage bond [equivalent to the Federal Phase II] would probably have been released on the areas, leaving only sufficient bond to reestablish revegetation (NDCC 38-14.1-17(7)(C)). If the lesser depths of resoiling should result in failure of revegetation due to migration of salts or other effects on vegetation, that amount of bond might not be sufficient to both add more resoiling material or treat toxic spoils and reestablish revegetation.

On the other hand, OSM notes that the technical information submitted when the alternative was first approved indicates that adverse effects on vegetation are unlikely. Further, permittees employing the alternative are still responsible for meeting revegetation success standards at the end of the responsibility period. Also, the areas

approved to employ the alternative to date may not represent all combinations of soil mapping units and overburden types in the North Dakota coal region; information on these additional combinations, if any, would be an important factor in evaluating the alternative.

For the above reasons, the Director finds that extending the authorization period would be of value in evaluating the alternative. The Director is therefore approving the proposed extension of the authorization.

20. Impoundments and Diversions: Compliance With Other State Laws

North Dakota proposes to add the requirements of water resource districts to the other State requirements cited in NDAC 69-05.2-16-03. The rule requires that all water impounding or diverting structures meet the cited State requirements and that the necessary State permits be obtained before conducting surface mining operations under a permit issued by PSC. Similarly, North Dakota proposes to add the requirements of "The North Dakota Dam Design Handbook" to other requirements placed on permanent impoundments at NDAC 69-05.2-16-12(1).

There are no direct corresponding provisions in the Federal regulations at 30 CFR chapter VII. However, Federal regulations at 30 CFR 732.15 require State programs to implement permitting systems that include the coordination of review and permit issuance with other regulatory authorities. North Dakota's proposed changes do not eliminate any requirements for impoundments and diversions identified under the Federal regulations; they would instead provide additional requirements, and ensure effective coordination of application review and permit issuance with other State regulatory requirements. Therefore, the Director finds that the proposals are not inconsistent with the Federal program, and is approving the additional requirements.

21. Impoundment Inspection: Frequency

At NDAC 69-05.2-16-09(20), North Dakota proposes revisions to require that impoundments meeting the criteria of 30 CFR 77.216, or located where failure would be expected to cause loss of life or serious property damage (hereinafter, "in hazardous locations"), be inspected in accordance with 30 CFR 77.216-3. Other impoundments would be required to be inspected semiannually, specified as once in addition to the annual inspection required under subsection (18). These inspections are to include observations of erosion, structural weakness, and other hazardous conditions.

The North Dakota program has included a provision (at NDAC 69.05-2-16-09(20)) allowing impoundments not meeting the criteria of 30 CFR 77.216(a) to be inspected only semi-annually since the program was approved by the Secretary on December 15, 1980. However, the Director subsequently informed North Dakota in accordance with 30 CFR Part 732 (by letter dated November 17, 1989), that this provision is less effective than the Federal regulations.

The Federal regulations at 30 CFR 816.49(a)(11) similarly require impoundments meeting the criteria of 30 CFR 77.216 to be inspected in accordance with 77.216-3. However, they require impoundments not meeting the criteria of 30 CFR 77.216 to be inspected at least quarterly. The preamble to the Federal rule indicates that inspections were initially proposed to be required at 30-day intervals. This was revised in the final rule to quarterly, in order to minimize the burden on operators; however, the preamble concluded that these impoundments "must be examined at least quarterly" [48 FR 43994, 44000; September 26, 1983]. The North Dakota rule requires only two inspections per year for these impoundments.

By letter dated January 9, 1990 (Administrative Record No. ND-J-2), North Dakota presented arguments that, in the semiarid climate of North Dakota, semiannual inspections are adequate to identify any problems with embankments or other structures. North Dakota indicated that most impoundments are frozen for 4 to 5 months, and that it is customary practice in North Dakota for impoundments to be inspected in the spring after snowmelt runoff, and in autumn before they are subjected to freezing.

The Federal regulations cited above are designed to minimize the hazards of impoundments to the environment and the public by early identification of hazardous conditions of impoundment embankments, allowing repairs to be made before failure occurs. OSM has further indicated that this requirement is directed toward the structural integrity of the embankment, and has allowed total exemption from the quarterly inspection requirement for water impoundments created by excavation (i.e., "incised impoundments," those that have no embankment or "dam" to fail); see OSM policy Directive TSR-2 [dated September 14, 1987]. Thus OSM has allowed exemption from quarterly inspections for impoundments which present no hazard through structural failure of an embankment.

North Dakota is not proposing a complete exemption, but rather a decrease in frequency of inspection. OSM agrees that North Dakota's proposed semiannual inspections, when applied to incised impoundments, would be no less effective than the complete exemption of inspection for incised impoundments allowed by OSM's policy.

When applied to impoundments with embankments, OSM does not agree that an impoundment being frozen over necessarily eliminates any possibility of failure. On the contrary, the freezing of saturated fill materials can be a cause of failure, particularly if repeated freeze-thaw cycles occur. For this reason, OSM believes that most impoundments should be inspected during the winter months, particularly prior to receiving snowmelt runoff in the spring (as opposed to North Dakota's proposed inspection after the snowmelt).

Another possible argument for exempting inspections of impoundments during the winter is that snow cover might obscure the embankments and prevent observations necessary to determine structural stability. While this may frequently occur, it would not be universally true; many embankments would be observable at some point during the winter. Additionally, some important indications of instability (such as major slips on the outslope of an embankment) may well be observable even under snow cover. In the absence of further data, OSM believes that the value of such observations as are possible would outweigh the burden on the operator, particularly since personnel would occasionally be on site for other purposes (e.g., water monitoring).

OSM is also not convinced that inspection frequency may be reduced during the summer months, even in a semiarid climate. Heavy thunderstorms can produce high peak runoffs, which both (1) increase the potential for erosion damage to embankments and (2) lead to high inflows into impoundments. Both situations can threaten impoundment embankments.

For the reasons discussed above, the Director finds that North Dakota's proposed semiannual inspections are no less effective than the Federal regulations, when applied to incised impoundments not meeting the criteria of 30 CFR 77.216 and not in hazardous locations, and is approving the proposal insofar as it applies to those impoundments.

However, the Director finds the proposed semiannual inspections to be less effective than the Federal regulations when applied to impoundments that are not incised, and is not approving the proposal insofar as it applies to those impoundments. The Director is requiring that North Dakota further amend its program to require quarterly inspections of non-incised impoundments which do not meet the criteria of 30 CFR 77.216 and are not in hazardous locations.

22. Ground Water Monitoring

At NDAC 69-05.2-16-14(3), North Dakota proposes to add to the monitoring requirements: (1) That the operator review ground water monitoring data annually, or more frequently if so required by PSC; and (2) any changes in aquifers are to be described and interpreted in the quarterly monitoring reports as to significance and possible effect on "water supplies." These requirements would be in addition to the existing requirements that monitoring data be submitted at least quarterly, include analytical results, and that if any analysis indicates noncompliance with permit conditions, that PSC be notified and remedial measures be undertaken.

The Federal regulations at 30 CFR 816.41(c) require ground water monitoring data to be submitted quarterly and monitoring to be conducted in accordance with the plan approved under 30 CFR 780.21(i). That regulation, in turn, requires the monitoring plan to describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

Thus the North Dakota proposal adds an additional yearly data review to the quarterly reports required by the Federal rule. The Director finds that this requirement is not inconsistent with the Federal requirement, and will assist North Dakota in its enforcement and permitting tasks. The Federal regulation requires monitoring data be used to determine effects on the "hydrologic balance"; North Dakota's proposal would require that the quarterly reports describe changes in monitored aquifers in terms of their effects on "water supplies." However, as noted above, the existing rule requires monitoring data to also be reviewed to see if it indicates noncompliance with permit conditions. Permit conditions would include the requirements of NDCC 38-14.1-24(8), which requires minimizing disturbances to the prevailing hydrologic balance and to the quality and quantity of water in ground water systems. Therefore, the proposal is no less effective than the Federal regulation.

For the reasons given above, the Director is approving the proposal.

23. Stream Buffer Zones

North Dakota proposes to revise the requirements concerning stream buffer zones at NDAC 69-05.2-16-20. The proposed revisions are substantively the same as the Federal regulation at 30 CFR 816.57(a), except that North Dakota proposes to retain the requirement that PSC consult with the State Engineer and the State Department of Health and Consolidated Laboratories (the State regulatory authority under the Clean Water Act) prior to making a finding allowing mining within a buffer zone. OSM notes that coordination with other agencies is in any case required under NDAC 69-05.2-10-01(5), which is substantively equivalent to 30 CFR 773.13(a)(3)(i).

The Director finds that the proposed revisions are no less effective than the Federal rule requirements, and will assist in the administration of the North Dakota program, and is therefore approving the proposed revisions. The Director notes that the proposal adds the requirement that PSC find, prior to allowing mining operations within a buffer zone, that the activities will not cause or contribute to a violation of applicable State and Federal water quality standards. The approval of this proposal will satisfy the required program amendment at 30 CFR 934.16(j), imposed as a result of a rulemaking action of January 19, 1990 (55 FR 1813, 1819); therefore this amendment requirement will be removed.

24. Night Time Blasting

North Dakota proposes to revise NDAC 69-05.2-17-05(1) by adding new language at subsection (1) and deleting previously approved language at subsections (1)(a) and (1)(b).

The proposed deletion of subsections (1)(a) and (1)(b) would remove some specific factors PSC is required to use in approving night time blasting. The Federal requirements at 30 CFR 816.64(a)(2) specify only one requirement for regulatory approval of night time blasting: a showing that the public will be protected from adverse noise and other impacts. North Dakota has added at subsection (1) a substantively equivalent requirement. Thus the proposed amendment does not render the North Dakota program any less effective than the Federal regulation. Therefore the Director is approving the revisions.

25. Waste Banks/Impoundments: Drawdown After Design Storm

North Dakota proposes to revise a requirement, at NDAC 69-05.2-20-03(3), for dams and embankments constructed of or intended to impound coal processing waste. The existing provision requires that the structures be designed so that at least 90 percent of the water stored during the design event will be removed within a ten-day period. The proposed revision would change this to a performance standard, so that for these structures, 90 percent of the stored water must be removed within the ten-day period.

The Federal regulations at 30 CFR 816.84(e) require that these structures be designed so that the 90 percent can be removed within 10 days. At subsection (f), the regulation additionally requires that the 90 percent must actually be removed within the 10 days. In other words, the Federal regulations include both a design standard and a performance standard. The preamble to the Federal regulation states explicitly that these two paragraphs (i.e., 30 CFR 816.84(e) and (f)) serve two distinct functions (53 FR 43584, 43603 (October 27, 1988)).

The existing North Dakota requirement has the design standard but not the performance standard. The proposed revision would reverse this, so that North Dakota's requirement would have the performance standard but not the design standard.

The Director is approving the proposed revision, but is requiring North Dakota to further amend its rule to include a design standard no less effective than the Federal regulation at 30 CFR 816.84(e).

26. Revegetation Success Standards

The North Dakota program includes both rules specifying general requirements for determining revegetation success, at NDAC 69-05.2-22-07, and a revegetation policy document specifying detailed standards, titled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments" (dated June 1988) (hereinafter, "Revegetation Guidelines"). North Dakota proposes to revise NDAC 69-05.2-22-07(4) as described below.

a. At subsection (4)(e) of NDAC 69-05.2-22-07, regarding woodlands and woodland-type fish and wildlife habitat, North Dakota proposes to change the period for which at least 80 percent of the counted stems must be in place from "eight growing seasons" to "six years."

At subsection (4)(f), regarding shelterbelts, North Dakota is proposing revisions to add health and time-in-place requirements for the stems to be counted toward revegetation success. The proposed changes are substantively the same as the Federal requirements at 30 CFR 816.116(b)(3)(ii). Therefore, the Director is approving the proposed revisions. However, as noted in previous rulemakings on March 10, 1989 (54 FR 10141, 10145) and January 19, 1990 (55 FR 1813, 1817), North Dakota's Revegetation Guidelines have not been revised and are less effective than the Federal regulations.

The Director notes that the proposed changes satisfy, in part, required program amendments at 30 CFR 934.16(b) and (f) that resulted from a March 10, 1989 (54 FR 10141, 10145) rulemaking action. Therefore, the Director is modifying the requirements at 30 CFR 934.16(b) and (f) to remove the references to the North Dakota rules.

b. At subsection (4)(e) of NDAC 69-05.2-22-07, North Dakota proposes to change the period for which revegetation success standards must be met from the last year of the responsibility period to the last two years of the responsibility period; this subsection applies to woodlands and woodland-type fish and wildlife habitat. At subsection (4)(f), North Dakota is proposing the same requirement for shelterbelts, and at subsections (4)(g) and (4)(h), for the remaining fish and wildlife habitat types. The proposed changes are substantively the same as the Federal requirements at 30 CFR 816.116(c)(3). Therefore, the Director is approving the proposed revisions. However, as noted in previous rulemakings on March 10, 1989 (54 FR 10141, 10145) and January 19, 1990 (55 FR 1813, 1817), North Dakota's Revegetation Guidelines have not been revised and are less effective than the Federal regulations.

The Director notes that the proposed changes satisfy, in part, the required program amendment at 30 CFR 934.16(e) that resulted from a March 10, 1989 (54 FR 10141, 10145) rulemaking action. Therefore, the Director is modifying the requirement at 30 CFR 934.16(e) to remove the references to the North Dakota rules.

c. At subsection (4)(i) of NDAC 69-05.2-22-07, North Dakota is proposing to revise the success standards for previously mined areas by deleting the phrase "that were not reclaimed to the requirements of this chapter," and by adding the requirement that "any reclamation requirements in effect when the areas were mined must be met." Thus the proposed rule would read:

"For previously mined areas, any reclamation requirements in effect when the areas were mined must be met. In addition, the ground cover * * * must not be less than can be supported by the best available * * * material, nor less than the ground cover existing before redisturbance. Adequate measures must be in place to control erosion * * *."

The North Dakota program has no separate definition of "previously mined area" that limits the term to apply only to those lands mined prior to SMCRA. Thus the rule, as proposed, would require that for areas redisturbed by surface coal mining operations, even if the original mining and reclamation was conducted under SMCRA, the revegetation standards in effect at the time of that original mining must be met, plus the standards in the existing rule for ground cover and erosion control.

The Federal regulations at 30 CFR 816.116(b)(5) require that, for "areas previously disturbed by mining and not reclaimed to the requirements of [the permanent program performance standards at 30 CFR subchapter K]", the ground cover must be at least as great as that which existed prior to redisturbance and must also be adequate to control erosion.

Regarding the proposed addition, North Dakota regulated surface coal mining and reclamation operations, to some extent, as early as 1969. Areas mined between that date and the date of SMCRA were required to meet some reclamation requirements, including some revegetation requirements. Therefore, the proposal to add the pre-SMCRA North Dakota reclamation requirements when the areas are redisturbed would impose additional revegetation requirements to the ground-cover requirement present in the Federal regulation; these additional requirements in some cases include productivity standards or tree planting requirements. When applied to sites mined prior to SMCRA, then, this proposed addition would impose additional requirements beyond those in the Federal regulation at 30 CFR 816.116(b)(5).

However, North Dakota's proposed deletion, by removing the phrase limiting this subsection to sites not reclaimed to the requirements of the North Dakota program under SMCRA, would apply this subsection to sites mined and reclaimed under SMCRA. Thus the proposal would limit reclamation requirements for those sites, when mined and reclaimed for a second time under SMCRA, to the requirements in effect when the initial post-SMCRA reclamation occurred. For example, this proposal would allow a site mined and reclaimed under the North Dakota program in 1983, then remined in 1996, to meet the revegetation success standards of 1983. If the revegetation success standards are made more stringent in the interim, this proposal would allow the more stringent standards to be bypassed, since reclamation would be conducted according to the less stringent 1983 standards.

In contrast, the Federal revegetation success standards at 30 CFR 816.116(b) require sites mined for a second time under SMCRA to be reclaimed to the full standards of pastureland, cropland, etc., that would be in effect at the time of the second operation. The Federal regulations allow a waiver of full contemporary reclamation standards only if the area was previously mined and *not* reclaimed to SMCRA requirements. Thus the proposed deletion would render the North Dakota program less effective than the Federal regulations.

Therefore the Director finds that the proposed addition of new language at subsection (4)(i) of NDAC 69-05.2-22-07, if limited to sites not reclaimed to the requirements of SMCRA, would provide for additional reclamation requirements beyond those required in the Federal regulations. The Federal regulations at 30 CFR 730.11(b) provide that State regulations which provide for more stringent environmental controls are not inconsistent with the Federal requirements. Therefore the Director is approving this proposed addition.

However, for the reasons stated above, the Director finds that the proposed deletion of the phrase "that were not reclaimed to the requirements of this chapter" would render the North Dakota program less effective than the Federal requirements; he is therefore not approving the proposed deletion.

27. Roads

North Dakota proposes a major revision of NDAC Chapter 69-05.2-24-01 through -06. The proposal would delete the entire text of those sections, and add new text at sections -01 and -03 (sections -02, -04, -05, and -06 would be repealed). In general, this propsoed revision parallels OSM's revision of road performance standards at 30 CFR 816.150 and 816.151 (48 FR 22110, 22122-22124 (May 16, 1983); and 53 FR 45190, 45210-45214 (November 8, 1988)). With the following exception, the proposed revisions are substantively the same as the Federal regulations, and are addressed in Finding No. 1.

At 69-05.2-24-01(3), North Dakota proposes road design requirements that are substantively the same as the

Federal requirements at 30 CFR 816.150(c), except that the proposal omits the Federal introductory phrase "to ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, * * *". However, the proposal requires (as does the Federal regulation) that road designs be in accordance with current, prudent, engineering practices and any design criteria established by the regulatory authority. The planned duration and use of the road and the equipment that will be using the road are factors that must be taken into account in any road design reflecting prudent engineering practices. Additionally, PSC would be given the authority to require additional design standards, if needed, on a case-by-case basis. Therefore, North Dakota's proposal meets the intent of and is no less effective than the Federal requirement, and the Director is approving the proposed revision.

28. Prime Farmland Productivity Restoration

At NDAC 69-05.2-26-05(3), North Dakota proposes to add requirements concerning the restoration of the productivity of prime farmlands.

a. North Dakota proposes, at subsection (3)(b) of NDAC 69-05.2-26-05(3), provisions regarding measurement of productivity that are the same as the Federal requirements at 823.15(b)(2), except that the proposal does not include the Federal requirements that the sampling technique employ a 90 percent or greater statistical confidence level and that the sampling methodology be approved in consultation with the U.S. Soil Conservation Service (SCS). However, the requirement for statistical confidence is present in North Dakota's general rule on revegetation success, NDAC 69-05.2-22-07(3)(c), which does require that a 90 percent statistical confidence level be employed for prime farmland. Therefore, the North Dakota program as proposed is no less effective than the Federal regulations in this regard.

Regarding the requirement for sampling methodology, North Dakota's approved methodologies for measuring productivity are contained in the Revegetation Guidelines. However, North Dakota has provided no documentation that these methodologies were approved in consultation with the SCS. Without SCS consultation on the measurement methodologies, the proposal is less effective than the Federal requirements. The Director is approving the proposal, but is requiring that North Dakota further amend its Revegetation Guidelines to provide documentation of SCS consultation on the approved methods for measuring productivity on prime farmlands.

b. At NDAC 69-05.2-26-05(3)(g), North Dakota proposes a provision stating that crop yield standards for nomined prime farmland must be determined by the methods in the Revegetation Guidelines, or by other methods approved by PSC and OSM.

The Federal regulations at 30 CFR 823.15(b)(7) require that the yield standard be obtained from representative local farms, with concurrence by the SCS, or by average county yields adjusted by the SCS to account for the difference between nonmined prime farmlands and all other soils reflected in the county average.

The North Dakota Revegetation Guidelines specify two methods for determining yield standards: reference area yields adjusted by applying SCS productivity indices, or SCS county soil survey yield data in conjunction with the productivity indices. The Revegetation Guidelines provide no documentation of SCS concurrence with the yield determination methods. With SCS concurrence on the yield standards, the North Dakota proposal is less effective than the Federal requirements at 30 CFR 823.15(b)(7). The Director is approving the proposed revision to NDAC 69-05.2-26-05(3)(g), but is requiring North Dakota to further amend the Revegetation Guidelines to provide documentation of SCS concurrence with the methods in the Revegetation Guidelines for determining the yield standard.

The proposed provision that other productivity measurement methods (besides those specified in the Revegetation Guidelines) may be used, with PSC and OSM approval, has no counterpart in the Federal requirement. The Director finds that it is not inconsistent with the Federal requirements. However, the Director notes that other methods may be approved by OSM only through the program amendment process. With this proviso, the Director is approving the proposed provision.

29. Individual Civil Penalties

a. North Dakota proposes to add a new rule, NDAC 69-05.2-28-16, that would allow PSC, where appropriate, to assess individual civil penalties (ICP's) in accordance with NDCC 38-14.1-32(6). The referenced statutory provision provides that whenever a corporate permittee violates a permit condition or fails or refuses to comply with enforcement orders issued by PSC under NDCC 38-14.1-28 or any order incorporated in a final decision issued by PSC (except orders for payment of penalties), any director, officer, or agent of the corporation who willfully and knowingly authorized or carried out such violation, failure, or refusal, is subject to the same criminal and civil penalties that may be assessed against the corporate permittee pursuant to NDCC 38-14.1-32(1) and (3). North Dakota is also proposing to add, at NDAC 69-05.2-01-02(121), a definition of "violation, failure, or refusal." The proposed definition defines "violation" to mean a violation of a condition of a permit issued by PSC. In addition, the proposed definition defines "failure or refusal" to mean failure or refusal to comply with any enforcement orders issued by PSC under NDCC 38-14.1-28 or with any order incorporated in a final decision issued by PSC under NDCC Chapter 38-14.1 (except orders requiring payment of penalties).

As discussed in Finding No. 3c, in the North Dakota program, coal exploration is regulated not by PSC, but by the State Industrial Commission (IC), under statutory and regulatory authorities different from those that govern the PSC's regulation of surface coal mining and reclamation operations. Thus, since the North Dakota proposal regarding ICP's is limited to activities regulated by PSC under NDCC Chapter 38-14.1, the proposed addition of NDAC 69-05.2-28-16, along with the proposed definition of "violation, failure or refusal" at NDAC 69-05.2-01-02(121), have no application to the coal exploration program in North Dakota.

North Dakota's coal exploration program, at NDCC 38-12.1-08(1), does provide for the assessment of civil penalties against any person who violates the requirements of the coal exploration program or any permit condition or regulation implementing the program. However, the North Dakota coal exploration program does not provide for the assessment of ICP's against the directors, officers, or agents of corporate permittees under any circumstances.

The State's proposal regarding ICP's is substantively similar to the Federal regulations at 30 CFR Part 846. However, the Federal provisions for the assessment of ICP's apply to coal exploration activities as well as surface coal mining and reclamation operations. In contrast, the North Dakota proposal would only allow for ICP's to be issued for violations, failures, or refusals regarding the surface coal mining program; violations, failures, or refusals regarding the coal exploration program are not included. This renders the North

Dakota proposal less effective than the Federal requirements.

In approving the North Dakota program (45 FR 82214, 82226 (December 15, 1980)) the Secretary noted that the inspection and enforcement authority for the coal exploration program (NDAC 43-02-01-17 and 43-02-01-05) was significantly less extensive than the Federal regulations. North Dakota indicated at that time that the provisions for inspection, enforcement, penalties, and sanctions in 30 CFR Parts 840, 842, 843, and 845 and 43 CFR part 4 would be made applicable to coal exploration permits by specific pre-issuance permit conditions, and the North Dakota program was approved on that basis. Since OSM had not yet promulgated the regulations governing ICP's at 30 CFR Part 846, those provisions were not included in this understanding in the program approval.

For the reasons above, the Director finds the proposed new rule and new definition to be no less effective than the Federal requirements when applied to the North Dakota surface coal mining program, and is approving them. However, he is requiring North Dakota to further amend its program to provide for ICP's under the North Dakota coal exploration program in a manner no less effective than the Federal requirements at 30 CFR Part 846.

b. Although the State's proposal at NDAC 69-05.2-28-16 does not specifically address how the regulatory authority is to determine the amount of any particular ICP, it does refer to the statutory provision at NDCC 38-14.1-32. This statutory provision does provide a method for determination of the amount of civil penalties. Subsection (1) of NDCC 38-14.1-32 requires the State regulatory authority, in determining the amount of a civil penalty, to consider the seriousness of the violation, the permittee's history of violations at the site, permittee negligence, and demonstrated good faith of the operator in abating the violation. Penalties are limited to $10,000 per day.

The Federal regulations at 30 CFR 846.14 require that the amount of ICP's be based on the criteria of Section 518(a) of the Act (history of violations, seriousness, negligence, and good faith). The Federal regulation modifies these somewhat: the history to be considered is not the history of the permittee at the site, but rather the individual's history of authorizing, ordering, or carrying out violations, failures, and refusals at the site; seriousness may include the cost of reclamation, as well as environmental harm and public hazard; and good faith is limited to the efforts of the individual to achieve rapid compliance after the notice of proposed ICP. The amount of an ICP is limited to $5000 per day.

Thus the North Dakota proposal differs in some respects from the Federal regulations. Section 518(i) of SMCRA requires State programs to have the same or similar procedural requirements for establishing civil and criminal penalties. However, the District Court for the District of Columbia ruled in *In re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79-1144 (D.D.C. February 26, 1980) that States need not adopt identical methods for assessing penalties, so long as the four criteria enumerated in Section 518(a) of SMCRA are incorporated. The Director finds that the North Dakota proposal is consistent with this standard, and is approving the proposal.

c. Neither proposed NDAC 69-05.2-28-16 nor the referenced statutory provision at NDCC 38-14.1-32 contains a provision equivalent to the Federal provision at 30 CFR 846.12(b), that specifies that OSM will not assess an ICP until a cessation order has been issued and the cessation order remains unabated for 30 days.

The Director notes that under both the proposed North Dakota rule and the Federal rule, issuance of an ICP is discretionary; the regulatory authority is empowered, but not required, to assess ICP's. In conducting oversight of State programs, OSM reviews, among other things, a State's record in assessing ICP's. North Dakota's proposal would allow the assessment of ICP's in more instances that does the Federal regulation, and thus may be implemented in a manner more stringent than the Federal regulation. Therefore, the Director finds that the lack of this provision does not render the North Dakota proposal any less effective than the federal requirements, and may make the North Dakota proposal more stringent than the Federal regulation. Therefore the Director is approving the proposal.

d. North Dakota's proposed rule at NDAC 69-05.2-28-16 also requires notice and service requirements substantively the same as the Federal requirements at 30 CFR 846.17 (a) and (c), except that the proposed North Dakota rule would require the notice of proposed ICP to include notice of opportunity for formal review of the penalty. The Director finds that this additional requirement is not inconsistent with the Federal regulations. The Director, by policy, requires a similar notice to be included in ICP's issued by OSM [see Directive INE-40, dated March 1, 1990].

e. North Dakota proposes to add a new rule at NDAC 69-05.2-28-18 that specifies the requirements for the payment of ICP's. The proposal is substantively the same as the Federal requirements at 30 CFR 846.18 (a)-(c), with the following exception. The Federal regulation allows that, when an abatement plan has been agreed upon, the individual assessed an ICP may postpone payment until receiving a final order (stating that payment is due on the date of the final order) or until the ICP has been withdrawn. The corresponding North Dakota proposed provision allows postponement until a final order is issued or until the penalty is withdrawn; it does not specify that payment is due on the date of the final order. By letter dated April 18, 1991 (Administrative Record No. ND-L-20), North Dakota stated its intent to interpret the proposed rule as requiring that payment is due on the date of the final order. With this understanding, the Director finds the proposal to be no less effective than the federal requirements, and is approving the proposal.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comment on the proposed amendment and provided opportunity for a public hearing. No comments were received, and the scheduled public hearing was not held because no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11), OSM solicited comments from various Federal agencies with an actual or potential interest in the North Dakota program.

By letter dated January 18, 1991 (Administrative Record No. ND-L-12), the Bureau of Indian Affairs responded that it had no comments. By letter dated January 16, 1991 (Administrative Record No. ND-L-11), the Army Corps of Engineers responded that it found the proposed amendment satisfactory. By letter dated January 14, 1991 (Administrative Record No. ND-L-09), the Bureau of Reclamation responded that it had no comment.

By letter dated February 4, 1991 (Administrative Record No. ND-L-14), the U.S. Soil Conservation Service (North Dakota State Conservationist) responded that it had no comment.

By letter dated January 29, 1991 (Administrative Record No. ND-L-10), the U.S. Fish & Wildlife Service responded that it had no substantive comments. The letter correctly identified

the amendment number and date of request for comments, but incorrectly stated that the proposed amendment dealt with permit rescission and termination of jurisdiction, apparently the result of misreading North Dakota's cover letter to the amendment.

By letter dated March 25, 1991 (Administrative Record No. ND-L-19), the Mine Safety and Health Administration (MSHA) responded that it found no conflicts with MSHA regulations. MSHA did identify one conflict between the proposed amendment and MSHA's design guidelines. MSHA directed the comment at NDAC 69-05.2-16-09(17)(a), which was not proposed for revision; however, the comment also pertains to a proposed addition at NDAC 69-05.2-20-03(1)(d). MSHA commented that MSHA's regulations do not specify a design precipitation event for spillway capacities for dams classified as high hazard (presumably, those meeting the criterion at 30 CFR 77.216(a)(3)). However, MSHA's design guidelines for these dams would specify that spillway capacity be designed for the Probable Maximum Flood. Further, MSHA commented that it believes that current, prudent engineering practice requires use of the Probable Maximum Flood as the design precipitation event for these dams.

The Director has reviewed the existing and proposed North Dakota provisions cited above, and finds that they are substantively the same as OSM's regulatory requirements. The Federal regulations at 30 CFR 816.49(a)(8)(ii)(A) and 816.84(b)(2) require impoundments meeting the criteria of 216.77(a) to be designed for a 100-year 6-hour event; if constructed of or impounding coal mine waste, the design event is the probable maximum precipitation of a 6-hour event. The North Dakota provisions specify these same design precipitation events. The Director does not have the authority to require standards in excess of the Federal regulations that implement SMCRA.

However, the Director notes that under NDAC 69-05.2-09-09(1)(h), the plan for each impoundment must be certified as meeting current, prudent engineering practices. The Director will forward MSHA's comment to the PSC, so that PSC can consider the comment in its review of impoundment designs.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) Comments

As required by 30 CFR 732.17(h)(4), OSM provided the proposed amendment to the SHPO and the ACHP for comment. As discussed in Finding No. 3b of this notice, the amendment did contain minor revisions to the definition of "historic lands." By notation dated January 3, 1991 (Administrative Record No. ND-L-15), the State Historic Preservation Officer responded that the amendment would have no effect on significant cultural resources. No response was received from the ACHP.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

North Dakota did not propose in this amendment any revisions to its program that relate to air or water quality standards. However, EPA's Regional and Headquarters offices were afforded opportunity to comment on this amendment.

By letter dated February 8, 1991 (Administrative Record No. ND-L-13), EPA's Region VIII responded that it had no comments. No response was received from EPA's Headquarters office.

V. Director's Decision

Based on the above findings, the Director approves, with the exceptions and additional requirements noted below, North Dakota's proposed program amendment as submitted November 20, 1990 and clarified on April 18, 1991.

As discussed in Finding No. 21, the Director is not approving NDAC 69-05.2-16-09(20) to the extent that it allows less than quarterly inspections of impoundments which are not incised and do not meet the criteria of 30 CFR 77.216 and are not located in hazardous locations; as discussed in Finding No. 26c, the Director is not approving the proposed deletion of the phrase "that were not reclaimed to the requirements of this chapter" at NDAC 69-05.2-22-07(4)(i).

The Director is requiring the following program amendments at 30 CFR 934.16: as discussed in Finding No. 3c, a definition of the term "road" within the coal exploration program; as discussed in Finding No. 6b, further revision of NDAC 69-05.2-06-02(3) to require information in permit applications on all types of violation notices; as discussed in Finding No. 9c, further revision of NDAC 69-05.2-08-15(3)(a) regarding submission of site-specific fish and wildlife resource information when state-listed or proposed listed species may be present; as discussed in Finding No. 10a, further revision of NDAC 69-05.2-09-06 to require that the plans, etc., for transportation facilities other than roads demonstrate compliance with NDAC 69-05.2-24-08; as discussed in Finding No. 11c, further revision to NDAC 69-05.2-09-09(2)(e) or other revision to include stability requirements for small and nonhazardous impoundments; as discussed in Finding No. 13a, revision to NDAC 69-05.2-10-03(1), to require permit denial for violations of, or delinquent civil penalties under, any Federal or State program under SMCRA, without temporal limitation; as discussed in Finding 13c, revision of NDAC 69-05.2-10-03(4) to require that all violations of Federal and all State programs under the Act be considered for patterns of violations; as discussed at Finding 13d, revision of NDAC 69-05.2-11-02(5)(d) to correct the cross-reference to the recodified subsection (6) of NDAC 69-05.2-10-03; as discussed in Finding No. 17b, further revision to NDAC 69-05.2-13-08(3) to prohibit mining operations from resulting in the unlawful taking of bald or golden eagles, nests, or eggs, and specifying that the North Dakota program shall not authorize the taking of bald or golden eagles, nests, or eggs in violation of the Bald Eagle Protection Act; as discussed in Finding No. 21, revision of NDAC 69-05.2-16-09(20) to require quarterly inspections of impoundments which are not incised and which do not meet the size/hazard criteria; as discussed in Finding No. 25, further revision to NDAC 69-05.2-20-03(3) or other revision to require a drawdown design requirement no less effective than 30 CFR 816.84(e); as discussed in Finding No. 28a, further revision to the Revegetation Guidelines to provide documentation of SCS consultation on the approved methodologies for measuring productivity on prime farmlands; as discussed in Finding No. 28b, further revision to the Revegetation Guidelines to document SCS concurrence with the approved methods for determining yield standards for prime farmlands; as discussed in Finding No. 29a, further revision of the program to make violations, failures, and refusals under the coal exploration part of the program also subject to individual civil penalties.

Director's decisions on previously-required amendments: as discussed in Finding No. 7a, the requirements of 30 CFR 934.16(k) have been satisfied, and the Director will remove the

requirement; as discussed in Finding No. 23, the requirements of 30 CFR 934.16(j) have been satisfied, and the Director will remove the requirement; and as discussed in Finding Nos. 26a and 26b, the requirements of 30 CFR 934.16(b), (e), and (f) have been partially satisfied by this revision of the State rules, and the required amendments will be revised to remove that requirement.

The Federal regulations at 30 CFR Part 934 codifying decisions concerning the North Dakota program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

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

VI. Procedural Determinations

National Environmental Policy Act

Pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions related directly to approval or conditional approval of State regulatory programs. Accordingly, this action by OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 27, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

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

PART 934—NORTH DAKOTA

1. The authority citation for Part 934 continues to read as follows:

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

2. Section 934.10 is amended by revising paragraphs (a) and (b), and removing paragraph (c), to read as follows:

§ 934.10 State program approval.

* * * * *

(a) North Dakota Public Service Commission, Reclamation Division; State Capitol Building; Bismarck, ND 58505-0165; Telephone: (701) 224-4096.

(b) Office of Surface Mining; Casper Field Office; 100 East B Street, room 2128; Casper, WY 82601-1918; Telephone: (307) 261-5776.

3. Section 934.15 is amended by adding paragraph (n) to read as follows:

§ 934.15 Approval of regulatory program amendments.

* * * * *

(n) The following provisions of the North Dakota Century Code (NDCC) and North Dakota Administrative Code (NDAC), as submitted on November 20, 1990, and clarified on April 18, 1991, and September 6, 1991, are approved effective January 9, 1992. The Director is approving the revisions proposed for the following laws and rules: NDCC 28-32-02(3), (4) (Rulemaking procedures); NDAC 69-05.2-01-02 (Definitions); NDAC 69-05.2-01-03(4), (5), (7) (Rulemaking procedures); NDAC 69.05.2-04-01(5)(b) (Areas unsuitable for mining); NDAC 69-05.2-05-06(1), (1d) (Permitting coordination with other laws); NDAC Chapter 69-05.2-06 Sections: -01; -02(3)-(6) (Permit applications; legal, financial, and related topics); NDAC Chapter 69-05.2-08 Sections: -05(2), (2C), (2e); -09(3b); -15 (Permit applications; environmental resources); NDAC Chapter 69-05.2-09 Sections: -01(4); -06(1), (2); -09(1)(c)(7-8), (1e), (2)(c-e), (h); -17(1), (2); -19(1) (Permit applications, operations plans); NDAC Chapter 69-05.2-10 Sections: -03; -05(3a, e) (Permit applications, review and approval/disapproval); NDAC 69-05.2-11-03 (Permit renewals); NDAC Chapter 69-05.2-12 Sections: -01(4), (10); -12(3); -18; -20 (Performance bond and insurance); NDAC Chapter 69-05.2-13 Sections: -08(2)-(6); -12(4); -13 (introduction) (Performance standards, general); NDAC 69-05.2-15-04(4)(a)(2)(c) (redistribution of resoiling material); NDAC Chapter 69-05.2-16 Sections: -03; -07(2a); -09(9), (17), (18), (20, in part only); -12(1); -14(3); -20 (Performance standards, hydrologic balance); NDAC Chapter 69-05.2-17 Sections -01(2); -05(1) (Performance standards, use of explosives); NDAC 69-05.2-18-01 (12, deletion of (f)) (Performance standards, excess spoil disposal); NDAC 69-05.2-20-03(1b, d), (3) (Coal processing waste dams and embankments, design and construction); NDAC 69-05.2-22-07(4)(e)-(h) and (i in part) (Revegetation success standards); NDAC 69-05.2-23-01 (Determining premining land use); NDAC Chapter 69-05.2-24 Sections: -01 through -09 (Performance standards, roads); NDAC 69-05.2-25-03(2),(4) (Aluvial valley floors, monitoring); NDAC 69-05.2-26-05 (title),(3) (Prime farmland, revegetation and restoration of productivity); and NDAC Chapter 69-05.2-28 Sections: -03(title),(7); -16; -17; -18 (Individual civil penalties). The following proposed provisions of the above amendment are not being approved: the proposed revisions to NDAC 69-05.2-16-09(20) to the extent that they would permit less than quarterly inspections for impoundments that are not incised, do not meet the criteria of 30 CFR 77.216, and are not in hazardous locations; and the deletion of the phrase "that were not reclaimed to the requirements of this chapter" at NDAC 69-05.2-22-07(4)(i).

4. Section 934.16 is amended by revising paragraphs (b), (e), and (f), removing and reserving paragraphs (j) and (k), and adding new paragraphs (l) through (y) to read as follows:

§ 934.16 Required regulatory program amendments.

* * * * *

(b) By March 20, 1990, North Dakota shall submit proposed revisions to the policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments" or otherwise propose to amend its program to require that at least 80 percent of the trees and shrubs counted to determine revegetation success have been in place for at least 60 percent of the 10-year period of revegetation responsibility.

* * * * *

(e) By June 8, 1989, North Dakota shall submit proposed revisions to the policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments" or otherwise propose to amend its program to require that revegetation success standards for woodlands and fish and wildlife habitats be met for at least the last two consecutive years of the revegetation responsibility period.

(f) By March 20, 1990, North Dakota shall submit proposed revisions to the policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments" to include tree and shrub stocking and vegetative ground cover success standards for all types of shelterbelts and require that trees and shrubs considered in determining revegetation success in shelterbelts meet time-in-place and related requirements no less effective than those established in 30 CFR 816.116(b)(3)(ii).

* * * * *

(j) [Reserved]

(k) [Reserved]

(l) By March 9, 1992, North Dakota shall submit a proposed definition of the term "road" that will be applicable to the coal exploration program.

(m) By March 10, 1992, North Dakota shall submit proposed revisions to NDAC 69-05.2-06-02(3) or other revision to require the submission in permit application of information on all types of violation notices.

(n) By March 9, 1992, North Dakota shall submit proposed revisions to NDAC 69-05.2-08-15(3)(a) or other revision to require the submission of site-specific fish and wildlife resource information when the permit or adjacent areas are likely to include species listed or proposed to be listed by North Dakota under State statutes similar to the Endangered Species Act, to be no less effective than 30 CFR 780.16(a)(2)(i).

(o) By March 9, 1992, North Dakota shall submit proposed revisions to NDAC 69-05.2-09-06 or other revision to require the plans, etc., for transportation facilities other than roads demonstrate compliance with NDAC 69-05.2-24-08.

(p) By March 9, 1992, North Dakota shall submit proposed revisions to NDAC 69-05.2-09-09(2)(e) or other revision to include stability requirements for impoundments that do not meet the criteria of 30 CFR 77.216(a) and are not located where failure would not be expected to cause loss of life or serious property damage, to be no less effective than the requirements of 30 CFR 780.25(c)(3).

(q) By March 9, 1992, North Dakota shall submit proposed revisions to NDAC 69-05.2-10-03(1), to require permit denial for violations of, or delinquent civil penalties under, any Federal or State program under SMCRA, without temporal limitation, to be no less effective than 30 CFR 773.15(b)(1).

(r) By March 9, 1992, North Dakota shall submit proposed revisions to NDAC 69-05.2-10-03(4) to require that all violations of Federal and all State programs under the Act be considered for patterns of violations, to be no less effective than 30 CFR 773.15(b)(3).

(s) By March 9, 1992, North Dakota shall submit proposed revisions to NDAC 69-05.2-11-02(5)(d) to correct the cross-reference to reflect the recodification of NDAC 69-05.2-10-03.

(t) By March 9, 1992, North Dakota shall submit proposed revisions to NDAC 69-05.2-13-08(3) or other revision to prohibit surface coal mining activities from being conducted in a manner that would result in the unlawful taking of bald or golden eagles, their nests, or their eggs, and to specify that nothing in the North Dakota program shall authorize the taking of a bald or golden eagle, its nest, or its eggs in violation of the Bald Eagle Protection Act.

(u) By March 9, 1992, North Dakota shall submit proposed revisions to NDAC 69-05.2-16-09(20) or other revision to require quarterly inspections of impoundments which are not incised and which do not meet the criteria of 30 CFR 77.216 and are not located where failure would be expected to cause loss of life or serious property would be expected to cause loss of life or serious property damage, to be no less effective than 30 CFR 816.49(a)(11).

(v) By March 9, 1992, North Dakota shall submit proposed revisions to NDAC 69-05.2-20-03(3) or other revision to impose on impounding structures constructed of or impounding coal mine waste design standards no less effective than 30 CFR 816.84(e).

(w) By March 9, 1992, North Dakota shall submit proposed revisions to the revegetation policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments" to document U.S. Soil Conservation Service consultation on the approved methodologies for measuring productivity on prime farmlands.

(x) By March 9, 1992, North Dakota shall submit proposed revisions to the revegetation policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments" to document U.S. Soil Conservation Service concurrence with the approved methods for determining yield standards for prime farmlands.

(y) By March 9, 1992, North Dakota shall submit proposed revisions to its program to make any violations, failures, or refusals applicable to the North Dakota coal exploration program subject to individual civil penalties.

[FR Doc. 92-239 Filed 1-8-92; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-AE56

Loan Guaranty: Lender Participation Fees

AGENCY: Department of Veterans Affairs.

ACTION: Final regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) is amending its loan guaranty regulations (38 CFR part 36) by requiring lenders to pay fees to participate in VA's Automatic Lending Program. These fees will defray in part the expenses incurred by VA in overseeing its activities of lenders.

EFFECTIVE DATE: February 10, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 233-3042.

SUPPLEMENTARY INFORMATION: On November 27, 1990, VA published in the Federal Register (55 FR 49302) proposed regulatory amendments to 38 CFR 36.4225 and 36.4348. Public comments were requested on a proposal to provide

for the payment of fees by lenders participating in VA's Automatic Lending Program. Please refer to the November 27, 1990, **Federal Register** for a complete discussion of the proposed amendments. For the reasons discussed below, VA is adopting the original proposal. Paragraphs (a), (b), and (c) of §§ 36.4225 and 36.4348 of the proposed amendments set forth the requirements, other than payment of fees, which lenders must satisfy to process VA guaranteed home loans on the automatic basis. These paragraphs were published in 56 FR 40559, August 15, 1991 and are not reprinted here.

VA received only three comments on the proposal. One expressed concern that increasing costs may discourage lender participation in the Loan Guaranty Program, another expressed concern that fees may discourage participation in the Automatic Lending Program, resulting in an increased workload for VA regional offices, and a third expressed both concerns. We do not believe the cost of these fees will cause lenders to stop processing loans on the automatic basis or cause them to withdraw from VA's Loan Guaranty Program. The fees VA will charge lenders are not large amounts, and they will be charged on either a one time or infrequent basis for each lender. Also, the fees are very small in comparison with the operating income and expenses of home mortgage lenders. In addition, they are similar to the fees charged lenders by the Department of Housing and Urban Development for participating in the Federal Housing Administration's Direct Endorsement Program.

All three commenters noted that administrative costs to VA are reduced when lenders participate in the Automatic Lending Program because the lender, rather than VA, underwrites and approves the loans. While VA does not underwrite loans processed on the automatic basis, there are still substantial administrative costs incurred because the loan documents for these loans must be reviewed by VA personnel to ensure that the loan is for an eligible purpose, made to an eligible veteran, and that the lender's underwriting of the loan is appropriate. In addition, VA incurs administrative costs in providing automatic approval of lenders, branch offices, and underwriters, as well as in monitoring lenders who participate in the Automatic Lending Program.

Further, by being able to process loans without prior VA approval, lenders are receiving a special benefit which is not shared by other lenders or the public. VA believes it is reasonable to assess a charge incident to the automatic lender's voluntary act of seeking, renewing, or expanding this automatic authority. VA has concluded that the new fees reflect not only the administrative costs of administering the automatic processing program, but also the added value to the lender of having the benefit of automatic processing privileges.

One commenter objected to the proposed $100 application fee for each underwriter because a $100 application and a $100 annual recertification fee is also proposed for regional underwriting centers. We believe these fees are appropriate. The application fee for each underwriter is for the review of the qualifications of individuals who will be underwriting VA guaranteed loans and is charged on a one time basis. On the other hand, the fees for underwriting centers are for approval and recertification of centers which allow lenders to underwrite loans in locations other than their home offices.

The Secretary hereby certifies that these final regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The fees VA will charge lenders are not large amounts and should have a minimal impact on small entities. These fees will be charged on either a one time or infrequent basis for each lender. These fees are also very small in comparison with the operating income and expenses of home mortgage lenders. Furthermore, they are similar to the fees charged lenders by the Department of Housing and Urban Development for participating in the Federal Housing Administration's Direct Endorsement Program.

The Secretary has also determined that the final amendments are not a "major rule" within the meaning of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumers or individual industries, nor will they have other 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.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

These amendments are made final under the authority granted the Secretary by sections 501(a), 3703(c)(1), and 3712(g) of title 38, United States Code.

Approved: December 9, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36, is amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36, §§ 36.4201 through 36.4287 continues to read as follow:

Authority: Sections 36.4201 through 36.4287 issued under 72 Stat. 1114, 84 Stat. 1110 (38 U.S.C. 501(a), 3712).

In § 36.4225, paragraphs (d) and (e) are added to read as follows:

§ 36.4225 Authority to close manufactured home loans on the automatic basis.

* * * * *

(d) To participate in VA's automatic program nonsupervised lenders of the class described in paragraph 3702(d)(3) of title 38 U.S. Code shall pay fees as follows:

(1) $500 for new applications;

(2) $200 for reinstatement of lapsed or terminated automatic authority;

(3) $100 for each underwriter approval;

(4) $100 for each agent approval;

(5) $100 for each regional underwriting office approval;

(6) A minimum fee of $100 for any other VA administrative action pertaining to a lender's participation in ALP;

(7) $200 annually for certification of home offices;

(8) $100 annually for certification of regional offices; and

(9) $100 annually for each agent renewal.

(e) Supervised lenders of the classes described in paragraphs (d)(1) and (d)(2) of 38 U.S. Code 3702 participating in VA's Loan Guaranty Program shall pay fees as follows:

(1) $100 fee for each agent approval; and

(2) $100 annually for each agent renewal.

(Authority: 38 U.S.C. 3712(g))

3. The authority citation for part 36, §§ 36.4300 through 36.4375 continues to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 72 Stat. 1114 (38 U.S.C. 501(a)).

4. In § 36.4348, paragraphs (d) and (e) are added to read as follows:

§ 36.4348 Authority to close loans on the automatic basis.

* * * * *

(d) To participate in VA's Automatic Lending Program (ALP) nonsupervised lenders of the class described in paragraph 3702(d)(3) of title 38 U.S. Code shall pay fees as follows:

(1) $500 for new applications;

(2) $200 for reinstatement of lapsed or terminated automatic authority;

(3) $100 for each underwriter approval;

(4) $100 for each agent approval;

(5) $100 for each regional underwriting office approval;

(6) A minimum fee of $100 for any other VA administrative action pertaining to a lender's participation in ALP;

(7) $200 annually for certification of home offices;

(8) $100 annually for certification of regional offices;

(9) $100 annually for each agent renewal.

(e) Supervised lenders of the classes described in paragraphs (d)(1) and (d)(2) of 38 U.S. Code 3702 participating in VA's Loan Guaranty Program shall pay fees as follows:

(1) $100 fee for each agent approval; and

(2) $100 annually for each agent renewal.

(Authority: 38 U.S.C. 501(a) and 3703(c)(1))

[FR Doc. 92-472 Filed 1-8-92; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 90-6; DA 91-1624]

Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; filing deadlines waived.

SUMMARY: Common Carrier Bureau waives deadlines for filing updated cellular system information which were announced in the Commission's Report and Order (CC Docket Nos. 90-6 and 85-388, FCC 91-306), 6 FCC Rcd 6185 (1991), 56 FR 58503 (November 20, 1991) and postpones the acceptance of applications for unserved areas. See also 47 CFR 22.925. In its Further Notice of Proposed Rulemaking (CC Docket No. 90-6, FCC 91-311), 6 FCC Rcd 6158 (1991), 55 FR 4882, (February 12, 1990) the Commission proposes to redefine the existing cellular geographic service areas of current licensees using a formula that approximates the Carey predicted 32 dBu contour. By temporarily suspending the filing deadlines and postponing acceptance of applications, the Bureau will avoid potentially unnecessary expenditure of staff and licensee resources.

EFFECTIVE DATE: December 26, 1991 pending Commission action on CTIA's motion. A document will be published in the Federal Register removing the suspension.

FOR FURTHER INFORMATION CONTACT: Joanne Foster Wall or Andrew Nachby, Mobile Services Division, Common Carrier Bureau (202) 632-6450 or Steve Markendorff, Mobile Services Division, Common Carrier Bureau, (202) 653-5560.

SUPPLEMENTARY INFORMATION:

Order

Adopted: December 24, 1991.

Released: December 26, 1991.

By the Deputy Chief (Operations), Common Carrier Bureau:

In the matter of Amendment of Part 22 of the Commission's rules to provide for filing and processing of applications for unserved areas in the cellular service and to modify other cellular rules.

I. Introduction

1. On October 18, 1991, the Commission issued rules for the acceptance, processing and selection of applications for unserved areas in the cellular service, and deadlines for the submission of updated cellular system information.[1] Concurrently, the Commission issued a Further Notice of Proposed Rulemaking requesting comments on its proposal that the Cellular Geographic Service Areas (CGSAs) of all cellular systems be altered to more closely reflect the area where service is actually provided by licensees.[2] Cellular Telecommunications Industry Association (CTIA) filed a motion for temporary suspension of the dates for filing updated cellular system information and the filing of unserved area applications as announced in the *Report and Order*. For the reasons set forth below, we will waive the deadlines for filing updated cellular system information as announced in the *Report and Order* and postpone the acceptance of applications for unserved areas.

II. Discussion

2. In its *Report and Order*, the Commission established deadlines for cellular licensees to submit updated (1) maps of their systems showing their existing 39 dBu contours and CGSAs and (2) frequency utilization charts or frequency plans (updated system information).[3] An unserved area is defined as "[a]ny area * * * which is outside of an existing cellular geographic service area in a specific frequency block." See 47 CFR 22.2. Therefore, a cellular system's CGSA determines which parts of a given Metropolitan Statistical Area or Rural Service Area constitute unserved areas. Under the Commission's current rules, a licensee must cover seventy-five percent of its proposed CGSA using 39 dBu contours. See 47 CFR 22.903. In its FNPRM, however, the Commission proposes to redefine the existing CGSAs of current licensees using a formula that approximates the Carey predicted 32 dBu contour.

3. CTIA contends that "the Commission's present plan [as announced in its FNPRM] to redefine CGSAs around a more realistic standard only after the unserved application and licensing process has begun will result in years of interference litigation, and marketing uncertainty." See CTIA

[1] *See* Amendment of part 22 of the Commission's rules to provide for filing and processing applications for unserved areas in the Cellular Service and to modify other cellular rules, First Report and Order and Memorandum Opinion and Order on Reconsideration, CC Docket Numbers 90-6 and 85-388, FCC 91-306, 6 FCC Rcd 6185 (1991) (Report and Order).

[2] *See* Amendment of part 22 of the Commission's rules to provide for filing and processing of applications for unserved areas in the Cellular Service and to modify other cellular rules, Further Notice of Proposed Rulemaking, CC Docket Number 90-6, FCC 91-311, 6 FCC Rcd 6158 (1991) (FNPRM).

[3] Specifically, the Report and Order sets January 21, 1992 as the deadline for filing updated system information for markets where the five-year fill-in period expires on or before March 20, 1992. See Report and Order at 6206 and 6207; see also 47 CFR 22.925(c); see also 56 FR 56,503 (November 20, 1991); see also Public Notice, Report No. CL-92-30 (released December 11, 1991) (in clarifying the dates for filing updated system information, the Common Carrier Bureau announces that "licensees in markets whose five-year fill-in period expires between February 19, 1992 and March 20, 1992, need not file the information required by Section 22.925 until January 21, 1991"). For all other markets, the deadline for filing updated system information is "60 days prior to the expiration of the five-year fill-in period." See Report and Order at 6206 and 6207; see also 47 CFR 22.925(a). Sections 22.31 (a)(1) and (f) of the rules provided initial licensees with a five-year fill-in period during which they could expand their systems within the markets without challenge from competing applications.

Motion at 3. Because the boundaries for unserved areas are measured by existing cellular licensees' CGSAs, the Commission's proposal would result in a redefinition of the boundaries for unserved areas. We are persuaded that we should temporarily suspend the dates for filing updated system information and postpone acceptance of applications until the Commission has the opportunity to consider CTIA's motion. This action will avoid potentially unnecessary expenditure of staff and licensee resources.

III. Ordering Paragraph

4. Accordingly, we are waiving the deadlines for the submission of updated cellular system information as announced in the Report and Order and postponing acceptance of applications for unserved areas pending Commission action on CTIA's motion. This action is taken pursuant to §§ 1.3 and 0.291 of the Commission's rules, 47 CFR 1.3 and 0.291.

Federal Communications Commission.

Gerald P. Vaughan,

Deputy Chief (Operations), Common Carrier Bureau.

[FR Doc. 92-352 Filed 1-8-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 22

[CC Docket No. 88-411; FCC 91-399]

The Use of Cellular Telephones in Aircraft.

AGENCY: Federal Communications Commission.

ACTION: Final rule; interpretation.

SUMMARY: The Commission adopted rules prohibiting the use of cellular telephones in airborne aircraft. However, the FCC will allow the on-ground use and installation of cellular telephones in aircraft subject to Federal Aviation Administration (FAA) regulations. As consumer demand for cellular services has increased, demand for variants of mobile service developed, such as authority to use cellular telephones in airplanes, helicopters, balloons and airborne vehicles. The Commission was contacted on numerous occasions for an interpretation of the rules concerning the use of cellular telephones in aircraft. The adopted rules clarify and concisely state the prohibition of airborne use of cellular telephones in aircraft and that the use of cellular telephones while the aircraft is on the ground is subject to FAA guidelines. In a separate portion of the decision not dealing with aircraft issues, the Commission authorized the routine licensing of cell enhancers or repeaters, devices that receive, amplify and retransmit the signals of a particular cell site and its mobile units to and from areas of poor coverage. Because these devices have proven successful in solving problems of poor coverage, the Commission believed that it would be in the public interest to adopt new rules governing their use. The adopted rules permit the use of all cell enhancers, consistent with the technical requirements adopted for the cellular service in Auxiliary Cellular Service Order, 3 FCC Rcd 7033 (1988), recon., 5 FCC Rcd 1138 (1990).

EFFECTIVE DATE: March 9, 1992.

FOR FURTHER INFORMATION CONTACT: Michael Ferrante ((202) 653-5560 or Dan Abeyta ((202) 632-6450), Mobile Services Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, in CC Docket No. 88-411, adopted December 12, 1991 and released December 30, 1991. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036

Paperwork Reduction

These rules have been found to impose no reporting burdens on the public.

Summary of Report and Order

On September 2, 1988, the Commission released a Notice of Proposed Rulemaking, 3 FCC Rcd 5265 (1988), 53 FR 35851 (September 15, 1988) seeking comments on proposed rules to prohibit the airborne use of cellular telephones in aircraft and to allow the use of cellular enhancers on a routine basis.

In response to the Notice, the commenting parties distinguished between the airborne use of cellular telephones and the use of cellular telephones while the aircraft is on the ground. The parties overwhelmingly agree that the airborne use of cellular telephones would likely cause interference to cellular operations. The Report and Order therefore adopts rules to prohibit such use.

With respect to the use of cellular telephones in aircraft while the aircraft is on the ground, the record generally supports a finding the there are public interest benefits to allowing such use. Permitting the on-ground use of cellular telephones in aircraft would, for example, allow commercial airline passengers who are faced with substantial ground delays after boarding their flights to use their portable telephones for business and personal reasons. As to concerns that the on-ground use of cellular telephones in aircraft may interfere with aircraft operations, the Federal Aviation Administration (FAA) has recently indicated that it is developing operational guidelines to restrict cellular telephones to use at the gate and during extended waits on the ground when specifically authorized by the captain of the aircraft. The Report and Order defers to the FAA to establish regulations for the use of cellular telephones while the aircraft is on the ground.

The majority of commenters also state that we should permit cellular telephones to be installed in private aircraft provided that these telephones are used only while the aircraft is on the ground. In view of the lack of evidence showing that the mere installation of cellular telephones in aircraft would cause interference and the legitimate reasons to allow such installation, the Report and Order adopts rules allowing such installation. Where cellular telephones are installed in aircraft, the Report and Order requires that a notice be posted adjacent to the telephone stating that the use of cellular telephones while the aircraft is airborne is prohibited by Federal Communications Commission rules and the violation of this rule could result in suspension of service and/or a fine. The posted notice will also state that the use of cellular telephones while the aircraft is on the ground is subject to FAA regulations. In addition, our rules will require that all cellular telephones must be turned off once the aircraft is airborne.

Finally, in a separate part of the Report and Order not dealing with aircraft, the Commission adopted specific rules governing the routine use of cellular enhancers on a regular non-developmental basis consistent with the technical requirements adopted for the cellular service in the Auxiliary Cellular Service Order, 3 FCC Rcd 7033 (1988), recon., 5 FCC Rcd 1138 (1990).

Ordering Clauses

Accordingly, *it is ordered*, pursuant to sections 1, 4(i), 4(j) and (j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 154(j) and 303(r), that Part 22 is amended

as set forth below, effective 60 days from the date of publication.

List of Subjects in 47 CFR Part 22

Domestic public cellular radio telecommunications service radio, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Part 22 of title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for part 22 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1083, as amended; 47 U.S.C. 154, 303.

2. Section 22.2 is amended by adding a new definition in alphabetical order to read as follows:

§ 22.2 Definitions.

* * * * *

Cellular repeater. A fixed station in the Domestic Public Cellular Radio Telecommunications Service which retransmits the transmission of a particular cell site, with or without frequencies translation.

* * * * *

3. Section 22.904 is revised to read as follows:

§ 22.904 Power Limitations.

Stations in this service shall not be permitted to exceed the effective radiated power indicated below.

	Watts (ERP)
Base stations	500
Mobile stations	7
Auxiliary test stations	7
Cellular Repeaters	500

4. Section 22.911 is amended by adding paragraph (a)(1) to read as follows:

§ 22.911 Permissible communications.

(a) * * *

(1) Cellular telephones shall not be operated in airplanes, balloons or any other aircraft capable of airborne operation while airborne. Once the aircraft is airborne, all cellular telephones on board such vehicles must be turned off. The term *airborne* means the aircraft is not touching the ground. Cellular telephones may be installed in aircraft. A cellular telephone which is installed in an aircraft must contain a posted notice which reads: "The use of cellular telephones while this aircraft is airborne is prohibited by FCC rules, and the violation of this rule could result in suspension of service and/or a fine. The use of cellular telephones while this aircraft is on the ground is subject to FAA regulations."

(2) [Reserved]

* * * * *

5. Section 22.912 is amended by adding new paragraph (c) to read as follows:

§ 22.912 Responsibility for operational control and maintenance of mobile stations.

* * * * *

(c) A cellular carrier may either refuse or terminate service to a subscriber, in accordance with any applicable local requirements for timely notification, for using a cellular telephone in an airborne aircraft in violation of § 22.911(a)(1).

(6) Section 22.930 is amended by adding a last sentence to paragraph (d) to read as follows:

§ 22.930 Special provisions for alternative cellular technologies and auxiliary services.

* * * * *

(d) * * * For purposes of this paragraph, cellular repeaters will be treated as a cellular facility.

[FR Doc. 92-542 Filed 1-8-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-250; RM-7461]

Radio Broadcasting Services; Gilmer, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Curtis Broadcasting Stations, Inc., licensee of Station KLSQ(FM), Channel 237A, Gilmer, Texas, substitutes Channel 237C3 for Channel 237A at Gilmer, and modifies its license for Station KLSQ(FM) to specify operation on the higher powered. See 56 FR 42967, August 30, 1991. Channel 237C3 can be allotted to Gilmer in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.2 kilometers (2.6 miles) southeast to accommodate Curtis' desired transmitter site. The coordinates for Channel 237C3 are 32-42-02 and 94-55-14. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 20, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-250, adopted December 20, 1991, and released January 6, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 237A and adding Channel 237C3 at Gilmer.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-543 Filed 1-8-92; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1806, 1807, 1812, 1815, 1816, 1823, 1825, 1830, 1831, 1832, 1842, 1844, 1852, and 1853

[NASA FAR Supplement Directive 89-10]

RIN 2700-AB16

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal or administrative matters. The major changes involve: (1) Revision of Points of Contact in NASA's Office of Procurement; (2) Revision to

permit negotiation and contractual identification of delivery schedules based on specific milestones; (3) Clarification of the price negotiation memorandum coverage; (4) Rewrite of coverage on Types of Contracts and related NASA FAR Supplement clauses; (5) Revision of section title and FAR reference regarding hazardous material identification and material safety data to implement FAC 90-8; (6) Revision of coverage on the Omission of the Examination of Records clause; (7) Removal of redundant language and clarification of terminology in the Cost Accounting Standards coverage; (8) Revision of coverage on Contract Cost Principles and Procedures; (9) Revision of NFS Advance Payment coverage; (10) Revision of coverage on Contract Financing; (11) Revision to NFS policy on consent to subcontract and contractor purchasing system reviews; and (12) Clarification of language and revision of coverage on Indirect Cost Rates and Disallowance of Costs.

EFFECTIVE DATE: December 31, 1991.

FOR FURTHER INFORMATION CONTACT: David K. Beck, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-8250.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The regulation imposes no new burdens on the public within the ambit of the Paperwork Reduction Act, as implemented at 5 CFR part 1320, nor does it significantly alter any reporting or recordkeeping requirements currently approved under OMB control number 2700-0042.

List of Subjects in 48 CFR Parts 1801, 1806, 1807, 1812, 1815, 1816, 1823, 1825, 1830, 1831, 1832, 1842, 1844, 1852, and 1853

Government procurement.

Darleen A. Druyun,

Assistant Administrator for Procurement.Q02

1. The authority citation for 48 CFR parts 1801, 1806, 1807, 1812, 1815, 1823, 1825, 1830, 1832, 1842, 1844, 1852, and 1853 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Subpart 1801.3 is amended as set forth below:

1801.370 [Amended]

a. In section 1801.370, paragraph (a)(1)(i) and (a)(1)(ii), the name "Bailets" is revised to read "King" in every occurrence, and in section 1801.370, paragraph (a)(1)(ii), the names "King/Pesnell" are revised to read "Nelson/Pesnell."

b. In section 1801.370, paragraph (b), the name "Bailets, Lynn W. (HP) 8252" is removed; the name "King, Bruce C. (HH) 1803" is revised to read "King, Bruce C. (HP) 8252"; the name "Nelson, Harold (HH) 8924" is revised to read "Nelson, Harold (HS) 8924"; and the name "Wilson, Roger (HH) 8009" is revised to read "Wilson, Roger (HM) 1803."

PART 1806—COMPETITION REQUIREMENTS

3. Part 1806 is amended as set forth below:

1806.202-70 [Amended]

a. In section 1806.202-70, paragraphs (a)(2)(i) and (a)(3), "(Code HH)" is revised to read "(Code HS)."

1806.302-770 [Amended]

b. In section 1806.302-770, paragraphs (a) and (c), "Code HH" is revised to read "Code HS."

1806.304 [Amended]

c. In section 1806.304, paragraph (c), "(Code HH)" is revised to read "(Code HS)."

PART 1807—ACQUISITION PLANNING

1807.7204, 1807.7206 [Amended]

4. Throughout sections 1807.7204 and 1807.7206, "(Code HH)" is revised to read "(Code HS)."

PART 1812—CONTRACT DELIVERY OR PERFORMANCE

1812.104-70 [Amended]

5. In section 1812.104-70, paragraph (d), the last sentence is removed and the following sentence is added in its place:

* * * * *

(d) * * * In the alternative, the delivery date may also be shown as a specified number of days from a specified milestone; for example, 90 days after contract award. The column heading "Delivery Date" may be changed to "Within Days After (Identify specific milestone)."

* * * * *

PART 1815—CONTRACTING BY NEGOTIATION

6. Part 1815 is amended as set forth below:

1815.808 [Amended]

a. In section 1815.808, paragraph (b), the sentence beginning with "However, when a * * *" and ending with "* * * of FAR 15.806-2(a)." is removed, and the following sentence is inserted in its place:

* * * * *

(b) * * * However, when a PPM has been prepared under 1815.807, the subsequent PNM need only provide any information required by FAR 15.808 that was not provided in the PPM and explain the differences between the prenegotiation objective position and the final negotiated settlement, including each proposed subcontract that meets the requirement of FAR 15.806-2(a).

* * *

1815.970 [Amended]

b. In section 1815.970, paragraph (e), the citation "1815.807-70(c)(3)" is revised to read "1815.807-70(d)(3)."

1815.970-2 [Amended]

c. In section 1815.970-2, paragraph (d), the last two sentences are removed.

PART 1816—TYPES OF CONTRACTS

7. Part 1816 is revised to read as follows:

PART 1816—TYPES OF CONTRACTS

Table of Contents

Subpart 1816.2—Fixed-Price Contracts

1816.202 Firm-fixed-price contracts.
1816.202-70 NASA contract clause.
1816.203 Fixed-price contracts with economic price adjustment.
1816.203-4 Contract clauses.
1816.207 Firm-fixed-price, level-of-effort term contracts.
1816.207-70 NASA contract clause.

Subpart 1816.3—Cost-Reimbursement Contracts

1816.301 General.
1816.301–3 Limitations.
1816.303 Cost-sharing contracts.
1816.307 Contract clauses.
1816.307–70 NASA contract clauses.
1816.370 Forms.

Subpart 1816.4—Incentive Contracts

1816.403 Fixed-price incentive contracts.
1816.404 Cost-reimbursement incentive contracts.
1816.404–2 Cost-plus-award-fee contracts.
1816.405 Contract clauses.
1816.405–70 NASA contract clause.

Subpart 1816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1816.603 Letter contracts.
1816.603–2 Application.
1816.603–3 Limitations.
1816.603–4 Contract clause.
1816.603–470 NASA contract clause.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1816.2—Fixed-Price Contracts

1816.202 Firm-fixed-price contracts.

1816.202–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.216–78, Firm-Fixed-Price, in firm-fixed-price solicitations and contracts. Insert the appropriate amount in the resulting contract.

1816.203 Fixed-price contracts with economic price adjustment.

1816.203–4 Contract clauses.

(a) In addition to the approval requirements in the prescriptions at FAR 52.216–2, –3, and –4, the contracting officer shall coordinate with the installation's Financial Management Officer before exceeding the ten-percent limit in paragraph (c)(1) of the clauses at FAR 52.216–2, –3, and –4.

(b) This paragraph (b) applies to adjustments based on cost indexes of labor or material.

(1) All price adjustment clauses using cost indexes require advance approval by the Assistant Administrator for Procurement. Requests for approval shall be submitted to the Office of Procurement, NASA Headquarters (Code HC).

(2) The factors in paragraphs (b)(2) (i) through (x) of this section should be considered in preparing any price adjustment clause in situations meeting the criteria of FAR 16.203–4(d):

(i) The clause should not be overly complex.

(ii) The clause shall provide for a ceiling for adjustment if a floor is included in the clause.

(iii) The clause shall cover only those elements of cost that are subject to unpredictable economic fluctuation.

(iv) (A) The clause must positively and accurately identify the index(es) upon which adjustments will be based and must provide an alternative in the event publication of the designated index is discontinued. The alternative might include the substitution of another index, if the time remaining would justify it and an appropriate index is reasonably available, or some other method for repricing the remaining portion of the work.

(B) There should normally be no need to make an adjustment if computation of the identified index is altered; however, provision may be made to adjust the economic fluctuation computations if the method of computing the index is so substantially altered as to negate the original intent of the parties. When an index to be used is subject to revision (e.g., the Bureau of Labor Statistics Producer Price Indexes), the price adjustment clause shall further specify that any adjustment shall be based upon the applicable revised index.

(v) An index should be structured to encompass a large sample of relevant items, yet bear a logical relationship to the type of contract costs measured. The basis of the index should not be so large and diverse that it is significantly affected by fluctuations not relevant to contract performance. However, it must be broad enough to ensure that the effect created by any single company, including the anticipated contractor, is minimal.

(vi) The clause must establish and properly identify a contract cost base against which an index, established in the contract, will be applied.

(vii) The clause should provide for definite times or events for price adjustments from the point when economic uncertainty commences. It should not provide for adjustment beyond the original contract performance period. Adjustments should be frequent enough to afford the contractor appropriate economic relief without creating a burdensome administrative effort. The adjustment frequency should normally range from six to twelve months.

(viii) The expenditure profile for both labor and material should be based on a predetermined rate of expenditure (expressed as the percentage of material or labor use as related to total contract price) in lieu of actual cost incurred. If the clause is to be used in a competitive procurement, the labor and material allocations, with regard to both mix and percentage rate of expenditure, shall be determined by the contracting officer in a manner approximating, as nearly as possible, the average-expenditure profile of all companies likely to make offers. If the clause is to be used in a noncompetitive procurement, the labor and material allocations determined by the contracting officer may be subject to negotiation and agreement.

(ix) (A) The clause should state the percentage of the contract price or the amount subject to adjustment. Adjustments shall not be applied to profit.

(B) Additionally, the labor and material portions of the contract must be examined to exclude areas not requiring adjustment. It may not be necessary, for example, to include all subcontracting, because some subcontract efforts could be completed during the early life of the contract and/or be firm-fixed-price. Certain areas of overhead should be excluded from escalation protection; e.g., depreciation charges, prepaid insurance costs, rental costs, leases, certain taxes, and utility charges. Economic fluctuation protection should not apply to that portion of labor for the period for which a definitive union agreement exists or for which Department of Labor wage determinations are known.

(C) That portion of the contract determined to be proper for economic fluctuation protection shall then be allocated to specific time periods (e.g., semiannually) on the basis of the expenditure profile.

(x) The economic price adjustment clause should provide that once the labor and material allocations have been established, they remain fixed through the life of the contract. Subsequent modifications which affect contract price are generally not subject to economic price adjustment. If the contracting officer determines that such an action should be subject to economic price adjustment, a new economic price adjustment clause should be incorporated into the contract. Such a clause would require prior approvals in accordance with 1816.203–4(b)(1).

(c) When economic price adjustment clauses are included in contracts that do not require submission of cost or pricing data (see FAR 15.804–2 and –3), the contracting officer shall obtain adequate information to establish the contract cost base from which adjustments will be made. In addition, the contracting officer may require verification of this information to the extent necessary to permit reliance upon it as reasonable.

(d) The contracting officer shall insert the provision at 1852.216–72, Evaluation of Offers Subject to Economic Price Adjustment, in all negotiated, fixed-price solicitations that contain an economic price adjustment clause.

1816.207 Firm-fixed-price, level-of-effort term contracts.

1816.207-70 NASA contract clause.

(a) The contracting officer shall insert a clause substantially as stated at 1852.216-79, Level-of-Effort (Fixed-Price), in fixed-price term solicitations and contracts. Insert the minimum direct labor hours, the labor categories and associated direct labor hours, and a formula or rates(s) (dollar amount(s)) by which the fixed price may be reduced if the minimum direct labor hours have not been provided. The labor category information may be simplified (e.g., "engineering" or "drafting") for smaller, less complex procurements.

(b) For task ordering procedures for firm-fixed-price, level-of-effort term contracts, see 1816.307-70(d)

Subpart 1816.3—Cost-Reimbursement Contracts

1816.301 General.

1816.301-3 Limitations.

The determination and findings required by FAR 16.301-3 and 16.403(c) may be signed by the contracting officer for individual purchases and contracts. The format shown below shall be used.

National Aeronautics and Space Administration

Determination and Findings

Authority to Use a (a) Contract

Upon the basis of the following findings and determination, which I make under the authority of 10 U.S.C. 2306(c), the contract described below may be entered into on a (a) basis.

Findings

1. The (b) proposes to enter into a (a) contract for the acquisition of (c). The cost of this work is estimated at $_____.

2. The work to be performed is (d).

Determination

(This contract type is likely to be less costly than any other type.) (It is impractical to obtain supplies or services of the kind or quality required without the use of this contract type.) (e)

Date: _____

NOTES—The contracting officer shall insert, where shown, the following information:

(a) Specific type of contract contemplated.

(b) Installation name.

(c) Brief description of supplies or services.

(d) Description of the nature of the proposed work and related specific facts that show why the contemplated contract type is the best alternative for this particular acquisition.

(e) The appropriate sentence or, when both apply, insert both connected by "and."

1816.303 Cost-sharing contracts.

(a) *When cost sharing is applicable.* (1) Except as provided for in paragraph (b) of this section, cost sharing by non-Federal organizations is mandatory in any contract for basic or applied research resulting from an unsolicited proposal.

(2) (i) Cost sharing by non-Federal organizations may be accepted in any contract when offered by a performing organization.

(ii) Cost sharing by educational institutions may be accepted, when voluntarily offered, if the institution is aware of NASA's policy that the amount of cost sharing is not a factor in determining whether to support a given proposal.

(b) *When cost sharing is not applicable.* (1) Cost sharing is not applicable to contracts for basic or applied research resulting from an unsolicited proposal when (i) the offeror certifies in writing to the contracting officer that it has no commercial, production, educational, or service activities on which to use the results of the research, and no means of recovering any cost sharing on such projects, and (ii) the contracting officer determines that cost sharing does not apply and documents the file with a memorandum. In these situations, where there is no measurable potential gain to the performing organization, mutuality of interest does not exist and it would not be equitable for the Government to require cost sharing.

(2) (i) NASA's normal policy is to fully reimburse universities for research performed on its behalf. However, to establish on a case-by-case basis that there is no clear potential for significant future benefit or measurable gain to the university, and that cost sharing is not appropriate, the contracting officer shall document the file with a determination substantively the same as that required by 1816.303(b)(1) of this section. The determination shall identify the information on which it is based. If the determination cannot reasonably be made from the available information, the contracting officer shall request the university to certify as in 1816.303(b)(1) of this section. Blanket procedures shall not be established for routinely obtaining certifications from all universities.

(ii) NASA does not request inclusion of cost-sharing information in proposals from educational institutions. If cost sharing is determined applicable, a cost-sharing offer will be requested during negotiations.

(c) *Amount of cost sharing.*—(1) Educational institutions and affiliated not-for-profit institutions. Cost sharing, if used for educational institutions and affiliated not-for-profit institutions, normally varies from one percent to as much as five percent of the project's cost.

(2) *Other performing organizations.* (i) Cost sharing for organizations other than those in paragraph (c)(1) of this section may be any percentage of the research cost. Mutuality of interest in the results of the work being performed is of primary significance in assessing the appropriateness of any particular level of cost sharing.

(ii) Factors that should be considered in determining mutuality of interest include—

(A) The potential of the contractor to recover its contribution from non-Federal sources;

(B) The extent to which the particular area of research requires special stimulus in the national interest; and

(C) The extent to which a research effort or result is likely to enhance the contractor's capability, expertise, or competitive position.

(d) *Implementation*—(1) *Payment of fee or profit.* No fee or profit may be paid to a cost-sharing contractor, and only an agreed-to portion of allowable costs shall be reimbursed.

(2) *Method of cost sharing.* Cost sharing shall be accomplished by a contribution of part or all of one or more elements of the allowable cost of the work being performed. It normally shall be expressed as a stated minimum percentage of the total allowable costs of the project. Costs so contributed may not be charged to the Government under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program).

(3) *Documentation.* Contract files shall contain appropriate documentation of the reasons for cost sharing and support for the amount or percentage of cost sharing agreed upon. For educational institutions, the reasons for any cost sharing exceeding (i) five percent or (ii) the amount originally offered shall be documented.

1816.307 Contract clauses.

(a) In solicitations and contracts containing the clause at FAR 52.216-8, Fixed Fee, or FAR 52.216-10, Incentive Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

(b) In paragraph (h)(2)(ii)(B) of the Allowable Cost and Payment clause at FAR 52.216-7, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required

in paragraph (d) of the clause at FAR 52.215-1, Examination of Records by Comptroller General.

(c) In paragraph (g)(2)(ii) of the Allowable Cost and Payment—Facilities clause at FAR 52.216-13, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (d) of the clause at FAR 52.215-1, Examination of Records by Comptroller General.

1816.307-70 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.216-73, Estimated Cost and Cost Sharing, in each contract in which costs are shared by the contractor pursuant to 1816.303.

(b) The contracting officer shall insert the clause, or one substantially like the clause, at 1852.216-74, Estimated Cost and Fixed Fee, in cost-plus-fixed-fee contracts.

(c) The contracting officer may insert the clause at 1852.216-75, Payment of Fixed Fee, in cost-plus-fixed-fee contracts. Modifications to the clause are authorized.

(d)(1) The contracting officer may insert a clause substantially as stated at 1852.216-80, Task Ordering Procedure, in level-of-effort term solicitations and contracts where (i) the statement of work is general in nature and (ii) task orders are needed to further define and clarify the effort required. This clause is applicable to both fixed-price and cost-reimbursement type term contracts.

(2) The contracting officer may issue task orders which tailor the list of information which the contractor is directed to provide in paragraph (b)(2) of the clause at 1852.216-80.

(e) The contracting officer shall insert the clause at 1852.216-81, Estimated Cost, in cost-no-fee contracts that are not cost sharing or facilities contracts.

(f)(1) The contracting officer shall insert a clause substantially as stated at 1852.216-82, Level-of-Effort (Cost), in term cost reimbursement type solicitations and contracts. Insert the required information in the blanks provided.

(2) Prior to reducing the contract fee in accordance with paragraph (d) of clause 1852.216-82, the contracting officer shall analyze the information, if any, provided by the contractor. The analysis and its bearing on the amount of the reduction shall be documented in the contract file.

(g) The contracting officer may insert a clause substantially as stated at 1852.216-87, Submission of Vouchers for Payment, in cost-reimbursement solicitations and contracts.

1816.370 Forms.

Contractors shall use NASA Form 778, Contractor's Release; NASA Form 779, Assignee's Release; NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts, to fulfill the assignment and release requirements of the clauses prescribed at FAR 16.307 (a) and (g) (i.e., the clauses at FAR 52.216-7, Allowable Cost and Payment, and 52.216-13, Allowable Cost and Payment—Facilities). Computer-generated forms may be accepted provided they comply with FAR clause 52.253-1.

Subpart 1816.4—Incentive Contracts

1816.403 Fixed-price incentive contracts.

A determination and findings is required by FAR 16.403(c) for fixed price incentive contracts. It shall be executed in accordance with 1816.301-3.

1816.404 Cost-reimbursement incentive contracts.

1816.404-2 Cost-plus-award-fee contracts.

(a) To assure compliance with FAR 16.404-2(b)(2), all contract performance areas subject to evaluation on a judgmental basis, including performance areas such as cost and technical management, quality, timeliness, and productivity, shall be consolidated in a single award fee criteria and rating plan. The objective is a balanced evaluation of the contractor's overall performance resulting in a single award fee determination consistent with NASA's management concerns and priorities.

(b) The amount of the base fee should normally not exceed three percent of the estimated cost of the contract exclusive of the fee; the maximum fee (base plus award fee) shall not exceed the limitations stated in FAR 15.903(d).

(c) Additional information on award fee contracting is contained in NASA's "Guidance on Award Fee Contracting" handbook dated June 1989 (available from Headquarters, Code HC).

1816.405 Contract clauses.

1816.405-70 NASA contract clauses.

(a) As authorized by FAR 16.405(e), the contracting officer shall insert the clause at 1852.216-76, Award Fee, in solicitations and contracts when a cost-plus-award-fee contract is contemplated.

(b) The contracting officer may insert a clause substantially as stated at 1852.216-83, Fixed Price Incentive, in fixed-price-incentive solicitations and contracts utilizing firm or successive targets. For items to be subject to incentive price revision, identify the target cost, target profit, target price, and ceiling price for each item.

(c) The contracting officer shall insert the clause at 1852.216-84, Estimated Cost and Incentive Fee, in cost-plus-incentive-fee solicitations and contracts.

(d) The contracting officer may insert a clause substantially as stated at 1852.216-85, Estimated Cost and Award Fee, in cost-plus-award-fee solicitations and contracts.

Subpart 1816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1816.603 Letter contracts.

1816.03-2 Application.

Although there is no set format for a letter contract, certain items must be included. In addition to the clauses prescribed in FAR 16.603-4, the following information, must be included in all letter contracts:

(a) Statement of work.

(b) Delivery or performance schedule and place(s) of inspection and acceptance.

(c) A statement that no profit or fee shall be paid under the letter contract except as provided in the Termination clause (see 1815.971).

1816.603-3 Limitations.

(a) Letter contracts having an estimated definitive contract amount below the dollar thresholds specified in 1807.7102.

(1) Authority to approve the issuance of such letter contracts is delegated to the procurement officer. Each request for approval shall include the following:

(i) Proposed contractor's name and address.

(ii) Location where contract is to be performed.

(iii) Contract number, including modification number, if applicable.

(iv) Brief description of the work or services to be performed.

(v) Performance period or delivery schedule.

(vi) Amount of letter contract.

(vii) Performance period of letter contract.

(viii) Estimated total amount of definitive contract.

(ix) Type of definitive contract to be executed.

(x) A statement that the definitive contract will contain all required clauses or that deviations have been approved.

(xi) A statement as to the necessity and advantage to the Government of the proposed letter contract.

(2) The procurement officer shall provide a copy of the approval to issue a letter contract, along with the documentation required in paragraph (a)(1) of this section, to the Assistant Administrator for Procurement (Code HS) within 10 days of approval.

(3) The procurement officer shall notify the Assistant Administrator for Procurement (Code HS) of the date of definitization and contract amount.

(b) Letter contracts having an estimated definitive contract amount equal to or exceeding the dollar thresholds specified in 1807.7102.

(1) Requests for authority to issue such letter contracts shall be signed by the procurement officer and submitted to the Assistant Administrator for Procurement (Code HS) for approval. They shall include the information cited in subparagraph (a)(1) of this section.

(2) Any modification of an undefinitized letter contract approved under (b)(1) of this section must be approved by the Assistant Administrator for Procurement.

(3) Any modification of an undefinitized letter contract approved by a procurement officer in accordance with (a)(1) of this section that increases the estimated definitized contract amount to or above the dollar thresholds specified in 1807.7102 must have the prior approval of the Assistant Administrator for Procurement.

1816.603-4 Contract clause.

1816.603-470 NASA contract clause.

The contracting officer may insert a clause substantially as stated at 1852.216-86, Settlement of Letter Contract, in contracts definitizing letter contracts.

PART 1823—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

8. Part 1823 is amended as set forth below:

1823.302 [Amended]

a. In section 1823.302, the section heading "General" is revised to read "Policy", and in the introductory paragraph, the citation "FAR 23.302(c)(3)" is revised to read "FAR 23.302(c)(2)."

1823.303-70 [Amended]

b. In section 1823.303-70, the sentence "Insert the potentially hazardous items or components." is revised to read "Identify in the clause the potentially hazardous items or components."

1823.370 [Amended]

c. In section 1823.370, the word "by" is added in front of the phrase "the clause at FAR 52.223-3."

1823.7002 [Amended]

d. In section 1823.7002, paragraph (c), "(Code NPG)" is revised to read "(Code FO)."

PART 1825—FOREIGN ACQUISITION

9. Part 1825 is amended by revising Subpart 1825.9 to read as follows:

Subpart 1825.9—Additional Foreign Acquisition Clauses

1825.901 Omission of the Examination of Records clause.

(a) The contracting officer's request for exclusion of the clause at 52.215-1, Examination of Records by the Comptroller General, shall consist of the proposed determination and findings (together with any relevant support information) prepared for the Administrator's signature according to the format in FAR 25.901(d). The procurement officer shall forward the package to the Assistant Administrator for Procurement (Code HC).

(b) When the clause at 52.215-1 is omitted pursuant to FAR 25.901(c)(1)(i)(B), the contracting officer shall prepare a written report in triplicate to be furnished to the Congress. The head of the installation concerned shall sign the report and forward it to the Assistant Administrator for Procurement (Code HC), who shall submit it to the Administrator for the Administrator's signature and forwarding to Congress.

PART 1830—COST ACCOUNTING STANDARDS

10. Part 1830 is amended by revising Subpart 1830.70 to read as follows:

Subpart 1830.70—Facilities Capital Employee for Facilities in Use or for Facilities Under Construction

1830.7001 Facilities capital employed for facilities in use.
1830.7001-1 Contract facilities capital estimates.
1830.7001-2 Pre-award facilities capital applications.
1830.7001-3 Post-award facilities capital applications.
1830.7002 Facilities capital employed for facilities under construction.
1830.7002-1 Definitions.
1830.7002-2 Measurement.

Subpart 1830.70—Facilities Capital Employed for Facilities in Use or for Facilities Under Construction

1830.7001 Facilities capital employed for facilities in use.

1830.7001-1 Contract facilities capital estimates.

(a) After the appropriate Forms Cost Accounting Standards Board-Cost of Money (CASB-CMF) have been analyzed and CMFs have been developed, the contracting officer is in a position to estimate the facilities capital cost of money and capital employed for a contract proposal. DD Form 1861 "Contract Facilities Capital and Cost of Money" has been provided for this purpose and, when properly completed, becomes a connecting link between the Forms CASB-CMF and any applicable agency structured approach to determination of profit or fee objectives. An evaluated contract cost breakdown reduced to the contracting officer's pre-negotiation cost objective must be available. The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(b) DD Form 1861 provides for listing indirect cost pools and direct-charging service centers (if used) in the same structure they appear on the contractor's cost proposal and Forms CASB-CMF. The structure and allocation base units-of-measure must be compatible on all three displays. The base for each indirect cost pool must be broken down by year to match each separate Form CASB-CMF. Appropriate contract overhead allocation base data are extracted by year from the evaluated cost breakdown or pre-negotiation cost objective, and are listed against each separate Form CASB-CMF. Each allocation base is multiplied by its corresponding cost of money factor, to get the Facilities Capital Cost of Money estimated to be incurred each year. The sum of these products represents the estimated Contract Facilities Capital Cost of Money for the Year's effort. Total contract facilities cost of money is the sum of the yearly amounts.

1830.7001-2 Pre-award facilities capital applications.

Facilities Capital Cost of Money as determined above is applied in establishing cost and price objectives as follows:

(a) *Cost objective.* This special, imputed cost of money shall be used, together with normal, booked costs, in establishing a cost objective or the target cost when structuring an incentive type contract. Target costs thus

established at the outset, shall not be adjusted as actual cost of money rates become available for the periods during which contract performance takes place.

(b) *Profit objective.* Cost of Money shall not be included as part of the cost base when measuring the contractor's effort in connection with establishing a pre-negotiation profit objective. The cost base for this purpose shall be restricted to normal, booked costs.

1830.7001-3 Post-award facilities capital applications.

(a) *Interim billings based on costs incurred.* Contract Facilities Capital Cost of Money may be included in cost reimbursement and progress payment invoices. The amount that qualifies as cost incurred for purposes of the Allowable Cost and Payment or Progress Payment clause of the contract is the result of multiplying the incurred portions of the indirect cost pool allocation bases by the latest available Cost of Money Factors. Like applied overhead at forecasted overhead rates, such computations are interim estimates subject to adjustment. As each year's data are finalized by computation of the actual Cost of Money Factors under CAS 414 and FAR 31.205-10, the new factors should be used to calculate contract facilities cost of money for the next accounting period.

(b) *Final settlement.* Contract Facilities Capital Cost of Money for final cost determination or repricing is based on each year's final Cost of Money Factors determined under CAS 414 and supported by separate Form CASB-CMF. Contract cost must be separately computed in a manner similar to yearly final overhead rates. Also like overhead costs, the final settlement will include an adjustment from interim to final contract cost of money. However, estimated or target cost will not be adjusted.

1830.7002 Facilities capital employed for facilities under construction.

1830.7002-1 Definitions.

The following definitions have been taken or developed from Cost Accounting Standard (CAS) 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction.

(a) *Cost of money rate.* The cost of money rate is either the interest rate determined by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat 97), or the time-weighted average of such rates for each cost accounting period during which the asset is being constructed, fabricated, or developed. The time-weighted average interest rate is calculated by multiplying the various rates in effect during the months of construction by the number of months each rate was in effect. The sum of the products is divided by the total number of months in which the rates were experienced.

(b) *Representative investment.* The representative investment is the calculated amount considered invested by the contractor in the project to construct, fabricate, or develop the asset during the cost accounting period. In calculating the representative investment, consideration must be given to the rate or expenditure pattern of the investment, i.e., if most of the investment was at the end of the cost accounting period, the representative investment calculation must reflect this fact.

(1) If the contractor experiences an irregular or uneven expenditure pattern in the construction, fabrication, or development of a capital asset, i.e., a majority of the construction costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor must either:

(i) Determine a representative investment amount for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or

(ii) Treat month-end balances as individual representative investment amounts.

(2) If the construction, fabrication, or development costs were incurred in a fairly uniform expenditure pattern throughout the construction period, the contractor may:

(i) Determine a representative investment amount for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period; or

(ii) Treat month-end balances as individual representative investment amounts.

1830.7002-2 Measurement.

(a) The imputed cost of money for an asset under construction, fabrication, or development is calculated by applying a cost of money rate (see 1830.7002-1(a)), to the representative investment amount (see 1830.7002-1(b)).

(1) When a representative investment amount is determined for a cost accounting period following 1830.7002-1(b)(1)(i) or 1830.7002-1(b)(2)(i), the cost of money rate used shall be the time-weighted average rate.

(2) When a monthly representative investment amount (see 1830.7002-1(b)(1)(ii) or 1830.7002-1(b)(2)(ii)) is used, the cost of money rate shall be the rate in effect each month. (Note: Under this method, the cost of money calculating is made monthly and the total for the cost accounting period is the sum of the monthly calculations.)

(b) The method chosen by a contractor for determining the representative investment amount may be different for each capital asset being constructed, fabricated, or developed as long as the method fits the expenditure pattern of the construction costs incurred.

(c) The imputed cost of money will be capitalized only once in any cost accounting period; either at the end of the period or at the end of the construction period, whichever comes first.

(d) When the construction of an asset takes more than one cost accounting period, the cost of money capitalized for the first cost accounting period will be included in determining the representative investment amount for any future cost accounting periods.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

11. Part 1831 is revised to read as following

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1831.1—Applicability

1831.101 Objectives.

Subpart 1831.2—Contracts with Commercial Organizations

1831.205 Selected Costs.
1831.205-32 Pre-contract costs.
1831.205-70 Contract clause.

Authority. 42 U.S.C. 2473 (c)(1).

Subpart 1831.1—Applicability

1831.101 Objectives.

Requests for individual deviations from FAR cost principles under FAR 31.101 shall be forwarded for the approval of the Assistant Administrator for Procurement (Code HC). The following should accompany each request for deviation: (1) The name and phone number of the contracting officer, (2) a copy of the contractor's request for cost allowance, (3) the rationale for granting the deviation and any supporting information, including the benefit to the Government, (4) the dollar amount involved, and (5) any other information considered relevant to the request.

Subpart 1831.2—Contracts with Commercial Organizations

1831.205 Selected costs.

1831.205-32 Precontract costs.

The authorization of precontract costs is not encouraged and shall be granted only in exceptional circumstances where a written request and justification has been submitted to and approved by the procurement officer. The justification shall (1) substantiate the necessity for the contractor to proceed prior to the contract award, (2) specify the start date of such contractor effort, (3) identify the total estimated time of the advanced effort, and (4) specify the cost limitation.

1831.205-70 Contract clause.

(b) The contracting officer shall insert the clause 1852.231-70, Date of Incurrence of Costs, in cost-reimbursement contracts for which specific coverage of precontract costs is authorized under 1831.205-32.

PART 1832—CONTRACT FINANCING

12. Part 1832 is amended as set forth below:

a. Subpart 1832.4 is revised to read as follows:

Subpart 1832.4—Advance Payments

1832.402 General.
1832.402-1 Small Business Innovative Research contracts.
1832.406 Letters of credit.
1832.406-70 Federal Cash Transaction Report.
1832.407 Interest.
1832.409-3 Security, supervision, and covenants.
1832.410 Findings, determination, and authorization.
1832.410-70 Instructions for determinations and findings.
1832.412 Contract clause.

Subpart 1832.4—Advance Payments

1832.402 General.

Determinations and findings in support of advance payments, as authorized by the Armed Services Procurement Act of 1947, as amended (10 U.S.C. 2307(c) and 2310(b)), shall be prepared in accordance with 1832.410. The lowest level of authority at which these determinations and findings shall be made is:

(a) The Assistant Administrator for Procurement (Code HC), for advance payments—

(1) Where the cumulative potential value for a single contract is greater than $25,000,000, or where a contract modification will increase the amount outstanding at any time and the cumulative potential contract value will exceed $25,000,000. When the advance payments outstanding at any time will exceed $25,000,000, the appropriate 60-day notification will be given to Congress in accordance with 10 U.S.C. 2307(d). Additional determinations and findings for increases to such contracts need not be prepared and submitted to the Assistant Administrator for Procurement as long as the advance payment amount outstanding at any time is not increased;

(2) In any amount to a foreign entity; or

(3) In any amount when the organization will receive a fee for the effort involved.

(b) The procurement officer, for advance payments involving a single action or which results in the cumulative potential contract value of $25,000,000 or less (other than to foreign entity or an organization that will receive a profit or fee), provided the action has been coordinated with the installation's Financial Management Officer.

1832.402-1 Small Business Innovative Research Contracts.

Advance payments for all Small Business Innovative Research (SBIR) Phase I contracts have been authorized through a class deviation. This authorization is for the Government fiscal years ending September 30, 1993.

1832.406 Letters of credit.

For the purposes of FAR 32.406(b)(1), each installation is considered a contracting agency.

1832.406-70 Federal Cash Transactions Report.

The report required by paragraph (m) of the clause at FAR 52.232-12, Advance Payments, or paragraph (j) of Alternate V of that clause, shall be submitted on Standard Form 272, Federal Cash Transactions Report, and, if appropriate, Standard Form 272-A, Federal Cash Transactions Report Continuation.

1832.407 Interest.

Advance payments without interest are hereby authorized, pursuant to FAR 32.407(d)(1).

1832.409-3 Security, supervision, and covenants.

The contracting officer, in consultation with the General Counsel, may require special security conditions, if appropriate, in particular cases. Those conditions may be included in solicitations and contracts that include the clause at FAR 52.232-12, Advance Payments.

1832.410 Findings, determination, and authorization.

1832.410-70 Instructions for determinations and findings.

(a) Requests for Headquarters approval of advance payments, in accordance with 1832.402(a), shall be forwarded to the Assistant Administrator for Procurement (Code HC). They should include (1) the name of the cognizant NASA Headquarters program or staff office; (2) the name and phone number of the contracting officer or negotiator; (3) a copy of the proposed advance payments clause; (4) a copy of the contractor's request for advance payments, along with any supporting information; and (5) if a profit/fee is contemplated, the factors considered in determining the profit/fee (see Subpart 18 15.9), and (6) information as to how a determination was made that the Government has adequate security to cover the maximum advance payment amount at any time outstanding.

(b) 10 U.S.C. 2307 is normally the statutory authority cited for authorizing advance payments. When appropriate, advance payments may also be authorized under 42 U.S.C. 2473(c)(5) or under Public Law 85-804 as implemented by Executive Order 10789 (see FAR Part 50).

(c) Generally, the format in FAR 32.410 should be used, tailored as follows:

(1) The phrase "Advance payments (in an amount not to exceed $ . . . at any time outstanding)" at format paragraph (a)(2), and not the alternate phrase "(in an aggregate amount not exceeding . . .)," shall be used for all determinations and findings. The phrase means the maximum unliquidated dollar amount a contractor would need in advance payments at any point in time for the particular contract. The amount would not usually be the full contract value. The amount inserted should be based on an analysis of the contractor's financing needs (monthly or other appropriate period) for the specific contract involved.

(2) In the second sentence of format subparagraph (a)(4), delete the reference to a special bank account.

(3) Use format subparagraph (a)(6), not (a)(7) or (a)(8).

(4) At the end of format paragraph (b), use "is in the public interest."

1832.412 Contract clause.

Whenever the clause at FAR 52.232-12 is used, it shall be modified as set forth at 1852.232-12. In addition, the dollar amount to be inserted in the blank of the modified language of the "Maximum

Payment" paragraph of the clause is the same amount determined for 1832.410-70(c)(1).

b. Subpart 1832.7 is revised to read as follows:

Subpart 1832.7—Contract Funding

1832.702 Policy.
1832.702-70 NASA policy.
1832.704 Limitation of cost or funds.
1832.705 Contract clauses.
1832.705-2 Clauses for limitation of cost or funds.
1832.705-270 Additional clauses for limitation of cost or funds.

1832.702 Policy.

1832.702-70 NASA policy.

(a) Cost-reimbursement contracts may be incrementally funded only if all the following conditions are met (except that, for cost-reimbursement R&D contracts under which no supplies are deliverable, only the condition in subparagraph (a)(3) of this section applies):

(1) The total value of the contract (including options as defined in FAR subpart 17.2) is $1,000,000 or more.

(2) The period of performance under the contract is in excess of twelve months or overlaps the succeeding fiscal year.

(3) The funds are not available to fund the total contract value fully at the time of entering into the contract.

(b) Fixed-price contracts, other than those for research and development, shall not be incrementally funded.

(c)(1) Fixed-price contracts for research and development may be incrementally funded if—

(i) The total fixed price of the contract (including options as defined in FAR subpart 17.2) is $1,000,000 or more;

(ii) The period of performance under the contract is in excess of twelve months or overlaps the succeeding fiscal year;

(iii) Funds are not available to fund the total fixed price of the contract at the time of entering into the contract; and

(iv) Initial funding of the contract is not less than 50 percent of the total fixed price.

(2) Notwithstanding the grant of authority to fund contracts incrementally under the circumstances in subparagraph (1) of this section, fixed-price contracts shall be fully funded whenever possible, and incremental funding of such contracts shall be kept to an absolute minimum.

(d) Except as noted in paragraph (e) of this section, waiver of any of the conditions set forth in paragraphs (a), (b), and (c) of this section shall be submitted for approval to the installation procurement officer. Concurrence of the installation Comptroller must be obtained on all requests prior to approval by the procurement officer. The procurement officer shall maintain a record of all such approvals during the fiscal year and submit a summary report to the Headquarters Financial Management Division (Code BFC) by October 31. The report will include: contract number, description and type; dollar value; amount of funds initially available; and the reason(s) for the waiver.

(e) A class deviation from the conditions set forth in paragraphs (a), (b), and (c) of this section exists to permit incremental funding of contracts under Phase II of the SBIR Program until the last year of the program (FY 1993 unless extended). This deviation exists with the understanding that the contracts will be fully funded when funds become available.

1832.704 Limitation of cost or funds.

(a) When a contract contains the clause at 1852.232-77, Limitation of Funds (Fixed-Price Contract), the procedures in FAR 32.704 are applicable.

(b) The amount obligated for fee should always be at least sufficient to pay fee anticipated to be earned by the contractor for the work to which the amount allotted for the estimated cost applies.

1832.705 Contract clauses.

1832.705-2 Clauses for limitation of cost or funds.

As authorized by FAR 52.232-22, the contracting officer shall substitute "Contract Funding clause" for "Schedule," wherever that word appears in the clause at FAR 52.232-22.

1832.705-270 Additional clauses for limitation of cost or funds.

(a) The contracting officer shall insert the clause at 1852.232-77, Limitation of Funds (Fixed-Price Contract), in solicitations and contracts for fixed-price incrementally funded research and development.

(b) The contracting officer shall insert a clause substantially as stated at 1852.232-81, Contract Funding, in solicitations and contracts containing the clause at FAR 52.232-22, Limitation of Funds. Insert the amounts of funds available for payment, the items covered, and the applicable period of performance. The contracting officer may add additional funding information (such as a summary of old amounts, amount(s) added in contract modifications, and new totals) as appropriate for the particular procurement.

c. Subpart 1832.9 is revised to read as follows:

Subpart 1832.9—Prompt Payment

1832.903 Policy.
1832.908 Contract clauses.
1832.970 Payments to Canadian Commercial Corporation.

1832.903 Policy.

As authorized at FAR 32.903, payments for contracts (other than Fixed-Price Architect-Contracts, Construction Contracts, and contracts for meats, perishables and dairy products) with the Canadian Commercial Corporation (CCC) shall be made earlier than the standard contract payment due dates.

1832.908 Contract clauses.

(a) When a clause at FAR 52.232-25, 52.232-26 or 52.232-27 is used, the clause at 52.232-28 shall be used as authorized by FAR 32.908(d), modified by deleting the words "and contract number" from paragraph (d). The following paragraph shall be inserted in FAR 52.232-28(b)(4) in lieu of the language at that location:

The Contractor shall submit a Standard Form 3881 to the installation awarding this contract. If a Standard Form 3881 previously submitted to the installation awarding this contract is still valid, resubmittal is not necessary, unless requested by NASA.

(b) When the clause at FAR 52.232-25, Prompt Payment, is used in contracting with the CCC subject to the conditions at 1832.970—

(1) The number "17" shall be used in lieu of "30" in paragraphs (a)(2)(i) and (a)(2)(ii) of the clause; and

(2) The number "17th" shall be inserted in paragraph (b)(2) of the clause.

1832.970 Payments to Canadian Commercial Corporation.

As authorized by FAR 32.903, the phrase "the 17th day" shall be used in lieu of the "the 30th day" at FAR 32.905(a)(1), 32.905(a)(2) and 32.906(a).

PART 1842—CONTRACT ADMINISTRATION

13. Subpart 1842.2 is amended as set forth below:

1842.202 [Amended]

a. In section 1842.202, paragraph c is revised to read as follows:

* * * * *

(c) *Restricted functions.* The functions listed below may not be delegated, except as indicated.

(1) Approval of the final voucher (FAR 42.302(a)(7)).

(2) Countersigning NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved (FAR 42.302(a)(8)).

(3) Issuance of decisions under the disputes clause (FAR 42.302(a)(10)).

(4) Contract payment (FAR 42.302(a)(13)).

(5) Execution of supplemental agreements involving spare parts or other items selected through provisioning procedures. However, delegation of the negotiation of supplemental agreements for spare parts and other items and forwarding for approval and signature of the NASA contracting officer is permitted (FAR 42.302(a)(22)).

(6) Execution of change orders (FAR 42.302(b)(8)). However, delegation of the negotiation of supplemental agreements for change order definitization and forwarding for approval and signature of the NASA contracting officer is permitted (FAR 42.302(b)(1)).

(7) Issuing termination notices and executing supplemental agreements for settlement of termination for default or for convenience of the Government. However, delegation of the negotiation of termination settlements and forwarding for approval and signature of the NASA contracting officer is permitted using NASA Form 1432 (FAR 42.302(a)(23)).

(8) Consent to placement of subcontracts under FAR 42.302(a)(51). However, in those situations where the contracting officer considers it necessary to delegate consent to subcontract, the requirements of 1844.102(b) shall be met prior to delegation.

1842.202-70 [Amended]

b. In section 1842.202-70, paragraph (f) is added to read as follows:

* * * * *

(f) *Contractor Purchasing System Reviews.* When delegating contract administration to a DOD contract administration office under FAR 42.202 and 42.302(a)(50), the NASA contracting officer shall include in the letter of delegation of contract administration functions a required for the contract administration office to provide the NASA contracting officer with:

(1) Adequate advance notification of scheduled CPSRs, to allow for the necessary NASA coordination of participation; and

(2) One copy of each CPSR report.

1842.705-70 [Amended]

c. In section 1842.705-70, paragraphs (b) and (c) are revised to read as follows:

* * * * *

(b) When NASA has been assigned the final indirect cost rate determination authority, settlement of indirect costs shall be conducted by the cognizant NASA contracting officer (normally from the installation providing the preponderance of NASA funding).

(c) Final indirect cost rates are to be established in accordance with FAR 42.705 unless quick-closeout procedures are used, in which case FAR 42.708 and NFS 1842.708 are to be followed.

d. Subpart 1842.8 is revised to read as follows:

Subpart 1842.8—Disallowance of Costs

1842.801 Notice of contract costs suspended and/or disallowed.

(a) Following a prompt and careful review of the facts and circumstances leading the auditor to initiate the NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved, and after coordination with other NASA and DOD contracting officers administering contracts with the same contractor under which a NASA Form 456, or a CDAA Form 1 in the case of a DOD contract, has been issued for the same items of a cost, the contracting officer shall take one of the following actions:

(1) Countersign the NASA Form 456 disapproving the costs.

(2) Countersign the NASA Form 456 suspending the costs.

(3) Issue a new NASA Form 456 suspending the costs rather than disapproving them pending resolution of the issues.

(4) Have the contractor issue a new voucher removing the costs in question from its claim and return the NASA Form 456 to the auditor unsigned.

(5) Return the unsigned NASA Form 456 to the auditor with a detailed explanation of why the suspension or disapproval is not being countersigned, and process the contractor's claim for payment.

(b) The contracting officer, when in agreement with the NASA Form 456 initiated by the auditor, shall assign a notice number and shall countersign the form. An original and three copies (which includes two acknowledgement copies, one each for return to the contracting officer and the auditor) of the form shall be sent to the contractor by certified mail, return receipt requested; one copy shall be attached to the Standard Form 1034 and each copy of the Standard Form 1034A (see 1842.9(c)) on which the deduction is made, and one copy shall be sent to the auditor.

(c) The total amount suspended or disapproved, as shown on the NASA Form 456, shall be inserted in the Differences block of the Standard Form 1034 and Standard Form 1034A, citing the applicable NASA Form 456.

(d)(1) If the amount of the deduction is more than the amount of the public voucher, the installment method of deduction shall be applied to this and subsequent public vouchers until the amount is fully liquidated. The deductions on any voucher may not exceed the voucher amount, to avoid processing of a voucher in a credit amount. Public voucher(s) with zero amounts must be forwarded to the fiscal or financial management office for appropriate action.

(2) If deductions are in excess of contractor claims, recovery may be made through a direct refund from the contractor, in the form of a check payable to NASA, or by a set-off deduction from the voucher(s) submitted by the contractor under any other contract, unless those contracts contain a "no set-off" provision. If a set-off is effected, the voucher(s) from which the deduction is made should be annotated to identify the contract and appropriation affected and the applicable NASA Form 456.

1842.1008 [Amended]

e. In section 1842.1008, the word "chairman" is revised to read "chairperson".

f. Subpart 1842.71 is added to read as follows:

Subpart 1842.71—Submission of Vouchers

1842.7101 Processing of vouchers.

(a) Under the authority of FAR 42.803, NASA had designated the contract auditor as the contracting officer's representative for (1) promptly examining reimbursement vouchers received directly from contractors, (2) promptly transmitting vouchers approved for provisional payment to the cognizant fiscal or financial management officer, and (3) regarding costs claimed, but not considered allowable, preparing and sending to the cognizant contracting officer NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved. Normally, the NASA Form 456 is initiated by the auditor; however, the contracting officer also may initiate it or direct is initiation. In accordance with any instructions received from the contracting officer, the contract auditor shall promptly examine and approve (but see paragraph (b) of this section) separate fee vouchers and fee portions of vouchers for provisional payment

under the contract. After examination, the auditor shall forward completion vouchers to the contracting officer for approval and transmittal to the cognizant fiscal or financial management officer.

(b) When the audit functions are delegated, special instructions may be issued to the contract auditor to—

(1) Require submission of separate vouchers for reimbursable costs and for payment of earned fee; and/or

(2) Reserve to the contracting officer approval of separate fee vouchers and all vouchers submitted by contractors performing at a NASA installation.

(c) Unless otherwise notified, the contractor shall be required to submit public vouchers to the auditor as follows:

(1) One original Standard Form 1034, Standard Form 1035, or equivalent contractor's attachment shall be submitted.

(2) Seven copies of Standard Form 1034A, Standard Form 1035A, or equivalent contractor's attachment shall be submitted.

(3) The contractor shall mark Standard Form 1034A copies 1, 2, 3, 4, and such other copies as may be directed by the contracting officer by inserting in the memorandum block names and addresses as follows:

(i) Copy 1, NASA contracting officer.

(ii) Copy 2, cognizant audit office.

(iii) Copy 3, Contractor.

(iv) Copy 4, Contract administration office.

(v) Copy 5, project management office (when required by the NASA contracting officer).

(4) The auditor shall retain an unpaid copy of the voucher.

(5) When a voucher contains one or more individual direct freight charges of $100 or more, an additional copy of Standard Form 1034A and Standard Form 1035A shall be submitted and marked for return to the contractor after payment. This copy shall be transmitted quarterly by the contractor with the freight bills to the General Services Administration. When a voucher is identified as the "Completion Voucher," an additional copy shall be submitted for transmittal to the NASA contracting officer.

(d) When necessary, the contracting officer should consult with the auditor or the financial management officer concerning preparation, examination, and payment of vouchers. Functions to be performed by auditors and financial management and fiscal office personnel during the examination of vouchers are in FMM 9630.

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

14. Part 1844 is amended as set forth below:

a. In Subpart 1844.1, sections 1844.102 and 1844.102–70 are revised to read as follows:

1844.102 Policy.

(a) It is NASA policy to retain consent to subcontract authority—

(1) Under fixed-price contracts required to include the clause at FAR 52.244–1;

(2) Under cost reimbursement and letter contracts required to include the clause at FAR 52.244–2;

(3) Under time-and-material and labor-hour contracts required to include the clause at FAR 52.244–3;

(4) For all subcontracts designated as requiring special surveillance. (See 1844.102–70 on special surveillance.)

(b) However, if the contracting officer considers it necessary to delegate consent to subcontract authority, the contracting officer shall—

(1) Justify in writing the rationale for such delegation;

(2) Obtain written approval of the justification from the procurement officer or a designee; and

(3) Include the approved justification in the contract file.

1844.102–70 Contracting officer designated special surveillance and consent requirements.

(a) Notwithstanding approval of a contractor's purchasing system, the contracting officer may require the contractor to obtain consent for any subcontract or class of subcontracts selected for special surveillance. Such subcontracts shall be identified in the schedule of the contract. In making subcontracts subject to special surveillance consent requirements, the contracting officer should consider specific subcontract awards, as well as any individual systems, subsystems, components, technologies, and services which would have contracting officer consent prior to being subcontracted. Any subcontract for which consent was not provided at the time of contract award, under a cost type prime contract (FAR 44.102–1(c)), for which the Government would have required cost and pricing data in accordance with FAR 15.806–2(a) (1) or (2), shall be identified for special surveillance.

(b) For each planned contract award expected to exceed $1 million in total estimated value (inclusive of options), the contracting officer, in conjunction with the technical representative, when appropriate, shall review the information available at the time of contract award to determine whether certain subcontracts require special surveillance. At a minimum, the contracting officer review should consider such factor as—

(1) The degree of subcontract pricing uncertainties at the time of contract award;

(2) The overall quality of the contractor's approach to pricing subcontracts;

(3) The extent of competition achieved, or to be achieved, by the contractor in the award of subcontracts;

(4) Technical complexity and the criticality of specific supplies, services, and technologies on the successful performance of the contract; and

(5) The potential impact of planned subcontractors on source selection or incentive arrangements.

(c) The contracting officer shall document results of the review in the contract file, and include the requirement to obtain consent for subcontracts identified for special surveillance in the schedule of the contract. For contract modifications and change orders, the contracting officer shall make the determination required by paragraph (b) of this section whenever the value of any subcontract resulting from the change order or modification:

(1) Is proposed to exceed $100,000; or

(2) Is one of a number of subcontracts with a single subcontractor, under the contract, for the same or related supplies or services, that in the aggregate are expected to exceed $100,000.

1844.102–71 [Amended]

b. In the section heading and paragraph (a) of section 1844.102–71, the word "critical" is removed.

c. In Subpart 1844.3, sections 1844.302–70 and 1844.302–71 are revised, and sections 1844.304–70, 1844.305, and 1844.307–70 are added to read as follows:

1844.302–70 DCMC-conducted contractor purchasing system reviews.

For contracts within their cognizance, NASA contracting officers shall be aware of purchasing system approval status and are encouraged to become actively involved with the Defense Contract Management Command (DCMC) in the Contractor Purchasing System Review (CPSR) process. Involvement should include the following:

(a) Verifying that CPSRs are being conducted as required for each contractor meeting the thresholds in FAR 44.302.

(b) Ensuring that purchasing system review specifically includes the business unit performing the NASA contract.

(c) Actively participating as a team member, or arranging NASA representation, on DCMC CPSRs. At a minimum, such participation or representation shall be arranged when the DCMC CPSR review involves—

(1) Contractors with major NASA programs;

(2) Contractors' business units where the total dollar value of NASA contracts is substantial; or

(3) Any contractor system where the contracting officer has special concerns.

Participation should be oriented towards reviewing those areas of NASA-specific interest within the contractor's procurement operation.

(d) Ensuring that the selected CPSR sample to be reviewed reflects the level of NASA business in the contractor's purchasing organization.

(e) Providing to the cognizant DCMC CPSR team leader any areas of special emphasis regarding the contractor's procurement operation, to ensure that the review is tailored to address any NASA concerns, in addition to complying with FAR requirements for the review format.

§ 1844.302-71 NASA-conducted contractor purchasing system reviews.

If a NASA activity is the cognizant contract administration office, or after coordination with the cognizant DCMC CPSR office, it is determined that a CPSR is required but cannot be accomplished by DCMC, then a CPSR should be conducted by NASA personnel. The NASA CPSR team leader:

(a) May use DOD FAR Supplement, Contractor Purchasing System Review (CPSR) guidance, as a general guide to conducting the CPSR.

(b) May vary the scope of review depending on the contractor and contracts involved.

(c) Shall maintain close coordination with the cognizant ACO during CPSRs at contractors under DOD cognizance.

§ 1844.304-70 Surveillance.

(a) In the period between complete CPSRs, NASA contracting officers shall maintain a sufficient level of surveillance to ensure contractor purchasing efforts in support of NASA contracts are accomplished in an appropriate manner and protect the interests of the Agency.

(b) Surveillance shall be accomplished primarily through performance of consent-to-subcontract reviews (see FAR 44.202). Other methods of surveillance, including periodic reviews of contractor purchasing records may also be conducted. Contracting officers shall document the results of consent-to-subcontract reviews and periodic reviews, maintaining a record of contractor subcontract or purchase order award performance on NASA contracts. Contractor performance shall be summarized on an annual basis and provided to the ACO cognizant of the contractor's purchasing system. Annual reports should summarize the number of consent reviews and other reviews conducted during the year by NASA representatives, and summarize the types and quantity of deficiencies identified during reviews, need for special reviews, and recommended areas of emphasis during future CPSRs.

§ 1844.305 Granting, withholding, or withdrawing approval.

ACO actions related to purchasing system approval have a potential impact on NASA contracting officer consent requirements. Accordingly, NASA contracting officers should review system deficiencies documented in CPSR reports and when results of consent reviews and other sources conflict with CPSR or DOD surveillance conclusions, formally communicate such concerns to the ACO having cognizance of procurement system approval. Significant issues or significant conflicts with DOD CPSR results should be formally referred to Headquarters, Code HM.

§ 1844.307-70 Reporting.

NASA contracting officers, when delegating contract administration to a DOD contract administration office under FAR 42.202 and 42.302(a)(50), are required by 1842.202-70(f) to include in the letter of delegation of contract administration functions a requirement for the contract administration office to provide the NASA contracting officer with adequate advance notification of scheduled CPSRs and a copy of each CPSR report.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

15. Part 1852 is amended as set forth below:

a. Sections 1852.216-72, 1852.216-73, and 1852.216-74 are revised to read as follows:

1852.216-72 Evaluation of offers subject to economic price adjustment.

As prescribed in 1816.203-4(d), insert the following provision:

Evaluation of Offers, Subject to Economic Price Adjustment

(Dec. 1991)

(a) Notwithstanding the requirements of the _____ * clause, offers shall be evaluated on the basis of quoted prices without an amount for economic price adjustment being added. Offers that provide for a ceiling lower than any ceiling stipulated in the clause, shall be awarded at the lower ceiling.

(b) Offers that provide for adjustment(s) that may exceed any maximum adjustment stipulated in the clause, or that limit or delete any downward adjustment stipulated in the clause, shall be rejected.

1852.216-73 Estimated cost and cost sharing.

As prescribed in 1816.307-70(a), insert the following clause:

Estimated Cost and Cost Sharing

(Dec. 1991)

(a) It is estimated that the total cost of performing the work under this contract will be $_____.

(b) For performance of the work under this contract, the Contractor shall be reimbursed for not more than _____ percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining _____ percent or more of the costs of performance so determined shall constitute the Contractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the _____ [insert "Limitation of Cost" or "Limitation of Funds"] clause, the total estimated cost to the Government is hereby established as $_____ (insert estimated Government share); this amount is the maximum cost for which the Government is obligated.

(d) The Contractor shall maintain records of all contract costs claimed by the Contractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the Contractor shall not be charged to the Government under any other grant, contract, or agreement (including allocation to other grants, contracts, or agreements as part of an independent research and development program). (End of clause)

1852.216-74 Estimated cost and fixed fee.

As prescribed in 1816.307-70(b), insert the following claus:

Estimated Cost and Fixed Fee

(Dec. 1991)

The estimated cost of this contract is _____ exclusive of the fixed fee of _____. The total estimated cost and fixed fee is _____. (End of clause)

b. Section 1852.216-76 is revised to read as follows:

* Insert the title of the clause providing for economic price adjustment. (End of provision)

1852.216-76 Award Fee.

As prescribed in 1816.405-70(a), insert the following clause:

Award Fee

(Dec. 1991)

(a) The Government shall pay the Contractor for performing this contract such base fee, if any, and such additional fee as may be awarded, as provided in the Schedule.

(b) Payment of the base fee and award fee shall be made as specified in the Schedule; provided that, after payment of 85 percent of the base fee and potential award fee, the Contracting Officer may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or $100,000, whichever is less.

(c) Award fee determinations made by the Government under this contract are not subject to the Disputes clause. (End of clause)

c. Sections 1852.216-79 and 1852.216-80 are revised to read as follows:

1852.216-79 Level-of-Effort (Fixed-Price).

As prescribed in 1816.207-70(a), insert the following clause:

Level-of-Effort (Fixed-Price)

(Dec. 1991)

(a) In accomplishing the work required under this contract, the Contractor shall provide _____ direct labor hours as a minimum. These hours shall be expended as follows:

Labor Category and Minimum Direct Labor Hours

(Insert the labor categories and associated direct labor hours.)

(b) "Direct labor hours" are those productive hours expended by Contractor personnel in performing work under this contract that are charged as direct labor under the Contractor's established accounting policy and procedures. The term *does not* include sick leave, vacation, holiday leave, military leave, or any type of administrative leave but does include direct labor hours provided under level-of-effort subcontracts.

(c) The Contractor may, at its own option, furnish more than the stated direct labor hours; however, the Contractor shall not be entitled to any increase in the fixed price of the contract for exceeding the stated direct labor hours.

(d) Within thirty (30) days after the end of the performance period and before submission of an invoice for final payment, the Contractor shall submit to the Contracting Officer a statement certifying the actual total number of direct labor hours expended under this contract. The Contractor further agrees to make available to the Contracting Officer such records as the Contracting Officer may reasonably require to determine that the minimum number of labor hours specified in this clause were expended in the performance of the work.

(e) If, at the end of the contract term, the Contractor has not provided the minimum direct labor hours specified above, the total fixed price of this contract shall be reduced as follows:

(Insert either a formula based upon the number of hours expended in the separate labor categories or the product of the hours of unexpended labor multiplied by one specified rate.) (End of clause)

1852.216-80 Task Ordering Procedure.

As prescribed in 1816.307-70(d), insert the following clause:

Task Ordering Procedure

(Dec. 1991)

Performance under this contract is subject to the following ordering procedure.

(a) Within the direct labor hours specified in the Level-of-Effort clause of this contract, the Contractor shall incur costs under this contract in the performance of task orders and task order modifications issued in accordance with this ordering procedure. No other costs are authorized without the express written consent to the Contracting Officer.

(b) From time to time during the term of this contract, the Contracting Officer will issue task orders in writing to the Contractor, providing specific information on work to be performed within the scope of the contract.

(1) Task orders will contain, as a minimum, the following information:

(i) Signature of the Contracting Officer.

(ii) Contract number, order number, and date.

(iii) Description of work.

(iv) Maximum dollar amount authorized (cost and fee or price).

(v) Maximum number of contract labor hours and other resources authorized.

(vi) Documentation requirements.

(vii) Delivery/performance schedule.

(viii) Quality assurance standards, as appropriate.

(ix) Travel authorized.

(x) Any other necessary information.

(2) Unless otherwise directed by the Contracting Officer, the Contractor shall submit the following information for each task order:

(i) Discussion of the technical approach for performing the work.

(ii) Estimated date of commencement of work, and any changes proposed to the schedule of performance.

(iii) Direct labor hours, both straight time and overtime (if authorized), on a monthly basis by applicable labor category, and the total direct labor hours, including those in (2)(b)(iv)(B) of this clause, estimated to complete the task.

(iv) The total estimated cost and fee, where appropriate, for completion of the task order; including:

(A) The travel and material estimates.

(B) An estimate for subcontractors and consultants, including the direct labor hours, if applicable.

(C) Estimated computer use time required, if applicable.

(D) Other pertinent information, such as indirect costs and inter-divisional transfers.

(3) Each task order shall require the Contractor to acknowledge receipt and acceptance of the task order within ten calendar days after receipt. If the Contractor cannot comply with a task order requirement, the Contractor shall indicate in his acknowledgment, the changes required prior to his acceptance. Any differences must be resolved between the parties and the order modified to reflect the agreement. (End of clause)

d. Sections 1852.216-82, 1852.216-83, 1852.216-84, 1852.216-85, and 1852.216-86 are revised to read as follows:

1852.216-82 Level-of-effort (cost).

As prescribed in 1816.307-70 (f), insert the following clause:

Level-of-Effort (Cost)

(Dec. 1991)

(a) (1) During the term of the contract, the Contractor is obligated to provide not less than _____ (insert minimum percentage or minimum number of hours) nor more than _____ (insert maximum percentage or maximum number of hours) of _____ total direct labor hours. The total direct labor hours are distributed between the contractor's applicable labor categories as follows:

Labor Category and Direct Labor Hours

(Insert the labor categories and associated direct labor hours.)

(2) The allocation of total direct labor hours between labor categories, as shown in paragraph (a)(1), reflects the best estimate of the skill mix required to perform the contract. It is understood and agreed that this allocation of direct labor hours may be varied, if necessary, in the actual performance of the work.

(b) "Direct labor hours" are those productive hours expended by Contractor personnel in performing work under this contract that are charged as direct labor under the Contractor's established accounting policy and procedures. The term *does not* include sick leave, vacation, holiday leave, military leave, or any type of administrative leave but does include direct labor hours provided under level-of-effort subcontracts.

(c) Once the maximum number of direct labor hours is reached or the contract term has ended, the Contractor's obligations under the contract are fulfilled, even though the specified work may not have been completed. The Contractor is not authorized to exceed the maximum of the direct labor hours specified in paragraph (a) of this clause. Any estimated cost and fee(s) adjustments for additional direct labor hours shall be based solely upon those hours being added to the maximum number of direct labor hours specified in this clause.

(d) The fee, if any, is based upon the furnishing of at least the specified minimum number of direct labor hours, including subcontract hours. If the Contractor provides less than that specified minimum number of hours prior to expiration of the contract term, and the Government has not invoked its

rights under the Termination clause of this contract to adjust the contract for such reduced effort, the Contracting Officer may unilaterally make an equitable downward adjustment to the contract fee. The downward adjustment in fee will be based upon the difference between the minimum direct labor hours specified under this clause and the amount of direct labor hours provided by the Contractor. Prior to making such an adjustment, the Contracting Officer will request the Contractor provide a written discussion of any extenuating circumstances (e.g., productivity improvements or reductions in contract scope) which contributed to the underrun. Any information provided by the Contractor will be considered by the Contracting Officer in determining the amount of the downward adjustment in fee. (End of clause)

1852.216-83 Fixed Price Incentive.

As prescribed in 1816.405-70(b), insert the following clause:

Fixed Price Incentive

(Dec. 1991)

The target cost of this contract is $_____. The Target profit of this contract is $_____. The target price (target cost plus target profit) of this contract is $_____. [The ceiling price is $_____.] (End of clause)

1852.216-84 Estimated Cost and Incentive Fee.

As prescribed in 1816.405-70(c), insert the following clause:

Estimated Cost and Incentive Fee

(Dec. 1991)

The target cost of this contract is $_____. The target fee of this contract is $_____. The total target cost and target fee as contemplated by the Incentive Fee clause of this contract are $_____. (End of clause)

1852.216-85 Estimated Cost and Award Fee.

As prescribed in 1816.405-70(d), insert the following clause:

Estimated Cost and Award Fee

(Dec. 1991)

The estimated cost of this contract is $_____. The base fee is $_____, and the maximum available award fee is $_____. Total estimated cost, base fee, and maximum award fee are $_____. (End of clause)

1852.216-86 Settlement of Letter Contract.

As prescribed in 1816.603-470, insert the following clause:

Settlement of Letter Contract

(Dec. 1991)

(a) This contract constitutes the definitive contract contemplated by issuance of letter contract _____ (insert number), dated _____. It supersedes the letter contract and its modification no.(s) _____ and, to the extent of any inconsistencies, governs.

(b) The cost(s) and fee(s), or price(s), established in this definitive contract represent full and complete settlement of letter contract _____ and modification no.(s) _____. (End of clause)

1852.216-87 [Amended]

e. In section 1852.216-87, the citation "1816.307-70(h)" is revised to read "1816.307-70(g)."

1852.232-80 [Redesignated]

f. Section 1852.232-80, Date of Incurrence of Costs, is redesignated as section 1852.231-70, and is revised to read as follows:

1852.231-70 Date of Incurrence of Costs.

As prescribed in 1831.205-70, insert the following clause:

Date of Incurrence of Costs

(Dec. 1991)

The Contractor shall be entitled to reimbursement for costs incurred on or after _____ in an amount not to exceed $_____ that, if incurred after this contract had been entered into, would have been reimbursable under this contract. (End of clause)

1852.232-76 [Redesignated]

g. Section 1852.232-76, Advance Payments, is redesignated as 1852.232-12 and revised to read as follows:

1852.232-12 Advance Payments.

As prescribed at 1832.412, modify the "Maximum Payment" paragraph (either paragraph (d) or (e)) of 52.232-12, Advance Payments, as follows:

In the sentence that begins "When the sum of", change the word "When" to lower case and insert before it the following: "Unliquidated advance payments shall not exceed $ * * * at any time outstanding. In addition * * *".

1852.232-75 [Removed]

h. Section 1852.232-75 is removed in its entirety.

PART 1853—FORMS

16. Part 1853 is amended as set forth below:

1853.215-2 [Amended]

a. Section 1853.215-2 is revised to read as follows:

1853.215-2 Price negotiation (NASA Form 634 and DD Form 1861).

(a) NASA Form 634, Structured Approach—Profit/Fee Objective. NASA Form 634, prescribed at 1815.970(a), shall be used for determining the profit or fee objective by the structured approach.

(b) DD Form 1861, Contract Facilities Capital Cost of Money. DD Form 1861, prescribed at 1815.970-3(b), shall be used to calculate facilities capital cost of money.

1853.242-70 [Amended]

b. In section 1853.242-70, paragraph (d), the citation "1842.202(a)(2)(i)" is revised to read "1842.202(c)(7)".

[FR Doc. 92-273 Filed 1-8-92; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 900124-0127]

Atlantic Surf Clam and Ocean Quahog Fishery

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

ACTION: Temporary notification requirements; removal.

SUMMARY: NMFS issues this notice to remove temporary notification requirements for the surf clam and ocean quahog fisheries. NMFS has determined more industry comment is appropriate before final requirements are implemented. These requirements were published in the **Federal Register** on December 2, 1991 (56 FR 61182).

EFFECTIVE DATE: The temporary notification requirements are removed effective January 6, 1992.

FOR FURTHER INFORMATION CONTACT: Myles A. Raizin, Resource Policy Analyst (508-281-9104).

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 8 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fishery (Amendment 8) were published on June 14, 1990 (55 FR 24184), with the regulations becoming fully effective on September 30, 1990.

Prior to the implementation of Amendment 8, vessel owners operating in the Mid-Atlantic surf clam fishery were required to provide written notice of their intention to fish for surf clams, up to 15 days prior to the fishing trip. Scheduled fishing trips could be canceled with advance notice. Also, during the months of November through April, vessel owners or operators could claim a bad weather "make up" day if, in their opinion, the weather conditions did not permit safe fishing operations. The make up day was the authorized fishing day immediately following the

day on which the fishing trip was scheduled.

Amendment 8 changed the management system from one of strict effort restrictions and notice requirements to an individual transferable quota (ITQ) based system. ITQs are issued as a portion of the total annual quota based on a percentage derived from a regulatory formula. Vessel operators fish for their respective ITQs at will, as long as there is remaining quota to be caught. Under such a system, the monitoring of the harvest on a vessel by vessel basis becomes critical to ensure that no one exceeds their ITQ and the integrity of the annual quota remains intact. Monitoring is accomplished through the use of an enhanced vessel and processor reporting system and shellfish cage tagging requirements.

Since enforcement is a critical aspect of an effective ITQ system, the regulations implementing Amendment 8 contain a provision that allows the Regional Director to specify notification requirements by publishing a notice in the **Federal Register**. For more than a year, the vessels in the fishery have operated without any scheduled fishing times. While enforcement agents were able to inspect some boats upon landing for compliance with the reporting and cage tagging requirements, the agents have had no advance knowledge during the last year regarding which boats were conducting fishing operations on any given day.

Those administering the ITQ system believe that knowledge of which vessels are fishing on any day is a necessary adjunct to the reporting requirements. Consequently, proposed notification requirements were published on October 11, 1991 (56 FR 51368). One set of written comments were received from the industry. The notification requirements were finalized and published on December 2, 1991 (56 FR 61182) and made effective from November 26, 1991 through December 31, 1992. The temporary notification requirement provided that vessel owners or operators notify the Regional Director at least 24 hours prior to departure on a fishing trip.

Possibly because the fishery has been virtually unregulated with respect to the actual fishing operations for over a year, the industry took little notice of the proposed notification requirements process. Prior to Amendment 8, proposals such as notification requirements were developed mainly within the Mid-Atlantic Fishery Management Council. Industry had ample opportunity to air its views and debate the merits of such a proposal. According to some recent industry comments, the 24-hour notice requirement may possibly be less flexible than requirements that existed prior to Amendment 8. This results from the fact that there is no make up day in place under the Amendment 8 regulations. Thus, weather conditions again become a complicating factor relative to the notification requirements. For example, processing plants that schedule vessels to fish on a certain day lose some flexibility if those boats are unable to leave port due to weather and the plant is unable to contact other vessels to make trips to supply the product it needs to keep its processing lines operating.

The Regional Director is concerned over the problems recently raised by industry. Notification requirements should be at the least intrusive on industry yet adequate for effective enforcement. Consequently, the notification requirements are being removed in favor of a more deliberative process. A proposed rulemaking will be published containing revised notification requirements after soliciting input from industry advisors, the Mid-Atlantic Council, and law enforcement personnel. Incorporating the notification requirements as actual regulatory text will also obviate the need to publish a notice in the **Federal Register** each year reimposing the notification requirements.

Other Matters

This action is taken under the authority of 50 CFR part 652 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: January 3, 1992.

David S. Crestin,

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

[FR Doc. 92-455 Filed 1-6-92; 3:06 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 6
Thursday, January 9, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 91-194]

Importation of Apricots, Persimmons, and Pomegranates From Sonora, Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow apricots, persimmons, and pomegranates to be imported into the United States from certain municipalities in Sonora, Mexico. This action appears warranted because these municipalities are free of certain injurious insect pests that attach the fruits. Apricots, persimmons, and pomegranates currently may not be imported from Mexico because of the existence of various fruit flies in that country and the lack of a suitable treatment to eliminate the fruit flies from these fruits. Adoption of this proposal would provide importers and consumers in the United States with additional source of apricots, persimmons, and pomegranates.

DATES: Consideration will be given only to comments received on or before January 20, 1992.

ADDRESSES: To help insure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-194. Comments received may be inspected at USDA room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 639-C, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436-5231.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 *et seq.* (referred to below as "the regulations") prohibit or restrict the importation of fruits and vegetables into the United States from certain foreign countries and localities to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within the United States.

Section 319.56-2, paragraph (e), of the regulations provides, among other things, that fruits and vegetables may be imported into the United States without treatment for certain injurious insects that attach the fruit or vegetable, if the fruit or vegetable is imported from a "definite area or district" of the country of origin that is free from those injurious insects. Paragraph (f) of § 319.56-2 contains criteria for importation of fruits and vegetables from a definite area or district.

Paragraph (h) of § 319.56-2 states that the Administrator has determined that the following municipalities in Sonora, Mexico, meet the criteria of § 319.56-2 (e) and (f) with regard to the insect pests *Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua,* and *A. fraterculus:* Altar, Atil, Caborca, Carbo, Empalme, Hermosillo, Pitiquito, Puerto Penasco, and San Miguel. Paragraph (h) further provides that apples, grapefruit, oranges, peaches, and tangerines may be imported from these areas without treatment for the insect pests named.

We are proposing, in addition, to allow apricots, persimmons, and pomegranates to be imported from these areas without treatment for the insect pests named.

Pest risk analyses conducted by the agency have determined that any other injurious insects that might be carried by these fruits would be readily detectable by a U.S. Department of Agriculture inspector. In accordance with § 319.56-6 of the regulations, the fruits would be subject to inspection at the port of first arrival and to such treatment as may be required by an inspector.

Therefore, it appears that this proposed change in the regulations can be made without increasing the risk of introducing injurious insect pests, including fruit flies, into the United States.

Comment Period

Mr. Robert Melland, Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by providing for a 10-day comment period on this proposed rule. This proposed rule would relieve restrictions on the importation of apricots, persimmons, and pomegranates from municipalities in Sonora, Mexico, that have previously been determined to be free of certain insect pests that attack the fruit. The 10-day comment period will allow the agency to promulgate and implement a final rule in time for the spring shipping season for the fruit. This rulemaking would benefit interested U.S. importers, distributors, and retailers by allowing them the opportunity to import, distribute, and sell Mexican apricots, persimmons, and pomegranates. It also would provide U.S. consumers with additional sources of these fruits.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule has been reviewed in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect 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.

This proposed rule would allow fresh apricots, persimmons, and pomegranates to be imported into the United States from certain municipalities in Sonora, Mexico. Small entities that could be affected by this action include importers of apricots, persimmons, and pomegranates, and

domestic growers, distributors, and retailers of these fruits.

We anticipate, however, that the economic impact on these entities would be insignificant, based on the amount of apricots, persimmons, and pomegranates that we expect to be imported from the specified municipalities.

The United States produces approximately 19,000 tons of fresh apricots annually. Approximately two-thirds of all fresh apricots are produced in California. Mexico produces about 5,500 tons of apricots annually, with Sonora producing 730 tons. Sonora estimates it will export close to 300 tons of fresh apricots to the United States annually, which represents 1.6 percent of total U.S. production and 2.4 percent of California production.

California produces approximately 99 percent of the 20,000 tons of pomegranates grown in the United States each year. Mexico produces 4,342 tons annually, while Sonora produces 640 tons. It is not known what portion of Sonoran pomegranates would be exported to the United States. However, if all Sonoran pomegranates were sent to the United States, they would comprise only 3.3 percent of the total U.S. crop.

Sonora is the dominant persimmon producer in Mexico. This region produces 235 of the 255 tons of Mexican persimmons grown each year. Again, California produces almost 100 percent of the 3,700 tons of persimmons each year in the United States. If the entire 235 tons of Sonoran persimmons were shipped to the United States, it would be about 6.4 percent of the total U.S. supply.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

§ 319.56-2 [Amended]

2. In § 319.56–2, paragraph (h) would be amended by adding the word "apricots," immediately after the word "Apples,"; and by adding the words "persimmons, pomegranates," immediately after the word "peaches,".

Done in Washington, DC, this 6th day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–535 Filed 1–8–92; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150-AE13

Limited Revision of Fee Schedules

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing two limited amendments to its regulations governing the assessment on license and annual fees. The proposed rule would assess license fees which are based on the full cost method quarterly instead of semiannually. The proposed rule would establish a lower tier small entity annual fee for those licensees that are small entities with relatively low annual gross receipts or supporting populations. The proposed amendments would improve NRC financial management and further mitigate the impact of the annual fee on small licensees with relatively low annual gross receipts or supporting populations.

DATES: The comment period expires February 10, 1992. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure only that comments received on or before this date will be considered. Because the Commission needs to incorporate the final results of this proposed rule in developing the FY 1992 annual fees, including those reduced fees for small entities, requests for extensions of the comment period will not be granted.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 am and 4:15 pm Federal workdays. (Telephone 301–504–1966).

Copies of comments received may be examined at the NRC Public Document Room at 2120 L Street, NW., Washington, DC 20555, in the lower level of the Gelman Building.

The agency workpapers that support these proposed changes to 10 CFR parts 170 and 171 are available in the Public Document Room at 2120 L Street, NW., Washington, DC, in the lower level of the Gelman Building.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–492–4301.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Proposed Action.
III. Section-by-Section Analysis.
IV. Environmental Impact: Categorical Exclusion.
V. Paperwork Reduction Act Statement.
VI. Regulatory Analysis.
VII. Regulatory Flexibility Analysis.
VIII. Backfit Analysis.

I. Background

The NRC assesses two types of fees: (1) License and inspection fees are assessed under 10 CFR part 170 to recover the costs to the NRC of providing individual services (e.g., inspections and license application reviews) to specific applicants for, and holders of, NRC licenses and approvals; and (2) Annual fees are assessed under 10 CFR part 171 to recover NRC generic and other regulatory costs not recovered under 10 CFR part 170.

On July 10, 1991, the Commission published a final rule that revised the fee schedules contained in 10 CFR parts 170 and 171 (56 FR 31472). These revisions were necessary to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA) (Public Law 101–508) which requires the NRC to recover approximately 100 percent of its budget authority for FY 1991 through 1995 from

the assessment of license and annual fees.

In implementing the Public Law, the NRC is required to evaluate the impact of its fees on small entities by the Regulatory Flexibility Act of 1980 (RFA). To obtain information to evaluate these impacts, the proposed rule, published by the Commission on April 12, 1991, specifically requested comments on the impact of the proposed fees on small entities (56 FR 14870). Using the comments received on the proposed rule, the Commission concluded that the revised annual fees would significantly impact upon a substantial number of materials licensees that are small entities. Therefore, a regulatory flexibility analysis was prepared for the final rule as required by the RFA. For the analysis, the Commission examined the impacts of the annual fees on small entities and addressed specific alternatives to minimize these impacts. As a result of this analysis, the NRC established a maximum annual fee of $1,800 per licensed category for those materials licensees who could qualify as a small entity under the NRC's size standards. The Commission noted that this decision balanced the objectives of the OBRA and the RFA by reducing, but not eliminating, the impact of the annual fees on small entities. The NRC adopted size standards for determining which NRC licensees qualify as small entities on December 9, 1985 (50 FR 50241), and clarified these size standards on November 6, 1991 (56 FR 56672). The NRC size standards for small entities are as follows:

1. A small business is a business with annual receipts of $3.5 million or less except private practice physicians for which the standard is annual receipts of $1 million or less.

2. A small organization is a not-for-profit organization which is independently owned and operated and has annual receipts of $3.5 million or less.

3. Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

4. A small educational institution is one that is (1) supported by a qualifying small governmental jurisdiction, or (2) one that is not state or publicly supported and has 500 employees or less.

In subsequent sections of this proposed rule, the $3.5 million size standard (Standard 1) will be used to represent small entities unless it is necessary to distinguish between the types of small entities.

The Commission followed the requirements of Public Law 101-508, and the guidance of the Conference Report accompanying the Public Law, in establishing the license and annual fees for FY 1991. Section 170.12 of the license fee regulations establishes the payment intervals for Part 170 license and inspection fees. Section 171.16(c) of the annual fee regulations establishes a maximum annual fee of $1,800 for those materials licensees who can qualify as a small entity under the NRC's size standards.

II. Proposed Action

The following discussion addresses proposed limited changes to 10 CFR parts 170 and 171. The proposed change to part 170 would reduce the interval between the time the NRC provides a specific service and the time NRC issues a bill for that service. The proposed change to part 171 would further reduce the impact of the annual fees on small materials licensees.

A. Change to 10 CFR Part 170 Billing Interval

Currently, all part 170 fees are paid upon submission of an application or are billed at least quarterly, except for fees for licensing actions (e.g., amendments, renewals or approvals) relating to reactors and certain materials licensees which are billed every six months. Sound financial management requires that bills for fees be sent promptly. Some licensees have suggested that if they received NRC bills more frequently, they would have useful cost information sooner. These licensees have indicated that information on these bills would assist them in making more timely business decisions on items such as contract modifications. The Commission is therefore proposing that the billing interval be changed from semiannually to quarterly for reactor and certain materials licensing actions.

B. Change to 10 CFR Part 171 Small Entity Fee

The Commission continues to receive written and oral comments from small materials licensees concerning the impact of the part 171 annual fees. According to these comments, the $3.5 million threshold for small entities is not representative of small businesses with gross annual receipts in the thousands of dollars. These commenters indicate that the $1,800 maximum annual fee for small entities represents a relatively high percentage of gross annual receipts for these types of businesses and could have a significant impact on their ability to continue to operate. Clearly, some of the over 1,000 termination requests that have been received since the revised fees were implemented represent these relatively small entities.

Members of Congress, in many of the more than 100 letters the NRC has received from them since the final rule was published, have expressed concern about the size of the annual fees and their economic impact on small entities. Some of these letters have suggested that the Commission should act to further reduce the economic impact on those materials licensees conducting limited operations.

The Small Business Administration (SBA), while commending the Commission for complying with and using the Regulatory Flexibility Act in the final rulemaking, suggested that the Commission should act to further alleviate the impact of the annual fees on small businesses. The American Nuclear Society has also recently expressed concern about the impact on the annual fees on small entities and suggested that the Commission examine alternatives to further reduce these impacts.

The Commission agrees that the current maximum annual fee of $1,800 for small entities, when added to the part 170 license and inspection fees, could have a significant economic impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, the Commission is proposing to further reduce the impact on small entities with relatively low gross annual receipts. Although the NRC would, for FY 1992, continue the maximum annual fee of $1,800 for certain small entities, the NRC is proposing that a second, lower tier small entity fee of $400 be established. Small businesses and non-profit organizations with gross annual receipts of less than $250,000 and small governmental jurisdictions with populations of less than 20,000 would qualify for the lower tier small entity fee. The basis for this proposal is discussed in detail in the Regulatory Flexibility Analysis included as Appendix A to this proposed rule.

The Commission believes that by defining relatively small gross annual receipts as less than $250,000, a significant number of small entities (approximately 50%) would be eligible for a further reduction of the impact of the annual fees. The Commission also believes that by defining a relatively small governmental jurisdiction as a population of less than 20,000, approximately 50 percent of the small governmental jurisdictions would be eligible for a further reduction in fees. These annual gross receipt and population levels would also help

ensure that those licensees who probably would be impacted the most by the annual fee would pay the lower amount. The Commission believes that the $400 fee would ensure that the lower tier small entities would receive a reduction (e.g., 75% for qualifying nuclear gauge licensees) substantial enough to mitigate any severe impact resulting from the annual fee. In addition, the amount of the small entity costs borne by other licensees would be equivalent to the $5.0 million estimated in the current rule, increased by 20% to account for the FY 1992 budget increase and the reduction in the number of material licensees due to license terminations.

The Commission emphasizes that the scope of this proposed rule has a very narrow focus. The proposed amendments are limited to the questions of (1) whether and how the Part 170 license fee billing interval should be modified and (2) whether and how to further alleviate the impact of the part 171 annual fees on those materials licensees that meet the existing NRC small entity size standards. Comments will only be considered which address these two questions. This narrow focus is necessary in order that the Commission be in a position to issue a final rule acknowledging and responding to the comments on these amendments by early spring. The NRC is not seeking, and will not consider, comments relating to a change in the NRC's existing size standards under which a licensee could qualify as a small entity for annual fee purposes, suggested changes in the structure of the specific fee categories, or suggested changes in the methods for allocating costs and calculating the annual fees.

Because the Commission intends to incorporate the comments received from this proposed rule in developing the FY 1992 annual fees, the annual fees for FY 1992 will be published in the **Federal Register** as a General Notice in Spring 1992, rather than in December 1991, as indicated in the July 10, 1991, final rule (56 FR 31724). In accordance with § 171.13, the NRC will continue to issue quarterly bills for the annual fees, beginning in December 1991, for annual fees greater than $100,000 which are based on the current 10 CFR part 171 annual fee schedule (56 FR 31506). The NRC will publish in the **Federal Register**, a General Notice in January 1992, updating the part 170 hourly rate and flat fees based on the NRC's FY 1992 appropriation.

III. Section-By-Section Analysis

The following analysis of those sections that would be affected under this proposed rule provides additional explanatory information. All references are to title 10, chapter I, U.S. Code of Federal Regulations.

Part 170

Section 170.12 Payment of Fees.

Paragraphs (b)(2), (c)(2), (d)(2), (e)(1), (f), and (i) of this section are amended by changing the interval at which the NRC bills applicants and licensees from six months to quarterly. This change would result in NRC billing fees for licensing and approval actions, based on the full cost method (professional staff hours and contractual costs), at quarterly intervals rather than every six months. This proposed amendment would be applicable primarily to reactors and fuel cycle facilities and would result in all part 170 full cost fees being billed at least quarterly. Good financial management practice requires that fee billings be made as promptly as is possible. Some licensees have suggested that the current six month billing interval be shortened in order that bills be issued on a more prompt and timely basis. More frequent billings would assist licensees in making business decisions on a more timely basis on items such as contract negotiations. The Commission is therefore proposing that licensing fees based on the full cost method be billed at quarterly intervals, e.g., December, March, June and September.

Part 171

Section 171.16 Annual Fees

Materials licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government agencies licensed by the NRC.

The introduction to paragraph (c) is amended (1) to provide for the continuation, in FY 1992, of a maximum annual fee of $1,800 per licensed category for those NRC licensees that meet NRC small entity size standards and (2) to establish a lower tier small entity annual fee of $400 per licensed category for those small businesses and non-profit organizations with gross annual receipts of less than $250,000 and for those small governmental jurisdictions with a population of less than 20,000. Data from an NRC survey of materials licensees and the Department of Commerce industry census show that about 50 percent of small businesses with gross annual receipts of less than $3.5 million have gross annual receipts of less than $250,000. Thus, the Commission is proposing to define a lower tier of small businesses with relatively low gross annual receipts as those with gross annual receipts less than $250,000. Under this proposal, a significant number of small entities would qualify for the further reduction of the annual fee. The proposed eligibility criterion would also help ensure that those small businesses who would probably be impacted the most by the annual fee would pay the lower amount.

The Commission used a similar approach in proposing a reduced annual fee for the small governmental jurisdiction standard of populations of less than 50,000. Data provided by the National Association of Counties show that about 50 percent of the counties located in non-Agreement States have a population of less than 20,000. Therefore, the Commission is proposing to establish a lower tier level of less than 20,000 population in order for a small governmental entity to qualify for the reduced annual fee of $400. This would ensure that at least 50 percent of the cities, towns, townships, villages, school districts, and other special districts would also receive the benefit because these jurisdictions are typically smaller than counties.

The Commission has not changed its basic definition of a small entity, that is, gross annual receipts of $3.5 million or less for businesses and nonprofit organizations; private practice physicians with gross annual receipts of $1 million or less, and small governmental jurisdictions with a population of less than 50,000.

Under this proposed rule, these three groups of NRC licensees would qualify for one of the two reduced annual fees depending on the level of the annual gross receipts or the respective population. A licensee with gross annual receipts of $1.5 million would pay a maximum small entity annual fee of $1,800 per licensed category. A licensee with annual gross receipts of $200,000 would qualify for the lower tier small entity fee of $400 per licensed category. Private practice physicians whose annual gross receipts are from $250,000 to $1 million, would pay the maximum annual fee of $1,800 per licensed category, while those private practice physicians with annual gross receipts of less than $250,000 would pay the reduced annual fee of $400 per licensed category. Licenses issued to city or county governments, for example, with a population of less than 20,000 would qualify for the lower tier small entity fee of $400. The Commission believes that this proposed two-tiered approach will further alleviate the impact of fees on small entities with relatively low annual

gross receipts and the smaller governmental jurisdictions.

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for this proposed rule.

V. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VI. Regulatory Analysis

The Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) requires the NRC to recover approximately 100 percent of its budget authority for Fiscal Year 1991 and the succeeding four years through the assessment of license and annual fees. With respect to part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. The proposed limited change to part 170 would revise the fee billing interval to quarterly for those license fees that are currently billed every six months. This would result in all part 170 fees being billed at least quarterly. With respect to the limited changes to part 171, the Commission is proposing to adjust the maximum annual fee assessed to materials licensees who qualify as a small entity under the NRC's size standards. Although the Commission would continue the $1,800 maximum annual fee per licensed category for small entities, it is proposing a lower tier annual fee of $400 per licensed category for those small materials entities that have annual gross receipts of less than $250,000 and for those small governmental jurisdictions with a population of less than 20,000. This constitutes the regulatory analysis for this proposed rule.

VII. Regulatory Flexibility Certification/Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover 100 percent of its budget authority through the assessment of license and annual fees. This Act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

The NRC is proposing two limited amendments to its regulations governing the assessment of license and annual fees. The proposed limited changes to 10 CFR part 170 would assess license fees, which are based on the full cost method, quarterly instead of semiannually. This proposed change affects only the frequency of the billings and not the amount of the fees to be billed. In addition, this proposed change applies primarily to reactors and large fuel cycle facilities that are not small entities. Therefore, the Commission certifies that the proposed change to 10 CFR part 170, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule would continue, in 10 CFR part 171 of the Commission's regulations, the existing maximum annual fee of $1,800 per licensed category for small entities. However, the proposed rule would establish a lower tier small entity annual fee of $400 per licensed category for those NRC materials licensees who can qualify as a small entity under the existing NRC's size standards and whose annual gross receipts are less than $250,000 or, for those small governmental jurisdictions who have a population of less than 20,000. This reduced annual fee would be established one level or tier below the current $1,800 annual fee. The basis for this proposed amendment to 10 CFR part 171 is discussed in detail in the regulatory flexibility analysis which is included as appendix A to this proposed rule. The regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Consistent with the requirements of the Regulatory Flexibility Act, this proposed change to 10 CFR Part 171 would further alleviate the impact of future annual fees on the smallest materials licensees.

VIII. Backfit Analysis

The NRC has determined that the backfit rule 10 CFR 50.109 does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule because these amendments do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct, or operate a facility.

Lists of Subjects

10 CFR 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR 171

Annual charges, Byproduct material, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material, Holders of certificates, registrations, or approvals, Penalties.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is proposing the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACTION OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051, sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 170.12, paragraphs (b)(2), (c)(2), (d)(2), (e)(1), (f), and (i) are revised to read as follows:

§ 170.12 Payment of fees.

* * * * *

(b) *License fees.* * * *

(2) Fees for applications for permits and licenses that are subject to fees based on the full cost of the reviews are payable upon notification by the Commission. The NRC shall bill each applicant at quarterly intervals for all accumulated costs for each application the applicant has on file for Commission review until the review is completed. Each bill will identify the applications and costs related to each.

(c) *Amendment fees and other required approvals.* * * *

(2) Fees for applications for license amendments, other required approvals and requests for dismantling, decommissioning and termination of licensed activities that are subject to full cost recovery are payable upon

notification by the Commission. The NRC shall bill each applicant at quarterly intervals for all accumulated costs for each application the applicant has on file for Commission review until the review is completed except for those costs relating to amendment and other approvals for early site permits that were deferred before August 9, 1991. These costs will be billed in a deferred manner consistent with that addressed in paragraph (d)(4) of this section. Each bill will identify the applications and costs related to each.

(d) *Renewal fees.* * * *

(2) Fees for applications for renewals that are subject to the full cost of the review are payable upon notification by the Commission. Except for those costs deferred before August 9, 1991, as noted in paragraphs (d)(3) and (d)(4) of this section, the NRC shall bill each applicant at quarterly intervals for all accumulated costs for each application that the applicant has on file for Commission review until the review is completed. Each bill will identify the applications and the costs related to each.

(e) *Approval fees.* (1) Fees for applications for materials approvals that are not subject to full cost recovery must accompany the application when it is filed. Fees for applications or preapplication consultations and reviews subject to full cost are payable upon notification by the Commission. The NRC shall bill each applicant at quarterly intervals until the review is completed. Each bill will identify the applications and the costs related to each.

* * * * *

(f) *Special Project Fees.* Fees for applications for special projects such as topical reports are based on full cost of the reviews and are payable upon notification by the Commission. The NRC shall bill each applicant at quarterly intervals until the review is completed. Each bill will identify the applications and the costs related to each.

* * * * *

(i) *Part 55 review fees.* The costs for Part 55 review services will be subject to fees based on NRC time spent in administering the examinations and tests that are generally given at the reactor site and any related contractual costs. The costs also include related items such as preparing, reviewing, and grading of the examinations and tests. The costs will be billed at quarterly intervals to the licensee employing the operators.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY NRC

3. The authority citation for part 171 is revised to read as follows:

Authority: Section 7601, Pub. L. 99-272, 100 Stat. 146, as amended by Sec. 5601, Pub. L. 100-203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101-239, 103 Stat. 2106 as amended by Sec. 6101, Pub. L. 101-508, 104 Stat. 1338 (42 U.S.C. 2021b, 2213); sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

4. In § 171.16, the introductory text of paragraph (c) is revised to read as follows:

§ 171.16 Annual fees.

Material licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government agencies licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1992 based on gross annual receipts, or for small governmental jurisdictions, population density as follows:

* * * * *

Small businesses and small not-for-profit organizations (gross annual receipts)	Annual fee per licensed category
$250,000 to $3.5 million	$1,800
Less than $250,000	400
Private Practice Physicians (gross annual receipts):	
$250,000 to $1.0 million	1,800
Less than $250,000	400
Small governmental jurisdictions (population):	
20,000 to 50,000	1,800
Less than 20,000	400

* * * * *

Dated at Rockville, Maryland, this 3d day of January, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Appendix A to This Proposed Rule—Regulatory Flexibility Analysis for the Limited Amendment to 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et. seq.) establishes as a principle of regulatory practice, that agencies endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act request that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in the consideration of impacts under the Regulatory Flexibility Act, the NRC has adopted size standards for determining which NRC licensees qualify as small entities on December 9, 1985 (50 FR 50241). These size standards were clarified November 6, 1991 (56 FR 56672). The NRC size standards are as follows:

(1) A small business is a business with annual receipts of $3.5 million or less except private practice physicians for which the standard is annual receipts of $1 million or less.

(2) A small organization is a not-for-profit organization which is independently owned and operated and has annual receipts of $3.5 million or less.

(3) Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

(4) A small educational institution is one that is (1) supported by a qualifying small governmental jurisdiction, or (2) one that is not state or publicly supported and has 500 employees or less.

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. For FY 1991, the amount to be collected was

approximately $445 million, and for FY 1992, the amount to be collected is approximately $493 million.

To comply with Public Law 101-508, the Commission proposed amendments to its fee regulations in 10 CFR parts 170 and 171 on April 12, 1991 (56 FR 14870). Based on careful evaluation of over 400 comments, the Commission issued a final rule on July 10, 1991 (56 FR 31472). Consistent with the Conference Report accompanying the Public Law, the NRC fairly and equitably allocated its budget costs. This resulted in the assessment of annual fees for all classes of licensees, including those classes of licensees with a substantial number of small entities.

II. Impact on Small Entities

Previous surveys, the comments received on the proposed FY 1991 fee rule revisions and small entity certifications received in response to the final FY 1991 fee rule indicate that NRC licensees that qualify as a small entity under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these material licensees, the NRC estimates that about 25 percent (approximately 2,000 licensees) would qualify as a small entity. Therefore, in recognition of this substantial number of small entities, the NRC requested comments from small entities on the proposed FY 1991 rule. Comments were specifically requested on: (1) How the proposed regulations would affect each class of licensee; and (2) how the regulations could be structured to further minimize the economic impact on the licensee, but still meet the statutory mandate of Public Law 101-508.

For materials licensees, the increase in fees assessed in FY 1991 consisted of (1) an increase of 25 percent in the license and inspection fees assessed under 10 CFR part 170, and (2) a new annual fee assessed under 10 CFR part 171 that ranges from $290 to over $10,000. A number of small entities indicated that the 25 percent increase in license and inspection fees, although not desirable, would not have a significant economic impact on them. However, many of the materials licensees commented on the negative economic impact of the new annual fee. Therefore, the regulatory flexibility analysis prepared for the July 10, 1991, final rule, as well as this regulatory flexibility analysis, concentrates on the new annual fee.

The commenters indicated the following results if the annual fees proposed on April 12, 1991, were not modified:

—Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well logging company (a "Mom and Pop" type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put them at an extreme disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

—Some firms would be forced to cancel their licenses. One commenter, with receipts of less than $500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in around 10 percent of the well logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

—Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.

—Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Although it was not clear to what extent these impacts would materialize at the time the July 10, 1991, final rule was promulgated, it was clear that the proposed annual fees would be a relatively high portion of the gross revenues of some licensees and far less a portion for other larger material licensees. After the final rule was published, approximately 1,000 license, approval and registration terminations were requested. Although some of these terminations were requested because the license was no longer needed, there are indications that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These comments indicate that the $3.5 million threshold for small entities is not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the $1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these types of businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

Members of Congress, in many of the more than 100 Congressional letters the NRC has received from them since the final rule was published, have expressed concern about the size of the NRC annual fees and their economic impact on small entities. Some of these letters have suggested that the Commission should act to further reduce the economic impact on those licensees who conduct limited operations. The Small Business Administration (SBA), while commending the Commission for complying with and using the RFA in the final rulemaking, suggested that the Commission should act to further alleviate the impact of the fees on small businesses. The American Nuclear Society (ANS) also expressed concern about the impact of the annual fees on small entities and suggested that the Commission examine alternatives to further reduce the impacts.

Therefore, the NRC concludes that additional alternatives, in accordance with the Regulatory Flexibility Act, should be considered because of the continuing significant impact of the annual fees on a substantial number of small entities.

III. Alternatives

Commenters on the proposed rule published April 12, 1991, and comments received subsequent to publication of the final rule on July 10, 1991, suggested alternatives to reduce the impact on small entities. These comments are categorized as follows:

—Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

—Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).
—Base fees on the NRC size standards for small entities.

The first alternative would result in the annual fee being in direct proportion to the amount of radioactivity (e.g., number of radioactive sources) possessed by the licensee, independent of whether the licensee meets the size standard for a small business. Thus, a large diversified firm that owns one source would get a reduced fee, while a small entity, whose business may depend solely on the use of radioactive materials, would pay a larger fee because it has more than one source. Thus, this alternative does not necessarily achieve the goal of the Regulatory Flexibility Act to minimize the impact on small entities. The NRC also believes that this approach would not result in a fair and equitable allocation of its generic and other costs not recovered under part 170. Therefore, the NRC rejected this approach.

For similar reasons, basing the fee on the frequency of use of the licensed radioactive source, the second suggested alternative, would not necessarily reduce the cost for small entities that meet the size standards discussed earlier. Therefore, the NRC also rejected this approach.

The last alternative would base fees on the size standards that the NRC has used to define small entities. This alternative would ensure that any benefits from modifying the proposed fees would apply only to small entities. Three basic options, each using the NRC size standards, were considered for modifying the annual fees imposed on small entities:

1. Exempt all small entities that meet the size standards from annual fees.
2. Require small entities to pay a fixed percent of the amount of the fee in each of the specific material license fee categories.
3. Establish a maximum fee for small entities.

Under Option 1, all small entities would be exempted from fees. However, because small entities would not pay any of the generic costs attributable to their class of licensees this option could be viewed as not consistent with the objectives of Public Law 101–508. Under this option, all the annual fees attributable to small entities would be paid by other NRC licensees.

Under Option 2, small entities would pay a percentage (e.g., 50 percent) of the proposed fee for each specific category of material license, regardless of how small or large the fee is. This option could result in a reduction in annual fees that are already relatively small and do not have a significant impact on a substantial number of small entities. On the other hand, for those fee categories assessed large annual fees, the percentage of reduction may result in assessing small entities licensed under those fee categories relatively large annual fees.

Option 3 would establish a maximum fee for all small entities. Under this option, a small entity would pay either the smaller of the annual fee for the category or the maximum small entity fee. This alternative strikes a balance between the requirements of Public Law 101–508 and the Regulatory Flexibility Act, which is to consider and reduce, as appropriate, the impact of an agency's regulatory actions on small entities. Therefore, the NRC has adopted Option 3 as the most appropriate to reduce the impact on small entities.

IV. Maximum Fee

To implement Option 3, the NRC established a maximum annual fee for small entities. The Regulatory Flexibility Act and implementing guidance do not provide specific guidelines on the amount or the percent of gross receipts that should be charged to small entity. To determine a maximum annual fee for a small entity, the NRC examined the NRC to CFR part 170 license and inspection fees established in 1991 and the 1991 Agreement State fees for those fee categories which are expected to have a substantial number of small entities. Because these fees have been charged to small entities, the NRC believes that these fees do not have a significant impact on them. In fact, the NRC concluded, in issuing the July 10, 1991, final rule, that the existing materials license and inspection fees do not have a significant impact on small entities.

The maximum fees per year charged in 1991 by several Agreement States and by the NRC for materials license fee categories with a significant number of small entities are shown below.

	1991 maximum average total fee per year
Washington	$3,760
Texas	2,100
Illinois	2,000
NRC	1,590
Nebraska	1,460
New York	1,030
Utah	440

Table 1 shows the estimated total fees (part 170 plus part 171) for materials licensees, assuming maximum annual fees for small entities of $2,000 or $1,500 and an average number of licensing actions and inspections per year. If the maximum annual fee for small entities is established at $2,000, the average fee per year for all of the categories would be below the approximately $3,800 maximum fee charged by Agreement States, except for radiography, waste receipt and packaging, and broad scope medical licensees. The broad scope medical, and waste receipt and packaging licensees are primarily large entities. Therefore, with a $2,000 maximum small entity annual fee and the average license and inspection fees, only small entities who are radiographers would pay slightly more than the current maximum Agreement State fee of approximately $3,800. If the maximum fee is reduced by $200 (from $2,000 to $1,800), then all categories of materials licensees, including radiographers, would pay no more for each category than the 1991 maximum Agreement State fee of about $3,800 if the licensee qualifies as a small entity.

By establishing the maximum annual fee for small entities at $1,800, the annual fee for many small entities will be reduced while at the same time materials licensees, including small entities, would pay for most of the FY 1991 costs ($22.3 million of the total $27.2 million) attributable to them. Therefore, the NRC has established and will continue, for FY 1992, the maximum annual fee (base annual fee plus surcharge) for certain small entities at $1,800 for each fee category covered by each license issued to a small entity. Note that the costs not recovered from small entities are allocated to other material licensees and to operating power reactors.

While reducing the impact on many small entities, the Commission agrees that the current maximum annual fee of $1,800 for small entities, when added to the part 170 license and inspection fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, the Commission is proposing to further reduce the impact on small entities with relatively low gross annual receipts.

Commenters have suggested that the NRC could reduce the impact of the fees for materials licensees by basing them on the licensee's nuclear capacity (e.g., the number of sources possessed, the number of hospital beds, or the amount of radioactive material possessed), or the frequency of use of the radioactive material). In adopting the July 10, 1991, final rule, the Commission recognized that there are inherent differences in the

nuclear capacity and the frequency of source use for many of the classes of materials licensees. However, as indicated in Section III of this analysis, the Commission concludes that basing the fee on the number of sources, frequency of use, or amount of radioactive material possessed does not necessarily reduce the impact of the fees on small entities, which is the goal of the RFA. The Commission continues to believe that uniformly allocating the generic and other regulatory costs to the specific license to determine the amount of the annual fee is a fair and equitable way to recover its costs and that establishing reduced annual fees based on gross receipts (size) is the most appropriate approach to minimize the impact on small entities. Consistent with this approach, the Commission will continue the $1,800 maximum annual fee for small entities. In addition, the Commission proposes to create a lower tier annual fee for small entities with relatively small gross annual receipts or with a relatively small population.

To implement this proposal, relatively small annual receipts must first be defined. Based on data from an NRC survey of materials licensees and the Department of Commerce industry census, the table below shows the distribution of businesses with annual gross receipts of less than $3.5 million.

Annual gross receipts	NRC survey (percent)	Department of Commerce (percent)
Less than $250K	45	55
$250-$499K	14	22
$500-$749K	8	6
$750-$999K	9	6
$1,000-$3,500K	24	11

As this table shows, 45 to 55 percent (or about 50%) of small businesses with gross annual receipts of less than $3.5 million have gross annual receipts that are less than $250,000. Thus, by defining relatively small gross annual receipts as less than $250,000, a significant number of small entities would be eligible for a further reduction of the impact of the annual fees. This level would also help ensure that those small businesses who probably would be impacted the most would pay the lower fee.

A similar approach has been used to define a relatively small governmental jurisdiction. Using 1990 data from the National Association of Counties, the distribution below for those counties located in non-Agreement States with a population of less than 50,000, shows that a population level of less than 20,000 would ensure that at least 50 percent of the small counties would be eligible for reduced fees. This would also ensure that at least 50 percent of other governmental jurisdictions (cities, towns, villages, school districts, etc.) could also receive the benefits because these other jurisdictions are typically smaller than counties.

Population	Percent of total
Less than 5,000	10
5,000-9,999	18
10,000-14,999	16
15,000-19,999	14
20,000-24,999	10
25,000-50,000	26

The NRC must also determine the amount of the annual fee that should be assessed to lower tier small entities (less than $250,000 for small businesses and small non-profit organizations, or less than 20,000 population for small governmental jurisdictions). The RFA and its implementing guidance do not provide specific guidelines on the amount or percent of gross receipts that should be charged to a small entity. In determining the amount of the annual fee for lower tier small entities, the Commission believes that the reduced fee should retain a balance between the objectives of the RFA and OBRA. This balance can be measured by (1) the amount of costs attributable to small entities that is transferred to larger entities (the small entity subsidy); (2) the total annual fee small entities pay, relative to this subsidy; and (3) how much the annual fee is for a lower tier small entity. Nuclear gauge users are used to measure the reduction in fees because they represent about 40 percent of the material licensees and most likely would include a larger percentage of lower tier small entities than other categories of materials licensees.

Before presenting alternative fees, the NRC notes that the number of licensees filing small entity certifications for the FY 1991 annual fees is lower than originally estimated. The NRC estimated 3,000 certifications in the current rule which would have resulted in an estimated cost of about $5 million in the small entity subsidy. Based on the response to the FY 1991 billings, NRC's current estimate is that there are about 2,000 small entities.

The table below shows four different lower tier small entity fees and their impact on the licensees, and their impact on the balance between OBRA and RFA.

Lower tier small entity annual fee	Reduction in fee for gauge users (%)	Estimated FY 1992 small entity subsidy ($ M)	Estimated FY 1992 annual fees paid by small entities ($ M)
$1,200	30	$5.0	$4.5
900	50	5.3	4.2
700	60	5.5	4.0
400	75	6.0	3.5

Each of the alternative lower tier annual fees reduces the annual fee for qualifying nuclear gauge licensees. However, the Commission proposes that an annual fee of $400 be established for the lower tier small entities because this amount should ensure that the lower tier small entities receive a reduction (75% for small gauge users) substantial enough to mitigate any severe impact. The amount of the small entity subsidy resulting from this fee would be equivalent to the amount estimated in the July 10, 1991, final rule, increased by 20 percent to account for the FY 1992 budget increase and the reduction in the number of material licensees resulting from license terminations after the FY 1991 rule became effective. Although the other reduced fees would result in lower subsidies, the Commission believes that the amount of the associated annual fees, when added to the license and inspection fees, would still be considerable for small businesses and organizations with gross receipts that are less than $250,000 or for governmental entities in jurisdictions with a population of less than 20,000.

V. Summary

Comments received on the proposed rule and implementation of the final rule provide evidence that the annual fee would significantly impact upon a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirements to consider means of reducing the impact of the proposed fee on small entities. On the basis of its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of $1,800 for small entities and a lower tier small entity annual fee of $400 for small businesses and non-profit organizations with gross annual receipts of less than $250,000, and small governmental entities with a population of less than 20,000, would reduce the impact on small entities. At the same time, these reduced annual fees would be consistent with the objectives of Public Law 101-508. Thus, the proposed fees for small entities maintain a balance between the objectives of Public Law 101-508 and the

Regulatory Flexibility Act.

TABLE 1.—1991 AVERAGE TOTAL SMALL ENTITY FEES PER YEAR

License fee category	Total small entity fee*	
	Max annual fee=$2K	Max annual fee=$1.5K
Special Nuclear Material (SNM):		
1C. Industrial Gages	$1,672	$1,672
1D. All Other SNM	2,506	2,006
Source Material:		
2B. Shielding	463	463
2C. Other Source Materials	2,867	2,367
Byproduct Material:		
3A. Manufacturing—Broad	3,560	3,060
3B. Manufacturing—Other	3,343	2,843
3C. Radiopharmaceuticals	3,207	2,707
3D. Radiopharmaceuticals—Manufacturing	2,677	2,177
3E. Irradiators—Self-Shield	1,699	1,699
3F. Irradiators—<10,000 Ci	2,623	2,123
3G. Irradiators—>10,000 Ci	3,840	3,340
3H. Exempt Distribution—Device Review	2,815	2,315
3I. Exempt Distribution—No Device Review	2,682	2,182
3J. Gen. License—Device Review	2,679	2,179
3K. Gen. License—No Device Review	2,708	2,208
3L. R&D—Broad	3,210	2,710
3M. R&D—Other	3,050	2,550
3N. Service License	2,733	2,233
3O. Radiography	4,050	3,550
3P. All Other Byproduct Materials	2,120	2,120
Waste Disposal and Processing:		
4B. Waste Receipt/Packaging	4,680	4,180
4C. Waste Receipt—Prepackaged	3,216	2,716
Well Logging:		
5A. Well Logging	3,207	2,707
Nuclear Laundry:		
6A. Nuclear Laundry	3,030	2,530
Human Use of Byproduct, Source, or SNM:		
7A. Teletherapy	3,788	3,288
7B. Medical—Broad	4,360	3,860
7C. Medical Other	3,130	2,630
Civil Defense:		
8A. Civil Defense	1,789	1,789
Device, Product, or Sealed Source Safety Evaluation:		
9A. Device/Product—Broad	3,200	2,700
9B. Device/Product—Other	2,580	2,080
9C. Sealed Sources—Broad	1,530	1,530
9D. Sealed Sources—Other	770	770

*Based on average 10 CFR Part 170 fees plus maximum annual fees.

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BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

10 CFR Parts 820, 830, and 835

[Docket Nos. NS-RM-91-820 NE-RM-91-830, and EH-RM-91-835]

Procedural Rules for DOE Nuclear Activities, Nuclear Safety Management, Radiation Protection for Occupational Workers

AGENCY: Department of Energy.

ACTION: Hearings on proposed rules; notice of change of dates and addresses.

SUMMARY: On December 9, 1991, the Department of Energy (DOE) published Notices of Proposed Rulemaking on Procedural Rules for: DOE Nuclear Activities, 10 CFR part 820 (NS-RM-91-820) at 56 FR 64290; Nuclear Safety Management, 10 CFR part 830 (NE-RM-91-830) at 56 FR 64316; and Radiation Protection for Occupational Workers, 10 CFR part 835 (EH-RM-91-835) at 56 FR 64334. This notice changes certain dates and addresses for written comments and public hearings concerning these Notices.

DATES: The period for written comments on all three notices has been extended until March 25, 1992. The dates for the public hearings on these Notices have been changed to February 24, 1992 for 10 CFR part 820, February 25, 1992 for 10 CFR part 830, and February 27, 1992 for 10 CFR part 835. The hearings will commence at 9 a.m. Written requests to speak at these public hearings must be received by February 18, 1992 at the address for written comments. DOE should receive 20 copies of the statement to be presented at the public hearing by February 20, 1992 at the address for written comments.

ADDRESSES: Written comments (20 copies) on each Notice should be submitted to: Ben McRae, Office of General Counsel, GC-31, room 6B-234, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

The hearings will be held in the U.S. DOE Germantown Auditorium, 19901 Germantown Rd. (Route 118), Germantown, MD. 20874.

FOR FURTHER INFORMATION CONTACT: Any procedural questions concerning the submission of written comments or participation in the public hearing should be directed to Andi Kasarsky at (202) 586-3012. Any policy or legal questions concerning the proposed rules should be directed to the persons listed in the original notices in the **FOR FURTHER INFORMATION** section.

SUPPLEMENTARY INFORMATION: Separate written comments should be submitted for each Notice. The docket number of the proposed rule to which the comments refer should be clearly visible on the outside of the package containing the comments and on the first page of the comments. Written comments should be organized to identify what aspect of the proposed rule a specific comment relates. To the extent practicable, reference should be made to the specific proposed regulatory section to which a comment relates.

Oral comments presented at the hearings will be limited to 10 minutes. A longer statement may be submitted for inclusion in the record. To the extent practicable, an oral presentation should summarize the views anticipated to be set forth in the written comments on the proposed rule and, in particular, should indicate what, if any, changes should be made in the proposed rule. Any procedural questions concerning the submission of written comments or participation in the public hearing should be directed to Andi Kasarsky at (202) 586-3012. Any policy or legal questions concerning the proposed rules should be directed to the persons listed in the original notices in the **FOR FURTHER INFORMATION** section.

Issued in Washington, DC, on January 6, 1992.

John J. Easton, Jr.,
General Counsel.

[FR Doc. 92-524 Filed 1-8-92; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-244-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which currently requires a one-time inspection to detect chafing on the engine fire extinguishing pipe in the pylon area at rib 12, and repair, if necessary. This condition, if not corrected, could result in a hole in the fire extinguishing pipe, rendering the fire extinguishing system ineffective. This action would require repetitive visual inspections to detect chafing of the engine fire extinguishing pipe, and

repair or replacement of worn pipes, if necessary; and eventual modification of the fire extinguishing pipe. This proposal is prompted by the development of a modification by the manufacturer which, when installed, will eliminate the need for repetitive inspections of the fire extinguishing pipe.

DATES: Comments must be received no later than February 24, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-244-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113, telephone (206) 227-2140; fax (206) 227-1320. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-244-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-244-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

On July 23, 1990, the FAA issued AD 90-14-05, Amendment 39-6648 (55 FR 27803, July 6, 1990), to require a one-time inspection of Model A300 series airplanes to detect chafing on the engine fire extinguishing pipe in the pylon area at rib 12, and repair, if necessary. That action was prompted by reports of chafing of the engine fire extinguishing pipe due to the pipe rubbing against the metal collars of the firewall rings. This condition, if not corrected, could result in a hole in the fire extinguishing pipe, rendering the fire extinguishing system ineffective.

Since issuance of that AD, Airbus Industrie has issued Service Bulletin A300-26-055, Revision 1, dated September 4, 1991, which describes procedures to perform repetitive visual inspections to detect chafing of the engine fire extinguishing pipe, and repair or replacement of worn pipes, if necessary. This service bulletin also describes a modification of the fire extinguishing pipe, which consists of adding clamp blocks to maintain the pipe so that it is attached to the firewall, thus preventing any friction, wear, and damage to the pipe. The French Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, has issued French Airworthiness Directive 90-056-106(B)R1, dated March 20, 1991, addressing this subject. However, the French DGAC has not classified Airbus Service Bulletin A300-26-055 as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the DGAC has kept the FAA totally informed of the above situation. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition addressed is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD 90-14-05 with a new airworthiness directive that would continue to require repetitive visual inspections to detect chafing of the engine fire extinguishing pipe, and repair or replacement of worn pipes, if necessary. This proposal would add a requirement for the eventual modification of the fire extinguishing pipe; once the modification is installed, the need for the repetitive inspections of the pipe would be eliminated. The actions would be required to be accomplished in accordance with the service bulletin previously described.

The FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The modification requirement proposed in this action is in consonance with the policy decision.

It is estimated that 63 airplane of U.S. registry would be affected by this AD. it would take approximately 4 work hours per airplane to accomplish the inspection required by paragraph (a) of this AD; it would take approximately 176 work hours (88 work hours per pylon) per airplane to accomplish the modification required by this AD. The average labor cost would be $55 per work hour. The estimated cost for required parts is $896 ($448 per pylon) per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $680.148.

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

For the reasons discussed above, I certify that this proposed regulation (1)

is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6648 and by adding the following new airworthiness directive:

Airbus Industrie: Docket No. 91-NM-244-AD. Supersedes AD 90-14-05, Amendment 39-6648.

Applicability: Model A300 series airplanes equipped with General Electric engines; up to and including airplane serial number 153 and serial number 157; on which Airbus Industrie modification 8430 has not been installed; certificated in any category.

Compliance: Required as indicated, unless previously accoplished.

To ensure proper operation of the fire extinguishing system, accomplish the following:

(a) Within 400 hours time-in-service after July 23, 1990 (the effective date of Amendment 39-6648, AD 90-14-05), perform an inspection of the engine fire extinguishing pipe in the pylon area at rib 12, in accordance with Airbus Industrie All Opertors Telex (AOT) 26/90/01, dated February 9, 1990, and Correction dated February 28, 1990. If chafing is found, prior to further flight, repair in accordance with the AOT.

(b) If no evidence of chafing is found as a result of the inspection required by paragraph (a) of this AD, perform repetitive visual inspections of the engine fire extinguishing pipe in the pylon are at rib 12 at intervals not exceed 8,000 hours time-in-service, in accordance with Airbus Industrie Service Bulletin A300-26-055, Revision 1, dated September 4, 1991. If wear is found which exceeds 0.6 mm (0.023 inch), prior to further flight, repair or replace the worn pipe in accordance with the service bulletin.

(c) Within 18 months after the effective date of this AD, modify the engine fire extinguishing pipe, and test the fire extinguishing bottles, in accordance with Airbus Industrie Service Bulletin A300-26-055, Revision 1, dated September 4, 1991.

(d) Modification of the engine fire extinguishing pipe, in accordance with Airbus Industrie Service Bulletin A300-26-055, Revision 1, dated September 4, 1991, constitutes terminating action for the repetitive visual inspections required by paragraph (b) of this AD.

(e) An alternative method of compliance of adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

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

Issued in Renton, Washington, on December 20, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-460 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-ANE-45]

Airworthiness Directives; General Electric (GE) GF6-80A Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to GE CF6-80A series turbofan engines. This proposed AD would require a one time inspection of the high pressure turbine rotor (HPTR) stage 1 disk rim bolt holes for cracks. This proposal is prompted by a report of an uncontained HPTR stage 1 disk failure which resulted in an aborted takeoff. This condition, if not corrected, could result in an uncontained HPTR stage 1 disk failure, inflight shutdown, aborted takeoff, or damage to the aircraft.

DATES: Comment must be received no later than February 24, 1992.

ADDRESSES: Send comments on the proposal in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 91-ANE-45, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, or deliver in duplicate to room 311 at the above address.

Comments may be inspected at the above location in room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Karen M. Grant, Engine Certification Office, ANE-140, Engine & Propeller Directorate Aircraft Certification Service, New England Region, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, (617) 273-7096.

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91-ANE-45". The postcard will be date/time stamped and returned to the commenter.

Discussion

During application of take-off power, a six post rim segment of the HPTR stage one disk separated due to cracks found in a single rim bolt hole, resulting

in an uncontained engine failure. Evaluation of the fracture surface revealed four fatigue cracks, two of which propagated to failure and liberated the six post rim segment from the disk. This condition, if not corrected, could result in an uncontained HPTR stage 1 disk failure, inflight shutdown, aborted takeoff, or damage to the aircraft.

The FAA has reviewed and approved the technical content of GE CF6-80A Commercial Engine Service Memorandum (CESM), Number 27, dated September 27, 1991, which describes the equipment and procedures necessary to accomplish and eddy current inspection of the rim bolt holes.

Since this condition is likely to exist or develop on other engines of this same type design, an AD is proposed which would require a one time inspection of the HPTR stage 1 disk, and removal and replacement of cracked parts in accordance with the CESM previously described.

There are approximately 420 GE CF6-80A series engines of the affected design in the worldwide fleet. It is estimated that there are 168 engines installed on aircraft of U.S. registry which would be affected by this AD, that it would take approximately 8 manhours per inspection per engine to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $73,920.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

General Electric Co. Docket No. 91-ANE-45

Applicability: General Electric (GE) CF6-80A series engines, installed on, but not limited to, Boeing 767 and Airbus A310 aircraft.

Compliance: Required as indicated, unless previously accomplished.

To prevent uncontained high pressure turbine rotor (HPTR) stage 1 disk failure, which could result in inflight shutdown, aborted takeoff, or aircraft damage, accomplish the following:

(a) Eddy current inspect rim bolt holes of HPTR stage 1 disks Part Numbers (P/N) 9234M67 and 9367M45 in accordance with GE CF6-80A Commercial Engine Service Memorandum Number 27, dated September 27, 1991, at the next shop visit after the effective date of this AD, but no later than December 31, 1995.

(b) For the purpose of this AD, a shop visit is defined as the induction of an engine into the shop for maintenance action.

(c) Eddy current inspect rim bolt holes of HPTR stage 1 disks P/N 9362M58 in accordance with GE CF6-80A CESM Number 27, dated September 27, 1991, at the next exposure of the high pressure turbine (HPT) after the effective date of this AD, but no later than December 31, 1995.

(d) For the purpose of this AD, HPT exposure is defined as the HPT module at piece part level.

(e) Remove from service, prior to further flight, HPTR stage 1 disks found cracked.

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to General Electric Aircraft Engines, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Room 311, 12 New England Executive Park, Burlington, Massachusetts.

Issued in Burlington, Massachusetts, on December 27, 1991.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92-461 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 333 and 369

[Docket No. 75N-183F]

RIN 0905-AA06

Topical Antimicrobial Drug Products for Over-the-Counter Human Use; Tentative Final Monograph for First Aid Antiseptic Drug Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration is correcting a proposed rule that appeared in the Federal Register of July 22, 1991 (56 FR 33644), in the form of an amended tentative final monograph that would establish conditions under which over-the-counter (OTC) first aid antiseptic drug products are generally recognized as safe and effective and not misbranded. The proposal was published with some inadvertent typographical errors. This document corrects those errors.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by January 21, 1992. New data by July 22, 1992. Comments on the new data by September 22, 1992. Written comments on the agency's economic impact determination by January 21, 1992.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

In FR Doc. 91-17107, appearing on page 33644 in the Federal Register of Monday, July 22, 1991, the following corrections are made:

1. On page 33650, in the second column, in item "14.," first paragraph, in

the second line from the bottom, the word "growth" should appear after the word "the".

§ 333.50 [Corrected]

2. On page 33677, in § 333.50 Labeling of first aid antiseptic drug products, paragraph (d)(5) is corrected by changing "§ 330.10" to read "§ 333.10".

§ 333.70 [Corrected]

3. On page 33679, in § 333.70 *Testing of first aid antiseptic drug products*, paragraph (c)(5)(i) in the heading of the table, the fourth entry "5 min" is corrected to read "15 min".

Dated: January 3, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-551 Filed 1-8-92; 8:45 am]

BILLING CODE 4160-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Notice No. 1]

The Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Notice of public meetings.

SUMMARY: The United States Information Agency (the "Agency") is in the process of revising the Exchange Visitor Program (J-1) regulations. Notice of proposed rulemaking regarding general provisions and training regulations for the Exchange Visitor Program was published in the Federal Register (56 FR 59822-42) on November 25, 1991, and the Agency set a 90-day period for written comments. The Agency will convene two public meetings to provide additional opportunity for public comment on the proposed regulations. The National Association for Foreign Student Affairs, the International Exchange Association, the Liaison Group for International Educational Exchange, and other organizations have been asked to assist the Agency in informing interested individuals about the meetings. All persons are welcome to attend. Reservation is requested as stated in this notice.

DATES: Public meetings will be held on February 10, 11, 18 and 19, 1992. See supplementary information for further details.

ADDRESSES: Public meetings will be held in Washington, DC and San Diego, California. See supplementary information for further details.

FOR FURTHER INFORMATION CONTACT: Persons who request more information about the public meetings should contact Tonya Reed, Office of the General Counsel, United States Information Agency, 301 4th Street, SW., room 700, Washington, DC 20547, (202) 401-1707 between 9 a.m. and 5 p.m., e.s.t.

SUPPLEMENTARY INFORMATION: The public meetings are scheduled to be held as follows:

February 10, 1992: Meeting on the general provisions at: VOA Auditorium, Cohen Building, United States Information Agency, C Street Entrance (between 3rd & 4th Sts., SW.) Washington, DC 20547, 10 a.m.-12:30 p.m., 2 p.m.-4p.m.

February 11, 1992: Meeting on the training regulations at the address in Washington listed above, 9:30 a.m.-12:30 p.m.

February 18, 1992: Meeting on the general provisions at: North Terrace Room, The San Diego Concourse, 202 C Street, San Diego, CA 92101, 10 a.m.-12:30 p.m., 2 p.m.-4 p.m.

February 19, 1992: Meeting on the training regulations at the address in San Diego listed above, 9:30 a.m.-12:30 p.m.

The public meetings will be conducted by senior Agency officials, and interested parties are invited to be present or represented at the sessions. The Agency Director encourages the widest possible participation from all interested parties, such as Exchange Visitor Program sponsors, educational associations, educators, educational administrators, researchers, corporate training personnel, government agencies, exchange visitors, and members of the community at large.

RESERVATIONS: Persons planning to attend one or more of the public meetings are requested to make reservations by calling Tonya Reed, Office of the General Counsel, United States Information Agency, at (202) 401-1707.

FORMAT OF PRESENTATION: Interested parties may present comments or ask questions at the public meetings orally or in writing. Each speaker will be asked to limit his or her comments to ten (10) minutes. Oral statements will be heard and transcribed by a stenographer or tape recorded; however, to assure accuracy the Agency recommends that statements also be submitted in writing. A party submitting a written statement may provide the Agency (at the address listed below) with an advance copy, or submit the written statement at the public meeting. Both oral and written statements will become part of the public record, and will be considered prior to the issuance of the notice of final rulemaking for the general provisions and training regulations. The Agency reserves the right to shorten the period of time of the meetings based on the number or oral statements presented.

SUBMISSION OF WRITTEN STATEMENTS: Written statements sent to the Agency should be addressed to: Task Force, Office of the General Counsel, United States Information Agency, 301 4th Street, SW., room 700, Washington, DC 20547. A party submitting an advance copy should indicate the location and date of any public meeting for which the submission is intended. To facilitate the Agency's review, an original and four additional copies of the written statement should be submitted.

Dated: January 3, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92-499 Filed 1-8-92; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-106-89]

RIN 1545-AP71

Sourcing of Certain Payments Made Pursuant to a Transfer of Securities Subject to Section 1058; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations relating to the taxation of certain payments made pursuant to cross-border transfer of securities subject to section 1058 of the Internal Revenue Code. These regulations would provide guidance concerning the source, character, and treaty treatment of such payments and would affect United States payors and recipients and foreign payors and recipients.

DATES: The public hearing will be held on Wednesday, April 15, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Wednesday, April 1, 1992.

ADDRESSES: The public hearing will be held in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the

Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (INTL-106-89), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9231, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is regulations proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 861 of the Internal Revenue Code of 1986. These regulations appear in the proposed rules section of this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, April 1, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An Agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-414 Filed 1-8-92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[INTL-106-89]

RIN 1545-AP71

Certain Payments Made Pursuant to a Securities Lending Transaction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to the taxation of certain payments made pursuant to a cross-border securities lending transaction. These regulations would provide guidance concerning the source, character, and income tax treaty treatment of such payments and would affect United States payors and recipients and foreign payors and recipients.

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at a public hearing scheduled for April 15, 1992, at 10 a.m., must be received by April 1, 1992. See notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments, requests to appear, and outlines or oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 [Attention: CC:CORP:T:R (INTL-106-89), room 5228].

FOR FURTHER INFORMATION CONTACT: Concerning the hearing on the proposed rulemaking, Robert Boyer, Regulations Unit, (202-377-9231), not a toll-free call); concerning the regulations, Teresa Burridge Hughes of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R (INTL-106-89) (202-566-6284, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 861, 871, 881, 894, and 1441 of the Internal Revenue Code of 1986. These regulations are proposed to be effective with respect to transfers of securities made more than 30 days after the date the regulations are published in final form in the **Federal Register**.

Explanation of Provisions

This document contains proposed regulations relating to the source, character, and income tax treaty treatment of substitute interest and dividend payments made pursuant to a transfer of securities that is described in section 1058(a) or a substantially similar transaction ("a securities lending transaction") between a United States person and a foreign person. A substitute interest or dividend payment is defined as a payment, made to the transferor of a security in a securities lending transaction, of an amount equivalent to an interest payment or dividend distribution which the owner of the transferred security is entitled to receive during the term of the transaction. These regulations provide that, for purposes of determining the source and character of cross-border substitute payments, a substitute payment will be treated as interest or dividend income received with respect to the transferred security. Thus, substitute dividend payments with respect to U.S. corporate stock transferred in a cross-border securities lending transaction will be treated as U.S.-source dividends for withholding, foreign tax credit limitation, and income tax treaty purposes. Substitute interest payments with respect to bonds, notes or other debt obligations of U.S. residents, U.S. corporations, or the U.S. Government transferred in a cross-border securities lending transaction will be treated as U.S.-source interest for withholding foreign tax credit limitation, and income tax treaty purposes. In addition, where a foreign person transfers United States securities the interest on which qualifies as portfolio interest under section 871(h) or 881(c), the substitute interest payments will qualify as portfolio interest, provided a Form W-8 or substantially similar form executed by the payee has been received by the withholding agent. However, no changes have been made to the existing rules that substitute dividend payments are not eligible for the dividends received deduction under section 243 and that substitute interest payments received on state and local bonds are not eligible for the section 103 exclusion from income. See Rev. Rul. 60-177, 1960-1 C.B. 9; Rev. Rul. 80-135, 1980-1 C.B. 18. Source, character, and income tax treaty treatment of substitute payments made prior to the effective date of these regulations will be determined under all the facts and circumstances of a particular transaction.

The Service is generally concerned that payments designed to replicate interest or dividend payments may be used to attempt to avoid U.S. withholding tax or increase the foreign tax credit limitation of a United States taxpayer. Thus, the proposed regulations apply to substitute payments made in cross-border transactions that either qualify as section 1058 transactions or are substantially similar to section 1058 transactions (whether or not each of the requirements is satisfied). Comments are invited on the extent to which the proposed regulations should apply to substitute payments made in connection with sale repurchase agreement ("repos").

The Service is considering whether the scope of the proposed regulations

should be expanded to prevent tax avoidance through other transactions that generate analogous payments. For example, the Service is considering whether the proposed regulations should apply to dividend equivalent payments made in connection with certain notional principal contracts, such as an equity index swap structured to replicate the case flows that would arise from an installment purchase of one or more equity securities. Taxpayers are invited to comment on this issue.

Further, comments are invited concerning the source, character, and income tax treaty treatment of fees paid to a lender of securities.

Special Analyses

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

Comments and Requests To Appear at the Public Hearing

Before adopting these proposed regulations, consideration will be given to any timely written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing is scheduled for April 15, 1992. See notice of hearing published elsewhere in this issue of the Federal Register.

Drafting Information

The principal author of these proposed regulations is Teresa Burridge Hughes of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR 1.861–1 through 1.897–9T

Aliens, Foreign investments in United States, Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.1441–1 through 1.1445–11T

Aliens, Foreign investments in United States, Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * *

Par. 2. Section 1.861–2 is amended by adding a new sentence to the end of paragraph (a)(1) and by adding a new paragraph (a)(7) to read as follows:

§ 1.861–2 Interest.

(a) *In general*—(1) * * * See paragraph (a)(7) of this section for special rules concerning substitute interest payments received pursuant to a securities lending transaction.

* * * * *

(7) A substitute interest payment is a payment, made to the transferor of a security in a securities lending transaction, of an amount equivalent to an interest payment which the owner of the transferred security is entitled to receive during the term of the transaction. A securities lending transaction is a transfer of one or more securities that is described in section 1058(a) or a substantially similar transaction. A substitute interest payment received by a foreign person from a United States person (or received by a United States person from a foreign person) pursuant to a securities lending transaction shall be treated as interest income received pursuant to the terms of the transferred security for purposes of this section and § 1.862–1. See also §§ 1.871–7(b)(2), 1.881–2(b)(2), 1.894–1(c), and 1.1441–2(a)(1).

* * * * *

Par. 3. Section 1.861–3 is amended by adding a new sentence to the end of paragraph (a)(1) and by adding a new paragraph (a)(6) to read as follows:

§ 1.861–3 Dividends.

(a) *General*—(1) * * * See also paragraph (a)(6) of this section for special rules concerning substitute dividend payments received pursuant to a securities lending transaction.

* * * * *

(6) *Substitute dividend payments.* A substitute dividend payment is a payment, made to the transferor of a security in a securities lending transaction, of an amount equivalent to a dividend distribution which the owner of the transferred security is entitled to receive during the term of the transaction. A securities lending transaction is a transfer of one or more securities that is described in section 1058(a) or a substantially similar transaction. A substitute dividend payment received by a foreign person from a United States person (or received by a United States person from a foreign person) pursuant to a securities lending transaction shall be treated as dividend income received with respect to the transferred security for purposes of this section and § 1.862–1. See also §§ 1.871–7(b)(2), 1.881–2(b)(2), 1.894–1(c), and 1.1441–2(a)(1).

* * * * *

Par. 4. Section 1.871–7 is amended by redesignating the existing language in paragraph (b) as paragraph (b)(1), by adding the paragraph heading "*General rule.*" immediately after such paragraph (b)(1) redesignation, and by adding a new paragraph (b)(2) to read as follows:

§ 1.871–7 Taxation of nonresident alien individuals not engaged in U.S. business.

* * * * *

(b) *Fixed or determinable annual or periodical income.*

(1) *General rule.* * * *

(2) *Substitute payments.* For purposes of this section, a substitute interest payment (as defined in § 1.861–2(a)(7)) received by a foreign person from a United States person pursuant to a securities lending transaction (as defined in § 1.861–2(a)(7)) shall be treated as interest income received pursuant to the terms of the transferred security. Similarly, for purposes of this section, a substitute dividend payment (as defined in § 1.861–3(a)(6)) received by a foreign person from a United States person pursuant to a securities lending transaction (as defined in § 1.861–3(a)(6)) shall be treated as dividend income received with respect to the transferred security. Where, pursuant to a securities lending transaction, a foreign person transfers to a United States person a security the interest on which qualifies as portfolio interest under section 871(h), substitute interest payments made with respect to the transferred security will be treated as portfolio interest, provided a Form W–8 or substantially similar form, executed

by the payee in accordance with § 1.6049-5(b)(2)(iv), has been received by the withholding agent. See also §§ 1.881-2(b)(2), 1.894-1(c), and 1.1441-2(a)(1).

* * * * *

Par. 5. Section 1.881-2 is amended by redesignating the existing language in paragraph (b) as paragraph (b)(1), by adding the paragraph heading "*General rule.*" immediately after such paragraph (b)(1) redesignation, and by adding a new paragraph (b)(2), to read as follows:

§ 1.881-2 Taxation of foreign corporations not engaged in U.S. business.

* * * * *

(b) *Fixed or determinable annual or periodical income.*

(1) *General rule.* * * *

(2) *Substitute payments.* For purposes of this section, a substitute interest payment (as defined in § 1.861-2(a)(7)) received by a foreign person from a United States person pursuant to a securities lending transaction (as defined in § 1.861-2(a)(7)) shall be treated as interest income received pursuant to the terms of the transferred security. Similarly, for purposes of this section, a substitute dividend payment (as defined in § 1.861-3(a)(6)) received by a foreign person from a United States person pursuant to a securities lending transaction (as defined in § 1.861-3(a)(6)) shall be treated as dividend income received with respect to the transferred security. Where, pursuant to a securities lending transaction, a foreign person transfers to a United States person a security the interest on which qualifies as portfolio interest under section 881(c), substitute interest payments made with respect to the transferred security will be treated as portfolio interest, provided a Form W-8 or substantially similar form, executed by the payee in accordance with § 1.6049-5(b)(2)(iv), has been received by the withholding agent. See also §§ 1.871-7(b)(2), 1.894-1(c), and 1.1441-2(a)(1).

* * * * *

Par. 6. Section 1.894-1 is amended by redesignating paragraph (c) and (d) and by adding a new paragraph (c), to read as follows:

§ 1.894-1 Income affected by treaty.

* * * * *

(c) *Relevant law.* Where a provision of an income tax convention refers to United States law, the relevant United States law is the section or sections of the Internal Revenue Code and regulations thereunder governing the tax which is the subject of such provision. For example, where a provision of an income tax convention governing the withholding tax on dividends paid to a nonresident of the United States defines the term "dividend" to include payments treated as a dividend under United States law, the relevant sections of United States law are those which define the term "dividend" for purposes of that withholding tax. Accordingly, a substitute dividend payment (as defined in § 1.861-3(a)(6)) is treated as a dividend for purposes of the relevant provisions of the convention. See § 1.871-7(b)(2). See also §§ 1.861-2(a)(7), 1.881-2(b)(2), and 1.1441-2(a)(1).

* * * * *

Par. 7. Section 1.1441-2 is amended by adding the following language after the third sentence in paragraph (a)(1) to read as follows:

§ 1.1441-2 Income subject to withholding.

(a) *Fixed or determinable annual or periodical income.* (1) * * * For purposes of the second preceding sentence, the term "interest" also includes a substitute interest payment (as defined in § 1.861-2(a)(7)) and the term "dividend" includes a substitute dividend payment (as defined in § 1.861-3(a)(6)). The rules of § 1.1441-7 shall apply in determining the withholding agent with respect to such substitute payments. See also §§ 1.871-7(b)(2), 1.881-2(b)(2), and 1.894-1(c). * * *

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 92-413 Filed 1-8-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

28 CFR Parts 50 and 80

[Order No. 1552-91]

Antibribery Provisions of the Foreign Corrupt Practices Act

AGENCY: Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice publishes for public comment proposed regulations establishing a Foreign Corrupt Practices Act Opinion Procedure. The proposed procedure will enable issuers and domestic concerns to obtain an opinion of the Attorney General regarding whether prospective conduct would conform with the Department of Justice's present enforcement policy regarding the antibribery provisions of the Foreign Corrupt Practices Act, 15 U.S.C. 78dd-1 and 78dd-2. This procedure would implement amendments made to the antibribery provisions of the Foreign Corrupt Practices Act by title V of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418.

DATES: Written comments must be submitted on or before February 10, 1992.

ADDRESSES: Interested persons are invited to submit written comments on the proposed regulations. Persons submitting comments should file seven copies of their comments with the Criminal Division, Fraud Section, P.O. Box 28188, Central Station, Washington, DC 20038. Copies of all communications received will be available for inspection and copying in room 7120, Bond Building, 1400 New York Avenue, NW., Washington, DC, between the hours of 10 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter B. Clark, Deputy Chief, Fraud Section, Criminal Division, U.S. Department of Justice, room 2424, Bond Building, 1400 New York Avenue, NW., Washington, DC 20530, (202) 514-0651.

SUPPLEMENTARY INFORMATION: The antibribery provisions of the Foreign Corrupt Practices Act of 1977, as amended (FCPA or the Act), 15 U.S.C. 78dd-1 and 78dd-2, are aimed at eliminating bribery of foreign government officials by issuers and domestic concerns. In 1988, the antibribery provisions of the FCPA were amended by section 5003 of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418. As amended, the antibribery provisions require the Attorney General to establish a procedure to respond to inquiries concerning whether prospective conduct would conform with the Department of Justice's present enforcement policy. 15 U.S.C. 78dd-1(e) and 78dd-2(f).

Set forth below for public comment is the proposed FCPA Opinion Procedure. It is based upon the existing FCPA Review Procedure, 28 CFR 50.18, established by the Department of Justice in 1980. The FCPA Review Procedure will be revoked when the proposed FCPA Opinion Procedure becomes effective.

Under the proposed FCPA Opinion Procedure, issuers and domestic concerns within the meaning of 15 U.S.C. 78dd-1 and 78dd-2, respectively, may submit a proposed transaction to the Attorney General for review. The Attorney General will then issue an opinion stating whether or not certain specified prospective conduct would, for purposes of the Department of Justice's present enforcement policy, violate the Act's antibribery provisions and lead the Department of Justice to take enforcement action. The proposed FCPA Opinion Procedure will not be available for matters relating to the recordkeeping provisions of the FCPA. 15 U.S.C. 78m(b)(2) and (3).

As amended, Sections 78dd-1(e) and 78dd-2(f) provide that the Attorney General's opinion that disclosed conduct conforms with the Department of Justice's present enforcement policy creates a rebuttable presumption of compliance with the antibribery provisions of the FCPA. This presumption may be rebutted by a preponderance of the evidence. These

provisions are incorporated in § 80.10 of the proposed FCPA Opinion Procedure.

As is the case with the existing FCPA Review Procedure, the Attorney General's opinion will be binding on the Department of Justice only as to the issuer or domestic concern submitting the request and no agency other than the Department of Justice will be bound. The Department of Justice has responsibility for all criminal enforcement of the antibribery provisions of the FCPA, and also for civil enforcement of 15 U.S.C. 78dd-2, which applies to domestic concerns. The Securities and Exchange Commission (SEC) has responsibility for civil enforcement of 15 U.S.C. 78dd-1, which applies to issuers. Notwithstanding the issuance of an FCPA Opinion by the Attorney General, the SEC remains free to take a civil enforcement action against any domestic concern. Nevertheless, by statute the rebuttable presumption arising from an FCPA Opinion applies "(i)n *any* action brought" under the applicable provisions of the Act. 15 U.S.C. 78dd-1(e)(1) and 78dd-2(f)(1) (emphasis supplied). Collateral consequences of a violation of the antibribery provisions of the Act may include government-wide suspension or debarment from participation in Federal programs under guidelines issued by the Office of Management and Budget (53 FR 19161, May 26, 1988).

The proposed FCPA Opinion Procedure differs from the existing FCPA Review Procedure in several respects to reflect the amendments made to 15 U.S.C. 78dd-1 and 78dd-2 in 1988. Among the differences, the proposed procedure eliminates the Department of Justice's discretion, under the existing FCPA Review Procedure, to refuse to review a request. Further, the proposed procedure requires the Attorney General to issue an opinion within 30 days after a request is deemed complete. In contrast, the existing FCPA Review Procedure states that "every reasonable effort" will be made to respond to requests within 30 days after receipt of the request or any additional information sought by the Department. Both the current procedure and the proposed procedure permit the Department of Justice to request additional information. The proposed FCPA Opinion Procedure states that a request is not deemed to be complete until the issuer or domestic concern submitting the request provides the Department all additional information that it seeks, and requires the Department to request additional information, where needed, within 30 days.

The proposed FCPA Opinion Procedure also contains an exemption from disclosure under the Freedom of Information Act, 5 U.S.C. 552, of any document or other material which is provided to, received by, or prepared in connection with a request. This exemption incorporates the statutory exemption from disclosure set forth in 15 U.S.C. 78dd-1(e)(2) and 78dd-2(f)(2).

Finally, the proposed FCPA Opinion Procedure provides that a request may only be withdrawn before the Attorney General issues an opinion, and that a withdrawn request shall have no force or effect. This accommodates the statutory requirements of 15 U.S.C. 78dd-1(e)(3) and 78dd-2(f)(3). The existing FCPA Review Procedure allows a request to be withdrawn at any time, and permits the Department to submit to the requesting party any comments on the withdrawn request that it deems appropriate.

The Department, in cooperation with the Department of Commerce, intends to produce for public distribution a brochure explaining, generally, the provisions of the FCPA.

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

List of Subjects

28 CFR Part 50

Administrative practice and procedure, Foreign Corrupt Practices Act.

28 CFR Part 80

Administrative practice and procedure, Foreign Corrupt Practices Act.

By virtue of the authority vested in me by 28 U.S.C. 509 and 510, 5 U.S.C. 301, and Public Law 100-418, Chapter I of Title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 50—STATEMENTS OF POLICY

1. The authority citation for part 50 continues to read as follows:

Autority: 28 U.S.C. 508, 509, 510, 516, 517, 518, 519; 5 U.S.C. 301, 552, 552a; 15 U.S.C. 16(d), E.O. 11247; 3 CFR (1964-65 Comp.) 348, 21 U.S.C. 881(f)(2).

§ 50.18 [Removed]

2. Section 50.18 is removed.

3. Part 80 is added to read as follows:

PART 80—FOREIGN CORRUPT PRACTICES ACT OPINION PROCEDURE

Sec.
80.1 Purpose.
80.2 Submission requirements.
80.3 Transaction.
80.4 Issuer or domestic concern.
80.5 Affected parties.
80.6 General requirements.
80.7 Additional information.
80.8 Attorney General opinion.
80.9 No oral opinion.
80.10 Rebuttable presumption.
80.11 Effect of FCPA Opinion.
80.12 Accounting requirements.
80.13 Scope of FCPA Opinion.
80.14 Disclosure.
80.15 Withdrawal.
80.16 Additional requests.

Authority: 28 U.S.C. 509, 510; 15 U.S.C. 78dd-1, 78dd-2.

§ 80.1 Purpose.

These procedures enable issuers and domestic concerns to obtain an opinion of the Attorney General as to whether certain specified, prospective—not hypothetical—conduct conforms with the Department's present enforcement policy regarding the antibribery provisions of the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. 78dd-1 and 78dd-2. An opinion issued pursuant to these procedures is a Foreign Corrupt Practices Act opinion (hereinafter FCPA Opinion).

§ 80.2 Submission requirements.

A request for an FCPA Opinion must be submitted in writing. An original and five copies of the request should be addressed to the Assistant Attorney General in charge of the Criminal Division, Attention: FCPA Opinion Group. The mailing address is P.O. Box 28188, Central Station, Washington, DC 20038. The address for hand delivery is room 2424, Bond Building, 1400 New York Avenue, NW., Washington, DC 20005.

§ 80.3 Transaction.

The entire transaction which is the subject of the request must be an actual—not a hypothetical—transaction but need not involve only prospective conduct. However, a request will not be considered unless that portion of the transaction for which an opinion is sought involves only prospective conduct. An executed contract is not a prerequisite and, in most—if not all—instances, an opinion request should be made prior to the requestor's commitment to proceed with a transaction.

§ 80.4 Issuer or domestic concern.

The request must be submitted by an issuer or domestic concern within the meaning of 15 U.S.C. 78dd-1 and 78dd-2, respectively, that is also a party to the transaction which is the subject of the request.

§ 80.5 Affected parties.

An FCPA opinion shall have no application to any party which does not join in the request for the opinion.

§ 80.6 General requirements.

Each request shall be specific and must be accompanied by all relevant and material information bearing on the conduct for which an FCPA Opinion is requested and on the circumstances of the prospective conduct, including background information, complete copies of all operative documents, and detailed statements of all collateral or oral understandings, if any. The requesting issuer or domestic concern is under an affirmative obligation to make full and true disclosure with respect to the conduct for which an opinion is requested. Each request on behalf of requesting issuer or corporate domestic concern must be signed by an appropriate senior officer with operational responsibility for the conduct that is the subject of the request and who has been designated by the requestor's chief executive officer to sign the opinion request. In appropriate cases, the Department of Justice may require the chief executive officer of each requesting issuer or corporate domestic concern to sign the request. All requests of other domestic concerns must also be signed. The person signing the request must certify that it contains a true, correct and complete disclosure with respect to the proposed conduct and the circumstances of the conduct.

§ 80.7 Additional information.

If an issuer's or domestic concern's submission does not contain all of the information required by § 80.6, the Department of Justice may request whatever additional information or documents it deems necessary to review the matter. The Department must do so within 30 days of receipt of the opinion request, or, in the case of an incomplete response to a previous request for additional information, within 30 days of receipt of such response. Each issuer or domestic concern requesting an FCPA Opinion must promptly provide the information requested. A request will not be deemed complete until the Department of Justice receives such additional information. Such additional information, if furnished orally, shall be promptly confirmed in writing, signed by the same person or officer who signed the initial request and certified by this person or officer to be a true, correct and complete disclosure of the requested information. In connection with any request for an FCPA Opinion, the Department of Justice may conduct whatever independent investigation it believes appropriate.

§ 80.8 Attorney General opinion.

The Attorney General or his designate shall, within 30 days after receiving a request that complies with the foregoing procedure, respond to the request by issuing an opinion that states whether the prospective conduct, would, for purposes of the Department of Justice's present enforcement policy, violate 15 U.S.C. 78dd-1 and 78dd-2. The Department of Justice may also take such other positions or action as it considers appropriate. Should the Department request additional information, the Department's response shall be made within 30 days after receipt of such additional information.

§ 80.9 No oral opinion.

No oral clearance, release or other statement purporting to limit the enforcement discretion of the Department of Justice may be given. The requesting issuer or domestic concern may rely only upon a written FCPA Opinion letter signed by the Attorney General or his designate.

§ 80.10 Rebuttable presumption.

In any action brought under the applicable provisions of 15 U.S.C. 78dd-1 and 78dd-2, there shall be a rebuttable presumption that a requestor's conduct, which is specified in a request, and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department's present enforcement policy, is in compliance with those provisions of the FCPA. Such a presumption may be rebutted by a preponderance of the evidence. In considering the presumption, a court, in accordance with the statute, shall weigh all relevant factors, including but not limited to whether information submitted to the Attorney General was accurate and complete and whether the activity was within the scope of the conduct specified in any request received by the Attorney General.

§ 80.11 Effect of FCPA Opinion.

Except as specified in § 80.10, an FCPA Opinion will not bind or obligate any agency other than the Department of Justice. It will not affect the requesting issuer's or domestic concern's obligations to any other agency, or under any statutory or regulatory provision other than those specifically cited in the particular FCPA Opinion.

§ 80.12 Accounting requirements.

Neither the submission of a request for an FCPA Opinion, its pendency, nor the issuance of an FCPA Opinion, shall in any way alter the responsibility of an issuer to comply with the accounting requirements of 15 U.S.C. 78m(b) (2) and (3).

§ 80.13 Scope of FCPA Opinion.

An FCPA Opinion will state only the Attorney General's opinion as to whether the prospective conduct would violate the Department's present enforcement policy under 15 U.S.C. 78dd-1 and 78dd-2. If the conduct for which an FCPA Opinion is requested is subject to approval by any other agency, such FCPA Opinion shall in nor way be taken to indicate the Department of Justice's views on the legal or factual issues that may be raised before that agency, or in an appeal from the agency's decision.

§ 80.14 Disclosure.

(a) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by an issuer or domestic concern under the foregoing procedure shall be exempt from disclosure under 5 U.S.C. 552 and shall not, except with the consent of the issuer or domestic concern, be made publicly available, regardless of whether the Attorney General responds to such a request or the issuer or domestic concern withdraws such request before receiving a response.

(b) Nothing contained in paragraph (a) of this section shall limit the Department of Justice's right to issue, at its discretion, a release describing the identity of the requesting issuer or domestic concern, the identify of the foreign country in which the proposed conduct is to take place, the general nature and circumstances of the proposed conduct, and the action taken by the Department of Justice in response to the FCPA Opinion request. Such release shall not disclose either the identity of any foreign sales agents or other types of identifying information. The Department of Justice shall index such releases and place them in a file available to the public upon request.

(c) A requestor may request that the release not disclose proprietary information.

§ 80.15 Withdrawal.

A request submitted under the foregoing procedure may be withdrawn prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect. The Department of Justice reserves the right to retain any FCPA Opinion request, documents and information submitted to it under this procedure or otherwise and to use them for any governmental purposes, subject to the restrictions on disclosures in § 80.14.

§ 80.16 Additional requests.

Additional requests for FCPA Opinions may be filed with the Attorney General under the foregoing procedure regarding other prospective conduct that is beyond the scope of conduct specified in previous requests.

Dated: December 28, 1991.

William P. Barr,

Attorney General.

[FR Doc. 92-404 Filed 1-8-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010-AB29

Amendment of Valuation Benchmarks in Gas Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is extending the public comment period on the proposed rule published in the **Federal Register** on December 12, 1991, (56 FR 64724). In response to requests for additional time, MMS will extend the comment period from January 13, 1992, to February 14, 1992.

DATES: Comments must be received on or before February 14, 1992.

ADDRESSES: Written comments may be mailed to the Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3910, Denver, Colorado 80225-0165, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, at (303) 231-3432 or FTS 326-3432.

Dated: January 3, 1992.

Donald T. Sant,

Acting Associate Director for Royalty Management.

[FR Doc. 92-458 Filed 1-8-92; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AF12

Veterans Education; Changing Programs of Education

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs Nurse Pay Act of 1990 contains a section which affects most of the educational programs VA (Department of Veterans Affairs) administers. The section revises the rules for determining whether an individual can change programs of education. This proposal will acquaint the public with the way in which VA intends to implement this provision of law with regard to the Survivors' and Dependents' Educational Assistance program and the Montgomery GI Bill-Active Duty.

DATES: Comments must be received on or before February 10, 1992. Comments will be available for public inspection until February 20, 1992. VA intends to make these amended regulations, like the section of law they implement, effective June 1, 1991.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until February 20, 1992.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 233-2092.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs Nurse Pay Act (Pub. L. 101-366) liberalizes the rules for determining whether a veteran or eligible person can change a program of education. It is applicable to all changes of program which occur after May 31, 1991. This proposal implements that change in law for two of the educational programs VA administers.

VA will implement this statutory change by applying the procedures now used to determine whether a veteran's second change of program may be approved to the second change and all subsequent changes of program made after May 31, 1991. Thus, approval of changes after a second program change will not be limited to cases in which the change is necessitated by reasons beyond the individual's control. Under these procedures counseling is available for those who wish it.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these regulations are 64.117 and 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 16, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subparts D and K are amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36

1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 210

2. In § 21.4234, paragraph (d)(4) and its authority citation are added to read as follows:

§ 21.4234 Change of program.

* * * * *

(d) *Other changes of program.*

* * * * *

(4) Notwithstanding any provision of any other paragraph of this section, if a third or subsequent change of program occurs after May 31, 1991, VA will apply only the applicable provisions of paragraph (d)(2) of this section. If the applicable provisions of paragraph (d)(2) of this section are met, VA will approve the change of program. VA will not apply any of the provisions of paragraph (d)(3) of this section in determining whether the change of program should be approved.

Authority: 38 U.S.C. chapter 30, Pub. L. 98-525; 38 U.S.C. 210(c)

3. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. chapter 30, Pub. L. 98-525; 38 U.S.C. 210(c)

4. Section 21.7114 and its authority citation are revised to read as follows:

§ 21.7114. Change of program.

In determining whether a veteran or servicemember may change his or her program of education under 38 U.S.C. ch. 30, VA will apply the provisions of § 21.4234 of this part. VA will not consider programs of education a veteran or servicemember may have pursued under 38 U.S.C. ch. 34 or 36 before January 1, 1990, if he or she wishes to change programs of education under 38 U.S.C. ch. 30.

(Authority: 38 U.S.C. 3034, 3691; Pub. L. 98-525, Pub. L. 101-366) (June 1, 1991)

[FR Doc. 92-473 Filed 1-8-92; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-363, RM-7877]

Television Broadcasting Services; Springdale, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Total Life Community Educational Foundation, seeking the allotment of UHF television Channel 57 to Springdale, Arkansas, as that community's first local television broadcast service. Coordinates used for this proposal are 36-11-00 and 94-08-18.

Although the Commission has imposed a temporary freeze on new television allotments in specified metropolitan areas pending the outcome of an inquiry into the use of advanced television systems in broadcasting, this proposal is not affected thereby. (See Order, Advanced Television Systems and Their Impact on Existing Television Broadcast Service, 52 FR 28346, July 29, 1987.)

DATES: Comments must be filed on or before February 27, 1992, and reply comments on or before March 13, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Ashton R. Hardy, Bradford D. Carey and Craig E. Frosch, Esqs., Walker, Bordelon, Hamlin, Theriot and Hardy, 701 South Peters Street, New Orleans, LA 70130.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-363 adopted December 19, 1991, and released January 6, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st St. NW., Washington, DC 20036

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-549 Filed 1-8-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-361, RM-7502]

Radio Broadcasting Services; Houma and Chalmette, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Guaranty Broadcasting Corporation, licensee of Station KCIL(FM), Channel 298C1, Houma, Louisiana, seeking the reallotment of Channel 298C1 to Chalmette, Louisiana, and modification of Guaranty's license to specify Chalmette as the station's community of license. Guaranty also proposes the allotment of Channel 296A to Houma, Louisiana. The petitioner is requested to provide additional information regarding the public interests benefits of its proposals. See Supplementary Information, infra.

DATES: Comments must be filed on or before February 27, 1992, and reply comments on or before March 13, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Carl R. Ramey, Esq., Wiley, Rein & Fielding, 1776 K Street, NW., Washington, DC 20006 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-361, adopted December 19, 1991, and released January 6, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Channel 298C1 can be allotted to Chalmette in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.1 kilometers (3.8 miles) west to accommodate petitioner's desired transmitter site. Channel 296A can be allotted to Houma with a site restriction of 11.9 kilometers (7.4 miles) south to avoid a short-spacing to Station WHMD(FM), Channel 296A, Hammond, Louisiana. The coordinates for Channel 298C1 at Chalmette are 29-55-11 and 90-01-29. The coordinates for Channel 296A at Houma are 29-29-30 and 90-44-26. In accordance with § 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 298C1 at Chalmette or require Guaranty to demonstrate the availability of an additional equivalent class channel for use by such parties.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-544 Filed 1-8-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-364, RM-7780]

Radio Broadcasting Services; Nassawadox, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Tobacco Country Radio, Inc., seeking the allotment of Channel 250A to Nassawadox, Virginia, as the community's first local FM service. Channel 250A can be allotted to Nassawadox without the imposition of a site restriction. The coordinates for Channel 250A at Nassawadox are North Latitude 37-28-24 and West Longitude 75-51-30.

DATES: Comments must be filed on or before February 27, 1992, and reply comments on or before March 13, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Stuart A. Shorenstein, Esq., Lowenthal, Landau, Fischer, Ziegler & Bring, P.C., 250 Park Avenue, New York, New York 10177 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-364, adopted December 20, 1991, and released January 6, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-547 Filed 1-8-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-362, RM-7873]

Radio Broadcasting Services; Jourdanton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Seventh Day Christian Group requesting the allotment of Channel 239A to Jourdanton, Texas. Channel 239A can be allotted to Jourdanton, Texas, without the imposition of a site restriction. The coordinates for Channel 239A at Jourdanton are 28-54-48 and 98-32-36. Mexican concurrence will be requested for this proposal.

DATES: Comments must be filed on or before February 27, 1992, and reply comments on or before March 13, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lee J. Peltzman, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 5335 Wisconsin Avenue, NW., suite 300, Washington, DC 20015-2003 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-362, adopted December 19, 1991, and released January 6, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-545 Filed 1-8-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-272; RM-7326]

Radio Broadcasting Services; Trinity, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: This document dismisses the petition of Roy E. Henderson, d/b/a Trinity Broadcasting Company, proposing the allotment of Channel 251A to Trinity, Texas, at petitioner's request. See 56 FR 50305, October 4, 1991. With this action, this proceeding is terminated.

DATES: This dismissal of proposed rule is effective February 20, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-272, adopted December 19, 1991, and released January 6, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-546 Filed 1-8-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 76

[MM Docket No. 82-434; FCC 91-405]

Network-Cable Cross-Ownership Rule

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission in this second further notice of proposed rulemaking invites further comment on its proposal to eliminate § 76.501(a)(1) of the Commission's rules, which prohibits common ownership of cable television systems and national television networks.

DATES: Comments are due on or before March 2, 1992, and reply comments are due on or before March 17, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James Coltharp, Policy and Rules Division, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *second further notice of proposed rulemaking* in MM Docket No. 82-434 adopted December 12, 1991, and released December 30, 1991. The complete text of this *second further notice of proposed rulemaking* is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC.

Synopsis of Second Further Notice of Proposed Rule Making

1. By this *second further notice of proposed rulemaking* ("*Second FNPRM*"), the Commission invites further comment on its proposal to eliminate § 76.501(a)(1) of the Commission rules, which prohibits common ownership of cable television systems and national television networks (the "network-cable cross-ownership rule"). In light of the significant changes in the video marketplace since the most recent comments in this docket were submitted in 1988, the Commission believes it is useful to revisit this proceeding and update its record. These changes, which were closely examined in a recent FCC Office of Plans and Policy Working Paper, Broadcast Television in a Multichannel Marketplace, include a continued decline in the broadcast networks' audiences and financial base, as well as the emergence of cable television as a more substantial competitive force in the video marketplace.

2. Through this *second FNPRM*, the Commission seeks to update the record on whether it may safely eliminate its network-cable cross-ownership rule and whether its repeal would promote increased efficiencies and benefits to the public. We recognize that parties commenting on the prior notices have raised serious questions regarding the impact of repeal on diversity and competition in the video marketplace. As a result, we believe that we should carefully consider these concerns to assess their legitimacy and to determine whether minimally intrusive regulatory safeguards are warranted to alleviate them if we decide to relax or repeal the rule. In this regard, we seek comment on certain alternative proposals aimed at addressing these concerns, and we also invite parties to propose any other safeguards or modification that they consider appropriate.

3. When adopting the network-cable cross-ownership rule in 1970, the Commission expressed its concern that the networks, if permitted to own cable systems at this critical stage of their development, could potentially thwart the industry's growth and inhibit competition. The Commission also stated that "the networks already have a predominant position nationwide through their affiliated stations in all markets, their control over network programming presented in prime time, and their share of the national television audience." Although the Commission did not elaborate further on this rule's rationale, its policy concerns were illuminated in its discussion of the broadcast-cable cross-ownership rule, which was simultaneously adopted and prohibits common ownership of local television stations and cable systems that serve the same area. This discussion suggests that the principal concerns underlying the network-cable rule were that: (1) the networks could restrict the amount of competing programming supplied by their cable television systems due to their incentive to maximize the audience for their own network programming; (2) cable systems owned by a network could refuse to carry the programming of rival networks, thus hindering the development of new cable networks as

well as limiting network competition nationwide; and (3) cable ownership could enhance the networks' dominance as suppliers of television programming, thus limiting the diversity of voices in the video marketplace.

4. Beginning in 1980, several studies questioned the necessity of the network-cable cross-ownership rule and emphasized the increasingly competitive nature of the video marketplace. We cited these studies in our first notice, 91 FCC 2d 76 (1982) 47 FR 39212, September 7, 1982, issued in 1982, that proposed to eliminate the cross-ownership rule in light of the growth of the video marketplace and the development of cable television services. In 1988, we issued a further notice, 3 FCC Rcd 5283 (1988) 53 FR 36080, September 16, 1988, to solicit additional comment on our proposal to eliminate the rule. Given the time elapsed since the notice, we allowed interested parties to comment on any intervening developments or circumstances that might affect our evaluation of the network-cable cross-ownership rule. In particular, we noted a report by the National Telecommunications and Information Administration, which concluded that broadcast television networks should not be prohibited from owning local cable systems. The further notice also observed that significant statutory or regulatory changes may have altered the nature of competition between the cable and broadcasting industries, including the adoption of the 1984 Cable Act, the elimination of our "must carry" rules, and the reimposition of our syndicated exclusivity rules. Accordingly, we sought specific comment on whether the opportunity for networks to own cable systems in markets containing their affiliated stations might adversely influence negotiations for affiliation contracts. Considering the absence of must carry, we also asked whether a network that affiliates with a local station while owning a cable system in the same market could undermine the competitive position of other broadcast facilities in that market.

5. In response to continuing fundamental changes within the video marketplace, we found that it is now useful to revisit the issue of whether eliminating the network-cable cross-ownership rule would enhance network efficiency and generate public benefits. However, we also recognize that a number of commenters responding to our prior Notices have expressed concerns that repealing the current restriction could undermine competition and diversity in local and national video markets. Therefore, we seek to explore those concerns in this proceeding to assess their validity, to analyze whether they could be satisfactorily addressed through imposing minimally intrusive regulatory safeguards, and to determine whether the record supports relaxing the rule.

6. We ask commenters first to address whether, in light of the significant changes within the video marketplace, the network-cable cross-ownership rule should be eliminated. In this regard, we note that the near complete dominance of the three broadcast networks, which existed when the rule was adopted and persisted for many years, has clearly diminished and left the networks with the need to adapt to a changing economic and competitive environment. According to the recent Office of Plans and Policy Working Paper, the reduction in advertising revenue as the traditional base of economic support will force the networks either to reduce their costs and "downsize" their operations, or to develop supplementary revenue streams. One potential means of both reducing costs and increasing revenues would be for the networks to enter the cable television industry, particularly given their experience and expertise in selling national advertising, acquiring and distributing programming, producing news programming, and working with a diverse group of local affiliates. Moreover, allowing the networks into cable television would enable them to take advantage of the benefits from vertical integration into cable system ownership and television programming services, as detailed in our July 1990 Report to Congress, 5 FCC Rcd 4962 (1990), on the status of competition in the cable industry. We also note that the increased revenues that may flow from network entry into cable system ownership could also benefit cable subscribers, affiliate stations that depend on a network's programming and economic resources, as well as independent stations that rely upon a diversity of off-network syndicated programming. We stress that any repeal of the network cable cross-ownership restriction would not be designed to provide an artificial boost to the network's competitive position. Rather, in light of their fundamental support to the free, over-the-air broadcast system, we seek to remove undue barriers to the network's continued competitive vitality.

7. Second, we note that some parties have raised valid concerns that network ownership of cable systems—or cable ownership of networks—may harm competition and diversity in local and national markets. These parties also raise a variety of questions pertaining to the possibility that networks could bypass or discriminate among local affiliates and independent stations. We seek comment on the merit and significance of these concerns in the current video marketplace. To the extent that the updated record establishes that these or other concerns may warrant relaxing, but not completely repealing the rule, we also seek comment on several options that would permit network ownership of cable systems subject to various constraints. These options consist of allowing networks to own cable systems in "large" or "competitive" markets, including where second competitive cable systems exist. We also request comment on the merits of options that would allow networks to own cable systems up to a national subscriber limit, or subject to must carry and discrimination safeguards. Parties may consider the options individually or in certain combinations, and are also encouraged to present alternative suggestions. Parties may also wish to weigh the extent to which other existing rules—such as the broadcast-cable cross-ownership rule or our regulations limiting network control over their affiliates—might ameliorate these concerns.

Initial Regulatory Flexibility Analysis

8. Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds:

I. Reason for Action

The proposals under consideration will modify or eliminate the existing prohibition on cross-ownership between cable television systems and national television networks. The Commission believes that, in its current form, this prohibition is not longer necessary in terms of its original purposes and that possible cost benefits attributable to cross-ownership are being needlessly forgone by continuation of the rule in its entirety.

II. Objectives

The objective of this action is to eliminate unnecessary regulation, thus permitting the marketplace to operate more freely and efficiently. In particular, networks may benefit by their ability to own cable systems, and cable systems may benefit through being owned by networks.

III. Legal Basis

The proposed Rule Making action is authorized by sections 1, 2, 3, 4(i) and (j), 303, 307, 308, 309 and 403 of the

Communications Act of 1934, as amended.

IV. Reporting, Recordkeeping and Other Compliance Requirements

No recording, recordkeeping or reporting requirements for cable television operators are involved. Depending on the proposed action, however, it may eliminate the need for possible Commission compliance actions or waiver proceeding related to the existing rule.

V. Federal Rules Which Overlap, Duplicate or Conflict With This Rule

None.

VI. Description, Potential Impact and Number of Small Entities Affected

The proposals under consideration are not expected to have a significant impact on most small cable systems. However, to the extent that networks purchase existing small cable systems, the systems may benefit from expertise of the network, or from the possible infusion of additional capital into the cable system. To the extent that networks choose to purchase large cable systems or that large cable systems choose to purchase networks, there should be little or no direct impact on small business entities.

VII. Any Significant Alternatives Minimizing Impact on Small Entities and Consistent With Stated Objective

Several of the proposals under consideration minimize the impact on small entities.

9. The Secretary shall cause a copy of this second further notice of proposed rulemaking, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law No. 96-354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.* (1981).

Ex Parte

10. This is a non-restricted notice and comment rule-making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.203, and 1.206(a).

11. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before March 2, 1992, and reply comments on or before March 17, 1992. To file formally in this proceeding, you must file an original plus five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

12. Authority for this proposed Rule Making is contained in sections 4(i) and (j), and 303 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-548 Filed 1-8-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-09; Notice 24]

RIN 2127-AE28

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend Standard 213, *Child Restraint Systems,* to expand the definition of a built-in child restraint system. The current definition is limited to child restraint systems installed in passenger cars. The effect of eliminating the limitation to cars would be to apply the standard's dynamic performance requirements for built-in restraints to a greater number of child restraint systems. Also, the agency proposed to amend Standard 213's application section so that the standard applies to motor vehicles that are manufactured with a built-in restraint system. This proposed amendment would make the vehicle manufacturer responsible for certifying compliance to Standard 213. Finally, in response to a petition for rulemaking from Ford Motor Company, NHTSA proposed several amendments to simplify the standard's labeling requirements for built-in restraints.

DATES: Comments on this notice must be received by the agency no later than March 9, 1992. The proposed effective date is 180 days after the date of publication of a final rule.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-5267. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hott, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366-0247.

SUPPLEMENTARY INFORMATION: This notice proposes to amend Standard 213, *Child Restraint Systems,* to expand the definition of a built-in child restraint system. The standard defines a built-in child restraint system as "any child restraint system that is an integral part of a passenger car." (S4) The amendment would eliminate the limitation to cars, thus applying the standard's dynamic performance requirements for built-in restraints to a greater number of child restraint systems. Also, the agency proposes to amend Standard 213's application section so that the standard applies to motor vehicles that are manufactured with a built-in restraint system. This proposed amendment would make the vehicle manufacturer responsible for certifying compliance to Standard 213. In addition, NHTSA is proposing several amendments to simplify the standard's labeling requirements for built-in restraints. The agency is proposing the labeling amendments in response to a petition for rulemaking from Ford Motor Company.

Definition of Built-In Child Restraint System

NHTSA proposes to amend the definition of a built-in child restraint system in two ways. First, the agency proposes to expand the definition to include child restraint systems that are integral to vehicles other than passenger cars, such as multipurpose passenger vehicles (MPV's). Those restraints are "child restraint systems" under S4 of Standard 213, and therefore must comply with all the provisions of the standard that are generally applicable to

"child restraint systems." However, since those restraints do not fall within the standard's definitions of a "built-in system" or an "add-on" system (see S4 of Standard 213), the restraints are not subject to Standard 213's dynamic performance requirements that expressly apply to either add-on systems or built-in systems.

NHTSA tentatively concludes that the dynamic performance requirements should apply to all child restraints that are built into a motor vehicle, or designed to be built into a motor vehicle, regardless of the type of motor vehicle involved. Evaluating the performance of a child restraint in a dynamic simulation of a vehicle impact provides the greatest assurance that the restraint will protect a child in an actual crash. NHTSA further believes that the dynamic performance requirements for built-in restraints in passenger cars are appropriate for built-in restraints installed in other vehicle types. Accordingly, NHTSA is proposing to replace the term "passenger car" with the term "motor vehicle" wherever the former term appears in Standard 213's specifications for built-in systems.

Second, NHTSA proposes to clarify the definition of a "built-in child restraint system" to make it clear that the definition includes both restraints that are integral parts of new vehicles as well as restraints that are designed to be integral parts of a motor vehicle, such as aftermarket restraint systems.

NHTSA believes that the impact of the proposal would be minimal. Based on correspondence and other contacts with manufacturers, the agency believes that the manufacturers whose restraint systems would be newly included in the definition of a "built-in child restraint system" (as a result of today's proposal) already make efforts to meet Standard 213's dynamic performance requirements.

Application

NHTSA also proposes to amend S3, *Application*, of Standard 213 to convert the standard from just an equipment standard into both a vehicle standard and an equipment standard. S3 states: "This standard applies to child restraint systems for use in motor vehicles and aircraft." The agency proposes that S3 be amended to apply the standard also to passenger cars, multipurpose passenger vehicles, trucks and buses equipped with a built-in child restraint system. The amendment would make the vehicle manufacturer responsible for certifying compliance with Standard 213. The practical effect of this amendment would be minimal, since the vehicle manufacturer is already responsible under 49 CFR part 579, *Defect and Noncompliance Responsibility*, for recalling the vehicle in the event the restraint it installed does not comply with Standard 213 or contains a safety-related defect.

Labeling Requirements for Built-in Systems (Ford Petition)

This notice proposes several changes to Standard 213's labeling requirements for built-in child restraint systems. Two of those changes are proposed in response to a petition for rulemaking from Ford. The third change is proposed to better inform persons installing built-in child restraints how to do so properly.

Commenters should note that the structure and language of the amendments proposed today reflect the standard's labeling requirements as they currently are in effect. Commenters should note also that in February and August 1991, NHTSA issued separate NPRMs that contain proposals that would make changes in the structure and language of those labeling requirements. (*See*, 56 FR 6603; 56 FR 38105) Those proposals are still pending. If the amendments proposed by the earlier NPRMs are adopted, any amendments that might ultimately be adopted based on this proposal would have to be modified to account for those changes.

1. Identifying Information

Ford petitioned NHTSA to remove the requirement in S5.5.4 of the standard that a built-in system must be labeled with the information specified in S5.5.5 (a) through (d) of the standard, i.e., the restraint's model name or number, manufacturer's name, and month, year and place of manufacture. Ford believed the information is unnecessary because "the vehicle manufacturer who installs the seats would be responsible for the design and service of the vehicle, including the built-in seat."

Ford also requested that NHTSA remove the requirement in S5.6.2 that the information be included in the vehicle owner's manual. Ford stated that the lack of a need for the requirement is shown by the absence from Standard 213 of any comparable requirement for add-on restraints. (The standard requires only that the information be labeled on the add-on restraint.) Ford also stated that it could not practicably print the date of manufacture of the restraint system in the vehicle owner's manual. The petitioner did not explain its statement, but NHTSA presumes that Ford believes it would be difficult for the owner's manual to contain the date of manufacture of the child restraint system because the date is unique to each child restraint system, while the manuals are generally printed at one time.

NHTSA has decided to propose the requested changes to S5.5.4 and S5.6.2 for factory-installed built-in child restraints. "Factory-installed built-in child restraint" would be defined in S4 of the standard as a built-in restraint system that was installed in a motor vehicle at the time of its delivery to a dealer or distributor for distribution. The agency has tentatively determined that placing the information required by S5.5.5 (a) through (d) is unnecessary for factory-installed built-in child restraints because the motor vehicle manufacturer is responsible under the National Traffic and Motor Vehicle Safety Act for recalling and remedying any vehicle whose factory-installed restraint contains a safety defect or fails to comply with any applicable Federal Motor Vehicle Safety Standard. Since the vehicle manufacturer is identified on the vehicle certification label and elsewhere in the vehicle, neither the manufacturer nor the manufacturer of the built-in child restraint, if different from the vehicle manufacturer, need be identified for the benefit of the owner of such a vehicle who is seeking a remedy of a defect or noncompliance involving the child restraint.

The agency requests comments on whether the information of S5.5.2 (a) through (d) and S5.5.5 (a) through (d) should continue to be required for add-on restraints and built-in restraints intended for used vehicles, in the event its proposal regarding child restraint registration proposal is adopted. In February 1991, NHTSA proposed a child restraint registration requirement to improve the dissemination of recall information to owners of add-on and some built-in restraint systems. 56 FR 6603; February 19, 1991. Under the proposal, restraint manufacturers must provide a registration card with each restraint system (excluding built-in systems installed in new vehicles), and keep records of the names and addresses of persons who have returned registration information. One purpose of the proposal is to aid manufacturers in informing an owner that the restraint system is recalled. NHTSA notes that the information labeled on the restraint pursuant to Standard No. 213 would allow those restraint owners whose names and addresses are not known to the manufacturer to determine if their restraint is among those recalled.

NHTSA recognizes that as a practical matter, today's proposal to limit labeling requirements might affect only a few manufacturers of built-in restraint

systems. A restraint manufacturer may have to label all restraints with the information required by S5.5.5. (a) through (d) unless the manufacturer can identify with certainty which restraints become factory-installed built-in child restraints.

2. Inadvertently Required Information

Ford's second suggestion was that NHTSA remove S5.6.3 through S5.6.6 of Standard 213, which describe various statements that must be included in the printed instructions accompanying each child restraint. Ford believed that NHTSA intended to remove those paragraphs in a 1988 rulemaking, but did not effectuate the intended change in the rule.

NHTSA tentatively agrees with Ford that the statements of S5.6.3 through S5.6.6 should not be required for built-in restraint systems. It appears that it was inadvertent that the standard required the statements for built-in systems. The statements are appropriate for add-on systems (and are required for them by S5.6.1.3 through S5.6.1.6), but as explained below, do not appear relevant for built-in ones.

S5.6.3 states that the instructions "shall explain the primary consequences of [not] following the warnings required to be labeled on the child restraint system in accordance with S5.5.2 (g) through (k)." The statement is inappropriate because the information of 5.5.2 (g) through (k) are required to be labeled on add-on restraints, not built-in ones.

S5.6.4 states that "The instructions for each car bed shall explain that the car bed should [be] position[ed] in such a way that the child's head is near the center of the vehicle." The statement is inappropriate for a built-in system because, once installed, the position of the system cannot be changed.

S5.6.5 states that the instructions "shall state that child restraint systems should be securely belted to the vehicle, even when they are not occupied, since in a crash an unsecured child restraint system may injure other occupants." The statement addresses the situation where an unsecured add-on restraint can become a flying missile in a crash and injure other vehicle occupants. There is no such danger for a built-in system.

S5.6.6 states "Each child restraint system shall have a location on the restraint for storing the manufacturer's instructions." This requirement appears to be inappropriate for restraints installed by the vehicle manufacturer on a new vehicle because the instructions for these systems are required to be "included in the vehicle owner's manual" (S5.6.2). It is unlikely that the vehicle owner's manual would be stored on the restraint.

However, NHTSA is proposing a storage location on the restraint for built-in systems other than factory-installed ones. The printed instructions would not be required to be in the vehicle owner's manual under today's proposal. The instructions would be provided separately, with the restraint. In those cases, the agency tentatively believes a storage location for the instructions would help ensure that the instructions are readily available when needed.

3. Installation Instructions for Built-In Restraints

NHTSA proposes a new requirement to increase the likelihood that a built-in restraint system will be correctly installed. The proposal would require a restraint that has not been installed in a vehicle to be accompanied by instructions that provide a step-by-step procedure for the installation. Also, NHTSA proposes that the instructions must specify the types of vehicles and the locations of seating positions into which the restraint can or cannot be installed. The agency requests comments on how specific the information should be. For example, one possibility is that the information should specify the vehicle makes and models into which the restraint could be installed, and where in the vehicle the restraint should be located.

The agency has tentatively determined that the instructions would make it easier for manufacturers of some built-in restraints to meet their certification responsibility. The restraints are those that are not factory-installed. Some manufacturers of these "aftermarket" built-in seats have asked NHTSA for guidance on how they can certify to Standard 213 when their restraint can be installed in different types of vehicles with varying interiors. If the restraint were installed in a manner that the restraint manufacturer did not intend, the installation could affect the seat's performance. For example, the restraint might be installed too close to a hard structure, such as a console assembly or a roof pillar, to sufficiently protect against head impact in a crash. When the vehicle's interior varies from that anticipated by the restraint manufacturer, so too can the performance of the built-in system.

The instructions would establish the assumptions that the manufacturer had about the vehicle interior that form the basis for the certification. The instructions specify attributes about the vehicle interior that are compatible or incompatible with the restraint. For example, the instructions could state that the restraint must not be installed within a specified distance from any rigid interior structures. The instructions would help ensure that a built-in restraint performs as intended in the real world.

NHTSA also believes that the installation instructions would help facilitate compliance testing. If the instructions were specific as to the vehicle types suitable for the restraint, the agency could determine the configuration of the "specific vehicle shell or the specific vehicle" (S6.1.1.1(a)) for testing the restraint. The agency would install the restraint pursuant to the manufacturer's instructions. The restraint's performance in the test would be representative of its performance in the vehicle.

Rulemaking Analyses and Notices

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

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has further determined that the effects of this rulemaking are minor and that preparation of a full preliminary regulatory evaluation is not warranted. The agency believes that manufacturers would be minimally affected by the proposed amendment to the definition of a "built-in child restraint system." Based on available information, manufacturers of restraint systems that would be newly included in the proposed definition now design their product to meet Standard 213 requirements for "built-in" systems. NHTSA also believes that manufacturers would be minimally affected by the proposed amendment to the labeling requirements. The amendment would affect some but not all of the information that is required to be labeled on or provided with the restraint. Overall, the requirements to label and provide informational instructions would be minimally affected.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. To our knowledge there are fewer than 10

manufacturers of built-in systems. Regardless of the number of small entities, NHTSA believes the economic impact on them would not be significant, since currently, manufacturers presently design their product to meet the dynamic performance requirements for "built-in" systems. NHTSA also believes that manufacturers would not be significantly affected by the amendment to the labeling requirements. The amendment would affect some but not all of the information that is required to be labeled on or provided with the restraint. Overall, the requirements to label and provide informational instructions would be minimally affected. The agency believes that there would not be any impact on the cost of most child seats, and that small organizations and governmental jurisdictions that purchase these seats would not be significantly affected by the proposals. In view of the above, the agency has not prepared an initial regulatory flexibility analysis.

Executive Order 12612

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

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Comments on the Proposal

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information. should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as set forth below.

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

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

§ 571.213 [Amended]

2. S3 would be revised to read as follows:

S3. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks and buses, and to child restraint systems for use in motor vehicles and aircraft.

3. S4 would be amended by adding a definition of "factory-installed built-in child restraint system" and by revising the definitions of "built-in child restraint system" and "specific vehicle shell" to read as follows:

S4. Definitions.

* * * * *

Built-in child restraint system means a child restraint system that is designed to be an integral part of a motor vehicle.

* * * * *

Factory-installed built-in child restraint system means a built-in child restraint system that was installed in a motor vehicle at the time of its delivery to a dealer or distributor for distribution.

* * * * *

Specific vehicle shell means the actual vehicle model part into which the built-in child restraint system is or is intended to be fabricated, including the complete surroundings of the built-in system. If the built-in child restraint system is or is intended to be manufactured as part of the rear seat, these surroundings include the back of the front seat, the interior rear side door panels and trim, the rear seat, the floor pan, the B and C pillars, and the ceiling. If the built-in system is or is intended to be manufactured as part of the front seat, these surroundings include the dashboard, the steering mechanism and its associated trim hardware, any levers and knobs installed on the floor or on a console, the interior front side door panels and trim, the front seat, the floor pan, the A pillars and the ceiling.

* * * * *

5. The introductory text of S5 would be revised to read as follows:

S5. *Requirements for motor vehicles with built-in child restraint systems and for child restraint systems manufactured for use in motor vehicles.* Each motor vehicle with a built-in child restraint system shall meet the requirements in this section when, as specified, tested in accordance with S6.1. Each child restraint system manufactured for use in motor vehicles shall meet the requirements in this section when, as specified, tested in accordance with S6.1.

* * * * *

6. S5.1.3.1 (introductory text) would be republished and S5.1.3.1(a) and S5.1.3.1(b) would be revised to read as follows:

S5.1.3.1 *Child restraint systems other than rear-facing ones and car beds.* Each child restraint system other than a rear-facing child restraint system or a car bed, shall retain the test dummy's torso within the system.

(a) In the case of an add-on child restraint system, no portion of the test dummy's head shall pass through a vertical transverse plane that is 32 inches forward of point z on the standard seat assembly, measured along the center SORL (as illustrated in figure 1B), and neither knee pivot point shall pass through a vertical, transverse plane

that is 36 inches forward of point z on the standard seat assembly, measured along the center SORL.

(b) In the case of a built-in child restraint system, neither knee pivot shall pass through a vertical, transverse plane that is 36 inches forward of the hinge point of the specific vehicle seat into which the system is or is intended to be built, measured along a horizontal line parallel to the vehicle's longitudinal center line and the center line of the vehicle seat.

* * * * *

7. S5.2.1.2 (introductory text) and S5.2.1.2(a) would be republished and S5.2.1.2(b) would be revised to read as follows:

S5.2.1.2 A front-facing child restraint system is not required to comply with S5.2.1.1 if the target point on either side of the dummy's head is below a horizontal plane tangent to the top of—

(a) the standard seat assembly, in the case of an add-on child restraint system, when the dummy is positioned in the system and the system is installed on the assembly in accordance with S6.1.2.

(b) the vehicle seat, in the case of a built-in child restraint system, when the system is activated and the dummy is positioned in the system in accordance with S6.1.2.

8. S5.2.2.2(a)(2) would be revised to read as follows:

S5.2.2.2 Each forward-facing child restraint system shall have no fixed or movable surface—

(a) * * *

(2) Parallel to a vertical plane through the longitudinal center line of the vehicle seat, in the case of the built-in child restraint system, and

* * * * *

9. S5.5.4 and the introductory text of S5.5.5 would be revised to read as follows:

S5.5.4 (a) Each built-in child restraint system, except for a factory-installed built-in restraint, shall be permanently labeled with the information specified in S5.5.5 (a) through (j). The information shall be visible when the system is activated for use.

(b) Each factory-installed built-in child restraint shall be permanently labeled with the information specified in S5.5.5 (e) through (j), so that the information is visible when the seat is activated for use. The information shall also be included in the vehicle owner's manual.

S5.5.5 The information specified in paragraphs (a) through (j) of this section that is required by S5.5.4 shall be in English and lettered in letters and numbers that are not smaller than 10-point type and are on a contrasting background.

* * * * *

10. S5.6.2 would be revised, S5.6.2.1 would be republished, S5.6.2.2 would be reserved, and S5.6.2.3 would be added to read as follows:

S5.6.2 *Built-in child restraint systems.* Each built-in child restraint system shall be accompanied by printed instructions in English that provide a step-by-step procedure, including diagrams, for activating the restraint system, positioning a child in the system, adjusting the restraint and, if provided, the restraint harness to fit the child. In the case of each motor vehicle equipped with a factory-installed built-in restraint, this information shall be included in the vehicle owner's manual.

S5.6.2.1 The instructions shall explain the primary consequences of not following the manufacturer's warnings for proper use of the child restraint system in accordance with S5.5.5 (f) through (i).

S5.6.2.2 [Reserved]

S5.6.2.3 Each built-in child restraint system, except for an original equipment built-in restraint, shall have a location on the restraint for storing the instructions.

11. S5.6.3 would be revised to read as follows:

S5.6.3 Each built-in child restraint system that has not been installed in a vehicle shall be accompanied by instructions in English that provide a step-by-step procedure for installing the system in a motor vehicle. The instructions shall specify the types of vehicles and the seating positions into which the restraint can or cannot be installed.

12. S5.6.4 through S5.6.6 would be removed.

* * * * *

Issued on January 3, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-430 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 57, No. 6
Thursday, January 9, 1992

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

January 3, 1992.

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 collecting; (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 Office, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 690-2118.

New Collection

• Farmers Home Administration.
7 CFR 1942-G, Rural Business Enterprise Grants—Addendum I.
On occasion.
State or local governments; Non-profit institutions; Small businesses or organizations; 520 responses; 505 hours.
Jack Holston (202) 720-9736.

• Food and Nutrition Service.
Validation of Competencies and Determination of Training needs for Managers in School Food Service.
One time only.
Individuals or households; Non-profit institutions; 1,800 responses; 600 hours.
Dr. Jeannie Sneed (601) 266-5773.

Reinstatement

• Farmers Home Administration.
7 CFR 1941-A, Operating Loan Policies, Procedures and Authorizations.
FmHA 403-1, 441-8, 441-10, 441-13, 441-18, 441-25, 1940-51, 1940-53, 1940-55, -56.
On occasion.
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 79,500 responses; 15,213 hours.
Jack Holston (202) 720-9736.

Extension

• Farmers Home Administration.
7 CFR 1951-O, Servicing Cases Where Unauthorized Loan or Other Financial Assistance was Received—Community and Business Programs.
On occasion.
State or local governments; Non-profit institutions; 14 responses; 12 hours.
Jack Holston (202) 720-9736.

• Food and Nutrition Service.
Evaluation of State-Initiated EBT Demonstrations.
On occasion.
State of local governments; Businesses or other for-profit; Federal agencies or employees; Small Business or organizations; 7,953 responses; 1,141 hours.
Kilo (Sharon) Bingham (703) 305-2115.

• Federal Crop Insurance Corporation.
Macadamia Orchard Inspection Report.
FCI-554.
On occasion.
Individuals or households; Farms; 200 responses; 200 hours, Bonnie L. Hart (202) 254-8393.

• Federal Crop Insurance Corporation.
Crop Appraisal and Adjuster Worksheets.
38 different forms.
On occasion.
Individuals or households; Farms; 61,468 responses; 104,496 hours, Bonnie L. Hart (202) 254-8393.

Larry K. Roberson,
Deputy Departmental Clearance Officer.

[FR Doc. 92-435 Filed 1-8-92; 8:45 am]

BILLING CODE 3410-01-M

Packers and Stockyards Administration

Proposed Study of Concentration in Red Meat Packing Industry; Request For Public Comment

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Request for public comment on proposed study of concentration in red meat packing industry.

SUMMARY: The Packers and Stockyards Administration was appropriated $500,000 in fiscal year 1992 to study concentration in the red meat packing industry. The Agency requests comments on project selection, research methodology, data needs and sources, and potential participants.

DATE: Comments are due on or before February 7, 1992.

ADDRESS: Send comments to: Gerald E. Grinnell, IAS-P&SA-USDA, room 3052-S, Washington, DC 20250-2800.

FOR FURTHER INFORMATION CONTACT: Gerald E. Grinnell, telephone (202) 720-7455.

SUPPLEMENTARY INFORMATION: A sum of $500,000 was included in the Packers and Stockyards Administration's fiscal year 1992 appropriation to conduct a study and report on concentration in the red meat packing industry. At least $250,000 of this amount will be used to contract with other organizations and universities.

The possible topics or projects of a concentration study in the red meat industry are numerous. In order to narrow the scope of the study to meet budget limitations, the Packers and Stockyards Administration will decide upon specific projects and arrange to have the projects completed.

To assist in its decisions, the Agency requests public comments on project selection. Commenters also may comment on research methodology, data needs and sources, and potential participants for the study. Recommendations should be concise, yet specific and accompanied by supporting statements.

Project Selection

In providing the funds for the study, Congress discussed possible subjects for a concentration study. For example, while not limited to the following, the

study could define relevant markets, measure concentration, review changes in price information systems and pricing practices, review annual reports, and assess the role of futures markets and forward contracts. Other topics might include trends and implications of increased vertical integration and coordination, potential for changes in concentration (including size economies and entry conditions), etc. It also may be desirable and necessary to limit the study to one or two species of livestock.

Research Methodology, and Data Needs and Sources

Commenters who care to do so, are invited to discuss the types of data and methodology needed to address the projects they think are most important. Commenters may also indicate data sources. Data for the study may be obtained under the Packers and Stockyards Administration's authorities, including its confidentiality restrictions.

Persons wishing to identify topics that they believe cannot be addressed due to methodological and data limitations should also identify the limitations.

Potential Participants

P&SA invites recommendations for participants to assist in addressing questions relating to concentration in the red meat packing industries.

This is not an invitation to bid on projects. After P&SA has selected research projects, the Agency will determine the most appropriate method to obtain the services needed to complete the work.

Authority: Public Law 102-142.

Dated: January 6, 1992.

Virgil M. Rosendale,

Administrator, Packers and Stockyards Administration.

[FR Doc. 92-505 Filed 1-8-92; 8:45 am]

BILLING CODE 3410-KD-M

CENTRAL INTELLIGENCE AGENCY

Nondisclosure Obligations and Prepublication Review; Access to and Release of Official Information

In accordance with the terms of the Settlement Agreement filed with the United States District Court for the District of Columbia on 16 July 1991 in the case of *Patti A. Goldman* v. *Central Intelligence Agency*, Civil No. 90-2138, the following notice is hereby given.

CIA internal regulations HR 6-2 and HR 6, Attachment 1 reflect the Agency's current policies and requirements with regard to nondisclosure obligations and prepublication review. These regulations are available to the public upon written request to the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505.

The term "official information," as used in CIA's regulation on access to and release of official information (HR 10-22), includes all information, whether classified or unclassified, that is originated, received, or controlled by the Agency in pursuance of law or in connection with the discharge of official duties. This definition encompasses information that concerns sources and methods, is unique to the Agency, or can be traced to the Agency. Excluded from this definition are personal copies of unclassified/uncontrolled administrative notices, personnel actions, financial statements, medical records, and items meant for public consumption, such as newspapers, magazines, books, and reference materials. All official information as defined in HR 10-22 is the property of the U.S. Government.

Official information is not to be used for personal use or benefit and may not be copied or removed from the files of the Agency for any purpose except in connection with official business.

CIA will not provide official information to or permit its use by an individual unless it is required in the course of official duties. Classified information is further restricted to those persons having a need-to-know who also have the necessary security clearances or access approvals.

Certain violations involving the misuse or mishandling of classified information can constitute a criminal offense, penalties for which are specified in sections 793, 794, and 798, Title 18 U.S. Code. Other violations, while not constituting a criminal offense, represent violations of the Executive order on classification of national security information and Agency security policy, and will be handled under appropriate provisions of Agency regulations.

CIA will not provide official information to former Agency employees unless it is properly released to them through designated official channels. Need-to-know and possession of the appropriate security clearances must be demonstrated prior to release of any classified information. In general, the Agency treats former employees like other members of the general public who request information under the provisions of the Freedom of Information or Privacy Acts or the mandatory review procedures in the Executive order on classification of national security information.

Dated: December 23, 1991.

Approved:

R.M. Huffstutler,

Deputy Director for Administration.

[FR Doc. 92-495 Filed 1-8-92; 8:45 am]

BILLING CODE 6310-02-M

COMMISSION ON CIVIL RIGHTS

Florida Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m on Thursday, January 23, 1992, at the Metro-Dade Government Center, 111 NW 1st Street, 18th Floor, Conference Room 4, Miami, Florida 33128. The purpose of the meeting is to discuss the status of the Commission and follow-up plans to the Tampa police project. In addition, the committee will receive information from community leaders on racial tensions in Florida (Miami).

Persons desiring additional information, or planning a presentation to the Committee should contact Florida Chairperson Bradford Brown 305/361-4991 or Bobby D. Doctor, Regional Director, Southern Regional Office of the U.S. Commission on Civil Rights at (404/730-2476, TDD 404/730-2481). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 6, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit

[FR Doc. 92-504 Filed 1-8-92; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

MCTL Implementation Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held January 29, 1992 at 9:30 a.m., in the Herbert C. Hoover Building, room 1617-F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis in

the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations as needed.

Agenda: General Session

1. Opening Remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Restructuring Militarily Critical Export Controls.
5. Underlying Policy Guidelines for Future Export Controls.
6. Other Business.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address:

Ms. Ruth D. Fitts, TAC Unit/OTPA/EA/BXA, room 1621, U.S. Department of Commerce, 14th & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 28, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Dated: January 6, 1992.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 92-539 Filed 1-8-92; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Sanctions for Violation of Administrative Protective Order

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

ACTION: Notice of Status of Investigation 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 violations of administrative protective orders in antidumping and countervailing duty proceedings.

EFFECTIVE DATE: January 9, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Chief Counsel for Import Administration, (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 an administrative protective order (APO) during the course of those proceedings. In order that the gravity with which ITA views violations of its APOs might be better appreciated, ITA is publishing the following report on a violation of an APO.

An individual violated his APO by sending a submission, which included business proprietary information, to persons not on Commerce's APO list for an Administrative Investigation. By failing to ascertain which parties should receive the submission, the individual violated the application for access to business proprietary information filed by the individual that was incorporated by reference into the APO.

In this case, the individual involved was (1) issued a private reprimand which warned that any future violation would be treated more severely; (2) required to attend a training session on procedures for protecting proprietary data; and (3) required to send a letter of apology to the party whose business proprietary information was mishandled. Although it is clear that a violation occurred, we consider these sanctions appropriate for the following reasons: First, the violation appears to have been inadvertent. Second, there appears to be no harm to the submitter of the information caused by the failure to protect the information and the unauthorized recipients promptly returned the materials and did not disseminate the material to anyone. Third, the individual cooperated fully with ITA's investigation.

Serious harm can result from failure to properly protect business proprietary information received under APO. ITA will continue to investigate vigorously allegations that the provisions of APOs have been violated, and is prepared to impose sanctions commensurate with the nature of the violations, including letters of reprimand, denial of access to business proprietary information, and debarment from practice before the ITA.

Dated: January 3, 1992.

Timothy J. Hauser,

Deputy Under Secretary for International Trade.

[FR Doc. 92-540 Filed 1-8-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-570-817]

Initiation of Countervailing Duty Investigation: Chrome-Plated Lug Nuts and Wheel Locks From the People's Republic of China ("PRC")

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: January 9, 1992.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hager or Paulo F. Mendes, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5055 or (202) 377-5050.

INITIATION:

The Petition

On December 12, 1991, we received a petition in proper form filed by Consolidated Interntational Automotive, Inc. on behalf of the United States industry producing chrome-plated lug nuts and wheel locks (collectively "lug nuts"). Petitioner alleges that manufacturers, producers or exporters of lug nuts in the PRC receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended ("the Act"). Since the PRC is not a "country under the Agreement" within the meaning of section 701(b) of the Act, the International Trade Commission

("ITC") is not required to determine whether, pursuant to section 303(a)(2), imports of the merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined in 19 CFR 355.2(i), and because it has filed the petition on behalf of the U.S. industry producing lug nuts. If any interested party, as described in 19 CFR 355.2(i)(3), (4), (5), or (6), wishes to register support for, or opposition to, this investigation, please file written notification with the Assistant Secretary for Import Administration, room B099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Allegations of Bounties or Grants

Petitioner contends that the lug nuts sector in the PRC is sufficiently outside of government control that this sector is no longer within the scope of *Georgetown Steel Corporation* v. *United States*, 801 F.2d 1308 (Fed. Cir. 1986) ("Georgetown Steel"). Petitioner also lists a number of practices by the PRC Government which allegedly confer bounties or grants on manufacturers, producers or exporters of lug nuts.

We have reviewed the evidence provided in the petition and, consistent with our initiation determination in Oscillating Fans and Ceiling Fans from the People's Republic of China (56 FR 57616, November 13, 1991), we find that the lug nuts industry is characterized by:

- Collective ownership, with the possibility of joint ventures;
- PRC-sourced inputs purchased at negotiated prices, *i.e.*, they are not provided through or as a result of a central plan; and
- Pricing and production decisions are left to the producing entity.

Based on this, we determine that petitioner has provided sufficient information to indicate that the PRC lug nuts producers operate in an economic environment which differs significantly from the nonmarket economic systems described in Georgetown Steel. Therefore, for purposes of this initiation, we conclude that it is appropriate to investigate whether the CVD law applies to lug nuts producers and, if so, whether lug nuts producers in the PRC receive bounties or grants within the meaning of section 303 of the Act. We are initiating on the following programs.

1. Multiple Exchange Rates
2. Benefits for enterprises in Special Economic Zones—Reduced Tax Rates or Exemptions

We are not initiating on the programs listed below because the requirements of section 303 of the Act were not fulfilled in the petition.

1. Upstream Subsidies

Petitioner has alleged that the lug nuts industry in the PRC is benefitting from upstream subsidies bestowed upon its steel and chemical suppliers. Specifically, petitioner has alleged: (1) That the steel and chemical sectors, like the lug nuts sector, are sufficiently outside of government control so as to be no longer within the scope of Georgetown Steel; (2) that subsidies within the meaning of section 771(5)(A)(ii) are being bestowed on the PRC steel and chemical industries; (3) that the subsidies to the upstream suppliers confer a competitive benefit on the PRC lug nuts industry; and (4) that the subsidies to the upstream suppliers have a significant effect on the cost of manufacturing or producing lug nuts.

We have reviewed the evidence submitted by petitioner with respect to the degree of government control in the PRC steel and chemical sectors and have determined, contrary to petitioner's allegation, that there is a significant degree of state control in these sectors. Our conclusion is based on the fact that "in-plan" production exists in both sectors. With respect to steel, approximately 45 percent of steel produced nationally is sold in-plan. with respect to chemicals, approximately ten percent falls under in-plan controls.

The fact that there is in-plan production of a commodity is significant because it means that, for that portion of output, the government sets target amounts to be produced each year, allocates (at set prices) the required inputs to ensure production of the target amounts, directs the amount of production to be delivered to state-owned enterprises, and sets the prices to be charged for those deliveries. In short, government directives replace the market as the allocator of resources, the very situation in which the Georgetown Steel court states that the countervailing duty law could not be applied.

Moreover, the types of "subsidies" allegedly received by the PRC steel and chemical sectors are similar to those identified by the Department in Carbon Steel Wire Rod from Czechoslovakia; Final Negative Countervailing Duty Determination, 49 FR 19370, 19371–19372, May 7, 1984 as typical in nonmarket economy countries:

> By market standards, the nonmarket environment is riddled with distortions. Prices are set by central planners. "Losses" suffered by production and foreign trade enterprises are routinely covered by government transfers. Investment decisions are controlled by the state. Money and credit are allocated by the central planners. The wage bill is set by government.

Thus, although the the steel and chemicals purchased by the lug nuts industry in the PRC are sold outside of the plan, we have determined that the significant government presence in theses industries renders subsidies incapable of being identified or fairly quantified. As a result, we have determined not to initiate an upstream subsidies investigation of the steel and chemical suppliers to the PRC lug nuts industry.

2. Convict Labor

Petitioner alleges that "temporary workers" for the lug nut producers in the PRC may be convict labor. Petitioner has not provided sufficient documentation to support its allegation that convict labor is used by Chinese lug nut producers, and we found no indication of this at verification in the antidumping case on lug nuts (see 56 FR 46153). Therefore, we are not initiating on this program.

Scope of Investigation

The lug nuts covered by this investigation are one-piece and two-piece chrome-plated lug nuts, finished or unfinished. These include chrome-plated lug nuts, finished or unfinished, which are more than 1 1/16 inches (17.45 millimeters) in height and which have a hexagonal (hex) size of at least ¾ inches (19.05 millimeters) but not over one inch (25.4 millimeters). The term "unfinished" refers to unplated and/or unassembled chrome-plated lug nuts.

The wheel locks covered by this investigation include finished or unfinished wheel locks. These include wheel locks which are more than 1 1/8 inches (17.45 millimeters) in height and which have an outside diameter of at least ¾ inches (19.05 millimeters) but not over one inch (25.4 millimeters), with a somewhat undulating or splined pattern for use with a matching key or wrench. The term "finished" refers to wheel locks that are chrome-plated and include a locking mechanism with or without a key or similar access device. The term "unfinished" refers to wheel locks that are unplated and with or without a locking mechanism. Locking mechanisms for wheel locks, if shipped separately, are within the scope of this investigation.

The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. The wheel lock, in addition, contains a locking mechanism which prevents removal except with a distinct access device such as a key. The subject merchandise

is currently provided for under subheading 7318.16.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

This determination is published pursuant to section 702(c) of the Act and 19 CFR 355.13.

Dated: January 2, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-466 Filed 1-8-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration.

[C-549-701]

Certain Steel Wire Nails From Thailand; Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind Countervailing Duty Order, in Part

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

ACTION: Notice of preliminary results of countervailing duty administrative review and intent to rescind countervailing duty order, in part.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain steel wire nails from Thailand for the period January 1, 1989 through December 31, 1989. We find that the scope of the countervailing duty order included certain non-dutiable merchandise from a GATT-signatory country. This notice hereby announces the Department's intent to rescind that portion of the countervailing duty order on the duty-free merchandise. We invite interested parties to comment on the intent to rescind the countervailing duty order, in part.

With regard to the dutiable merchandise covered by the remainder of the countervailing duty order, we preliminarily determine the total bounty or grant to be 0.46 percent *ad volorem*. 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: January 9, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 5, 1990, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 40901) of the countervailing duty order on certain steel wire nails from Thailand (52 FR 36987, October 2, 1987) for the period January 1, 1989 through December 31, 1989. On October 31, 1990, certain petitioners in the original investigation requested an administrative review of the order. We initiated the review on December 10, 1990 (55 FR 50739). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope

In our notice of Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (52 FR 36987, October 2, 1987), the merchandise covered by the investigation was described as follows:

> The products covered by this investigation are certain steel wire nails from Thailand. These nails are: One-piece steel nails made of round wire, as currently provided for in Tariff Schedules of the United States Annotated item numbers 646.2500, 646.2610-90 and 646.3040; two-piece steel wire nails as currently provided for in item number 646.3200; and nails with steel wire shanks and lead heads, as currently provided for in item number 646.3600. These products are currently classifiable under Harmonized System item numbers 7317.00.55, 7317.00.65, 7317.00.75 and 7616.10.10.

With respect to Harmonized Tariff Schedule (HTS) item number 7616.10.10, this number applies only to aluminum nails. In the petition, petitioners did not include aluminum nails in the description of the covered merchandise and the Department did not investigate aluminum nails. Accordingly, we are clarifying the scope of the order to exclude aluminum nails imported under HTS number 7616.10.10.

In addition, the Department intends to rescind that portion of the countervailing duty order covering those items which were duty-free at the time of the investigation. This merchandise includes certain steel wire nails, previously provided for in Tariff Schedules of the United States Annotated (TSUSA) item number 646.3040; TSUSA item number 646.3200, two piece steel wire nails; and TSUSA item number 646.3600, nails with steel wire shanks and lead heads. These products are currently provided for under HTS item numbers 7317.00.65 and 7317.00.75, both of which continue to have duty-free treatment.

The merchandise covered by the remainder of the countervailing duty order, and subject of this administrative review, is described as: One-piece steel nails made of round wire, as previously provided for in TSUSA item number 646.2500 and 646.2610-90. These products are currently provided for under HTS item number 7317.00.55. The TSUSA and HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This administrative review covers the period January 1, 1989 through December 31, 1989, and seven programs. One producer, K.Y. Intertrade (KYI), and one trading company, Asoke, accounted for substantially all exports of the subject merchandise from Thailand to the United States during the review period. Both of these companies, and the firms supplying substantially all nails to the trading company, responded to the Department's questionnaires.

Intent to Rescind Countervailing Duty Order, in Part

During the conduct of this administrative review, the Department found that certain merchandise covered by the countervailing duty order (the Order) was duty-free under the Generalized System of Preferences (GSP) and had been duty-free at the time of the investigation.

Since Thailand is a member of the General Agreement on Tariffs and Trade (GATT), and as certain of the nails covered by the Order are non-dutiable, petitioner was required to allege that, and the U.S. International Trade Commission was required under section 303(a)(2) of the Act, to determine whether imports of these duty free products caused or threatened to cause material injury to the U.S. industry in question. Under the provisions of this paragraph, the Department lacks the authority to impose duties on duty-free merchandise from Thailand unless an affirmative injury determination has been made. (See, e.g., Certain Fasteners from India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order (47 FR 44129, October 6, 1982); Wool from Argentina; Termination of Countervailing Duty Investigation (47 FR 57981, December 29, 1982); Carbon Steel Wire Rod from Trinidad and Tobago; Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order (52 FR 45982, December 3, 1987); and, Amendment to Scope of Investigation;

Leather from Argentina (55 FR 13303, April 10, 1990).)

By letter of November 15, 1991, the Royal Thai Government (RTG) requested that the Department revoke the countervailing duty order on this merchandise, and, on November 21, 1991, petitioners formally withdrew that portion of the petition covering the duty-free merchandise.

Accordingly, The Department intends to rescind that portion of the countervailing duty order on imports of non-dutiable nails from Thailand, as described in the "Scope" section of this notice.

Analysis of Programs

I. Programs Preliminarily Determined to Confer Bounties or Grants

A. Export Packing Credits

Export packing credits (EPCs) are short-term pre-shipment and post-shipment export loans. Exporters apply to commercial banks for EPCs and the commercial banks, in turn, submit the applications to the Bank of Thailand (BOT) for approval. Under the "Regulations Governing the Purchase of Promissory Notes Arising from Exports" (B.E. 2528), effective January 2, 1986, the BOT repurchases promissory notes issued by creditworthy exporters through commercial banks. To qualify for the repurchase arrangement, promissory notes must be supported by a letter of credit, sales contract, purchase order, usance bill or warehouse receipt. The notes are available for a maximum of 180 days and interest is payable on the due date of the loan.

The BOT charges the commercial bank account for the principal amount plus five percent interest per annum on repurchased packing credits issued in connection with exports of goods specified in categories one and two of the "Notification of the Board of Investment No. 40/2521." The commercial bank then charges the exporter's account for the principal amount plus up to seven percent interest on the due date of the loan.

If the commercial bank does not meet the terms of the loan, the BOT charges the commercial bank a penalty, retroactive to the first day of the loan, at an eight percent interest rate. If the exporter does not meet the terms of the loan, the commercial bank passes on to the borrower the additional eight percent penalty charge.

If the exporter can prove that shipment of the goods took place within 60 days after the due date (in the case of pre-shipment loans), or the foreign currency was received within 60 days after the due date (in the case of post-shipment loans), the penalty is refunded to the commercial bank by the BOT and the commercial bank credits the exporter's account. If only a portion of the goods was shipped or only a portion of the foreign currency was received by the due date, the exporter receives only a partial refund, proportional to the value of the goods shipped or the foreign currency received The purpose of the penalty charge is to ensure that companies are using the EPCs to finance export sales.

On October 1, 1988, the RTG issued new regulations that coexisted with the prior regulations until December 31, 1988. Effective October 1, 1988, all first-time applicants for EPCs had to apply under the new regulations. Established users of the EPC program had the option of taking out promissory notes under either the old or the new regulations. EPCs received under the previous regulations, but still outstanding as of January 1, 1989, continued under the previous regulations until their expiration dates.

The new regulations implemented several changes in the EPC program. Now, only pre-shipment financing is permitted, the maximum interest rate that commercial banks can charge exporters was increased from 7 to 10 percent, and the BOT repurchase rate was changed to 4 percent for small exporters and 5 percent for large exporters. The penalty charge to exporters was reduced from 8 to 5 percent. In addition, commercial banks can lend up to 100 percent of the shipment value, but can only rediscount up to 50 percent of the loan amount with the BOT. Under the previous regulations, the commercial banks could only lend up to 90 percent of the shipment value and the BOT rediscounted 100 percent of the loan amount.

Because only exporters are eligible for these loans, we preliminarily determine that they are countervailable to the extent that they are provided at preferential rates.

For our benchmark interest rate, we used an average of the interest rates charged on, loans and overdrafts during the review period. The average rate was 11.75 percent for loans taken out in 1988, and 12.23 percent for loans taken out in 1989. In the countervailing duty investigation of steel wire rope from Thailand (See, Final Affirmative Countervailing Duty Determination and Order; Steel Wire Rope from Thailand (56 FR 46299, September 11, 1991)), the Department determined that these were the most appropriate rates to determine the benchmark because loans and overdrafts accounted for approximately 70 percent of all short-term financing in Thailand during the period of review.

Comparing the benchmarks for 1988 and 1989 to the rates charged on the EPCs, we find that the rate on EPCs is preferential and, therefore confers a bounty or grant on exports of steel wire nails. Only KYI used these EPC loans to finance U.S. exports of the subject merchandise during the review period.

To calculate the benefit from the EPC loans on which interest was paid during 1989, we followed the short-term loan methodology which has been applied consistently in our past determinations (See, Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Butt-Weld Pipe Fittings from Thailand (55 FR 1695, January 18, 1990) and Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Ceramic Tile from Mexico (53 FR 15090, April 27, 1988)), and § 355.44(b)(3) of "Notice of Proposed Rulemaking and Request for Public Comment" (54 FR 23366, May 31, 1989).

As KYI was able to provide information on EPCs taken out specifically for exports of nails to the United States, we compared the amounts of interest it paid on these EPCs to the amount of interest which would have been paid on similar loans at the benchmark rates. We deducted the total amount of interest (including unrefunded penalties paid during the period) paid by KYI from the amount of interest which would have been paid at benchmark rates, then divided the resulting interest differential by the value of KYI's U.S. nail exports for the period. We then weighted the benefits received by KYI by its share of nail exports to the United States during the period of review. As a result, we preliminarily determine the weighted average bounty or grant under this program to be 0.33 percent *ad valorem*.

B. Tax Certificates for Exports

The Tax and Duty Compensation of Exported Goods produced in the Kingdom Act of 1981 (Tax and Duty Act) provides for rebates to exporters for indirect taxes and imported duties on inputs used to produce exported goods. These rebates are provided to the exporters in the form of tax certificates. These certificates may be used by the companies to pay various tax liabilities or they may be sold or traded to other companies. These are two rates for the tax certificates for each eligible product sector, the "A" rate rebates both import duties and indirect domestic taxes, and is claimed by exporters that have

incurred import charges and have not otherwise had duties refunded. The "B" rate rebates only indirect domestic taxes and is claimed by exporters who have not paid import duties or who participate in Thailand's customs duty drawback program or duty exemption program on imported raw materials, or who do not import raw materials for use is production.

In all previous investigations and administrative reviews involving Thailand's program of tax rebates, these rebate rates have been computed on the basis of an Input/Output (I/O) study initially published in 1980, based on 1975 data, and updated in 1985 using 1980 data. Thailand's Ministry of Finance (MOF) used the I/O study to compute the value of total inputs (both imports and local purchases) used in a discrete range of sector-specific products at ex-factory prices. The Ministry then calculates the import duties and indirect domestic taxes on each input, and the A and B rebate rates described above.

In the Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Steel Wire Nails from Thailand (52 FR 36987, October 2, 1987), the Department examined Thailand's rebate system under the Tax and Duty Act and found that the program was intended to rebate indirect taxes and import duties and that, based on the methodology employed by the MOF at that time, the rebate rates had been reasonably calculated. (For more detailed discussions of the sector-specific rebates see, Final Affirmative Countervailing Duty Determination; Certain Textile Mill Products from Thailand (52 FR 7638, March 12, 1987), Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Butt-Weld Pipe Fittings from Thailand (55 FR 1695, January 18, 1990), and Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Steel Wire Rope from Thailand (56 FR 46299, September 11, 1991)).

In 1987, the Ministry of Finance (MOF) devised a new methodology for calculating product-specific rebate rates for nails, first, to eliminate rebates on non-physically incorporated inputs, and second, to adjust the denominator used in the calculation of the rebate rate to f.o.b value, the basis upon which the certificates are granted. This new product-specific methodology used by the MOF is called the physical input coefficient methodology (PHIC).

To establish the new rebate rates, the MOF first surveyed nail producers in 1987, to obtain 1986 data on the source, amount and value of inputs used in nail production, and information on sales of finished products.

Based on the survey responses, the MOF identified the physically incorporated inputs for nails and calculated corresponding values for each input, per ton, of nails produced. This per-ton value is called the "input coefficient." The calculation of tax incidence varies by input based on sourcing. The indirect taxes rebated in the PHIC methodology are (1) the final stage business tax on the sale of the inputs to the nail producer by the input supplier, and (2) the prior stage business tax and import duties on the sale of materials to the input supplier. Under the PHIC methodology, the final stage business tax is calculated by multiplying the input coefficient for each input by the business and municipal tax rate. The prior stage indirect tax and duty incidence is calculated by utilization of the A and B rebate rates (sector rates) for the I/O sector to which each physically incorporated input corresponds, as applied to its input coefficient.

On imported raw materials, the PHIC methodology rebates the import tariff and business tax. The import tariff rate is obtained directly from the Customs Tariff of Thailand. The business tax rate for this product is a maximum of five percent before adjustment. Under certain circumstances, it may be less. For the PHIC methodology, the reduced rate business tax was utilized and the lowest tax rate available was used to calculate the total business and municipal taxes.

The incidence of import duties on imported raw materials is calculated by multiplying the customs tariff rate by the input coefficient. The incidence of business tax on imported raw materials is derived by multiplying the business tax rate by the input coefficient plus the incidence of import duties, plus an increment entitled "standard profit." This "standard profit" is an addition to the import price of the goods, utilized solely by Thai Customs to increase the assessment base used in determining the amount of business taxes to be charged on imports.

For the PHIC A rebate rate, the total tax incidence is the sum of business taxes, municipal taxes and import duties. For the PHIC B rebate rate, it is the sum of business and municipal taxes.

For the denominator to be used in determining the rates of the tax refunds, the MOF compared the export sale value derived from responses in the survey, to a 'variable cost-price' figure. The MOF selected the higher of these two prices to use as the denominator in determining the A and B export tax rebate rates.

In 1987, these new rates were published in No. Or. 2/2530. The PHIC rebate rates for nails classified in CCCN 73.31 were 6.78 percent (A rate) and 0.13 percent (B rate). This No. Or. 2/2530 was superseded on February 29, 1988 by No. Or. 1/2351, which republished all existing rebate rates by Harmonized System (HS) classification item number The No. Or. 1/2351 rates for steel wire nails classified under HS 7317.00 are 6.78 percent (A rate) and 0.13 percent (B rate). These rates were in effect during the entire review period.

Because the PHIC methodology is now used by the RTG to determine the rebate rates for nail exports, the Department must treat these revisions as it would an entirely new program and revisit the issue of whether or not the program meets our criteria as a legitimate rebate of indirect taxes and import duties.

To determine whether an indirect tax rebate system, which incorporates rebates of imports duties, confers a bounty or grant, we must apply the following analysis. First, we examine whether the system is intended to operate as a rebate of both indirect taxes and import duties. Next, we analyze whether the government properly ascertained the level of the rebate. This includes a review of the sample used in the study, including the documentation and the accuracy of the information gathered from the sample on input coefficients, import prices and rates of duty on imported inputs, and the exchange rates used to convert import prices denominated in a foreign currency to the local currency. We must also determine that, where there is a fixed duty drawback system in place, the import duties are not being refunded or rebated in an amount greater than the actual duty amount. Finally, we review whether the rebate schedules are revised periodically in order to determine if the rebate amount reflects the amount of duty and indirect taxes paid. (See, Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Apparel from Thailand (50 FR 9818, March 12, 1985).)

When the study upon which the indirect tax and import duty rebate system meets the criteria outlined above, the Department will consider that the system does not confer a bounty or grant unless the amount set forth in the rebate schedule for the exported product exceeds the amount of duties and indirect taxes on physically incorporated inputs.

In the Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Apparel from Thailand (50 FR 9818, March 12, 1985), we examined the RTG's rebate system under the Tax and Duty Act. We found that the program was intended to rebate indirect taxes and import duties. We compared the bases for the I/O and the PHIC studies, and analyzed the information submitted by the respondents. Having examined the methodology utilized in determining the PHIC rebates we find, preliminarily, that these rebates also are intended to rebate indirect taxes and import duties.

We reviewed Thailand's duty drawback system and found that, in order to participate in this drawback system, a firm must be registered and cannot receive the A rebates which include the import duties in the calculation. Only unregistered firms may utilize the A rate tax rebates. Based on the above, we find that there are no overrebates of import duties.

We also find that the RTG properly ascertained the tax and duty rates applicable to each of the claimed input categories utilized in the production of nails, and that the rates were correctly applied in the RTG's input coefficient calculation.

However, the respondents did not provide any of the requested supporting documentation, such as the companies' questionnaire responses or the RTG's calculations of the input coefficients which were based on these responses. Accordingly, there was not sufficient supporting documentation for the Department to make a determination as to whether the input coefficients had been properly calculated.

Based on the above, the Department determines, preliminarily, that respondents have failed to demonstrate that the rebate rates were reasonably calculated, and, since the program is available only to exporters, the entire amount of the export tax rebate is countervailable.

Asoke and KYI accounted for substantially all exports of Thai nails to the United States during the period. These two firms received only the B tax rebate rate, 0.13 percent, on their nail exports to the United States.

Accordingly, we preliminarily determine the total net bounty or grant received under this program to be 0.13 percent.

II. Programs Preliminarily Determined Not to be Used

The Department has examined the following programs and preliminarily determines that the producers, manufacturers and exporters of the subject merchandise to the United States did not use them during the period of review.

A. Rediscount of Industrial Bills
B. Electricity Discounts for Exporters
C. Export Processing Zones
D. International Trade Promotion Fund
E. Incentives Under the Investment Promotion Act (IPA)
(1) Assistance to Trading Companies under the IPA (Section 16)

- Exemption of business taxes for suppliers
- Exemption of business taxes for subcontractors
- Entitlement to Export Packing Credits
- A double deduction from taxable income of taxes paid by branch offices outside Thailand
- A double deduction from taxable income of foreign marketing expenses
- Permission to maintain foreign currency bank accounts

(2) Other Incentives

- Section 28, Exemption on import duties and business taxes on machinery used to produce promoted products
- Section 31, Income tax exemption
- Section 33, Goodwill and royalties tax exemption
- Section 34, Additional tax deduction for dividends paid on promoted activities
- Section 36(2), Exemption of import duties and business taxes on items imported for export
- Section 36(3), Exemption on export duties and business taxes on products produced or assembled by promoted firms
- Section 36(4), Deduction form assessable income of an amount equal to 5 percent of the increase over the previous year of income derived from exports

It should be noted that under item E. 1), "Asssitance to Trading Companies Under the Investment Promotion Act, Permission to Hold Foreign Currency Accounts," Asoke does maintain a foreign currency account denominated in U.S. dollars. However, according to the questionnaire response, this account was not used to conduct transactions involving steel wire nail exports to the United States, or to import inputs for the production of steel wire nails during the review period.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net bounty or grant on the dutiable merchandise to be 0.46 percent *ad valorem* for all shipments of certain dutiable steel wire nails from Thailand to the United States during the period January 1, 1989 through December 31, 1989. Pursuant to 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis*.

With regard to the rescission of that part of the order covering the duty-free merchandise, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all such entries upon which liquidation has been suspended, and, further, to terminate the suspension of liquidation on future entries of this merchandise.

Regarding the dutiable merchandise covered by this administrative review, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of the merchandise subject to the countervailing duty order exported on or after January 1, 1989 and on or before December 31, 1989.

Further, the Department intends to instruct the Customs Service to waive cash deposits or estimated countervailing duties, as provided by section 751(a)(1) of the Act, on all shipments of the covered merchandise from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of the administrative review.

Parties to the proceeding may request disclosure of the calculation 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. The case briefs must present in full all arguments that interested parties feel are relevant to the Secretary's final results in this administrative review. 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 § 355.38(e) of the Commerce regulations.

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: January 3, 1992

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-541 Filed 1-8-92; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an amended export trade certificate of review.

SUMMARY: The Department of Commerce, has issued an amendment to the Export Trade Certificate of Review granted to the CISA Export Trade Group, Inc. Notice of issuance of the Certificate was published in the **Federal Register** on October 26, 1988 (53 FR 43253).

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b) which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 3905(a) of the Act and 15 CFR 325 11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 88-00013 was issued to the CISA Export Trade Group, Inc. (CISAETG) on October 19, 1988. Notice of issuance of the Certificate was published in the **Federal Register** on October 26, 1988 (53 FR 43253).

The CISA Export Trade Group, Inc. (CISA ETG) has amended its certificate to:

1. Delete Beardsley & Piper Division, Chicago, IL; Georgia-Pacific Corporation, Atlanta, GA; Metaullics Systems, Solon, OH; Capital Resin Corporation, Columbia, OH; and Simplicity Engineering, Inc., Durand, MI as "Members" of the Certificate.
2. Add the following "Members" to the Certificate: Didion Manufacturing Company, St. Peters, MO; GMD Engineered Systems, Inc., Forth Worth, TX; Hartley Engineered Control Systems, Division of Hartley Controls Corporation, Neenah, WI and its controlling entity The Neenah Corporation, Neenah, WI; Stackpole Carbon Company, St. Marys, PA and its controlling entity The Carbone USA Corporation, Boston, MA.
3. Amend the mailing address of a "Member" company as follows: Dependable Foundry Equipment Co., Inc./Redford-Carver Foundry Products, Sherwood, OR and its controlling entity Tromley Industrial Holdings, Inc., Tualatin, OR.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: December 17, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-496 Filed 1-8-92; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

[Docket No. 920101-2001]

Taking and Importing of Marine Mammals

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

ACTION: Notice of finding of conformance.

SUMMARY: The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), announces that Ecuador and Panama have submitted documentary evidence that establishes that, during the 1991 fishing season, these nations have met the criteria established for the importation of yellowfin tuna and yellowfin tuna products from countries that have enacted legislation to prohibit intentional purse seine nets on marine mammals. Therefore, yellowfin tuna and yellowfin tuna products may be imported from Ecuador and Panama into the United States through December 31, 1992.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, room 2005, Terminal Island, CA 90731-7415 (213/514-6196).

SUPPLEMENTARY INFORMATION: On November 16, 1990, NMFS published an interim final rule (55 FR 47880) that established a provision for timely consideration and granting of an affirmative finding under the yellowfin importation regulations to a nation that prohibits its vessels from intentionally deploying purse seine nets on marine mammals in the course of harvesting yellowfin tuna in the eastern tropical Pacific Ocean. With an affirmative finding, yellowfin tuna and yellowfin tuna products from the harvesting nation can be imported into the United States.

The regulation at 50 CFR 216.24(e)(5) provides, consistent with the purposes and policies of the Marine Mammal Protection Act, specific criteria for issuing initial and subsequent affirmative findings to a harvesting nation that implements a prohibition against the intentional setting on marine mammals by its purse seine vessels. The Assistant Administrator has determined that the nations of Ecuador and Panama complied with the criteria established by the regulations during the 1991 fishing season—October 1, 1990, through September 30, 1991.

Therefore, all yellowfin tuna and yellowfin tuna harvested products by Panama or Panamanian-flag vessels and Ecuador or Ecuadorian-flag vessels may be imported into the United States through December 31, 1992, or until the Assistant Administrator determines otherwise.

Authority: 16 U.S.C. 1361 *et seq.*

Dated: January 3, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

[FR Doc. 92-456 Filed 1-8-92; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council (Council) will hold a public meeting on January 15, 1992, at 10 a.m., at the Kings Grant Inn, rt. 128 at Trask Lane, Danvers, MA; telephone: 508-774-6800.

The meeting will begin with reports by the Atlantic Sea Scallop, the Groundfish and the Large Pelagics Oversight Committees. Following these reports there will be a briefing on the field hearing of the Committee on Merchant Marine and Fisheries Subcommittee and Wildlife Conservation regarding the New England Groundfish Restoration Act of 1992. There also will be a report on the status of the Council's Committee on Fisheries Interrelationships.

The meeting will conclude with reports by the Council Chairman, the Council Executive Director, the National Marine Fisheries Service Regional Director, and the Northeast Fisheries Science Center and Mid-Atlantic Council liaisons. Representatives from the U.S. Department of State, U.S. Coast Guard, U.S. Fish and Wildlife Service and the Atlantic States Marine Fisheries Commission will then also report to the Council.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone (617) 231-0422.

Dated: January 3, 1992.

David S. Crestin,

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

[FR Doc. 92-415 Filed 1-8-92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Termination of the Export Visa Arrangement for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

January 2, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs terminating the existing export visa arrangement.

EFFECTIVE DATE: March 5, 1992.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, 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).

The U.S. Government has notified the Government of the Socialist Federal Republic of Yugoslavia that the existing export visa arrangement, established under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated October 26 and 27, 1978, as amended, is being terminated. (See 55 FR 5053, published in the **Federal Register** on February 13, 1990.)

In the letter published below, the Chairman of CITA directs the Commissioner of Customs, effective on March 5, 1992, to permit entry of shipments of textile products, produced or manufactured in Yugoslavia and exported from Yugoslavia on and after March 5, 1992 which are not accompanied by an export visa. The import restraint limits published in the **Federal Register** on December 16, 1991 (56 FR 65244) are still in effect for 1992.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 2, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive cancels and supersedes the directive issued to you on February 7, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Yugoslavia which are not properly visaed by the Government of the Socialist Federal Republic of Yugoslavia.

Effective on March 5, 1992, an export visa shall no longer be required for shipments of textile products, produced or manufactured in Yugoslavia and exported from Yugoslavia on and after March 5, 1992.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-467 Filed 1-8-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

[OMB Control No. 9000-XXXX; FAR Case 91-13]

OMB Clearance Request Concerning Written Refusal of a Utility Supplier To Execute a Utility Contract

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Written Refusal of a Utility Supplier to Execute a Utility Contract.

DATES: Comments may be submitted on or before March 9, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Regulation requires that contracts comply with the applicable Federal laws and the relevant parts of the FAR. The written and definite refusal by a utility supplier to execute a tendered contract (41.004-2) is intended to identify those suppliers who refuse to do so and the rationale of the supplier for refusing.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 50; responses per respondent, 1; total annual responses, 50; preparation hours per response, .30; and total response burden hours, 25.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0002, Written Refusal of a Utility Supplier to Execute a Utility Contract, in

all correspondence. FAR 41.004-2(c) was contained in a proposed rule, FAR Case 91-13, Acquisition of Utility Services, published in the **Federal Register**, 56 FR 23982, May 24, 1991

Dated: December 31, 1991.

Laurie A. Frazier,

FAR Secretariat.

[FR Doc. 92-407 Filed 1-8-92; 8:45 am]

BILLING CODE 6820-JC-M

General Services Administration

National Aeronautics and Space Administration

[OMB Control No. 9000-XXXX; FAR Case 91-13]

OMB Clearance Request Concerning Change in Rates or Terms and Conditions of Service for Regulated Services

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for a new information collection requirement concerning FAR clause 52.214-6, Change in Rates or Terms and Conditions of Service for Regulated Services.

DATES: Comments may be submitted on or before March 9, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-5755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR clause at 52.241-6 requires the utility to furnish the Government with a complete set of rates, terms and conditions, and any subsequently approved or proposed revisions when proposed.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 1000; responses per respondent, 5; total annual responses, 5000, preparation hours per response, 15 mins; and total response burden hours, 1250.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 1000; hours per recordkeeper, 1; and total recordkeeping burden hours, 1000.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-XXXX, FAR case 91-13, Change in Rates or Terms and Conditions of Service for Regulated Services, in all correspondence. The clause at 52.241-6 was contained in a proposed rule, FAR case 91-13, Acquisition of Utility Services, published in the **Federal Register** (56 FR 23982), May 24, 1991.

Dated: December 31, 1991.

Laurie A. Frazier,

FAR Secretariat.

[FR Doc. 92-408 Filed 1-8-92; 8:45 am]

BILLING CODE 6820-JC-M

[OMB Control No. 9000-XXXX; FAR Case 91-13]

OMB Clearance Request Concerning Capital Credits

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for a new information collection requirement concerning FAR clause 52.241-13, Capital Credits.

DATES: Comments may be submitted on or before March 9, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR clause 52.241-13, Capital Credits, is designed to obtain an accounting of Capital Credits due the Government when the Government is a member of a cooperative.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 450; responses per respondent, 1; total annual responses, 450; preparation hours per response, 2; and total response burden hours, 900.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 450; hours per recordkeeper, 1; and total recordkeeping burden hours, 450.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-XXXX, FAR Case 91-13, Capital Credits, in all correspondence. The clause at 52.241-13 was contained in a proposed rule, FAR case 91-13, Acquisition of Utility Services, published in the **Federal Register** (56 FR 23982) May 24, 1991.

Dated: December 31, 1991.

Laurie A. Frazier,

FAR Secretariat.

[FR Doc. 92-409 Filed 1-8-92; 8:45 am]

BILLING CODE 6820-JC-M

[OMB Control No. 9000-XXXX; FAR Case 91-13]

OMB Clearance Request Concerning Scope and Duration of Contract

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for a new information collection requirement concerning FAR clause 52.241-2, Scope and Duration of Contracts.

DATES: Comments may be submitted on or before March 9, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR clause at 52.241-2 requires the utility to furnish the Government with a complete set of rates, terms and conditions, and any subsequently approved or proposed revisions when proposed.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 1000; responses per respondent, 5; total annual responses, 5000; preparation hours per response, 15 mins; and total response burden hours, 1250.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 1000; hours per recordkeeper, 1; and total recordkeeping burden hours, 1000.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-XXXX, FAR case 91-13, Scope and Duration of Contract, in all correspondence. The clause at 52.241-2 was contained in a proposed rule, FAR Case 91-13, Acquisition of Utility Services, published in the **Federal Register**, 56 FR 23982, May 24, 1991.

Dated: December 31, 1991.

Laurie A. Frazier,

FAR Secretariat.

[FR Doc. 92-410 Filed 1-8-92; 8:45 am]

BILLING CODE 6820-JC-M

[OMB Control No. 9000-XXXX; FAR Case 91-13]

OMB Clearance Request Concerning Electric Service Territory Compliance Representation

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for a new information collection requirement concerning the provision at FAR 52.241-11, Electric Service Territory Compliance Representation.

DATES: Comments may be submitted on or before March 9, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The representation at 52.241-11, Electric Service Territory Compliance Representation, is required when proposed alternatives of electric utility suppliers are being solicited. The representation is to ensure compliance with Public Law 100-202.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 200; responses per respondent, 2.5; total annual responses, 500; preparation hours per response, 1; and total response burden hours, 500.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-XXXX, FAR Case 91-13, Electric Service Territory Compliance Representation, in all correspondence. The clause at 52.241-11 was contained in a proposed rule, FAR case 91-13, Acquisition of Utility Services, published in the **Federal Register** (56 FR 23982) May 24, 1991.

Dated: December 31, 1991.

Laurie A. Frazier,

FAR Secretariat.

[FR Doc. 92-411 Filed 1-8-92; 8:45 am]

BILLING CODE 6820-JC-M

Department of the Navy

Intention to Prepare an Environmental Impact Statement for the Wastewater Treatment System Upgrade at Marine Corps Base,Camp LeJeune, NC

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Guidelines (40 CFR part 1500), the Department of the Navy (DON), U.S. Marine Corps is preparing a DEIS for modifications to the existing Wastewater Treatment System at the Camp Lejeune Complex which includes the Marine Corps Base (MCB) and the Marine Corps Air Station (MCAS), New River (Onslow County).

The State of North Carolina has indicated that discharges into portions of the New River and its tributaries are in conflict with its goal to upgrade water quality in the region. The North Carolina Department of Environment, Health, and Natural Resources, Division of Environmental Management (DEM) has conducted studies which indicate the river is no longer able to absorb all of the nutrients being discharged to it. Camp Lejeune currently maintains seven separate wastewater treatment plants, six of which discharge into the New River. The seventh plant discharges to the intracoastal waterway.

As a result of the DEM concerns, MCB Camp Lejeune initiated a multi-phased Wastewater Treatment Master Plan to evaluate alternative approaches to meet the overall treatment needs. Five alternatives were developed and investigated from a technical and economic feasibility standpoint. Three alternatives are being further investigated based on a combination of factors: Economic, regulatory, phasing and environmental. Along with the no action alternative, the three alternatives to be evaluated within the context of the EIS will be: (1) A new 15 MGD secondary treatment plant at the Hadnot Point area with an ocean outfall to accommodate all flows, (2) a new 15 MGD advanced treatment plant at the Hadnot Point area with a river discharge to accommodate all flows, (3) a combination of land application for the southern plants, and construction of a new advanced treatment plant with a river discharge for the remaining flows.

Scoping for this DEIS was initiated in November 1991 by letters to potentially affected entities, and cognizant local, state, and Federal agencies. The letter described the proposed action and requested formal input to identify environmental issues meriting in-depth analysis.

In order that comments be considered in a timely fashion, all scoping correspondence should be received not later than four (4) weeks after the publication of this notice. When the DEIS is completed, a public notice of its availability will be made which will request review and comment by all

interested parties. A Final Environmental Impact Statement (FEIS) will then be prepared to respond to the review comments.

The Marine Corps wishes to ensure that all interested parties have the opportunity to focus the environmental analysis, and requests comments be addressed to: Atlantic Division, Naval Facilities Engineering Command, Norfolk, Virginia 23511-6287. Attn: Ms. Pam Anderson (Code 2032).

Dated: January 2, 1992.

Wayne T. Baucino,

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

[FR Doc. 92-488 Filed 1-8-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Intent To Prepare a Remedial Investigation/Feasibility Study-Environmental Impact Statement: Response Actions at Sites in St. Louis, MO

AGENCY: Department of Energy.

ACTION: Notice of intent to prepare a remedial investigation/feasibility study-environmental impact statement.

SUMMARY: Notice is hereby given that the Department of Energy (DOE), under its Formerly Utilized Sites Remedial Action Program (FUSRAP), intends to conduct a comprehensive environmental review and analysis of the "St. Louis Site" (composed of several sites located in and near St Louis, Missouri) to determine the nature and extent of existing contamination and to evaluate alternative response actions. The St Louis Site is composed of the St. Louis Downtown Site (SLDS) and vicinity properties; the St. Louis Airport Site (SLAPS) and vicinity properties; and the Latty Avenue properties consisting of the Hazelwood Interim Storage Site (HISS), the Futura Coatings property, and six commercial or industrial vicinity properties along Latty Avenue. (These vicinity properties are areas not owned or controlled by DOE which are radioactively contaminated above DOE guidelines for residual radioactive material as a result of the previous processing of radioactive materials at the St. Louis Site where DOE is undertaking remedial action.) The environmental review and analysis will integrate the values of the National Environmental Policy Act (NEPA) and requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA)—hereafter referred to as CERCLA. NEPA values under NEPA will be incorporated into the remedial investigation/feasibility study (RI/FS) requirements of CERCLA. The resulting report will be the RI/FS-EIS. Nothing in this Notice of Intent (NOI), or in other documents to be prepared, is intended to represent a statement on the legal applicability of NEPA to remedial actions under CERCLA.

DATES: Written comments or suggestions postmarked on or before February 7, 1992, will be considered in the course of implementing the integrated CERCLA/NEPA process and its documentation. Comments or suggestions postmarked after that date will be considered to the maximum extent practicable. A scoping meeting will be held at the Berkeley Senior High School, 8710 Walter Avenue, Berkeley, Missouri 63134, on January 28, 1992, at 7 p.m. local time. Requests to speak at this meeting should be forwarded to Mr. Lester K. Price by January 22, 1992, at the address indicated below Persons who have not submitted a request to speak in advance may register at the scoping meeting. Those who register to speak at the meeting will be called on to present their comments as time permits.

ADDRESSES: Comments or suggestions on the scope of the RI/FS-EIS and requests to speak at the scoping meeting discussed below in the Scoping section should be addressed to Mr. Lester K. Price, Director, Former Sites Restoration Division, U.S. Department of Energy, DOE Field Office, Oak Ridge, Post Office Box E, Oak Ridge, Tennessee 37831, (615) 576-0948 or 1-800-253-9759 Fax comments to: (615) 576-0956.

Documents are available for inspection at locations set forth later in this notice.

FOR FURTHER INFORMATION CONTACT: For further information on DOE's EIS process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Oversight, EH-25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4700 or 1-800-472-2756.

For further information on DOE's RI/FS process, please contact: Ms. Kathleen Taimi, Director, Office of Environmental Compliance, EH-22, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9024.

SUPPLEMENTARY INFORMATION: The St. Louis Site contains residual radioactivity above DOE guidelines, and cleanup of the Site has been designated as part of FUSRAP. FUSRAP was established in 1974 by the Atomic Energy Commission (AEC), a predecessor agency of DOE. The primary objective of FUSRAP is to identify and remediate sites where radioactive contamination remains from the early years of the nations' atomic energy program or from other activities that resulted in conditions that Congress has authorized DOE to remediate. The goals of FUSRAP are to: (1) Control radioactive contamination at the sites, in compliance with applicable or relevant and appropriate requirements for the protection of human health and the environment, and (2) to the extent possible, certify the sites for use without radiological restrictions following decontamination.

Background

The St. Louis Site consists of several noncontiguous areas located in and near St. Louis, Missouri. The St. Louis Site consists of SLDS and vicinity properties; SLAPS and vicinity properties; and the Latty Avenue properties consisting of HISS, the Futura Coatings property, and six commercial or industrial vicinity properties along Latty Avenue. Contamination at these sites is the result of uranium processing and waste management activities that took place from the 1940s, 1950s, and 1960s. All the properties, with the exception of SLDS and its vicinity properties, are on the National Priorities List of the Environmental Protection Agency (EPA).

The SLDS located in an industrialized area on the eastern border of St. Louis, about 90 m (300 ft) west of the Mississippi River and approximately 17.7 km (11 mi) southeast of SLAPS. The SLDS is owned by Mallinckrodt, Inc., and is utilized as an operating plant for the production of various chemical products. The property occupies approximately 18.2 ha (45 acres) and includes numerous buildings and facilities. The SLDS is traversed by the tracks of three railroad lines, and several spurs service the property from the main lines. The property is fenced, and Mallinckrodt, Inc., maintains 24-hour security.

The SLAPS, an 8.8-ha (21.7-acre) property approximately 24 km (15 mi) from downtown St. Louis, lies immediately north of the Lambert-St. Louis International Airport. It is bounded on the south by the Norfolk and Western Railroad and Banshee Road, on the west by Coldwater Creek, on the north by a ball field area, and on the north and east by McDonnell Boulevard. The area is zoned for industrial use, with the nearest residential areas located approximately 0.8 km (0.5 mi) west, 1.6 km (1 mi)

northwest and 2.4 km (1.5 mi) north of SLAPS. The property is currently owned by the city of St. Louis and is managed by the St. Louis Airport Authority. Transfer of SLAPS property back to DOE prior to remediation is being considered. However, this transfer is not a condition for the proposed alternatives to be evaluated as part of the RI/FS-EIS. Currently, the entire site is fenced to restrict public access, and maintenance and routine environmental monitoring are the only activities taking place at the property. The SLAPS vicinity properties include ditches to the north and south of the property, an adjacent athletic field, transportation routes termed as "haul roads" (i.e., McDonnell Boulevard, Latty Avenue, Hazelwood Avenue, Pershall Road, Eva Avenue, and Frost Avenue), and the areas along transportation routes and Coldwater Creek that have been identified as containing residual radioactivity that exceeds DOE guidelines. Seventy-eight such properties along the haul roads and Coldwater Creek have been identified; five of these properties are zoned for residential use, with the rest zoned for commercial use. Bansheed Road on the southern border of SLAPS, a 30-m (100-ft) strip of St. Louis Airport property south of and parallel to Banshee Road, and seven railroad properties in the area of SLAPS are also considered SLAPS vicinity properties.

The Latty Avenue properties consist of HISS and Futural Coatings properties at 9200 Latty Avenue and six additional commercial or industrial vicinity properties along Latty Avenue. These properties are located in northern St. Louis County within the city limits of Hazelwood and Berkeley, Missouri, approximately 1.2 km (0.75 mi) northeast of SLAPS. The HISS and Futura Coatings properties, which are separated by a chain-link fence, occupy the eastern and western halves of 9200 Latty Avenue, respectively. The HISS and Futura Coatings properties are completely fenced to restrict public access.

The Latty Avenue properties are located in an area that is primarily commercial/industrial, with the nearest residential area located approximately 0.5 km (0.3 mi) to the east. Storm-water runoff from the Latty Avenue properties drains into ditches and a storm sewer that empties into Coldwater Creek, which is located to the west of the properties. The HISS property, which is currently leased by DOE, contains a vehicle docontamination facility, two office trailers, and two covered surface storage piles that contain approximately 27,700 m^3 (32,000 yd^3) of radioactive material. The Futura Coatings property is owned by Jarboe Realty and Investment Company and is leased to Futura Coatings, Inc., which currently manufactures plastic coatings on the property.

From 1942 to 1957, the former Maillinckrodt Chemical Works performed work at SLDS under contracts with the Manhattan Engineer District (MED) and AEC. Several operations were performed, including process development and production of various forms of uranium compounds and metal, and recovery of uranium metal from residues and scrap. From 1942 to 1945, MED/AEC activities were carried out in areas designated as Plants 1 and 2 and in the original Plant 4 (now Plant 10). In 1946, manufacturing of uranium dioxide from pitchblende ore began at the newly constructed Plant 6. From 1948 through 1950, decontamination activities were conducted and supervised by Mallinckrodt personnel at Plants 1 and 2. These decontamination efforts were conducted to meet AEC criteria in effect at that time, and the plants were released in 1951 for use without radiological restrictions. During 1950 and 1951, uranium processing operations began at Plant 6E; Plant 4 was modified and used as a metallurgical pilot plant for processing uranium metal until it was closed in 1956. AEC operations in Plant 6E ended in 1957, and AEC managed the decontamination efforts in Plants 4 and 6E, returning them to Mallinckrodt for use without radiological restrictions in 1962. Contaminated buildings, equipment, and soil from Plants 4 and 6E were removed. Some buildings that existed in 1962 have been razed, and some new buildings have been constructed at the former locations of Plants 4 and 6. Plant 7 was used for storing reactor cores, removing metallic uranium from salt by a wet grinding/mill flotation process, and continuous processing of green salt (i.e., production of uranium tetrafluoride). These operations at Plant 7 began in 1950 and 1951, continuing until the plant closed in 1957. Plant 7 was released for use without radiological restrictions in 1962 following decontamination, based on criteria in effect at that time. Plant 7 is now used primarily for storage of materials and equipment related to current chemical plant operations.

The SLAPS was acquired by MED/AEC in 1946. From 1946 until 1966, the property was used to store residues (i.e., uranium-bearing material generated as a by-product of uranium processing) from SLDS. In 1966, the wastes were purchased by the Continental Mining and Milling Company, removed from the SLAPS, and placed in storage at 9200 Latty Avenue. After most of the residues had been removed from SLAPS, the buildings were demolished and buried on-site, and the whole area was covered with 0.3 to 1 m (1 to 3ft) of clean fill material. At 9200 Latty Avenue, all the wastes transferred from SLAPS were deposited directly on the ground surface. During 1967 and 1970, the residues were dried and shipped to Canon City, Colorado, by the Commercial Discount Corporation and Cotter Corporation. The material in the storage piles currently on HISS originated from a 1979 demolition and excavation activity on the Futura Coatings property and remedial action and construction activities on and around the Latty Avenue properties that took place in 1984 and 1986.

Radiological surveys at SLDS indicate that current contamination in structures and radionuclide concentrations in soil exceed DOE limits for release for use without radiological restrictions (as given in DOE Order 5400.5). Radon concentrations in three buildings also exceed DOE nonoccupational radiation exposure guidelines in DOE Order 5400.5. Results of surveys performed by Bechtel National, Inc., indicate that at SLDS, uranium-238, radium-226, thorium-232, and thorium-230 concentrations in the soil range from background levels up to 95,000 pCi/g, 2,800 pCi/g, 440 pCi/g, and 98,000 pCi/g, respectively. The surveys indicated surface contamination on virtually all portions of SLDS that were examined. The volume of contaminated soil at SLDS is estimated to be 220,000 m^3 (288,000 yd^3).

Radiological surveys performed at SLAPS indicate radionuclide concentrations in the soil exceeding DOE guidelines for release for use without radiological restrictions. Contamination was identified as deep as 5.5 m (18 ft) beneath the ground surface. Uranium-238, thorium-230, and radium-226 have been determined to be the primary contaminants, with concentrations ranging up to 1,600 pCi/g, 2,600 pCi/g, and 5,620 pCi/g, respectively. The volume of contaminated soil at SLAPS is estimated to be 191,000 m^3 (250,000 yd^3).

A large portion of the ground surface and subsurface soil at HISS/Futura Coatings property still remains radioactively contaminated in excess of DOE guidelines for release for use without radiological restrictions. Subsurface contamination is as deep as 2 m (6 ft) at HISS, with concentrations of uranium-238, thorium-230, and radium-226 ranging up to 800 pCi/g, 7,900 pCi/g,

and 700 pCi/g, respectively. The estimated volume of contaminated soil at HISS is 53,520 m^3 (70,000 yd^3). At the Futura Coatings property, contamination is as deep as 4.6 m (15 ft) beneath the surface, and the maximum measured concentrations of thorium-230, radium-226, uranium-238, and thorium-232 in the soil were 2,000 pCi/g, 2,300 pCi/g, 2,500 pCi/g, and 26 pCi/g, respectively. The estimated volume of contaminated soil at the Futura Coatings property is 26,000 m^3 (34,000 yd^3).

Radiological surveys have also been conducted at all vicinity properties. The major radioactive contaminant on these properties is thorium-230. The average concentration of thorium-230 measured in soil at these vicinity properties ranges from background levels up to 145 pCi/g.

Surveys for possible chemical contaminants were also performed at various properties considered to be representative of those comprising the St. Louis Site. The purpose of these surveys was to: (1) Identify and quantify any "hazards waste" as defined under the Resource Conservation and Recovery Act (RCRA); (2) to provide a basis for assessing the potential health hazardous from the handling of materials at the Site while performing remedial actions; (3) to ensure proper design and implementation of a health and safety plan; (4) to define chemical characteristics; (5) to investigate potential migration pathways; and (6) to determine any resulting impact on the design criteria for final disposition of the waste. Chemical analyses for metals, anions, organics, and characteristics of RCRA hazardous waste were performed on soil samples collected from SLDS, SLAPS, HISS, Futura Coatings property, and the athletic field. Limited chemical analyses were also performed on groundwater samples from SLDS, SLAPS, HISS, Futura Coatings property, with surface-water samples from Coldwater Creek also analyzed. In conjunction with historical records of activities at the various St. Louis Site properties, chemical surveys at these selected sites can provide indications of maximum chemical contamination. These values are used as conservative, upper level indications of chemical contamination on other vicinity properties where chemical surveys were not taken.

The results of the chemical surveys indicate potential contamination with metals similar to, and thus possibly attributable to, those occurring in the materials processed at SLDS. A few organic compounds commonly found in many industrial areas have also been detected at SLDS. These organic compounds are not related to DOE processing activities conducted at SLDS.

In June 1990, DOE executed a Federal Facility Agreement (FFA) with EPA Region VII. The FFA was made available on July 12, 1990, for public review and comment. The public comment period ended on August 17, 1990, and the final agreement became effective on September 13, 1990. Under the FFA, DOE has assumed responsibility for:

—All contamination, both radioactive and chemical, whether commingled or not, at HISS and SLAPS.

—All radioactive contamination present at SLDS and on any vicinity property that is above DOE guidelines for residual radioactive material and is related to uranium processing at SLDS.

—Any chemical or nonradioactive contamination at SLDS and on vicinity properties that has been mixed or commingled with radioactively contaminated wastes resulting from, or associated with, uranium manufacturing or processing activities conducted at SLDS.

The FFA does not assign responsibility to DOE for managing areas, other than SLAPS and HISS, that are only chemically contaminated with no connection to processing of radioactive materials at SLDS.

Environmental Review Process

DOE intends to conduct a comprehensive environmental review and analysis to meet the requirements of CERCLA and incorporate the values of NEPA for implementing response actions at the St. Louis Site. The St. Louis Site consists of approximately 765,000 m^3 (1,000,000 yd^3) of contaminated materials.

The CERCLA environmental review and analysis process has two major phases: a remedial investigation and a feasibility study, which are also the titles or partial titles of the reports resulting from these phases. It is DOE policy, under DOE Order 5400.4, to integrate the values of NEPA and the requirements of CERCLA for remedial actions at sites for which it is responsible. Under the integration policy, the CERCLA process is supplemented, as appropriate, to incorporate the values of NEPA.

The integrated CERCLA/NEPA process begins with scoping and planning phases that culminate in a series of planning documents, including the RI/FS–EIS work plan. In the work plan, the problems at a site are scoped by analyzing existing data, identifying the contaminants of concern, projecting potential exposure routes, identifying any additional specific information that is available, and specifying tasks required throughout the entire remediation process to fully remediate the site problem(s).

From the work plan, a field sampling plan is written to obtain the remaining required data. Companion documents include the health and safety plan, the quality assurance project plan, and the community relations plan. The health and safety plan specifies the procedures needed to protect workers and the general public. The quality assurance project plan specifies the procedures, detection levels, and data quality checks to be used in the laboratory analyses. The community relations plan outlines procedures to ensure that the public is kept informed and given the opportunity to provide information, suggestions, and comments.

The RI phase of the remediation decisionmaking process includes activities associated with site investigations, sample analyses, and data evaluation, which are performed to characterize the site and to determine the nature and extent of contamination. In addition, applicable or relevant and appropriate requirements must be identified to determine what standards, criteria, regulations, or other constraints should be applied to the proposed action. Bench-scale or pilot studies may be performed to test potentially applicable technologies. The RI phase also includes a baseline risk assessment, which is a quantitative assessment of the primary health and environmental threats under the no action alternative.

The FS phase includes screening of remedial technologies, identification and screening of response alternatives, development of general performance criteria for such alternatives, and detailed evaluation and comparison of alternatives consistent with both CERCLA and NEPA. Alternatives to be considered for the St. Louis Site include: (1) No action; (2) treatment and disposal of wastes either on-site or off-site (off-site disposal would be considered generically, not specifically); and (3) (on-site or off-site) containment or institutional control alternatives that control the threats posed by hazardous substances to prevent exposure. The no action alternative provides an environmental baseline against which the impacts of the other alternatives can be compared.

The data collected during the RI phase will influence the development of the remedial alternatives in the FS phase, which in turn affects the data needs and scope of treatability studies and can result in additional field investigations.

Consistent with DOE policy, the RI/FS process will be supplemented, as necessary, to be consistent with NEPA and the Council on Environmental Quality's regulations (40 CFR parts 1500–1508). DOE has determined that an EIS is the appropriate level of NEPA documentation for the St. Louis Site. DOE will prepare an EIS implementation plan to record the results of the scoping process and to present the approach for preparation of the EIS (i.e., RI/FS–EIS). The EIS implementation plan will be prepared following the scoping meeting and will be appended to the work plan for the St. Louis Site.

Nothing in this NOI, or in other documents to be prepared, is intended to represent a statement on the legal applicability of NEPA to remedial actions under CERCLA.

Preliminary List of Potential Issues

Potential issues related to response actions at the St. Louis Site include environmental impacts, as well as factors that may result from or be influenced by implementation of one or more of the remedial alternatives. The preliminary list that follows is based on issues that have been raised relative to other DOE proposals of this nature. Interested parties are invited to participate in the scoping process discussed below and to help refine this list to arrive at the significant issues to be analyzed in depth in the integrated CERCLA/NEPA process and to eliminate from detailed study the issues that are not significant.

The potential major issues that may arise and therefore require analysis in the integrated CERCLA/NEPA process are as follows:

1. Potential radiological/chemical impacts in terms of both radiation/chemical doses and resulting health risks:
—On people, including workers and the general public (i.e., individuals and the total population, children and adults, present and future generations);
—Along transportation routes relevant to the proposed alternatives;
—Associated with routine remedial operations and accidents;
—Associated with various pathways to humans, including air, soil, surface water, groundwater and biota;
—Due to natural forces, such as erosion and flooding; and
—Associated with human intrusion into the contaminated materials.
2. Potential engineering and technical issues:
—The most reasonable engineering options for each type of waste/residue;
—Probable duration of contamination isolation;
—Rates and magnitude of loss of containment;
—Related to site-specific geohydrology and ecology;
—Related to site-specific wind patterns; and
—Site characterization and research and development work necessary before the decision or before actual implementation of an alternative.
3. Potential issues relative to mitigative measures and monitoring:
—Health-physics and industrial-hygiene procedures for workers; and
—Control measures for erosion, gases, and dusts.
4. Potential institutional issues:
—Project-specific criteria for decontamination, effluents, environmental concentrations, and release of site for use without radiological restrictions;
—Future institutional controls (i.e., monitoring and maintenance); and
—Institutional issues that need to be resolved before an alternative can be implemented.
5. Potential socioeconomic issues:
—Effects on land uses, values, and marketability; and
—Effects on local transportation systems.
6. Cumulative impacts associated with the remedial actions proposed to be taken or reasonably foreseeable at the St. Louis Site.
7. Issues related to CERCLA criteria for selection of a remedial action:
—Overall protection of human health and the environment;
—Compliance with applicable or relevant and appropriate requirements;
—Long-term effectiveness and permanence;
—Reduction of waste toxicity, mobility, and volume through treatment;
—Short-term effectiveness;
—Implementability;
—Cost;
—State acceptance; and
—Community acceptance.

Scoping

The results of the integrated CERCLA/NEPA assessment process for the St. Louis Site will be presented in the draft RI/FS–EIS. The draft work plan and companion documents, fact sheets, technical reports, and other information related to DOE activities at the St. Louis Site have been placed in the repositories at the addresses noted below.

The scoping process will involve all interested government agencies (i.e., Federal, State, and local), groups, and members of the public. Comments are invited on the alternatives and the issues to be considered in the integrated CERCLA/NEPA process, as discussed in this NOI and in the draft RI/FS–EIS work plan. A public scoping meeting is scheduled to start at 7 p.m., to be held on January 28, 1992, in the Berkeley Senior High School, 8710 Walter Avenue, Berkeley, Missouri 63134. This will be an informal meeting, but a complete record will be taken and copies of the transcript will be made available as detailed below.

The meeting will be presided over by an independent facilitator, who will explain DOE procedures for conducting the meeting. The meeting will not be conducted as an evidentiary hearing, and those who choose to make statements will not be subject to cross examination by other speakers. However, to facilitate the exchange of information and to clarify issues, DOE and its representatives may respond by answering questions and making short clarifying statements, as necessary or appropriate. To ensure that everyone who wishes to speak has a chance to do so, 5 minutes will be allotted for each speaker, and speakers are encouraged to submit a written summary of comments.

Depending on the number of persons requesting to be heard, DOE may allow longer times for representatives of organizations; persons wishing to speak on behalf of an organization should identify the organization in their request. Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting; they will be called on to present their comments if time permits. Written comments or suggestions will also be accepted at the meeting or should be sent to Mr. Lester K. Price at the address given above in the Addresses section and should be postmarked no later than February 7, 1992. Comments or suggestions postmarked after that date will be considered to the maximum extent practicable. Oral and written comments will be given equal weight. Copies of the scoping meeting transcript, the draft work plan and companion documents, and major references used in preparing these documents will be available for inspection during normal business hours at the following locations:

St. Louis Public Library, Government Information Section, 1301 Olive Street, St. Louis, MO, 63103, (314) 241–2288.

St. Louis County Library, Prairie Commons Branch, 915 Utz Lane,

Hazelwood, MO, 63042, (314) 895-1023.

DOE Public Information Office, 9200 Latty Avenue, Hazelwood, MO, 63042, (314) 524-4083.

Certain materials have already been placed at the above repositories, including preliminary assessment and site investigation reports, the draft work plan, the community relations plan, and reports on work that has previously been conducted at the Site. Other documents will be added to the repositories as work at the Site progresses. These additional documents may include, but are not limited to, the scoping meeting transcript, implementation plan, major references used in preparing the RI/FS-EIS, other technical reports, comments and new data submitted by interested persons, and DOE responses to comments.

DOE will retain the transcript of the scoping meeting, and, in addition to the locations noted above, will make a copy available for inspection at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, Monday through Friday during business hours (i.e., 9 a.m. to 4 p.m.). In addition, anyone may make arrangements with the recorder to purchase a copy. When the draft RI/FS-EIS is available, a notice will be published in the **Federal Register** and local newspapers to announce the locations where the documents can be reviewed.

Persons who do not wish to submit comments or suggestions during the comment period but who would like to receive a copy of the draft RI/FS-EIS for review and comment should notify Mr. Lester K. Price at the address given above in the Addresses section.

DOE expects by the end of 1994 to issue the final RI/FS-EIS, which will include a description of the proposed plan and responses to public comments received on the draft RI/FS-EIS (responsiveness summary). DOE will announce a remedial action selection for the Site in the Record of Decision to be issued no earlier than 30 days after the final RI/FS-EIS is issued.

Issued in Washington, DC, this 3d day of January 1992.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 92-531 Filed 1-8-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES92-24, et al.

UtiliCorp United Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. UtiliCorp United Inc.

[Docket No. ES92-24-000]

December 30, 1991.

Take notice that on December 23, 1991, UtiliCorp United Inc. filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authority to issue not more than 1 million shares of preference stock, without par value, and for exemption from the Commission's competitive bidding regulations.

Comment date: January 22, 1992, in accordance with Standard Paragraph E end of this notice.

2. Gulf States Utilities Co.

[Docket No. ES92-23-000]

December 30, 1991.

Take notice that on December 23, 1991, Gulf States Utilities Company filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authority to issue not more than $100 million of unsecured notes with a final maturity date no later than three years after commencement of the line of credit and for exemption from the Commission's competitive bidding regulations.

Comment date: January 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. William G. Kuhns

[Docket No. ID-1353-002]

December 30, 1991.

Take notice that on August 18, 1991, William G. Kuhns (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Chairman, President Chief Executive Officer, Director.	General Public Utilities Corporation.
Director, Chairman and Chief Executive Officer.	Jersey Central Power & Light Company.
Director, Chairman and Chief Executive Officer.	Metropolitan Edison Company.
Director, Chairman and Chief Executive Officer	Pennsylvania Electric Company.
Director	Marine Midland Banks, Inc.
Director	Home Life Insurance Company.
Director	Ingersoll-Rand Company.

Comment date: January 10, 1992, in accordance with standard paragraph E at the end of this notice.

4. Portland General Exchange, Inc.

[Docket No. ER91-662-000]

December 31, 1991.

Take notice that on December 11, 1991, Portland General Exchange, Inc. tendered for filing a revised notice of cancellation of service schedule PGX-1.

Comment date: January 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Keystone Energy Service Company, L.P. and Keystone Urban Renewal Limited Partnership

[Docket No. QF87-617-001]

December 31, 1991.

On December 19, 1991, Keystone Energy Service Company, L.P. and Keystone Urban Renewal Limited Partnership (Applicants) of Township of Logan, Gloucester County, New Jersey, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is presently certified for 200 MW (41 FERC ¶ 62,222 (1987)). The instant recertification is requested to reflect a change in the design of the facility from four boilers and two extraction/condensing steam turbine generators with 200 MW capacity to one boiler and one extraction/condensing steam turbine generator with 202 MW capacity. The construction of the facility is now expected to commence in March of 1992. In addition, the ownership of the facility has changed. Under the proposed ownership structure Pacific Gas and Electric Corporation will have an indirect ownership interest in the facility.

Comment date: 30 days from publication in the **Federal Register**, in accordance with standard Paragraph E at the end of this notice.

6. Chevron U.S.A. Inc.

[Docket No. QF85-703-001]

December 31, 1991.

On December 23, 1991, Chevron U.S.A. Inc. tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to the use of thermal energy and operating and efficiency value calculations.

Comment date: January 21, 1992, 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. 92-451 Filed 1-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-780-000 and CP91-780-002; and CP91-2322-000 and CP91-2322-002]

Northwest Pipeline Corp. and Paiute Pipeline Co.; Availability of the Draft Environmental Impact Statement for the Northwest Pipeline Expansion Project

January 3, 1992.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) has made available a draft environmental impact statement (DEIS) on the natural gas pipeline facilities proposed in the above-referenced dockets. The facilities proposed by the two applicants are considered jointly as the Northwest Pipeline Expansion Project.

The DEIS was prepared to satisfy the requirements of the National Environmental Policy Act. Construction of the proposed Northwest Pipeline Expansion Project would result in a limited, adverse environmental impact. The staff's analyses indicate that most of the impact would occur during construction of the proposed facilities. However, based on the information contained in this document, the staff has concluded that if this project is constructed and operated in accordance with the recommended mitigation recommendations, including the receipt of the necessary permits and approvals, it would be an environmentally acceptable action. The DEIS also evaluates alternatives to the proposals, including the No Action Alternative.

Northwest Pipeline Corporation (Northwest) proposes, in Docket Nos. CP91-780-000 and CP91-780-002, to expand the capacity of its existing natural gas transmission system which extends from the United States/Canadian border at Sumas, Washington south and west through Washington, Oregon, Idaho, Wyoming, Utah, and Colorado. Northwest proposes to construct pipeline facilities capable of transporting up to 433,415 thousand cubic feet per day (Mcfd) of both domestic and Canadian natural gas. These volumes would be delivered to various locations in the western United States and used by 9 local distribution companies, 16 end-users (i.e., various commercial and industrial gas users), 4 producers, 9 marketers, and 1 interstate gas shipper.

The proposed Northwest pipeline facilities would consist of 378.0 miles of new pipeline loop on Northwest's existing mainline and lateral systems. Mainline expansion would include construction of 243.4 miles of new loop pipeline consisting of 39 miles of 30-inch-diameter and 204.4 miles of 24-inch-diameter pipeline in 11 major segments or loops. New pipeline proposed to be built on the lateral systems would include 134.6 miles of pipeline consisting of 8.7 miles of 20-inch-diameter loop, 52.1 miles of 16-inch-diameter loop, 23.7 miles of 12-inch-diameter loop, 35.3 miles of 10-inch-diameter loop, and 14.8 miles of 6-inch-diameter lateral that would replace an existing 4-inch-diameter lateral. The lateral system expansion would consist of seven loops and one replacement lateral.

Northwest's proposed facilities would also include about 68,610 horsepower (hp) of compression at 10 new compressor stations, about 44,460 hp of additional compression at 7 existing compressor stations, and modifications of existing compressor equipment and/or piping at 6 existing compressor stations.

Additionally, Northwest proposes to requalify to a higher maximum allowable operating pressure (MAOP) about 89 miles of existing 26-inch-diameter mainline in 2 segments, and to construct upgrades and/or crossover taps to loop lines at 60 existing meter stations. Northwest also requests Commission authorization for the abandonment of 14.8 miles of 4-inch-diameter pipeline (to be replaced with 6-inch-diameter, as described above) on its Klamath Falls Lateral and various other existing equipment which would be replaced by upgraded equipment at 33 existing meter stations and 2 existing compressor stations.

Finally, Northwest proposes the construction of, or addition to 35 communication sites. Twelve of these sites would be constructed at new or existing compressor station sites. Twenty-two of the remaining sites would be located at existing communication sites. Eleven of these would require the erection of a new tower and/or a small building while the remaining 11 would require either new dishes installed on existing towers or the installation of a small repeater antenna. One entirely new communication site would be developed near Red Wash, Utah.

In its application (Docket Nos. CP91-2322-000 and CP91-2322-002) Paiute proposes to construct and operate 2.6 miles of 8-inch-diameter pipeline loop on its North Tahoe Lateral, 0.7 mile of 10-inch-diameter pipeline that would replace an existing 6-inch-diameter line on its South Tahoe Lateral, and 12.4 miles and 26.3 miles of 12-inch-diameter loop on its Reno and Elko Laterals, respectively. Additionally, Paiute would requalify to a higher MAOP 31.9 miles of 10-inch-diameter pipeline on its Carson Lateral.

Paiute's proposed facilities would also include the uprating and restaging of compressor units at four existing compressor stations, the installation of a new compressor engine/gas booster at one existing station, and relocation of an existing compressor engine from one station to another station. Paiute also proposes to construct a temporary compressor facility that would consist of a 300-hp skid-mounted compressor installed near the terminus of the Elko Loop. Finally, Paiute proposes to construct 4 new pressure regulating stations and to replace, uprate, or otherwise modify 16 meter stations or taps.

The DEIS has been mailed to Federal, State, and local agencies, public interest groups, interested individuals, libraries, and parties in the FERC proceeding interested in environmental issues, and other interested individuals. A 45-day comment period is being provided for review and receipt of the comments on the DEIS.

Written comments are requested to help identify significant new issues or concerns related to the proposed actions. All comments should focus on specific environmental issues and should contain supporting

documentation and rationale. Written comments should be filed on or before February 18, 1992, must reference Docket No. CP91-780-002 when discussing the Northwest facilities or Docket No. CP91-2322-002 when discussing the Paiute facilities, and must be addressed to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

A copy of the comments should also be sent to the FERC Project Manager identified below.

Comments on the DEIS will also be accepted from State and local agencies, and the general public at a limited number of public meetings. These meetings are tentatively scheduled for the week of January 20, 1992 in Albany, Oregon; Vancouver, Washington; Reno, Nevada; and Twin Falls, Idaho. Further information concerning the precise dates and locations of the public meetings will be mailed as soon as possible to all of the parties receiving this notice.

After these comments are reviewed, any new issues are investigated, and modifications are made to the document, a final EIS (FEIS) will be published and distributed. The FEIS will contain the staff's responses to comments received on the DEIS.

The DEIS has been placed in the public files of the FERC and is available for public inspection in the FERC's Division of Public Information, room 3104, 941 North Capitol Street, NE., Washington, DC 20426. The DEIS will also be available for review at the various Bureau of Land Management state, district, and resource area offices within the project area. Additional copies of the DEIS, in limited quantities, are available from the FERC's Division of Public Information or from Ms. Lauren O'Donnell, Project Manager, telephone (202) 208-0874. Any person may file a motion to intervene on the basis of the staff's DEIS (18 CFR 380.10(a) and 385.214).

An Executive Summary of this DEIS was prepared and sent to the property owners directly affected by this project, as well as other environmental groups and organizations, and parties in the FERC proceedings. Those individuals receiving the Executive Summary who wish to receive the entire DEIS may request copies from Ms. O'Donnell while the supplies last; however, this will not extend the comment period.

Lois Cashell,

Secretary

[FR Doc. 92-449 Filed 1-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2579-010, et al]

Indiana Michigan Power Co., et al.; Relicensing of Hydroelectric Projects

Take notice that the following filings have been with the Commission:

1. Indiana Michigan Power Co.

[Project No. 2579-010 Indiana]

December 19, 1991.

Take notice that on December 9, 1991, the Indiana Michigan Power Company filed an application to relicense the Twin Branch Hydroelectric Project No. 2579.

The Twin Branch Project is located on the St. Joseph River, in St. Joseph County, Indiana. The project consists of a 402-foot-long and 28-foot-high concrete topped timber crib dam, a 1,065-acre reservoir, and a powerhouse with an installed capacity of 4,800 kW. The licensee proposes no changes in operation or new construction for the project. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

2. Indiana Michigan Power Co.

[Project No. 2551-004 Michigan]

December 19, 1991.

Take notice that on December 11, 1991, the Indiana Michigan Power Company filed an application to relicense the Buchanan Hydroelectric Project No. 2551.

The Buchanan Project is located on the St. Joseph River, in Berrien County, Michigan. The project consists of a 400-foot-long and 10-foot-high concrete spillway, a 423-acre reservoir, and a powerhouse with an installed capacity of 4,104 kW. The licensee proposes no changes in operation or new construction for the project. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

3. Alabama Power Co.

[Project No. 2408-007 Alabama]

December 30, 1991.

Take notice that on December 17, 1991, the Alabama Power Company filed an application to relicense the Thurlow Hydroelectric Project No. 2408.

The Thurlow Project is located on the Tallapoosa River, in Tallapoosa and Elmore Counties, Alabama. The project consists of 1,129.92-foot-long and 62-foot-high concrete spillway, a 574-acre reservoir, and a powerhouse with an existing installed capacity of 58,000 kW. The licensee proposes the rewinding of the generators to increase the project capacity to 66,250 kW. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

4. Alabama Power Co.

[Project No. 2407-006 Alabama]

December 30, 1991.

Take notice that on December 17, 1991, the Alabama Power Company filed an application to relicense the Yates Hydroelectric Project No. 2407.

The Yates Project is located on the Tallapoosa River, in Tallapoosa and Elmore Counties, Alabama. The project consists of 619-foot-long and 61-foot-high concrete spillway, a 2,000-acre reservoir, and a powerhouse with an existing installed capacity of 32,000 kW. The licensee proposes the rewinding of the generators to increase the project capacity to 36,800 kW. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

5. Wisconsin Public Service Corp.

[Project No. 2525-004 Wisconsin]

December 30, 1991.

Take notice that on December 17, 1991, the Wisconsin Public Service Corporation filed an application to relicense the Caldron Falls Hydroelectric Project No. 2525.

The Caldron Falls Hydro Project is located on the Peshtigo River, in Marinette County, Wisconsin. The project consists of the approximately 1,000-foot-long concrete dam, a 1,180-acre reservoir, and a powerhouse with an installed capacity of 6,400 kW. The licensee proposes no changes in operation or new construction for the project. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

6. Wisconsin Public Service Corporation

[Project No. 2433-004 Wisconsin/Michigan]

December 30, 1991.

Take notice that on December 17, 1991, the Wisconsin Public Service Corporation filed an application to relicense the Grand Rapids Hydroelectric Project No. 2433.

The Grand Rapids Hydro Project is located on the Menominee River, in Marinette County, Wisconsin and Menominee County, Michigan. The project consists of the 1,402-foot-long

concrete Grand Rapids Dam, a 300-acre reservoir, and a powerhouse with an installed capacity of 7,020 kW. The licensee proposes no changes in operation or new construction for the project. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L end of this notice.

Standard Paragraph

L. Any resource agency, Indian tribe, or person believing that additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, a request for the study, together with justification for such request in accordance with § 4.32 of the Commission's regulations, must be filed no later than 60 days after the date of filing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-453 Filed 1-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-258-000, et al.]

Arkla Energy Resources, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

Take notice that the following filings have been made with the Commission:

1. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP92-258-000]

December 26, 1991.

Take notice that on December 19, 1991, Arkla Energy Resources, a division of Arkla, Inc. (AER), 525 Milam Street, Shreveport, Louisiana 71151, filed in Docket No. CP92-258-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to construct and operate certain facilities in Arkansas and Kansas and to abandon certain facilities in Oklahoma, under its blanket certificate issued in Docket No. CP82-384-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that AER requests authorization to construct and operate two sales taps and related facilities for delivery of natural gas to Arkansas Louisiana Gas Company (ALG) for resale to domestic consumers in Logan County, Arkansas and Sedgwick County, Kansas; to operate two existing taps in Union Parish, Louisiana and Hot Spring County, Arkansas, for delivery of natural gas to ALG for resale to consumers other than the right-of-way grantors for whom the taps were originally installed; and to abandon one domestic sales tap in Hughes County, Oklahoma.

It is further stated that the natural gas required for the performance of the above services will be delivered from AER's general system supply, which AER states is adequate to provide the service.

Comment date: February 10, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. El Paso Natural Gas Co.

[Docket No. CP92-261-000]

December 26, 1991.

Take notice that on December 20, 1991, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP92-261-000 an application pursuant to Sections 4, 5 and 7 of the Natural Gas Act, its restructuring proposal to finalize compliance with the Notice of Proposed Rulemaking issued in Docket No. RM91-11-000 (MEGA-NOPR) including application for certificates, approval of tariff filing and any other necessary authorizations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that it seeks pursuant to Sections 4, 5 and 7 of the Natural Gas Act a blanket sales certificate pursuant to proposed Subpart J, Part 284 of the Commission's Regulations; such authorization as may be necessary to permit the requested blanket sales certificate to supersede El Paso's presently effective certificate authorizing its Gas Inventory Charge mechanism; abandonment of the certificate authorizing El Paso's Interruptible Sales program and the service rendered pursuant thereto; tariff sheets applying standards of conduct to El Paso's unbundles sales service consistent with proposed § 284.285(h) of the Commission's Regulations; a certificate, pursuant to section 7(c) of the Natural Gas Act and proposed § 284.8(f)(3) of the Commission's Regulations, authorizing implementation of a capacity release program or, in the alternative, a capacity brokering program; and approval for El Paso to modify its rates so as to incorporate a straight fixed-variable rate design methodology, consistent with the Commission's partial modification of its Rate Design Policy Statement, as announced in the MEGA-NOPR.

El Paso states that the tariff, certificate and abandonment authorizations are intended to comprise its "Restructuring Proposal" to comply with any Final Rule that may be issued as a result of the MEGA-NOPR in Docket No. RM91-11-000. El Paso proposes that the tariff changes, including in particular, the rate design changes proposed by El Paso, not be made effective until the Final Rule at Docket No. RM91-11-000 has been promulgated and the Commission has specifically approved such proposed tariff changes. El Paso requests all necessary waivers, including waiver of any applicable notice requirements, to permit such tariff changes to be made effective on the date of a final Commission order approving El Paso's proposed tariff sheets.

El Paso states that it has elected to file its restructuring proposal at this time, rather than wait for issuance of a Final Rule in Docket No. RM91-11-000 because of the unique procedural and substantive posture of El Paso's service arrangements and rates. El Paso states that it believes it has already largely modified its tariff and service structure in ways that meet the proposed requirements of the MEGA-NOPR, therefore, there are likely to be few remaining steps required in El Paso's system to comply with the Final Rule. In addition, El Paso maintains that this filing will facilitate coordination of the compliance filing to be required by the MEGA-NOPR with El Paso's rate case pending at Docket No. RP91-188-000. El Paso states that this system-wide rate change was filed on July 1, 1991, and will go into effect on January 1, 1992. El Paso also states that the preparation of testimony, the commencement of a hearing, and the conduct of any settlement discussion will, in the normal course of events, occur in that case in 1992. El Paso further states that because the rate design aspects of El Paso's compliance filing in response to the MEGA-NOPR comprises one of its most significant components, a substantial potential for wasted or duplicative effort would exist if El Paso withheld its rate design proposal until some later date.

El Paso states that it is its present intention that, upon issuance of the Final Rule at Docket No. RM91-11-000, El Paso will request the Commission to consolidate all or part of this restructuring proposal with the proceeding at Docket No. RP91-188-000 and make such further procedural requests as may be appropriate in light of the content of the Final Rule and procedural status at the time of Docket No. RP91-188-000. El Paso requests that

the authorizations be made effective on a date to be established through the procedural process associated with the consolidated proceedings. El Paso also states that it reserves the right to amend this application, as may be necessary or appropriate, to reflect the provisions of any Final Rule that may be issued at Docket No. RM91-11-000.

Comment date: January 16, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Co.

[Docket No. CP92-268-000]

December 30, 1991.

Take notice that on December 24, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92-268-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to establish a new delivery point to its existing firm sales customer, Piedmont Natural Gas Company, Inc. (Piedmont) under Tennessee s blanket certificate, issued in Docket No. CP82-143-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that pursuant to Piedmont's request it has agreed to establish a new delivery point near Greenbrier, Robertson County, Tennessee. The new delivery point is required to enable Piedmont to render service to an industrial customer and to provide for additional customer growth in the area. It is stated that all costs associated with such delivery point would be borne by Piedmont.

Tennessee states that it does not propose to increase or decrease the total authorized daily and/or annual quantities to Piedmont. In addition Tennessee states that there would be no detriment to Tennessee's other customers and its currently effective tariff does not prohibit the establishment of such new point.

Comment date: February 13, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Trunkline Gas Co.

[Docket No. CP92-250-000]

December 31, 1991.

Take notice that on December 17, 1991 Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-250-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain compression facilities by conveyance to Exxon Corporation (Exxon), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Trunkline requests authorization to abandon, effective March 1, 1992, one 3,000 horsepower compressor unit and appurtenant facilities located on Exxon's Platform A in South Timbalier Block 165, Offshore Louisiana. Pursuant to an August 1, 1990 gas purchase and sales agreement, fifty percent of Exxon's production from South Timbalier 172 field is dedicated to Trunkline. Trunkline and Exxon entered into a Conveyance Agreement dated November 4, 1991, wherein Trunkline would convey the compressor unit and appurtenant facilities to Exxon at no cost, it is stated. Trunkline further states that in return for conveying the facilities, Trunkline's obligation to install, maintain, and operate compression at South Timbalier 165/172 would be eliminated. It is further stated, that Exxon would become responsible for any compression necessary to meet Trunkline's operating pressure at South Timbalier 165/172 field, and for any future maintenance costs concerning the compressor facilities.

Comment date: January 21, 1992, in accordance with Standard Paragraph F at the end of this notice.

5. El Paso Natural Gas Co.

[Docket No. CP92-270-000]

December 31, 1991.

Take notice that on December 27, 1991, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request with the Commission in Docket No. CP92-270-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon by conveyance to the Navajo Tribal Utility Authority (NTUA) various sales lateral pipelines and metering facilities in San Juan County, Utah, and the related transportation services to NTUA, Texas-New Mexico Pipeline Company (Texas-New Mexico), and Texaco Inc. (Texaco) under El Paso's blanket certificates issued in Docket Nos. CP82-435-000 and CP88-433-000, all as more fully set forth in the application which is open to public inspection.

El Paso proposes to abandon by conveyance to NTUA the Montezuma Creek School sales lateral pipeline (approximately 1.4 miles of 2⅜ inch and 6⅝ inch O.D. pipe), the Texas-New Mexico sales lateral (approximately 0.33 miles of 2⅜ inch pipe) the Montezuma School meter station, the Aneth School meter station, the Texas-New Mexico meter station, and the Texaco return residue sales meter station. The Commission authorized El Paso to construct and operate these facilities in the orders issued January 24, 1963, and October 1, 1963, in Docket Nos. CP63-67 (29 FPC 135) and CP63-297 (30 FPC 930), respectively. El Paso states that it no longer needs these distribution-type facilities because they are isolated from and no longer connected to El Paso s interstate system.[1]

El Paso further states that no interruption of natural gas service to NTUA, Texas-New Mexico, or Texaco would occur. NTUA would operate these facilities as part of its distribution system and has executed a gas supply and gathering contract with Western. Texas-New Mexico and Texaco would use their own natural existing production properties in the Aneth area in lieu of natural gas formerly transported by El Paso.

Comment date: February 13, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. Trunkline Gas Co.

[Docket No. CP92-251-000]

December 31, 1991.

Take notice that on December 17, 1991, Trunkline Gas Company (Trunkline), P.O. 1642, Houston, Texas 77251-1642 filed in Docket No. CP92-251-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a portion of natural gas transportation service performed by Trunkline for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline proposes to abandon the transportation of 25,000 Mcf per day of natural gas to Southern under Trunkline's Rate Schedule T-1 to be effective November 1, 1992. Trunkline states that it transports up to 85,000 Mcf per day of natural gas, on a firm basis, authorized in an order issued on May 23, 1979, in Docket No. CP75-149-000, from reserves produced in South Marsh Island Area Blocks 268, 269 and 281, offshore Louisiana pursuant to a transportation agreement dated September 11, 1974, as amended November 12, 1974, and September 27, 1978. Since the time initial deliveries commenced on May 29, 1979, Trunkline

[1] The Commission authorized El Paso to abandon its San Juan River gathering systems (downstream from the facilities El Paso proposes to abandon herein) to Western Gas Resources, Inc. (Western) in the order issued November 8, 1991, at Docket Nos. CP91-1600-000 (57 FERC ¶61,186).

delivers the gas to Southern in St. Mary's Parish, Louisiana, it is indicated.

Trunkline states that Trunkline and Southern have mutually agreed to a reduction of 25,000 Mcf per day of Southern's maximum daily contract quantity under Rate Schedule T-1 pursuant to Southern's written request dated November 20, 1991, to be effective November 1, 1992.

No facilities are proposed to be abandoned herein.

Comment date: January 21, 1992, in accordance with Standard Paragraph F at the end of the notice.

7. Equitrans, Inc.

[Docket No. CP92-269-000]

December 31, 1991.

Take notice that on December 23, 1991, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP92-269-000 a request to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to install a sales tap under its blanket certificate issued to Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable), in Docket No. CP83-508-000 and transferred to Equitrans in Docket No. CP86-676-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Equitrans states that the proposed sales tap will be installed on its transmission line H-126 in Gastonville, Pennsylvania, to provide gas service to Equitable. Equitrans further states that the projected quantity of gas to be delivered through the proposed sales tap will be one Mcf on a peak day. It is stated that Equitrans will charge Equitable the applicable rate contained in Equitrans' tariff on file with and approved by the Commission.

Comment date: February 13, 1992, in accordance with Standard Paragraph G at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157 10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary

[FR Doc. 92-452 Filed 1-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-185-009]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 2, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on August 30, 1991, tendered for filing proposed changes in its FERC Gas Tariff as set forth in the revised tariff sheets:

Second Revised Volume No. 1

Proposed to be effective December 1, 1990

Sub Original Sheet No. 225

Proposed to be effective January 1, 1991

Sub 1 Rev Sheet No. 225

Third Revised Volume No. 1

Proposed to be effective February 1, 1991

2 Sub Original Sheet No. 64

Algonquin states that it is filing Sub 1 Rev Sheet No. 225 and 2 Sub Original Sheet No. 64 to implement the Commission's Order on Rehearing of June 21, 1991 which granted Algonquin's rehearing request and authorized use of a one part 100% Demand rate for service under Rate Schedule FTP. Algonquin also states that it is filing Sub Original Sheet No. 225 to implement rates for Rate Schedule FTP service for the period December 1, 1990 through December 31, 1990.

Algonquin notes that copies of this filing were served upon each affected party and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-448 Filed 1-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ92-2-21-000 and TM92-7-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 2, 1992.

Take notice that on December 30, 1991, Columbia Gas Transmission Corporation (Columbia) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective February 1, 1992:

Fourteenth Revised Sheet No. 26
Sixth Revised Sheet No. 26.1
Fourteenth Revised Sheet No. 26A

Sixth Revised Sheet No. 26A.1
Fourteenth Revised Sheet No. 26B
Fifth Revised Sheet No. 26B.1
Thirteenth Revised Sheet No. 26C
Fourth Revised Sheet No. 26D
Fourteenth Revised Sheet No. 163

Columbia states that the purpose of the tariff sheets is to reflect a current purchased gas cost adjustment applicable to sales rate schedules; a continuation of certain surcharges which were accepted by the Commission to be effective through April 30, 1992; a transportation fuel charge adjustment; and a transportation cost recovery adjustment.

Columbia states that copies of the filing were served on Columbia's jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-443 Filed 1-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-2-2-000]

East Tennessee Natural Gas Co.; Filing

December 31, 1991.

Take notice that on December 20, 1991, East Tennessee Natural Gas Company (East Tennessee) tendered for filing revisions to Fourth Revised Sheet No. 6 of First Revised Volume No. 1 of its FERC Gas Tariff, to be effective January 1, 1992.

East Tennessee states that the revised tariff sheet reflects (i) the allocation of additional fixed take-or-pay charges billed to it by Tennessee Gas Pipeline Company (Tennessee) in Docket No. RP92-51 in the amount of an $22,214.00, (ii) customer payments through December 31, 1991, and (iii) a reduction in carrying charges utilized to compute the future amortization due to a reduction in interest rates, for an overall reduction in the monthly Demand Rate Surcharges.

East Tennessee also requests the Commission to waive section 26(a)(7) of its FERC Gas Tariff in order to allow the amortization of the new transition costs over the remaining amortization period which began on May 1, 1991. East Tennessee states that an extension of the amortization period is not necessary since the filing results in an overall decrease in monthly Demand Rate Surcharges as well as the fact that the instant filing will have a *de minimis* impact on the monthly surcharge level.

East Tennessee also requests a waiver of the 30 day notice period related to tariff filings in order to place the instant tariff sheets into effect on January 1, 1992. East Tennessee states that good cause for the waiver is shown because the filing results in an overall decrease in Demand Rate Surcharges.

East Tennessee states that copies of the filing were served on East Tennessee's jurisdictional customers and interested state regulatory agencies.

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, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of East Tennessee's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-445 Filed 1-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-71-000]

El Paso Natural Gas Co.; Tariff Filing

January 2, 1992.

Take notice that on December 27, 1991, El Paso Natural Gas Company ("El Paso"), filed, pursuant to part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act and § 22.6 contained in the General Terms and Conditions of its Second Revised Volume No. 1 Tariff, Fourteenth Revised Sheet No. 100 reflecting the confidential nature of the Gas Inventory Charge and Gas Cost Ceiling Charge rates to be effective January 1, 1992.

El Paso states that § 22.6, Filing with Commission, of said tariff, states that "Seller shall file with the Commission at least seventy-two (72) hours before the effective date * * * the Gas Inventory Charge rates and the Gas Cost Ceiling Charge rates and the period(s) during which such rates will be in effect." El Paso states that it will be implementing a GIC Sales Service Agreement with Southern California Gas Company, Southern Union Gas Company, A Division of Southern Union Company, Citizens Utilities Company, and Gas Company of New Mexico, A Division of Public Service Company of New Mexico to be effective January 1, 1992. Accordingly, El Paso states that it is tendering for filing and acceptance Fourteenth Revised Sheet No. 100 to be effective January 1, 1992. El Paso also is requesting confidential treatment of the Gas Inventory Charge and Gas Cost Ceiling Charge rates until February 1, 1992.

El Paso also states that a similar request for confidential treatment was approved by the Commission's November 27, 1991 order at Docket No. RP92-16-000.

El Paso respectfully requested that the Commission accept the tendered tariff sheet for filing and permit it to become effective on January 1, 1992.

El Paso states that copies of the filing were served upon all interstate pipeline system sales customers of El Paso and interested State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary

[FR Doc. 92-440 Filed 1-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ92-6-4-000 and TM92-10-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

January 2, 1992.

Take notice that on December 30, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581-5039, tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on January 1, 1992:

Eighth Revised Sheet No. 21
Fourth Revised Sheet No. 22

According to Granite State, this filing reflects the effect of revised projected gas costs for the first quarter of 1992 on its projected sales for the quarter Granite State further states that it initially filed revised rates for the first quarter of 1992 in its Annual Purchased Gas Cost Adjustment on November 18, 1991. (Docket No. TA92-2-4-000) It is stated that the revised rates in its filing reflect current gas costs that will be in effect on January 1, 1992 and result in a reduction in the rates originally proposed in the November 18th filing. It is stated that the revised rates also reflect a change in the Transportation Cost Adjustment in the sales rates attributable to a change in the commodity component in Rate Schedule CCT-NE of Tennessee Gas Pipeline Company and a recalculation of the demand component of the Transportation Cost Adjustment to reflect increased demand billing determinants now applicable to Granite State's sales rates as a result of the effectiveness of its motion rates in Docket No. RP91-164-000.

It is stated that the proposed rate changes are applicable to Granite State's jurisdictional services rendered to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary

[FR Doc. 92-441 Filed 1-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-9-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

January 2, 1992.

Take notice that on December 27, 1991, Granite State Gas Transmission, Inc. (Granite State) 300 Friberg Parkway, Westborough, Massachusetts 01581 tendered for filing the revised tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on the dates indicated:

	Proposed effective dates
Revised Ninth Revised Sheet No. 25.	December 1 1991.
Tenth Revised Sheet No. 25....	January 1, 1992.

According to Granite State, it provides a storage service for Bay State Gas Company under its Rate Schedule GSS with storage capacity provided in a facility operated by CNG Transmission Corporation (CNG). It is further stated that Granite State's Rate Schedule GSS tracks changes made by CNG under its Rate Schedule GSS pursuant to which Granite State obtains storage capacity from CNG.

Granite State further states that on December 13, 1991, CNG made a filing in Docket No. RP90-143-00 in compliance with a Commission order, dated November 29, 1991, in that docket revising its Rate Schedule GSS rates effective December 1, 1991 and January 1, 1992. According to Granite State, its filing tracks in its Rate Schedule GSS the changes proposed by CNG in its rates for Rate Schedule GSS service.

Granite State states that copies of its filing were served on Bay State Gas Company and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 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 January 9, 1992. 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. 92-439 Filed 1-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-70-000]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 2, 1992.

Take notice that on December 27, 1991 Mississippi River Transmission Corporation (MRT) tendered for filing Third Revised Sheet No. 68 to its FERC Gas Tariff, Original Volume No. 1-A.

MRT states that the tariff filing is being made in compliance with the Commission's Final Rule in Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates, FERC Statutes and Regulations Paragraph 30,927 (1991) ("Order No. 537"). Specifically, MRT states that its filing is in compliance with revised 18 CFR 284.12(e), reflecting the Commission's interpretation of the "on behalf of" standard of section 311 of the Natural Gas Policy Act of 1978.

MRT states that a copy of this filing has been mailed to each of MRT's jurisdictional customers, and to the State commissions of Arkansas, Illinois and Missouri.

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 rule 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214. All such motions or protests should be filed on or before January 9, 1992. 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. 92-446 Filed 1-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-5-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

January 2, 1992.

Take notice that on December 30, 1991 Mississippi River Transmission Corporation (MRT) tendered for filing Seventy-First Revised Sheet No. 4, and Thirtieth Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective January 1, 1992. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that Seventy-First Revised Sheet No. 4 and Thirtieth Revised Sheet No. 4.1 reflect a decrease of 11.64 cents per MMBtu in the commodity cost of purchased gas from PGA rates filed to be effective December 1, 1991 in Docket No. TQ92-2-25-000. MRT also states that since the October 31, 1991 filing date, MRT has experienced decreases in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of the filing has been mailed to each of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-447 Filed 1-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-66-000]

Pacific Gas Transmission Co.; Change in FERC Gas Tariff

January 2, 1992.

Take notice that on December 23, 1991, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance Section Revised Sheet Nos. 50 and 51, Original Sheet No. 51A, First Revised Sheet No. 79 and First Revised Sheet No. 88 to be a part of its FERC Gas Tariff, Original Volume No. 1-A, with a proposed effective date of January 22, 1992.

PGT states that the purpose of this filing is to revise the tariff sheets in compliance with the Commission's final Rule in Order No. 537, issued on September 20, 1991.

PGT states that copies of the filing were served upon PGT's jurisdictional customers and affected State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-444 Filed 1-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-67-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

January 2, 1992.

Take notice that on December 23, 1991, Transwestern Pipeline Company (Transwestern) tendered for filing the following revised tariff sheets to become part of its FERC Gas Tariff, Second Revised Volume No. 1, with a proposed effective date of January 1, 1992.

2nd Revised Sheet No. 30E
5th Revised Sheet No. 30F
2nd Revised Sheet No. 34C
Original Sheet No. 34C.1

Transwestern states that the above tariff sheets are being filed to comply with the Commission's Final Rule in Order No. 537 issued September 20, 1991 in Docket No. RM90-7-000.

Transwestern states that copies of the filing were served on its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-442 Filed 1-8-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. F-033]

Energy Conservation Program for Consumer Products; Decision and Order Granting a Waiver from the Furnace Test Procedures to Armstrong Air Conditioning, Inc.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. F-033) granting a Waiver to Armstrong Air Coniditoning, Inc. (Armstrong), from the existing Department of Energy (DOE) test procedures for furnaces. The Department is granting Armstrong its Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its EG8G series of induced draft gas furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasser, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Armstrong has been granted a Waiver for its EG8G series of induced draft gas furnaces, permitting the company to use an alternate test method in determining the Annual Fuel Utilization Efficiency (AFUE).

Issued in Washington, DC, December 30, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Armstrong filed a "Petition for Waiver" dated December 14, 1990, in accordance with section 430.27 of 10 CFR part 430. DOE published in the **Federal Register** on July 26, 1991, Armstrong's petition and solicited comments, data and information respecting the petition. 56 FR 34200. Armstrong also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on July 22, 1991. 56 FR 34200, July 26, 1991.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." DOE consulted with The Federal Commission (FTC), concerning the Armstrong Petition. The FTC did not have any objections to the issuance of the waiver to Armstrong.

Assertions and Determinations

Armstrong's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Armstrong requests the allowance to test using a 30-second blower time delay when testing its EG8G series of induced draft gas furnaces. Armstrong states that, since the 30-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of approximately 0.6 percent, the petition should be granted.

Under specific circumstances, the DOE test procedures contain exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Armstrong indicates that it is unable to take advantage of any of these exceptions for its EG8G series of induced draft gas furnaces.

Since the blower controls incorporated on the Armstrong furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the Armstrong EG8G series of induced draft gas furnaces. Accordingly, with regard to testing the EG8G series of induced draft gas furnaces, today's Decision and Order exempts Armstrong from the existing provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Armstrong Air Conditioning, Inc. (Case No. F-033), is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, Armstrong Air Conditioning, Inc., shall be permitted to test its EG8G series of induced draft gas furnaces on the basis of the test procedures specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103-82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE 103-82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnaces and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted

to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modification set forth above, Armstrong Air Conditioning, Inc. shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the EG8G series of induced draft gas furnaces manufactured by Armstrong Air Conditioning, Inc.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective (January 9, 1992), this Waiver supersedes the Interim Waiver granted Armstrong Air Conditioning, Inc., on July 22, 1991. 56 FR 34200, July 26, 1991 (Case No. F-033).

Issued in Washington, DC, December 30, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92-527 Filed 1-8-92; 8:45 am]

BILLING CODE 6450-01-M

[Case No. F-041]

Energy Conservation Program for Consumer Products; Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Furnace Test Procedures from Consolidated Industries Corp.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Consolidated Industries Corp. (Consolidated Industries) from the existing Department of Energy (DOE) test procedures for furnaces regarding blower time delay for the company's MAA series of gas furnaces.

Today's notice also publishes a "Petition for Waiver" from Consolidated Industries. Consolidated Industries' Petition for Waiver requests DOE to grant relief from the DOE test procedures relating to the blower time delay specification. Consolidated Industries seeks to test using a blower delay time of 30 seconds for its MAA series of gas furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than February 10, 1992.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-041, Mail Stop CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3012.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On September 18, 1991, Consolidated Industries filed an Application for an Interim Waiver regarding blower time delay and an amended application on November 4, 1991. Consolidated Industries' Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Consolidated Industries requests the allowance to test using a 30-second blower time delay when testing its MAA series of gas furnaces. Consolidated Industries states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 0.8 percent. Since current DOE test procedures do not address this variable blower time delay,

Consolidated Industries asks that the Interim Waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 55 FR 37521, September 12, 1990; Trane Company, 54 FR 19226, May 4, 1989, and 55 FR 41589, October 12, 1990; Lennox Industries, 54 FR 50525, December 7, 1989; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182, April 9, 1990; Inter-City Products Corporation, 55 FR 31099, July 31, 1990, and 56 FR 27959, June 18, 1991; Amana Refrigeration Inc., 56 FR 853, January 9, 1991, and 56 FR 29957, July 1, 1991; Armstrong Air Conditioning, Inc., 56 FR 10553, March 13, 1991, and 56 FR 34200, July 26, 1991; Snyder General Corporation, 56 FR 14511, April 10, 1991; Goodman Manufacturing Corporation, 56 FR 20421, May 3, 1991; Thermo Products, Inc., 56 FR 32205, July 15, 1991; and The Ducane Company, 56 FR 45958, September 9, 1991. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Consolidated Industries an Interim Waiver for its MAA series of gas furnaces. Pursuant to paragraph (e) of section 430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver to Consolidated Industries was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC., December 30, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Department of Energy

Washington, DC 20585

December 30, 1991.

Mr. Richard H. Weber, President,

Consolidated Industries Corp., P.O. Box 7800, Lafayette, IN 47903-7800.

Dear Mr. Weber: This is in response to your November 4, 1991, amended Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedures for furnaces regarding blower time delay for Consolidated Industries Corp. (Consolidated Industries) MAA series of gas furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 55 FR 37521, September 12, 1990; Trane Company, 54 FR 19226, May 4, 1989, and 55 FR 41589, October 12, 1990; Lennox Industries, 54 FR 50525, December 7, 1989; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182, April 9, 1990; Inter-City Products Corporation, FR 31099, July 31, 1990, and 56 FR 27959, June 18, 1991; Amana Refrigeration Inc., 56 FR 853, January 9, 1991, and 56 FR 29957, July 1, 1991; Armstrong Air Conditioning, Inc., 56 FR 10553, March 13, 1991, and 56 FR 34200, July 26, 1991; Snyder General Corporation, 56 FR 14511, April 10, 1991; Goodman Manufacturing Corporation, 56 FR 20421, May 3, 1991; Thermo Products, Inc., 56 FR 32205, July 15, 1991; and The Ducane Company, 56 FR 45958, September 9, 1991.

Consolidated Industries' Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Consolidated Industries will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Consolidated Industries' Application for an Interim Waiver from the DOE test procedures for its MAA series of gas furnaces regarding blower time delay is granted.

Consolidated Industries shall be permitted to test its line of MAA series of gas furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, appendix N, with the modification set forth below.

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103-82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Consolidated Industries

November 4, 1991.

Assistant Secretary of Conservation and Renewable Energy,

U.S. Department of Energy, 1000 Independence Avenue S.W., Washington, DC 20585.

Gentlemen: This letter is in reference to my letter of September 18, 1991, to Petition for Waiver and Application for Interim Waiver as submitted in compliance with title 10 CFR 430.27.

By this letter Consolidated Industries is amending our September 18, 1991 request such that our MAA series furnaces will be tested with a 30 second time delay used in place of the current test procedure's 1.5 minute time delay. Thirty seconds is the maximum time delay, including manufacturing tolerance, of the non-adjustable time delay relay used in the MAA Series furnaces.

Test results show an average of 0.8% improvement in AFUE using th4 30 seconds fixed time delay in place of the present standards 1.5 minute time delay. Data and documentation can be supplied at your request.

Sincerely,

Richard H. Weber,

President.

September 18, 1991.

Assistant Secretary of Conservation and Renewable Energy,

U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585

Gentlemen: This Petition for Waiver and Application for Interim Waiver is submitted in compliance with title 10 CFR 430.27. This request is for a modification to the Test Procedures for Measuring the Energy Consumption of Furnaces found in appendix N to subpart B of Part 430.

The current test procedure uses a 1.5 minute time delay between the burner start-up and the blower start-up. Consolidated Industries' MAA series of furnaces utilizes a 25 second non-adjustable fixed time delay between the burner ignition and blower startup. This timer has a manufacturer's tolerance of ±5 seconds. For the MAA series of furnaces, Consolidated Industries is requesting that the fixed time delay be substituted for the current test procedure's 1.5 minute time delay.

We submit that the current test procedure using the 1.5 minute blower start-up time delay requires a bypass of the furnace safety limit switch and does not represent the true product performance and efficiency. The MAA furnace series has a light weight, compact heat exchanger that was designed to heat up very quickly with an ensuing blower start-up time optimized at 25 seconds. The advanced heat exchanger design along with improved operating controls has improved the efficiency of this furnace in such a way that the current standard does not credit Consolidated Industries for the true efficiency improvements of this furnace. The product performance will be more accurately depicted using the proposed ASHRAE Standard 103–1988 which accounts for the design flexibility and improvement without the penalty incurred by using the current test procedure. The test results show an average of 0.9% improvement in AFUE using the 25 second fixed time delay.

Other manufacturers have submitted similar waiver requests for similar reasons.

Data and documentation can be supplied at your request.

This waiver request letter has been sent to GAMA and gas furnace manufactures that market similar products.

Sincerely,

Richard H. Weber,

President Consolidated Industries Corp.

[FR Doc. 92–530 Filed 1–8–92; 8:45 am]

BILLING CODE 6450–01–M

[Case No. F–034]

Energy Conservation Program for Consumer Products; Decision and Order Granting a Waiver From the Furnace Test Procedures to Thermo Products, Inc.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–034) granting a Waiver to Thermo Products, Inc. (Thermo) from the existing Department of Energy (DOE) test procedures for furnaces. The Department is granting Thermo its Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its GLC and GHC condensing gas furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Thermo has been granted a Waiver for its GLC and GHC condensing gas furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, December 30, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Thermo filed a "Petition for Waiver", dated May 2, 1991, with supplemental information presented by letter of June 4, 1991, in accordance with section 430.27 of 10 CFR part 430. DOE published in the **Federal Register** on July 15, 1991. Thermo's Position and solicited comments, data and information respecting the Petition. 56 FR 32205. Thermo also filed an "Application for Interim Waiver" under section 430.27(g), which DOE granted on July 9, 1991. 56 FR 32205, July 15, 1991.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." DOE consulted with the Federal Trade Commission (FTC), concerning the Thermo Petition. The FTC did not have any objections to the issuance of the waiver to Thermo.

Assertions and Determinations

Thermo's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the

ignition of the burner and the starting of the circulating air blower. Thermo requests the allowance to test using a 30-second blower time delay when testing its GLC and GHC condensing gas furnaces. Thermo states that since the 30-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of approximately 1.5 percent, the Petition should be granted.

Under specific circumstances, the DOE test procedures contain exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Thermo indicates that it is unable to take advantage of any of these exceptions for its GLC and GHC condensing gas furnaces.

Since the blower controls incorporated on the Thermo furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the Thermo GLC and GHC condensing gas furnaces. Accordingly, with regard to testing the GLC and GHC condensing gas furnaces, today's Decision and Order exempts Thermo from the existing provisions regarding blower controls and allows testing with the 30-second delay.

It is therefore, ordered that:

(1) The "Petition for Waiver" filed by Thermo Products, Inc. (Case No. F-034) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, Thermo Products, Inc. shall be permitted to test its GLC and GHC condensing gas furnaces on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measuremennts shall be as specified in section 9 in ANSI/ASHRAE 103-82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows:

3.10 Gas-and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE 103-82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnaces and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modification set forth above, Thermo Products, Inc. shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the GLC and GHC condensing gas furnaces manufactured by Thermo Products, Inc.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective January 9, 1992, this Waiver supersedes the Interim Waiver granted Thermo Products, Inc. On July 9, 1991. 56 FR 32205, July 15, 1991 (Case No. F-034).

Issued in Washington, DC, December 30, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92-526 Filed 1-8-92; 8:45 am]

BILLING CODE 6450-01-M

Energy Conservation Program for Consumer Products; Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Furnace Test Procedures From The Trane Company (Case No. F-040)

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to The Trane Company (Trane) from the existing Department of Energy (DOE) test procedures for furnaces regarding blower time delay for the company's TUD-C, TUD-R, TDD-C and TDD-R central furnaces.

Today's notice also publishes a "Petition for Waiver" from Trane. Trane's Petition for Waiver requests DOE test procedures relating to the blower time delay specification. Trane seeks to test using a blower delay time of 45 seconds for its TUD-C, TUD-R, TDD-C and TDD-R central furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATE: DOE will accept comments, data, and information not later than February 10, 1992.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-040, Mail Stop CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3012.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National

Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On October 16, 1991, Trane filed an Application for an Interim Waiver regarding blower time delay. Trane's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Trane requests the allowance to test using a 45-second blower time delay when testing its TUD–C, TUD–R, TDD–C and TDD–R central furnaces. Trane states that the 45-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 1.0 percent. Since current DOE test procedures do not address this variable blower time delay, Trane asks that the Interim Waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 55 FR 37521, September 12, 1990; Trane Company, 54 FR 19226, May 4, 1989, and 55 FR 41589, October 12, 1990; Lennox Industries, 54 FR 50525, December 7, 1989; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182, April 9, 1990; Inter-City Products Corporation, 55 FR 31099, July 31, 1990, and 56 FR 27959, June 18, 1991; Amana Refrigeration Inc., 56 FR 853, January 9, 1991, and 56 FR 29957, July 1, 1991; Armstrong Air Conditioning, Inc., 56 FR 10553, March 13, 1991, and 56 FR 34200, July 26, 1991; Snyder General Corporation, 56 FR 14511, April 10, 1991; Goodman Manufacturing Corporation, 56 FR 20421, May 3, 1991; Thermo Products, Inc., 56 FR 32205, July 15, 1991; and The Ducane Company, 56 FR 45958, September 9, 1991. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Trane an Interim Waiver for its TUD-C, TUD-R, TDD-C and TDD-R central furnaces. Pursuant to paragraph (e) of §430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver to Trane was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC., December 30, 1991.

J. Michael Davis, P.E.

Assistant Secretary, Conservation and Renewable Energy.

Mr. James T. Vershaw,
Manager, Furnace System Technology, The Trane Company, P.O. Box 9010, Tyler, TX 75711

December 30, 1991.

Dear Mr. Vershaw: This is in response to your October 16, 1991, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedures for furnaces regarding blower time delay for The Trane Company (Trane) TUD–C, TUD–R, TDD–C and TDD–R central furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 55 FR 37521, September 12, 1990; Trane Company, 54 FR 19226, May 4, 1989, and 55 FR 41589, October 12, 1990; Lennox Industries, 54 FR 50525, December 7, 1989; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182, April 9, 1990; Inter-City Products Corporation, 55 FR 31099, July 31, 1990, and 56 FR 27959, June 18, 1991; Amana Refrigeration Inc., 56 FR 853, January 9, 1991, and 56 FR 29957, July 1, 1991; Armstrong Air Conditioning, Inc., 56 FR 10553, March 13, 1991, and 56 FR 34200, July 26, 1991; Snyder General Corporation, 56 FR 14511, April 10, 1991; Goodman Manufacturing Corporation, 56 FR 20421, May 3, 1991; Thermo Products, Inc., 56 FR 32205, July 15, 1991; and The Ducane Company, 56 FR 45958, September 9, 1991.

Trane's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Trane will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Trane's Application for an Interim Waiver from the DOE test procedures for its TUD–C, TUD–R, TDD–C and TDD–R central furnaces regarding blower time delay is granted.

Trane shall be permitted to test its line of TUD–C, TUD–R, TDD–C and TDD–R central furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B,

appendix N, with the modification set forth below.

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Assistant Secretary Conservation and Renewable Resources,

United States Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585

October 16, 1991.

Gentlemen: This is a Petition for Waiver and Application for Interim Waiver submitted pursuant to title 10 CFR 430.27. Waiver is requested from the furnace test procedure found in appendix N to subpart B of part 430.

The current test procedure requires a 1.5 minute delay between burner and supply air blower startup. Trane is requesting the use of 45 seconds instead of 1.5 minutes when testing our TUD–C, TUD–R, TDD–C and TDD–R central furnace families incorporating a timed fan control with a fixed timed on adjustment of 45 seconds. The current procedure does not credit Trane for additional energy savings that are realized when a shorter blower on time is utilized. Test data for each model series indicates an average 1% AFUE increase when a 45 second timed on delay is used. Copies of confidential test data confirming these energy savings will be forwarded to you upon request.

Trane is confident that this petition for Waiver will be granted, and therefore, requests an Interim Waiver until the final ruling is made. Similar waivers have been granted to Evcon, Rheem Manufacturing, Carrier, Inter-City Products, and Lennox Industries. Also, the proposed ASHRAE 103–88 currently under consideration by DOE contains the coverage requested in this Petition for Waiver.

Manufacturers that domestically market similar products have been sent a copy of this Petition for Waiver and Application for Interim Waiver.

Sincerely,

James T. VerShaw,

Manager, Furnace Systems Technology.

[FR Doc. 92–529 Filed 1–8–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[Docket No. FE C&E 91–25; Certification Notice-93

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Four owners and operators of proposed new electric base load powerplants have filed self-certifications in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION:

The following companies have filed self-certifications:

Name	Date received	Type of facility	Megawatt capacity	Location
United Technologies Corporation, Pratt & Whitney, East Hartford, CT	12-20-91	Topping Cycle	24.9	East Hartford, CT
Pasco Cogen, Ltd., Orange, CA	12-24-91	Topping Cycle	106	Pasco County, FL
Lake Cogen, Ltd, Orange, CA	12-24-91	Topping Cycle	106	Lake County, FL
Ag-Energy, L.P., New York, New York	12-26-91	Combined Cycle	79.9	Ogdensburg, NY

Amendments to the FUA on May 21, 1987 (Pub. L. 100–42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

Copies of this self-certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE/52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586–6769.

Issued in Washington, DC on January 2, 1992.

Anthony J. Como,

Director, Office of Coal & Electricity; Office of Fuels Programs, Fossil Energy.

[FR Doc. 92–525 Filed 1–8–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $83,750,000 in crude oil overcharge funds, plus accrued interest, obtained from Salomon Inc. Case No. LEF-0033. The DOE has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Applications for Refund submitted pursuant to this Decision must be filed in duplicate, postmarked no later than June 30, 1992, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Any party that has previously submitted a refund application in crude oil proceedings need not file another application; that application will be deemed filed in all crude oil proceedings finalized to date.

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, William Robinson, Staff Analyst, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8018 (Tedrow), (202) 586-6602 (Robinson).

SUPPLEMENTARY INFORMATION: .

In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute crude oil overcharge funds obtained from Salomon Inc. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986) (MSRP). Under the MSRP, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of crude oil and refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of crude oil price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

As the Decision and Order indicates, Applications for Refund may now be filed by injured purchasers of crude oil and refined petroleum products. Applications must be filed in duplicate and postmarked no later than June 30, 1992. The specific information required in an Application for Refund is set forth in the Decision and Order. As we state in the Decision, any party that has previously submitted a refund application in crude oil refund proceedings need not file another application; that application will be deemed filed in all crude oil proceedings finalized to date.

Dated: January 2, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order

January 2, 1992.

Name of Firm: Salomon Inc.

Date of Filing: May 24, 1991.

Case Number: LEF-0033.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

This Decision and Order considers a Petition for the Implementation of Special Refund Procedures filed by the ERA for crude oil overcharge funds. The petition deals with monies obtained from Salomon Inc, Case No. LEF-0033. Salomon remitted $83,750,000.00 in crude oil overcharge funds to the DOE pursuant to a proposed Consent Order entered into by Salomon and the DOE on September 12, 1990 and finalized on November 13, 1990. This Consent Order resolved allegations that Salomon committed violations of the federal petroleum price and allocation regulations during the period January 1, 1978 through January 28, 1981 (Consent Order number 6C0X00294A). An additional $4,863,572.11 has accrued in interest on Salomon's escrow account as of October 31, 1991. This Decision and Order establishes the OHA's procedures for distributing these funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶82,508 (1981) and *Office of Enforcement*, 8 DOE ¶82,597 (1981). We have considered the ERA's requests to implement subpart V procedures with respect to the monies received from Salomon and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (hereinafter the MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. 1986), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986) (hereinafter the August 1986 Order). That Order provided a period of thirty days for the filing of any objections to the application of the MSRP and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987) hereinafter the April 10 Notice). The April 10 Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the subpart V regulations. In that Notice, the OHA stated that all applicants for crude oil refunds would be required to document their purchase volumes of petroleum products during the period of Federal crude oil price controls and to prove that they were injured by the alleged overcharges. The April 10 Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges and need not submit any further proof of injury to receive a refund. Finally, the OHA stated that refunds would be calculated on the basis of a per-gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would consist of the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement, or were subsequently deposited in the escrow account, and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

These procedures, which the OHA has applied in numerous cases since the April 10

Notice, see, *e.g., New York Petroleum, Inc.*, 18 DOE ¶85,435 (1988); *Shell Oil Co.*, 17 DOE ¶85,204 (1988); *Ernest A. Allerkamp*, 17 DOE ¶85,079 (1988), have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals. Various states had filed a Motion with the Kansas District Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, the Court issued an Opinion and Order denying the states' Motion in its entirety. *In re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318 (D. Kan. 1987). The Court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.* at 1323. The court also ruled that, as specified in the April 10 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *id.* at 1323–24. The states appealed the latter ruling, but the Temporary Emergency Court of Appeals affirmed the Kansas District Court's decision. *In re: The Department of Energy Stripper Well Exemption Litigation*, 857 F.2d 1481 (T.E.C.A. 1988).

II. The Proposed Decision and Order

On October 1, 1991, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the alleged crude oil violation amount obtained from Salomon Inc. 56 FR 50721 (October 8, 1991). The OHA tentatively concluded that the funds should be distributed in accordance with the MSRP and the April Notice. Pursuant to the MSRP, the OHA proposed to reserve initially 20 percent of the crude oil violation funds for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining 80 percent of the funds would be distributed to the states and the federal government for indirect restitution. After all valid claims have been paid, any remaining funds in the claim reserve would also be divided between the states and the federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the PD&O, the OHA proposed to require applicants for refund to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged crude oil overcharges. The PD&O stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry are presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April Notice. The PD&O provided a period of 30 days from the date of its publication in the **Federal Register** in which comments could be filed regarding the tentative distribution process. More than 30 days have elapsed, and the OHA has received comments from only one party concerning the proposed procedures for the distribution of Salomon Inc funds.

III. Discussion of the Comments Received

In response to the PD&O, the OHA received comments from Philip P. Kalodner as counsel for six electric utilities, fourteen foreign-flag shipping companies, and four pulp and paper manufacturers. Mr. Kalodner's comments focus on two elements of the crude oil proceeding: The 20 percent reserve and $0.0008 per gallon volumetric refund amount. He first contends that the 20 percent reserve for claimants will be insufficient "to enable OHA to distribute the 'volumetric' which it has determined is due." Kalodner comments at 3. Kalodner asserts that the "OHA should either reserve its adoption of the 20% limitation, or if it believes it cannot do [so] without the approval of Judge Theis, it should seek such approval." *Id.* at 6.

Kalodner's second objection is related to the first. He holds that "[a]s long as [the] OHA continues to insist on the 20% limitation," then the OHA's "policy to permit late-filing claimants to be paid at the $0.0008 per gallon level . . . will reduce the amounts available for distribution to first pool claimants such as these commenters." Kalodner comments at 6. Kalodner argues that only those applicants who filed crude oil claims before October 31, 1989 should receive a volumetric refund of $0.0008 per gallon and that applicants filing after that date should receive refunds based on mere fractions of that per-gallon figure.

These exact comments were addressed at length in recent Decisions and Orders issued by the OHA. *See Seneca Oil Company*, 21 DOE ¶ 85,327 (1991) (*Seneca*); *Diamond Shamrock R&M, Inc.*, 21 DOE ¶ 85,352 (1991). We will therefore refrain from repeating our analysis of those contentions in the same detail at this time. Instead, we will summarize our determinations in Seneca. With respect to Kalodner's argument that the 20 percent reserve would be insufficient to pay claimants, we stated that he had advanced similar arguments before the OHA and the courts and had been rebuffed at each attempt. Seneca at 88,970. We also noted that at no time has the DOE given assurances as to the precise level of restitution that would be ultimately paid to claimants from the 20 percent reserved from oil overcharge funds. *Id.*, citing *Amorient Petroleum Co.*, 18 DOE ¶ 85,595 (1989). We further reminded Kalodner that the United States District Court for the District of Delaware had rejected this same argument, deciding instead that "[a]t this late date, all parties would best be served by the equitable compromise of paying 80% of the fund out immediately while retaining 20% for individual claimants." *Id.* See *Getty Oil* v. *Department of Energy*, Civ. No. 77–434 MMS (D. Del. Dec. 28, 1988), *aff'd*, 890 F.2d 425 (Temp. Emer. Ct. App. 1989). As in *Seneca*, we agree with the courts and reject Kalodner's argument about the 20 percent reserve which seeks to inflate the level of restitution to the successful claimants that he represents in DOE's crude oil refund proceedings.

Kalodner's objection to the OHA policy of paying claimants who filed subpart V crude oil refund applications before June 20, 1992 at the rate of $0.0008 per gallon was also addressed at length, and ultimately rejected, in *Seneca*. As we stated in that Decision, we believe that all purchasers of covered products during the crude oil refund period was injured equally by the overcharges. Therefore, it would be inequitable to preclude any applicants who file before the June 30, 1992 deadline from receiving a pro rata share of the monies available, which at this time has been set at the $0.0008 level (per gallon volumetric). *Seneca* at 88,971. As we stated in *Seneca*, we do not wish to penalize equally eligible applicants for lacking the resources that large applicants, such as Kalodner's, possess.

IV. The Refund Procedures

A. Refund Claims

The OHA has concluded that the $83,750,000 remitted by Salomon Inc, plus the interest that has accrued on that amount, should be distributed in accordance with the crude oil refund procedures discussed above. We have decided to reserve the full 20 percent of the alleged crude oil violation amount, or $16,750,000 plus interest, for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See MAPCO, Inc.*, 15 DOE ¶ 85,097 (1986); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following subpart V precedent, reasonable estimates of purchase volumes may be submitted. *Greater Richmond Transit Co.*, 15 DOE ¶ 85,028, at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of crude oil price controls. *See A. Tarricone Inc.*, 15 DOE ¶ 85,495, at 88,893–96 (1987). The end-user presumption of injury is rebuttable, however. *Berry Holding Co.*, 16 DOE ¶ 85,405, at 88,797 (1987). If an interested party submits evidence which is of sufficient weight to cast serious doubt on whether the specific end-user in question was injured, the applicant will be required to produce further evidence of injury. *See New York Petroleum*, 18 DOE at 88, 701–03. The United States District Court for the District of Kansas recently upheld the OHA's position that generalized evidence

does not suffice to rebut the end-user presumption. If an interested party wishes to rebut the end-user presumption, it must present evidence relevant to the specific factual situation of the applicant. *In re: The Department of Energy Stripper Well Exemption Litigation*, 746 F. Supp. 1446 (D. Kan. 1990).

Reseller and retailer claimants must submit detailed evidence of injury and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the *Report by the Office of Hearings and Appeals to the United States District Court of the District of Columbia, In re: The Department of Energy Stripper Well Exemption Litigation*, 6 Fed. Energy Guidelines ¶ 90,507 (1985). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under Supart V. *Boise Cascade Corp.*, 16 DOE ¶ 85,214, at 88,411, *Reconsideration denied*, 16 DOE ¶ 85,494, *aff'd sub nom. In re: The Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,613 (D. Kan. 1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amount involved in this determination ($83,750,000) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868 n.4. This yields a volumetric refund amount of $0.00004143993 per gallon for the proceeding involved in this determination. The use of this approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program.[1]

As we have stated in previous Decisions, a crude oil refund applicant is required to submit only one application for crude oil overcharge funds. *See Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil application will be deemed to be filed in all crude oil proceedings finalized to date. The deadline for filing an Application for Refund for crude oil implementation orders issued since January 18, 1991 is June 30, 1992. *See Quintana Energy Corporation*, 21 DOE ¶ 85,327 (January 18, 1991). It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1992 at the rate of .0008 per gallon. However, while we anticipate that applicants which filed their claims by June 30, 1988 will receive a supplemental refund payment, we will decide in the future whether claimants that filed later Applications should receive additional refunds. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register**.

To apply for a refund, a claimant should submit an Application for Refund. Although an applicant need not use any special application form to apply for a crude oil refund, a suggested form has been prepared by the OHA and may be obtained by sending a written request to: Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585.

Each crude oil Application for Refund should contain the type of information specified by the OHA in past decisions. *See Texaco Inc.*, 19 DOE ¶ 85,200 at 88,734, *corrected*, 19 DOE ¶ 85,236 (1989); *Hood Goldsberry*, 18 DOE ¶ 85,902 at 89,477–78 (1989); *Wickett Refining Co.*, 18 DOE ¶ 85,659 at 89,081–82 (1989).

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining eighty percent of the alleged crude oil violation amount subject to this Decision or $67,000,000 in principal, plus accrued interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to transfer one-half of that amount, or $33,500,000, plus interest, into an interest-bearing subaccount for the states, and one-half, or $33,500,000, into an interest-bearing subaccount for the federal government. In accordance with previous practice, when the amount available for distribution to the states reaches $10 million, we will direct the DOE's Office of the Controller to make the appropriate disbursements to the individual states. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It is Therefore Ordered That:

(1) Applications for Refund from the alleged crude oil overcharge funds remitted by Salomon Inc may now be filed.

(2) All Applications submitted pursuant to paragraph (1) above must be filed in duplicate and postmarked no later than June 30, 1992.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer $83,750,000.00 (plus accrued interest) from the Salomon Inc escrow account, Number 6C0X00249A, as specified in paragraphs (4), (5), and (6) of this Decision.

(4) The Director of Special Accounts and Payroll shall transfer $33,500,000 (plus accrued interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer $33,500,000 (plus accrued interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $16,750,000 (plus accrued interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-Claimants 4," Number 999DOE0010Z.

(7) This is a final Order of the Department of Energy.

Dated: January 2, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

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BILLING CODE 6450-01-M

[1] The DOE established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly disbursing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *See Amber Refining Inc.*, 13 DOE ¶ 85,217 at 88,564 (1985).

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4091-3]

California State Motor Vehicles Pollution Control Standards; Opportunity for Public Hearings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearings and public comment periods.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has taken three actions for which it is requesting waiver of Federal preemption. California has (1) amended its motor vehicle emission standards and test procedures to phase-in substantially more stringent "low-emission vehicle" (LEV) standards for light and medium-duty vehicles (hereinafter "LEV" request), (2) amended its emission standards, certification and compliance test procedures and durability requirements applicable to light-duty trucks and medium-duty and light heavy-duty vehicles and engines for the control of hydrocarbon (HC), carbon monoxide (CO), oxides of nitrogen (NO_x) emissions and particulate matter (PM) as those standards apply to gasoline, gaseous, diesel and methanol-fueled vehicles and engines (hereinafter "MDV" request), and (3) amended its emission standards and test procedures for gasoline and diesel vehicles and engines that make them applicable to all classes of dedicated-methanol-fueled vehicles and engines and fuel-flexibile vehicles (hereinafter "methanol" request).

This is the first opportunity for public hearing and comment period to be offered on the "LEV" and "MDV" requests. With regard to the "methanol" request, EPA published a notice of

opportunity for hearing on June 11, 1991 in which notice it was stated that the comment period would expire on August 15, 1991 (56 FR 26817). EPA received no requests for a hearing nor comments concerning this matter. By letter dated October 9, 1991 CARB extended its original request to encompass California's methanol vehicle standards and test procedures as revised by its new hydrocarbon and carbon monoxide exhaust emission standards for new passenger cars and light duty trucks (HC/CO standards) and its new hydrocarbon, carbon monoxide and oxides of nitrogen exhaust emission standards for light-duty trucks, medium-duty vehicles and light heavy-duty vehicles and engines (MDV standards). Because CARB's revised "methanol" request reflects substantive changes to California's standards, EPA is offering an additional opportunity for interested parties to request a hearing or submit written comments.

CARB has requested that, pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b), EPA waive Federal preemption for these amendments. This notice announces that EPA has tentatively scheduled three public hearings which will occur consecutively beginning on February19, 1992 and continuing (if necessary) on February 20, 1992, to hear comments form the general public concerning CARB's requests. Any party desiring to present oral testimony for the record on one or more of CARB's requests at the public hearings, instead of or in addition to submitting written comments, must notify EPA by January 29, 1992. If on any of the three requests, no party informs EPA that it wishes to testify, no hearing will be held on that request and EPA will consider CARB's request based on written submissions to the record.

DATES: For administrative expediency, EPA has scheduled two consecutive days for hearings regarding the three separate CARB waiver requests. EPA has tentatively scheduled public hearings for CARB's "low-emission vehicle" (LEV) and "medium-duty vehicle) (MDV) and "methanol" waiver requests [1] on February 19, 1992 beginning at 9:30 a.m. and continuing (if necessary) on February 20, 1992. A hearing will be held on a given waiver request only if a party notifies EPA by January 29, 1992 that it wished to present oral testimony regarding such CARB request. Please note that if one or more tentative public hearing is canceled, EPA will not publish a notice of cancellation in the **Federal Register**. Therefore, any person who plans to attend the hearing should call Robert M. Doyle (LEV), or Lee Holmes Cook (MDV), or Tiffany Schauer (Methanol) of EPA's Manufacturers Operation Division at (202) 260-2491, on or after January 31, 1992 to learn whether or not a particular hearing will be held. Regardless of whether or not a hearing is held, written comments regarding CARB's request will be accepted until March 24, 1992.

ADDRESSES: The tentatively scheduled public hearings will be held at: Best Western Domino's Farms Hotel and Conference Center, 3600 Plymouth Road, Ann Arbor, Michigan 48105, (313) 769-9800. Parties wishing to testify at the hearing should provide written notice to: Charles N. Freed, Director, Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, 401 M Street, Washington, DC 20460. In addition, written comments, in duplicate, should be sent to Mr. Freed at the same address. Copies of material relevant to the waiver request (LEV Docket No. A-91-71, MDV Docket No. A-91-55, and Methanol Docket No. A-90-29) will be available for public inspection during the working hours of 8:30 a.m. to 12:00 p.m. and 1:30 p.m. to 3:30 p.m., Monday through Friday, at: U.S. Environmental Protection Agency, Air Docket (LE-131), room M1500, First Floor Waterside Mall, 401 M Street, SW., Washington, DC 20460 (telephone (202) 260-7548).

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Lee Holmes Cook, or Tiffany Schauer, Attorney/Advisors, Manufacturers Operations Division (EN-340F). U.S. Environmental Protection Agency, Washington, DC 20460, Telephone: (202) 260-2491.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

Section 209(a) of the Act as amended, 42 U.S.C. 7543(a), provides in part: "No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part * * * [or] require certification, inspection, or any other approval relating to the control of emissions * * * as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment."

Section 209(b) of the Act requires the Administrator, after notice and an opportunity for public hearing, to waive application of the prohibitions of section 209(a) for California "if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that—(A) the determination of the State is arbitrary and capricious. (b) [California] does not need such * * * standards to meet compelling and extraordinary conditions, or (c) [its] standards and accompanying enforcement procedures are not consistent with section 202(a) of [the Act]."

Once California has been granted waiver for a set of standards and enforcement procedures for a class of vehicles, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject class of vehicles without having to receive a further waiver of Federal preemption.

1. By letter dated October 4, 1991 CARB submitted to EPA a request for waiver of Federal preemption for amendments to its emission standards and test procedures. These amendments:

a. Establish four new categories of light-duty vehicles [2] based on levels of exhaust emission standards. The vehicle categories, in order of increasing stringency, are called transitional low-emission vehicles (TLEVs), low-emission vehicles (LEVs), ultra-low-emission vehicles (ULEVs), and zero emission vehicles (ZEVs). Each vehicle category has specific exhaust emission certification standards for hydrocarbons,[3] carbon monoxide (CO), oxides of nitrogen (NOx), particulate matter (PM) [4] and formaldehyde (HCHO).[5] These standards will be effective as early as the 1994 model year, but some categories may not be introduced until later model years when manufacturers are faced with increasingly more stringent "fleet average" requirements (explained below);

b. Establish two new categories for medium-duty vehicles: LEVs and ULEVs. Each of these categories has the same pollutant emission certification standards as the light-duty vehicle LEV and ULEV categories;

[1] The LEV, MDV and Methanol requests are available in EPA Air Dockets A-91-71, A-91-55, and A-90-29 respectively.

[2] The term "Light-duty vehicles," as used in this notice, encompasses passenger cars and small (up to 3750 lbs. loaded vehicle weight) light-duty trucks.

[3] The new hydrocarbon emission standards will be expressed in terms of "non-methane organic gases" (NMOG) which include measurement of non-methane hydrocarbons, aldehydes, ketones, alcohols, and ethers.

[4] The PM standards are for diesel vehicles only.

[5] The HCHO standards are for methanol vehicles only.

c. Establish, for light duty vehicles only, a fleet average NMOG requirement that manufacturers must meet. The fleet average requirement, which begins in model year 1994, becomes more stringent each successive model year, through model year 2003. Manufacturers may choose whatever mix of vehicle categories they wish for their light-duty vehicle fleet to comply with the fleet average requirement, subject only to a production requirement for ZEVs. (The ZEV production requirement begins in model year 1998, when two percent of a manufacturers sales of light duty vehicles must be ZEVs, and increases at certain points in succeeding model years until it reaches a maximum production requirement of 10 percent of sales in model year 2003 and beyond.) Manufacturers may earn marketable credits for having a sales-weighted fleet emission average lower than the fleet average requirement. Manufacturers who do not meet the fleet average requirement will be assessed deficits which must be made up within certain time limits;

d. Establish interim in-use standards which are up to 30 percent less stringent than the corresponding certification standards for TLEVs, LEVs, and ULEVs, and will be applicable for only two model-years after the expected introduction date of each vehicle category; and

e. Include regulations which establish a mechanism for adjusting the NMOG emissions from vehicles powered by fuels other than conventional gasoline, based on whether the emissions from such vehicles are more or less ozone-reactive. The reactivity adjustment factors will effectively make more equitable the NMOG comparisons between vehicles operating on gasoline and those operating on other fuels.

2. By letter dated July 15, 1991, CARB submitted to EPA a request for waiver of federal preemption for amendments to its emission standards and test procedures. These amendments, which apply to light-duty trucks, medium-duty and light heavy-duty vehicles and engines:

a. Establish and provide for the phase-in beginning in model year 1995 of new more stringent exhaust standards for HC, CO and NOx and establish PM standards of comparable stringency (as measured by a new test procedure) to existing PM standards and extend the durability requirements for medium-duty vehicles (MDVs) and light heavy-duty vehicles and engines (LHDVs);

b. Expand the definition of MDV to include all vehicles and engines with a GVWR of 6001–14000 lbs.[6] (which were previously categorized as light heavy-duty vehicles and engines);

c. Revise the certification and in-use chassis test procedures for current MDVs and LHDV and engines (to include the expanded MDV class) [7];

d. Revise weight categories to account for the effect of vehicle loading;

e. Make California's in-use enforcement and Onboard Diagnostic regulations applicable and more practical for MDVs and LHDVs; and,

f. Increase the strigency of the NOx standard applicable to 1995 and later model year light-duty trucks.

3. By letter dated August 20, 1990, CARB submitted to EPA a request for a waiver of Federal preemption for amendments to California's evaporative and exhaust emission standards and test procedures for gasoline and diesel vehicles and engines that make them applicable to all classes of dedicated-methanol-fueled vehicles and engines and fuel-flexible vehicles (methanol standards). In the notice for opportunity for public hearing concerning this waiver, EPA stated that the comment period would expire on August 15, 1991 (58 FR 26817 (6/11/91)). EPA received no requests for a hearing or comments concerning this matter.

Upon review of CARB's original request, EPA identified two additional findings which CARB would need to submit in order for EPA to complete its review of California's request. Specifically, CARB needed to provide EPA with its finding regarding the relative protectiveness of (1) the California 1993 model year HC/CO standards as applicable to methanol vehicles as compared to the applicable Federal 1993 and later model year methanol vehicle standards and, (2) the California 1993 HC/CO standards as applicable to methanol vehicles as compared to the new federal standards passed in the Clean Air Act Amendments of 1990 applicable to 1994 and later model year methanol vehicles (Federal tier 1 standards) [8].

Pursuant to EPA's request, on October 9, 1991, CARB supplemented its original methanol waiver request to encompass California's HC/CO standards as applicable to methanol vehicles and its new MDV standards as applicable to methanol vehicles.[9] CARB also revised its findings to take into consideration the new Federal tier 1 standards (56 FR 25724 (6/5/91)) as applicable to methanol vehicles in its analysis.

Because CARB's supplemental request reflects substantive changes to California's standards and includes new findings regarding the relative protectiveness of the California standards as compared to the applicable Federal standards, the Agency is offering an additional opportunity for interested parties to request a hearing or submit comments concerning CARB's supplemental waiver request. Consistent with CARB's revised request, this notice solicits comment on the waiver criteria described above as applied to California's HC/CO and MDV standards for 1993 and later model year methanol vehicles.

For each of the requests described above, California has stated (in its letter, dated October 4, 1991) that it has determined that its amended standards are, in the aggregate, at least as protective of the public health and welfare as the applicable Federal standards. Further, California states that it continues to need separate standards to meet compelling and extraordinary conditions. Finally, California states that the amendments are not inconsistent with section 202(a) of the Act. Section 202(a) requires that the procedures provide sufficient lead time to permit the development and application of requisite technology, giving appropriate consideration to the cost of compliance within such period. In addition, the Agency has held that to avoid inconsistency with section 202(a), California's procedures may not impose inconsistent certification requirements such that manufacturers would be unable to meet both the California and Federal requirements with the same test vehicle.

Once California has been granted waiver of Federal preemption for a set of standards and enforcement procedures for a class of vehicles, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject class of vehicles without having to receive a further waiver of Federal preemption.

California's requests will be considered according to the procedures for a waiver decision, which includes providing the opportunity for a public

[6] Previously MDVs were limited to 6,001–8,500 lbs. gvwr.

[7] As an option, diesel and incomplete vehicles from 8,501–14,000 lbs. gvwr may chose to certify to engine test procedures if additional in-use compliance requirements, which would make in-use testing more cost effective, are met.

[8] The final rule implementing the new federal standards was effective on June 5, 1991.

[9] By letter dated July 15, 1991, CARB had already submitted to EPA a separate request for a waiver of Federal preemption for its MDV standards which were intended in part to revise MDV standards as applied to methanol vehicles.

hearing. Any party wishing to present testimony at the hearing should address the following issues:

(1) Whether California's determination that the amended standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether California needs separate standards to meet compelling and extraordinary conditions; and,

(3) Whether California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

II. Procedures for Public Participation

Any person desiring to make an oral statement on the record should file ten (10) copies of his or her proposed testimony and other relevant material with the Director of EPA's Manufacturers Operations Division at the Director's address listed above not later than February 4, 1992. In addition, that person should submit 25 copies, if feasible, of the planned statement to the presiding officer at the time of the hearing.

Because a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements which he or she deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any witness.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested persons may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense.

If a given hearing is not held, EPA will keep the record open until March 24, 1992. Upon expiration of the comment period, the Administrator will render a decision concerning California's request based on the record of the public hearing, if one is held, relevant written submissions, and other information which he deems pertinent. All information will be available for public inspection at the EPA Air Docket.

Dated: January 2, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92-515 Filed 1-8-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4091-2]

Technology Innovation and Economics Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT); Open Meeting

Under Public Law 92-463 (The Federal Advisory Committee Act), EPA gives notice of the fourth meeting of the Diffusion Focus Group of the Technology Innovation and Economics (TIE) Committee. The TIE Committee is a standing committee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory committee to the Administrator of the EPA. The TIE Committee and NACEPT are seeking ways to encourage the diffusion, or transfer, of environmentally beneficial technology. The meeting will convene January 22-23, 1992, at 9 a.m. and will be held at the Madison Hotel, 1177 15th Street, NW., Washington, DC 20005.

The Diffusion Focus Group is developing recommendations to EPA's Administrator about what EPA's unique role in the diffusion of environmentally beneficial technologies should be. In developing these recommendations, the Focus Group is examining current EPA practices, other government agency practices, and those of the private sector in the transfer to technology and information. The Focus Group is attempting to determine the barriers to the diffusion of environmentally beneficial technologies and what EPA can do to address these barriers. The Focus Group will be addressing three substantive issues at this meeting: (1) The differences between EPA's roles in the diffusion of pollution prevention and other types of environmentally beneficial technology, (2) how to achieve mutually supportive diffusion efforts among EPA, state agencies, and local environmental authorities, and (3) how EPA's roles in domestic and international diffusion differ. The Focus Group will be discussing what will be the contents and major recommendations in its upcoming report and recommendations to the Administrator.

The January 22 and 23 meeting will be open to the public. Written comments will be received and reviewed by the Focus Group. Additional information may be obtained from David R. Berg or Morris Altschuler at EPA (A-101 F6) 401 M Street, SW., Washington, DC 20460, or by calling 202-260-9153, or by fax 202-260-6882.

Dated: December 20, 1991.

Abby J. Pirnie,

NACEPT Designated Federal Official.

[FR Doc. 92-514 Filed 1-8-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4091-1]

Science Advisory Board Research Strategies Advisory Committee; Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Research Strategies Advisory Committee (RSAC) of the Science Advisory Board (SAB) will hold a meeting on January 22, 1992. The meeting will be held at the Marriott Suites Hotel, 801 North St. Asaph Street, Alexandria, Virginia 22314. The hotel telephone number is (703) 836-4700. The meeting will begin at 9 a.m., ending no later than 2 p.m.

The purpose of the meeting will be to review the Social Sciences Research Plan being developed by the U.S. EPA. The Committee will: (1) Determine whether the Agency has used appropriate criteria in identifying and applying its priorities; (2) determine whether a proper balance is struck between short-term and long-term research; (3) examine how such research efforts are integrated into related, but broader efforts elsewhere in the United States and overseas; and, (4) discuss the plan's responsiveness to recommendations in the SAB Future Risk report. Copies of the EPA draft document (Stimulating Environmental Progress: A Social Science Research Agenda, December 30, 1991 draft report) are available from Mr. Jim Cole, U.S. EPA, OPPE (PM-223X), 401 M Street, SW., Washington, DC 20460, telephone: (202) 260-4538. Copies are not available from the Science Advisory Board.

The meeting is open to the public and seating is on a first come basis. Any member of the public wishing further information concerning the meeting should contact Mr. Randall C. Bond, Designated Federal Official, Research Strategies Advisory Committee, Science Advisory Board (A-101F), U.S. EPA, 401 M Street, SW., Washington, DC 20460, telephone: (202) 260-6552, or FAX: (202) 260-7118. Those individuals requiring a copy of the Agenda should contact Ms. Janice Jones at the same number. Members of the public wishing to provide oral comments at the meeting should provide a copy of those comments to Mr. Bond no later than January 14, 1992. Oral comments are limited to 5 minutes, and the Science

Advisory Board expects that such comments will not be repetitive of previously submitted materials.

Dated: December 30, 1991.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 92-516 Filed 1-8-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-59928; FRL 4042-9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 4 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 92-74, January 1, 1992.

Y 92-77, 92-78, 92-79, January 12, 1992.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92-74

Manufacturer. U.S. Polymers Inc.

Chemical. (S) Polymer of di-ethylene glycol, trimethylol propane, trimethylol ethane, pentaerythritol, neopentyl glycol, polyrthyleneterephthlate, phthalic anhydride, and tofa.

Use/Production. (S) As an industrial fast air drying primer or as a baking enamel. Prod. range: 200,000-300,000 kg/yr.

Y 92-77

Manufacturer. Confidential.

Chemical. (G) Olefin copolymer.

Use/Production. (G) Films, fabrics. Prod. range: Confidential.

Y 92-78

Manufacturer. Confidential.

Chemical. (G) Olefin copolymer.

Use/Import. (G) Film, textiles, molded/extruded parts, compounds. Import range: Confidential.

Y 92-79

Importer. Confidential.

Chemical. (G) Olefin copolymer.

Use/Import. (G) Electrostatic powder coatings. Import range: Confidential.

Dated: January 3, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-518 Filed 1-8-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-51781; FRL 4042-8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 15 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 92-293, 92-294, March 7, 1992.

P 92-295, 92-296, March 8, 1992.

P 92-297, 92-299, 92-300, 92-301, 92-302, 92-303, 92-304, 92-305, March 9, 1992.

P 92-306, March 10, 1992.

P 92-307, March 11, 1992.

P 92-308, March 14, 1992.

Written comments by:

P 92-293, 92-294, February 6, 1992.

P 92-295, 92-296, February 7, 1992.

P 92-297, 92-299, 92-300, 92-301, 92-302, 92-303, 92-304, 92-305, February 8, 1992.

P 92-306, February 9, 1992.

P 92-307, February 10, 1992.

P 92-308, February 13, 1992.

ADDRESSES: Written comments, identified by the document control number "(OPPTS-51781)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. L-100, Washington, DC, 20460, (202) 260-3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE -G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 92-293

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified phenylene ether polymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-294

Importer. Colorin Systems.

Chemical. (G) Diphenylmethane diisocyanate (MDI) modified.

Use/Import. (G) Reactive component. Import range: Confidential.

P 92-295

Manufacturer. Rohm and Haas Company.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2.0 g/kg species (rat). Eye irritation: practically none species (rabbit). Skin irritation: minimal species (rabbit).

P 92-296

Manufacturer. Rohm and Haas Company.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2.0 g/kg species (rat). Eye irritation: practically none species (rabbit). Skin irritation: minimal species (rabbit).

P 92-297

Importer. Novo Nordisk Bioindustrials, Inc.

Chemical. (G) Hydrolystic enzyme produced in a recombinant strain of bacillus.

Use/Import. (G) Processing aid for starch liquifaction. Import range: Confidential.

P 92-299

Manufacturer. Confidential.

Chemical. (G) Biophenol A polyether terphthalene.

Use/Production. (G) Resin for photocopy toner. Prod. range: Confidential.

P 92-300

Manufacturer. Confidential.

Chemical. (G) Modified acrylic polymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-301

Manufacturer. Shell Oil Company.

Chemical. (S) Pyrolyzed subbituminous coal.

Use/Production. (S) Solid fuel for utilities and power plants. Prod. range: Confidential.

P 92-302

Manufacturer. Confidential.

Chemical. (G) Modified acrylic polymer.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 92-303

Manufacturer. Champion Technologies, Inc.

Chemical. (G) Reaction product of trisubstituted phenol, sodium hydroxide and benzyl chloride.

Use/Production. (G) Oil and gas well stimulation additive. Prod. range: Confidential.

P 92-304

Manufacturer. Confidential.

Chemical. (G) Acrylated chain extended maleated polybutadiene.

Use/Production. (S) Graphic arts printing plate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: > 2 g/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: none species (rabbit).

P 92-305

Manufacturer. Confidential.

Chemical. (G) Acrylated chain extended maleated polybutadiene.

Use/Production. (S) Graphic arts printing plate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: > 2 g/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: none species (rabbit).

P 92-306

Manufacturer. Mooney Chemicals, Inc.

Chemical. (G) Aluminum alkoxide chelate.

Use/Production. (S) Drier for coatings. Prod. range: 100,000–500,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: > 2,000 mg/kg species (rabbit). Eye irritation: extreme species (rabbit). Skin irritation: mild species (rabbit). Mutagenicity: negative. Skin sensitization: negative mild species (guinea pig).

P 92-307

Manufacturer. Confidential.

Chemical. (G) Mixed isomers of 2-propenoic acid, 2-methyl-, alkoxy ester and hexanedioic acid.

Use/Production. (S) Reactive intermediate. Prod. range: Confidential.

P 92-308

Manufacturer. Confidential.

Chemical. (G) Cyanated phenolic resin.

Use/Production. (G) Industrial molding and composities resin. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 3.2 g/kg species (rat). Acute dermal toxicity: > 2 g/kg species (rabbit). Eye irritation: moderate species (rabbit). Skin irritation: mild species (rabbit). Mutagenicity: negative. Skin sensitization: positive species (guinea pig).

Dated: January 3, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-519 Filed 1-8-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-925-DR]

Republic of the Marshall Islands; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Republic of the Marshall Islands (FEMA-925-DR), dated December 7, 1991, and related determinations.

DATED: December 30, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the Republic of the Marshall Islands, dated December 7, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 7, 1991:

Arno Atoll and Aur Atoll for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92-497 Filed 1-8-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-930-DR]

Texas; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-930-DR), dated December 26, 1991, and related determinations.

DATES: January 2, 1992.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Texas, dated December 26, 1991, is hereby amended to include the following areas among those areas

determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 26, 1991:

The counties of Bell, Fort Bend, McLennan, Tarrant, Trinity, and Walker for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92-498 Filed 1-8-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; American Transport Lines, Inc., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: (1) 212-010386-022 (2) 212-010388-017.

Title: (1) Argentina/U.S. Atlantic & Gulf Ports Pool Agreement. (2) U.S. Atlantic & Gulf Ports/Argentina Pool Agreement.

Parties: America Transport Lines, Inc., Empresa Lineas Maritimas Argentinas S.A. Columbus Line, Empress de Navegacao Alianca S.A., Companhia de Navegacao Lloyd Brasileiro, Companhia Maritima Nacional.

Synopsis: The proposed amendments would add A. Bottacchi S.A. de Navegacion C.F.I.I as a party to each Agreement. The parties have requested shortened review periods.

Agreement No.: 224-200510-001.

Title: Tampa Port Authority/Tampa Bay International Terminals, Inc. Wharfage Incentive Agreement.

Parties: Tampa Port Authority, Tampa Bay International Terminals, Inc.

Synopsis: The agreement, filed December 23, 1991, provides for an incentive charge for weighing of vehicles used in transporting the iron or steel billets and reinforcing bars, as provided for in the original agreement of $2.40 for each weigh. The term of the agreement is through April 16, 1992.

Dated: January 3, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-454 Filed 1-8-92; 8:45 am]

BILLING CODE 6730-01-M

Organization and Functions of the Federal Maritime Commission; Commission Order No. 1, Amendment No. 16

As a result of the recent reorganization of the Commission staff, the Bureau of Trade Monitoring has become the Bureau of Trade Monitoring and Analysis, and the Bureau of Domestic Regulation has become the Bureau of Tariffs, Certification and Licensing. In addition, the function of processing marine terminal agreements has been transferred from the former Bureau of Domestic Regulation to the newly formed Bureau of Trade Monitoring and Analysis.

The Commission is contemplating a complete revision to Commission Order No. 1. However, in order to reflect the changes effected by the recent reorganization and avoid any administrative problems, Commission Order No. 1 is amended to reflect the organizational changes and transfer of functions as follows:

(1) All references in Commission Order No. 1 to the "Bureau of Trade Monitoring" are changed to the "Bureau of Trade Monitoring and Analysis";

(2) All references in Commission Order No. 1 to the "Bureau of Domestic Regulation" are changed to the "Bureau of Tariffs, Certification and Licensing"; and

(3) All delegations of authority in section 9 of Commission Order No. 1 pertaining to marine terminal agreements are redelegated to the "Director, Bureau of Trade Monitoring and Analysis," in addition to the other delegations to the "Director, Bureau of Trade Monitoring and Analysis," in section 8 of Commission Order No. 1.

Dated: January 2, 1992.

Christopher L. Koch,

Chairman.

[FR Doc. 92-487 Filed 1-8-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank of Montreal, et al.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 30, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Bank of Montreal, Montreal, Canada; Bankmont Financial Corp., New York, New York; and Harris Bankcorp, Inc., Chicago, Illinois; to engage *de novo* through their subsidiary, Harris Investors Direct, Inc., Chicago, Illinois, in buying and selling securities on the order of a customer as a riskless principal pursuant to *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989) and *Norwest* 76 Federal Reserve Bulletin 79 (1990).

These activities will be conducted in Illinois, Arizona, California, Colorado, Florida, Iowa, Indiana, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Texas, Virginia, and Wisconsin.

Board of Governors of the Federal Reserve System, January 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-417 Filed 1-8-92; 8:45 am]

BILLING CODE 6210-01-F

NGLC, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 30, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. NGLC, Inc., Miami, Florida; to become a bank holding company by acquiring 92 percent of the voting shares of Peoples National Bank of Commerce, Miami, Miami, Florida.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. BanCentral Corporation, Champaign, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Singer & Associates, Inc., Mattoon, Illinois, and thereby indirectly acquire Central National Bank of Mattoon, Mattoon, Illinois.

2. Sandwich Banco, Inc., Yorkville, Illinois; to acquire 100 percent of the voting shares of B.O.Y. Bancorp, Inc., Yorkville, Illinois, and thereby indirectly acquire The Bank of Yorkville, Yorkville, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Banks, Inc., St. Louis, Missouri; to acquire at least 57.28 percent of the voting shares of WIN Bancorp, Inc., Winchester, Illinois, and thereby indirectly acquire Winchester National Bank, Winchester, Illinois.

2. Golden Financial Corporation, Elizabethtown, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Fort Knox National Bank, Radcliff, Kentucky.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community First Bankshares, Inc., Fargo, North Dakota; to merge with First Interstate of North Dakota, Inc., Fargo, North Dakota, and thereby indirectly acquire First Interstate of Fargo, N.A., Fargo, North Dakota.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Summit Bancorp, Inc., Bellevue, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Summit Savings Bank, Bellevue, Washington.

Board of Governors of the Federal Reserve System, January 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-418 Filed 1-8-92; 8:45 am]

BILLING CODE 6210-01-F

Valley Bancorporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 30, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Valley Bancorporation, Appleton, Wisconsin; to acquire United Savings and Loan Association, Sheboygan, Wisconsin, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-419 Filed 1-8-92; 8:45 am]

BILLING CODE 6210-01-F

Western Commerce Bank; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than January 30, 1992.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Western Commerce Bank, Trustee of The Western Commerce Bank Stock Bonus Plan and Trust Agreement, to acquire an additional 4.57 percent of the voting shares of Western Commerce Bancshares of Carlsbad, Inc., Carlsbad, New Mexico, for a total of 11.8 percent, and thereby indirectly acquire Western Commerce Bank, Carlsbad, New Mexico.

Board of Governors of the Federal Reserve System, January 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-420 Filed 1-8-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Challenge of Multidrug-Resistant Tuberculosis: Building a Coalition

The National Center for Prevention Services (NCPS) and the National Center for Infectious Diseases (NCID) of the Centers for Disease Control (CDC) announce the following meeting.

Name: The Challenge of Multidrug-Resistant Tuberculosis: Building a Coalition.

Times and Dates: 12 noon–8 p.m., January 22, 1992. 8 a.m.–1 p.m., January 23, 1992.

Place: CDC, Auditorium B, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to provide information concerning tuberculosis in the United States, in particular, multidrug-resistant tuberculosis, and to obtain ideas and comments concerning the tuberculosis problem from State health department officials, representatives of professional societies, and other organizations involved in public health.

Matters To Be Discussed: The current tuberculosis situation in the United States; tuberculosis and HIV/AIDS; recent multidrug-resistant tuberculosis outbreaks; and issues in treatment and preventive therapy, public health response, drug availability, infection control, and laboratory and research issues. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Walter W. Ihle, Jr., Deputy Chief, Surveillance and Epidemiologic Investigations Branch, Division of Tuberculosis Elimination, NCPS, CDC, 1600 Clifton Road, NE., Mailstop E-10, Atlanta, Georgia 30333, telephone 404/639-2519 or FTS 236-2519.

Dated: January 3, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92-459 Filed 1-8-92; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

Reconsideration of Disapproval of Tennessee State Plan Amendment (SPA) 91-13; Hearing

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing at 10 a.m. on February 26, 1991, in room 721, 101 Marietta Street, Atlanta, Georgia to reconsider our decision to disapprove Tennessee SPA 91-13.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by January 24, 1992.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, telephone (410) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Tennessee State plan amendment (SPA) 91-13.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish an additional notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Tennessee SPA 91-13 proposes to reimburse physicians at 60 percent of the State's usual Medicaid payment rate for physician services provided to children under 21 for those visits in excess of the current limits of: 24 office visits, 20 hospital visits, and hospital visits for approved organ transplants.

The issue in this matter is whether the 40 percent reduction in the payment level would: (1) Be sufficient to satisfy coverage required by section 6403 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89); (2) satisfy the amount, duration and scope requirements at 42 CFR 440.230 for children under 21; and, (3) be sufficient to enlist enough providers so that services under the plan are available to recipients at least to the extent that those services are available to the general public under 42 CFR 447.204.

Section 6403 of OBRA 89 requires States to provide coverage for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services for all individuals under the age of 21. EPSDT services include screening services, vision services, hearing services and any other health care described in section 1905(a) of the Act that is necessary to correct or ameliorate defects and physical or mental illness or conditions discovered during the screening process. This care is required regardless of whether such services are covered for other individuals under the Title XIX State Plan.

Regulations at 42 CFR 447.204 require that an agency's payments for services must be sufficient to enlist enough providers to that services under the plan are available to recipients at least to the extent that those services are available to the general population. In addition, regulations at 42 CFR 440.230 require that each service must be sufficient in amount, duration and scope to reasonably achieve its purpose.

The State believes that the plan amendment represents an expansion of coverage and an increase in reimbursement for those entitled to receive EPSDT benefits because in the past physicians received no reimbursement for services in excess of the plans limits. The State also believes that this expansion would have a positive impact on provider participation.

HCFA believes the State has failed to demonstrate that the proposed Medicaid reimbursement rate would ensure the required access to necessary medical care. HCFA believes that a forty percent reduction in payment levels is likely to severely restrict service coverage required by section 6403 of OBRA 89 and would not satisfy the regulatory requirements concerning the amount, duration, and scope of medical services. Moreover, the State has not demonstrated that the proposed payment level would be sufficient to encourage provider participation. HCFA believes that a forty percent reduction in the State's payment level for physician services would not meet the statutory requirements of section 1902(A)(30) of the Act and the requirements in regulations at 42 CFR 440.230.

The notice to Tennessee announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Manny Martins,
Assistant Commissioner,
Bureau of Medicaid, 729 Church Street, Nashville, Tennessee 37219.

Dear Mr. Martins: I am responding to your request for reconsideration of the decision to disapprove Tennessee State Plan Amendment (SPA) 91-13. This request was received by the Health Care Financing Administration on December 5, 1991.

Tennessee SPA 91-13 would reimburse physicians at 60 percent of the usual State's Medicaid payment rate for physician services provided to children under 21 for those visits in excess of the current limits of: 24 office visits, 20 hospital visits, and hospital visits for approved organ transplants.

The issue in this matter is whether the 40 percent reduction in the payment level would: (1) be sufficient to satisfy coverage required by section 6403 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89); (2) satisfy the amount, duration and scope requirements at 42 CFR 440.230 for children under 21; and, (3) be sufficient to enlist enough providers so that services under the plan are available to recipients at least to the extent that those services are available to the general public under 42 CFR 447.204.

Section 6403 of OBRA 89 requires States to cover services for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) for all individuals under the age of 21. EPSDT services include screening services, vision services, hearing services, and any other health care described in section 1905(a) of the Social Security Act that is necessary to correct or ameliorate defects and physical or mental illness or conditions discovered during the screening process. This care is required regardless of whether such services are covered for other eligible individuals under the Title XIX State Plan.

Federal regulations at 42 CFR 430.12(c) require a State plan to be amended to reflect new or revised Federal statutes or regulations or a material change in any phase of State law, organization, policy, or State agency operation. 42 CFR 447.201(b) requires that the State plan describe the policy and methods to be used in setting payment rates for each type of service included in the State's Medicaid program. Federal regulations at 42 CFR 430.12(c) require a State plan to be amended to reflect new or revised Federal statutes or regulations or a material change in any phase of State law organization, policy, or State agency operation. 42 CFR 447.201(b) requires that the State plan describe the policy and methods to be used in setting payment rates for each type of service included in the State's medical program.

HCFA has considered the State's modification proposing to provide payment at the State's full payment rate for EPSDT services and has found that, because of the inconsistent wording remaining in the State plan, the modification has in effect, not changed the meaning from that of the disallowed proposed SPA.

I am scheduling a hearing on your request for reconsideration to be held at 10:00 a.m. on February 26, 1991, in Room 721, 101 Marietta Street, Atlanta, Georgia. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR Part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (410) 597-3013.

Sincerely,

Gail R. Wilensky, Ph.D.,
Administrator.

Authority: Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: January 3, 1992.

Gail R. Wilensky,
Administrator, Health Care Financing Administration.

[FR Doc. 92-429 Filed 1-8-92; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

National Institutes on Aging; Meeting of the National Advisory Council on Aging

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, February 6-7, 1992, to be held at the National Institutes of Health, Building 31, Conference Room 6, Bethesda, Maryland. This meeting will be open to the public on Thursday, February 6, from 8:30 a.m. until 2 p.m. for a status report by the Acting Director, NIA; a report on the Geriatrics Program; and for discussion of the NIA budget, program policies and issues, recent legislation, and other items of interest.

It will again be open to the public on Friday, February 7, Conference Room 6, from 8:30 a.m. to adjournment for reports on the NIA Intramural Program; and a report on Peer Review Procedures. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting of the Council will be closed to the public on February 6 from 2 p.m. to recess for the review, discussion and evaluation of grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, suite 2C218, Bethesda, Maryland 20892 (301/496-9322), will provide a summary of the meeting and a roster of committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: December 30, 1991.

Susan K. Feldman,
Committee Management Officer, NIH.

[FR Doc. 92-558 Filed 1-8-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Meetings of National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee; Allergy and Immunology Subcommittee, Microbiology and Infectious Diseases Subcommittee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on January 23-24, 1992 at the National Institutes of Health, Building 31C, Bethesda, Maryland 20892.

The meeting of the full Council will be open to the public on January 23 in Conference Room 6 from approximately

1 p.m. until 4 p.m. for opening remarks of the Institute Director, discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program will include a DMID Task Force report as well as presentations on emerging microbes in tuberculosis; future research directions; peer review and future housing of non-human primates. On January 24 the meetings of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and NAAIDC Microbiology and Infectious Diseases Subcommittee will be open to the public from 8:30 a.m. until adjournment. All three subcommittees will meet at the National Institutes of Health, Building 31C in Conference Rooms 6, 7 and 9 respectively.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately three hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8:30 a.m. until approximately 1 p.m. on January 23, in conference rooms 6, 7 and 9 respectively. The meeting of the full Council will be closed from approximately 4 p.m. until recess on January 23 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John J. McGowan, Director, Division of Extramural Activities, NIAID, NIH, Solar Building, room 4C07, 6003 Executive Boulevard, Rockville, Maryland 20892, telephone (301–496–7291), will provide substantive program information.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855 Immunology, Allergic and Immunologic Diseases Research, 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: December 30, 1991.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–554 Filed 1–8–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting of Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on February 10, 1992, at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

The meeting will be open to the public from 8:30 a.m. to 10 a.m. on February 10, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 10 a.m. until adjournment on February 10. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Mark L. Rohrbaugh, Scientific Review Administrator, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Solar Building, room 4C39, Rockville, Maryland 20892, telephone (301–496–8208), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.855 Immunology, Allergic and Immunologic Diseases Research, National Institutes of Health)

Dated: December 30, 1991.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–555 Filed 1–8–92; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting Biometry and Epidemiology Contract Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, January 23–24, 1992, Executive Plaza North, Conference Room H, 6130 Executive Boulevard, Rockville, Maryland 20892.

This meeting will be open to the public on January 23 from 9 a.m. to 10 a.m. to discuss administrative details. Attendance by public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on January 23 from 10 a.m. to recess and on January 24 from 9 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commerical property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892, Tel. 301/496–5708, will provide a summary of the meeting and a roster of committee members upon request.

Dr. Harvey P. Stein, Scientific Review Administrator, Biometry and Epidemiology Contract Review Committee, 5333 Westbard Avenue, room 807, Bethesda, Maryland 20892, telephone 301/496–7030, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research: 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers

Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control.)

Dated: December 30, 1991.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-553 Filed 1-8-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on February 12-13, 1992, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public February 12, from 8:30 a.m. to 12 noon and again on February 13, from 10:30 a.m. to adjournment to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the subcommittee and full Council meeting will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on February 12, from 1 to 5 p.m.: Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urologic and Hematologic Diseases. The full Council meeting will be closed on February 13, from 8:30 a.m. to 10:30 a.m.

These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Westwood Building, room 657, Bethesda, Maryland 20892, (301) 496-7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-6917.

(Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: December 30, 1991.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-556 Filed 1-8-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences; Meeting of National Advisory Environmental Health Sciences Council

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, January 30-31, 1992, at the National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina.

This meeting will be open to the public on January 30 from 9 a.m. to approximately 2 p.m. and 8:30 a.m. to 10 a.m. on January 31 for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on January 30, from approximately 2 p.m. to 5 p.m. and on January 31 from 10 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, rm. 2B55, NIH, Bethesda, Md. 20892 (301) 496-3511, will provide summaries of the meeting and rosters of council members.

Dr. Anne Suassaman, Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541-7723, FTS 629-7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: December 30, 1991.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-557 Filed 1-8-92; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meeting of the Literature Selection Technical Review Committee

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on February 6-7, 1992, convening at 9 a.m. on February 6 and at 8:30 a.m. on February 7 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on February 6 will be open to the public from 9 a.m. to 10:30 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(9)(B), title 5, U.S.C., Public Law 92-463, the meeting will be closed on February 6 from 10:30 a.m. to approximately 5 p.m. and on February 7 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Scientific Review Administrator of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301-496-6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93-879—Medical Library Assistance, National Institutes of Health.)

Dated: December 30, 1991.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-559 Filed 1-8-92; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meetings of the Board of Regents and Subcommittees

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on January 30-31, 1992, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Extramural Programs Subcommittee will meet on January 29 in the 5th-Floor Conference Room, Building 38A, 2:30 to approximately 4 p.m., and will be closed to the public.

The meeting of the Board will be open to the public from 9 to approximately 4:30 p.m. on January 30 and from 9 to adjournment on January 31 for administrative reports and program discussions. Attendance will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4), 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the entire meeting of the Extramural Programs Subcommittee on January 29 will be closed to the public, and the regular Board meeting on January 30 will be closed from approximately 4:30 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301-496-6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health.)

Dated: December 30, 1991.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-560 Filed 1-8-92; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-030-00-4320-12]

Meeting: Idaho Falls District

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Idaho Falls District Grazing Advisory Board.

SUMMARY: The Idaho Falls District Grazing Advisory Board will meet Thursday, February 13, 1992. Notice of this meeting is in accordance with Public Law 92-463. The meeting will begin at 9 a.m. at the Idaho Falls District Office at 940 Lincoln Road, Idaho Falls, Idaho. The meeting is open to the public; public comments will be accepted from 9:30 a.m. to 10 a.m.

The agenda for this meeting includes, but is not limited to: Election of officers, Field Enhancement Effort, subleasing, Range Inventory, Allotment Management Plans, and project funding to include both 8100 and Advisory Board projects.

Detailed minutes of the meeting will be maintained in the District Office and will be available for public review during regular business hours (7:45 a.m. to 4:30 p.m. Monday through Friday) within 30 days following the meeting.

Dated: January 2, 1992.

Gary L. Bliss,

Acting District Manager.

[FR Doc. 92-489 Filed 1-8-92; 8:45 am]

BILLING CODE 4310-GG-M

[ID-030-02-4212-14]

Intent To Prepare a Planning Amendment to the Medicine Lodge Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a planning amendment to the Medicine Lodge Resource Management Plan.

SUMMARY: The following described public land in Fremont County, Idaho, will be examined for possible disposal by direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719:

Boise Meridian, Idaho

T. 7 N., R. 38 E.,
sec. 5, SE¼NE¼SE¼SW¼, E½SE¼SE¼SW¼.

The lands described above contain 7.5 acres, more or less.

An environmental assessment will be completed for this action. If the lands are found to be suitable for disposal, the United States will offer these lands for direct sale to Delmar Raybould at fair market value. This action would resolve a longstanding unauthorized use.

For a period of 30 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

Dated: December 30, 1991.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 92-490 Filed 1-8-92; 8:45 am]

BILLING CODE 4310-GG-M

Fish and Wildlife Service

Meeting, Klamath River Basin Fisheries Task Force

AGENCY: Department of the Interior.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) (and pending renewal of a charter) of the Federal Advisory Committee Act (5 U.S.C. app. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss et seq.). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force will meet from 8:30 a.m. to 5 p.m. on Monday, January 13; from 8:30 a.m. to 5 p.m., and 7 p.m. to 9 p.m. on Tuesday, January 14; and from 8:30 a.m. to 4:30 p.m. on Wednesday, January 15, 1992. Because the renewal of a charter required by 5 U.S.C. app. I is pending, please contact the office listed for further information to verify meeting dates.

PLACE: The daytime meetings will be held at the National Marine Fisheries Service Southwest Fisheries Science Center Conference Room, 8604 La Jolla Shores Drive, La Jolla, California. The evening meetings will be held at the Inn-By-The-Sea Hotel Conference Room, 7830 Bay Avenue, La Jolla, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main, suite 212), Yreka, California 96097-1006, telephone (916) 842-5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR

25639). Main agenda items will include selection of a management concept for implementing the long-range plan for fish restoration, and preparation of a short term action plan. The Task Force will consider adopting a management concept of organizing restoration actions on a watershed basis, emphasizing involvement of local citizen groups. Other agenda items will include drafting a Request for Proposals for Fiscal Year 1993, and choosing a procedure for completing the long-range plan amendment for the upper Klamath River basin.

Dated: December 31, 1991.

David L. McMullen,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 92-406 Filed 1-8-92; 8:45 am]

BILLING CODE 4310-55-M

Development of an Agreement on Interpretation and Implementation of a Protocol on Subsistence Hunting of Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public involvement.

SUMMARY: This Notice is to inform the public that the U.S. Fish and Wildlife Service (FWS), in coordination with the Department of State, is working with the Canadian Wildlife Service (CWS), the Canadian Department of External Affairs and other interested groups on development of an agreement to amend the subsistence hunting provisions of the Convention for the Protection of Migratory Birds concluded by the U.S. and Great Britain, on behalf of Canada, in 1916. The amendment would provide a basis for managing subsistence hunting of migratory birds in Alaska and Canada during what is otherwise the closed period presently prescribed by the Convention. The CWS is now conducting national public consultations in Canada and in the near future will hold other meetings to receive public input on the process and options for producing desired changes in Convention provisions. The FWS proposes similar consultations and public meetings in the U.S.

DATES: Comments on this Notice must be received by May 15, 1992.

ADDRESSES: Communications regarding this Notice should be addressed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, 634 Arlington Square, Washington, DC 20240, or Regional Director, Region 7, U.S. Fish and Wildlife Service, 1011 E Tudor Road, Anchorage, AK 99503. Comments received on this notice will be available for public inspection during normal business hours in Room 634 Arlington Square Building, 4401 North Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 634 Arlington Square, Washington, DC 20240 (703/358-1714), or Regional Director, Attention Migratory Bird Coordinator, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503 (907/786-3423). Information on Canadian views can be obtained from Gregory Thompson, Director, Migratory Birds and Wildlife Conservation Branch, Canadian Wildlife Service, Ottawa, Ontario K1A 0H3 (819/957-2957).

SUPPLEMENTARY INFORMATION:

Background

Through the FWS and the CWS, the Secretary of the Interior of the U.S. and the Minister of the Environment of Canada are working toward development of a protocol to amend the subsistence hunting provisions of the 1916 Convention for the Protection of Migratory Birds. Although the FWS is currently addressing the issue of subsistence hunting of resident wildlife species in Alaska, migratory birds will not be covered by that action.

The 1916 Convention is between the U.S. and Great Britain (acting on behalf of Canada) and is hereinafter referred to as the 1916 Treaty. The FWS' immediate intent is to develop amendment language that would make the subsistence hunting provisions of the 1916 Treaty consistent with those of the Convention between the U.S. and the Union of Soviet Socialists Republics Concerning the Conservation of Migratory Birds and Their Environment, signed in 1976 (hereinafter referred to as the U.S.-U.S.S.R. Treaty). The FWS' ultimate goal is to modify the 1916 Treaty to allow subsistence hunting of migratory birds.

In the far north, spring use of migratory birds and their eggs as a source of fresh meat is a traditional and customary use. Subsistence use of migratory birds in this way is a centuries-old practice. Migratory birds returning from the south provide nutritional and other essential needs of the indigenous inhabitants. However this subsistence hunting activity as currently practiced in Canada and the U.S. does not comply with the requirements of the 1916 Treaty.

The pertinent wording of the 1916 Treaty is contained in Article II and is described in the following excerpts:

Introductory Paragraph

"The High Contracting Powers agree that, as an effective means of preserving migratory birds, there shall be established the following close seasons during which no hunting shall be done except for scientific or propagating purposes under permits issued by proper authorities."

Section 1

"The close season on migratory game birds shall be between March 10 and September 1, except . . . that Indians may take at any time scoters for food but not for sale."

Section 3

"The close season on other migratory birds shall continue throughout the year, except that Eskimos and Indians may take at any season auks, auklets, guillemots, murres, and puffins, and their eggs for food and their skins for clothing, but the birds and eggs so taken shall not be sold or offered for sale."

In contrast, the U.S.-U.S.S.R. Treaty provides that residents of rural Alaska (not just Indians and Eskimos) may take migratory birds for their own nutritional and other essential needs in accordance with season(s) set by the competent authority, i.e., the Secretary of the Interior. The U.S.-U.S.S.R. Treaty provides also that the season(s) may occur during the closed period, when hunting would otherwise be prohibited by the 1916 Treaty. The U.S.-U.S.S.R. Treaty further requires that any hunting seasons set by the competent authority must provide for the preservation and maintenance of stocks of migratory birds. There is a clear provision for regulation and control of subsistence hunting in the U.S.-U.S.S.R. Treaty, which is presently lacking in the 1916 Treaty.

The pertinent wording of the U.S.-U.S.S.R. Treaty, toward which an intended 1916 Treaty protocol is directed, is as follows:

Article II

1. Each Contracting Party shall prohibit the taking of migratory birds, the collection of their nests and eggs and the disturbance of nesting colonies. Also, any sale, purchase or exchange of these birds, whether dead or alive, or their nests or eggs, and any sale, purchase or exchange of their products or parts, shall be prohibited. The importation and exportation of migratory birds and their nests, eggs, parts, and products shall also be prohibited. Exception to these prohibitions may be made on the basis of laws, decrees, or regulations of the respective Contracting Parties in the following cases:

(a) For scientific, educational, propagative, or other specific purposes not inconsistent with the principles of this convention;

(b) For the establishment of hunting seasons in accordance with Paragraph 2 of this Article;

(c) For the taking of migratory birds and the collection of their eggs by the indigenous inhabitants of the Chukchi and Koryaksk

national regions, the Commander Islands and the State of Alaska for their own nutritional and other essential needs (as determined by the competent authority of the relevant Contracting Party) during seasons established in accordance with Paragraph 2 of this Article; and

(d) For the purpose of protecting against injury to persons or property.

2. The hunting seasons for migratory birds provided for in Paragraph 1(b) of this Article and the seasons during which the indigenous inhabitants mentioned in Paragraph 1(c) of this Article may take such birds and collect their eggs for their nutritional and other essential needs (as determined by the competent authority of the relevant Contracting Party) shall be determined by the competent authority of each Contracting Party, respectively. The seasons shall be set so as to provide for the preservation and maintenance of stocks of migratory birds.

The negotiation report for the U.S.–U.S.S.R. Treaty states that the term "indigenous inhabitants" was chosen purposefully to allow for the inclusion of non-Native Alaskans with legitimate subsistence hunting needs.

The Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712) is the instrument authorizing the Secretary of the Interior to implement the provisions of the U.S.-U.S.S.R. Treaty. This Improvement Act directs the Secretary to ensure that subsistence hunting of migratory birds in Alaska be guided by the language of that Treaty, as well as the others with Canada, Japan and Mexico. In effect, because of the nature of the language in the Fish and Wildlife Improvement Act, it would seem that the U.S. Congress established the language of the U.S.-U.S.S.R. Treaty as the standard for dealing with subsistence hunting of migratory birds in Alaska. The subsistence hunting provisions of the 1916 Treaty are inconsistent with this standard.

The changes sought would reconcile for the U.S. the different provisions of the two treaties, and would be modeled after the subsistence hunting provisions of the U.S.-U.S.S.R. Treaty. The intent is to provide a basis for managing subsistence hunting of migratory birds in Alaska and Canada. The 1916 Treaty prohibits hunting between March 10 and September 1, the period when waterfowl are most available and most needed for food in the far north. Exceptions are made for some subsistence hunting but they apply only to Indians for the taking of scoters and to Eskimos and Indians for the taking of certain seabirds and their eggs. These species may be taken by these people at any time of the year and in any number but they are either not generally available or not traditionally utilized in many areas of Alaska. Waterfowl are important for subsistence in many of these areas, however. Although migratory birds generally provide for a relatively small part of the total subsistence needs of the people in these areas, they are a very important element at certain times of the year in some locations where the people still depend on them. Thus, the 1916 Treaty does not adequately address the legitimate subsistence needs of some people in Alaska and Canada.

Canada has the same problem as the U.S. has in Alaska with the requirements of the 1916 Treaty and the needs of northern people to have equitable access to migratory birds. An additional issue in Canada involves the managed harvest of common and thick-billed murres by the residents of Newfoundland. Newfoundland, where the practice of harvesting murres has been ongoing since the earliest days of settlement, was not a Province of Canada at the time the 1916 Treaty was executed.

It is with the foregoing factors in mind that efforts are being renewed to finally resolve the issue.

Recent Progress

In the late-1970s and 1980s, there was an attempt to effect changes in the 1916 Treaty such as those described above. A modification to the 1916 Treaty was agreed upon by both countries in 1979 and forwarded to the U.S. Senate for ratification in 1980. Public concern in the U.S. led to a decision by the Department of the Interior to request a delay in Senate action on the amendment. While these concerns were bring addressed, Constitutional questions were raised in Canada. After several years of internal discussions in Canada, it became clear that changes to the 1916 Treaty originally proposed in 1979 must be modified.

In recent years the failure to adequately resolve this issue has complicated management of declining goose populations on the Yukon-Kuskokwim (Y–K) Delta of Alaska. In order to better manage these declining stocks, an agreement was signed between the native inhabitants of the Y–K Delta, the FWS, the State of California and the State of Alaska. This initial agreement was nullified by the U.S. Court of Appeals for the Ninth Circuit that found it in violation of the 1916 Treaty (*Alaska Fish and Wildlife* v. *Dunkle*, 829 F.2d 933 (9th Cir. 1987). In its finding, the Court said that any subsistence hunting regulation must be in accord with all four migratory bird treaties that the U.S. was party to. Subsequently, the agreement was modified to avoid the conflict and it now exists as the Y–K Delta Waterfowl Management Plan.

Since the fall of 1990, the pace of activity by the FWS, CWS, and other groups has increased with regard to development of a new protocol to resolve the issue of subsistence hunting in the 1916 Treaty. The CWS and the FWS have worked independently and jointly to begin to seek public input, settle the legal and technical questions remaining, and recommend courses of actions within the respective countries and between the two countries. A principal purpose of this Notice is to inform the public that meetings to obtain public input are being scheduled for the near future in the contiguous 48 States and in the State of Alaska. A similar process is occurring in Canada.

Public Meetings and Proposed Schedule for Negotiations

To better inform the public and to gather information to be used in establishing a final FWS position for negotiations, open meetings will be scheduled and conducted over the period March 1 through April 30, 1992, in Washington, DC; Denver, CO; Portland, OR; and Sacramento, CA. The exact dates and locations of these four meetings will be published in a notice in the **Federal Register** approximately the middle of February.

In Alaska, meetings will be scheduled and conducted during the period February 1 through April 30, 1992, in Anchorage, Barrow, Bethel, Dillingham, Fairbanks, Fort Yukon, Galena, Hooper Bay, Juneau, Kodiak, Kotzebue, Nome, Tok, and Toksook Bay to provide additional opportunity for public comment. Due to logistics and weather conditions, dates of the Alaska public meetings may have to be adjusted and, therefore, will not be published in the **Federal Register**. Alaska public meetings will be publicized within the State as soon as a schedule can be determined in consultation with potentially affected State, local and regional interests. Information on dates and exact meeting places in the Alaskan communities listed above may be obtained by contacting the FWS Region 7 Director in Anchorage using the information provided under the **FOR INFORMATION CONTACT** section of this notice.

In addition to the meetings outlined above, the FWS also intends to expand less formal consultation with Native groups, State wildlife agencies, conservation organizations, Flyway Councils, and other groups whenever possible. The FWS intends to consult particularly closely with the State of Alaska, especially regarding the conduct

of meetings in that State and the development of a position on amendment of the 1916 Treaty.

Results of the scheduled meetings, other discussions, and written comments will be published in the **Federal Register** by the end of summer 1992. It is the intent of the FWS to propose at that time a preliminary U.S. negotiation position, and possibly draft amendment language, for further public review. Initial negotiations between the FWS and CWS could begin as early as fall 1992. Formal negotiations with Canada, led by the U.S. Department of State, could begin as early as winter 1992–93.

If it appears that efforts to amend the 1916 Treaty will be unsuccessful or long delayed, as has been the case since 1979, consideration will be given to pursuing a legislative solution.

Language previously proposed to amend the 1916 Treaty prompted public concerns in seven major areas. These are: (1) Definition of competent authority; (2) clarification of bag limits, season lengths, and how birds may be taken; (3) commercial use of birds taken for subsistence purposes; (4) regulation of subsistence harvest size; (5) beneficiaries of harvest; (6) geographic areas involved; and (7) enforcement and compliance of subsistence hunting regulations. The FWS invites the public to address these and other issues in testimony at the public hearings or in written comments.

Dated: December 30, 1991

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–465 Filed 1–8–92; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0067); Washington, DC 20503, telephone (202) 395–7340, with copies to John V. Mirabella; Acting Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: 30 CFR Part 250, Subpart E, Well-Completion Operations

OMB approval number: 1010–0067.

Abstract: Respondents submit this information to MMS's District Supervisors so they can evaluate and approve or disapprove the adequacy of equipment and/or procedures to be used during the conduct of well-completion operations.

Bureau form number: None.

Frequency: Varies.

Description of respondents: Federal Outer Continental Shelf oil and gas lessees.

Estimated completion time: .9 hour.

Annual responses: 17.5.

Recordkeeping hours: 538.

Annual burden hours: 553.

Bureau clearance officer: Dorothy Christopher, (703) 787–1239.

Dated: December 3, 1991.

G.R. Daniels,

Acting Deputy Associate Director for Operations and Safety Management.

[FR Doc. 92–491 Filed 1–8–92; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–542 through 544 (Preliminary)]

Potassium Hydroxide From Canada, Italy, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–542 through 544 (Preliminary) under section 733(a)) of the Tariff Act of 1930 (19 U.S.C. 1673b(a) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada, Italy, and/or the United Kingdom of potassium hydroxide, provided for in subheading 2815.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by February 18, 1992.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on January 2, 1992, by LinChem, Inc., Edison, NJ.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.22 and 207.10 of the Commission's rules, not later than seven (7) days after a public service list containing the names and addresses of all persons, of their representatives, who are parties to these investigations upon the expiration of the period of filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained

by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in accordance with these investigations for 9:30 a.m. on January 23, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Olympia Hand (202-205-3182) not later than January 17, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 28, 1992, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3 and 207.7 of the Commission's rules.

In accordance §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: January 3, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-552 Filed 1-8-92; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Accurate Partitions; Lodging of Consent Decree

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(i), and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on December 30, 1991, a proposed consent decree in *United States* v. *Accurate Partitions, et al.*, Civil Action No. S91-00646M, was lodged with the United States District Court for the Northern District of Indiana. The United States filed this action pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, for the cleanup of the Fisher-Calo Chemicals and Solvents Site ("Site"), located in La Porte County, Indiana, and for the recovery of costs expended by the United States in connection with the Site.

The proposed consent decree is entered into between the United States (on behalf of the United States Environmental Protection Agency ("U.S. EPA")), the State of Indiana (co-plaintiff), and 261 defendants. Under the proposed decree, the defendants have agreed to perform a remedial action at the Site that is estimated to cost $30 million. The principal general components of the remedy for the Site include the following: Extensive soil and groundwater remediation; fencing of those portions of the site being remediated; and additional investigation of contamination in certain portions of the site. The groundwater will be treated by a traditional extraction well, and a pump and treat system using air strippers and activated carbon. The soils which contain PCBs in excess of 10 ppm or bis(2-ethylhexyl) phthalate in concentrations in excess of 6.1 ppm will be excavated and incinerated. The soils contaminated with volatile organic compounds will be treated with soil flushing technologies or, if deemed equally effective by EPA, by soil vapor extraction technologies ("SVE").

The proposed decree also requires the settling parties to pay $3,068,323 in past costs incurred by U.S. EPA, as well as the oversight costs that U.S. EPA will incur in connection with the remedial action. The defendants must also pay $20,000 to the U.S. Department of the Interior in settlement of federal natural resource damage. Further, the defendants must pay additional sums to the State of Indiana for its costs and state natural resource damage.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. All comments should refer to *United States* v. *Accurate Partitions, et al.*, DJ Ref. #90-11-2-549.

The proposed consent decree may be examined at the following offices: (1) The United States Attorney's Office, M01 Federal Building, 204 South Main Street, South Bend, Indiana; (2) the United States Environmental Protection Agency, 77 W. Jackson, Chicago, Illinois 60604; and (3) the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, DC 20004. Copies of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004.

Any request for a copy of the decree, not including appendices or Settling Defendant signature pages, should be accompanied by a check in the amount of $16.75 ($.25 per page) for copying costs. Any request for a copy of the decree including appendices and Settling Defendant signature pages should be accompanied by a check in the amount of $112.50 ($.25 per page) for copying costs. The check should be made payable to the "Consent Decree Library."

Roger B. Clegg,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 92-493 Filed 1-8-92; 8:45 am]

BILLING CODE 4410-01-M

Asarco, Inc.; Lodging of Consent Decree Pursuant to the Comprehensive Environmental

In accordance with Department of Justice Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on December 30, 1991, a Complaint was filed and proposed Consent Decree was lodged with the United States District Court for the Western District of Washington in *United States* v. *Asarco, Inc.*, Civil Action No. C91-5528B. The proposed consent decree addresses an interim remedial action at the Asarco Smelter Site (the Asarco Site) in Tacoma and Ruston, Washington. The remedial action will be performed pursuant to the Record of Decision for the Asarco Demolition Operable Unit of the

Commencement Bay Nearshore/ Tideflats (CB N/T) Superfund Site.

The Complaint asserts claims under sections 104, 106, and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. 9604, 9606, and 9607, and section 7003 of the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. 6973. The Complaint seeks reimbursement of response costs, a declaration that defendant is liable for all future response costs incurred by the United States, and implementation of an interim remedial action at the Asarco Site.

Pursuant to the Consent Decree, Asarco has agreed to implement the proposed interim remedial action. The estimated cost of this action is approximately $12 million. Asarco has also agreed to pay $333,500 in partial reimbursement of EPA's past response costs at the Site and has agreed to compensate EPA for its future response costs incurred in connection with the interim remedial action. The proposed Consent Decree contains a covenant not to sue only for the work to be done and the costs actually reimbursed under the Decree. The United States reserves all rights against Asarco with respect to unreimbursed response costs and other remedial activities.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Asarco, Inc.*, D.J. Ref. No. 90-11-2-698.

The proposed Consent Decree and exhibits may be examined at the office of the United States Attorney, Western District of Washington at Tacoma, 1145 Broadway Plaza, Tacoma, Washington 98402; at the Region 10 Office of EPA, Lynn M. Williams, Administrative Records Coordinator, Superfund Branch, 1200 Sixth Avenue, Seattle, Washington 98101; and at the Environmental Enforcement Section, Environment and Natural Resources Division of the U.S. Department of Justice, room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530.

Simultaneously with this notice, EPA is undertaking a public outreach program to give notice of an Explanation of Significant Differences (ESD) in connection with the interim remedial action which Asarco will perform under the proposed Consent Decree. The ESD provides options for temporary on-site storage of demolition debris prior to permanent disposal in addition to those included in the Record of Decision for the Asarco Demolition Operable Unit. The United States will withhold final action on the proposed Consent Decree until after EPA has taken final action on the ESD.

The proposed Consent Decree and exhibits may be examined at the following locations: The Region 10 Office of EPA, Lynn M. Williams, Administrative Records Coordinator, Superfund Branch, 1200 Sixth Avenue, Seattle, WA 98101; the Ruston Town Hall, 5117 North Winnifred, Ruston, WA 98407; the Washington Department of Ecology, 4415 Woodview Drive S.E., Olympia, WA 98504; the Tacoma Public Library, Main Branch, 1102 Tacoma Avenue South, Northwest Room, Tacoma, WA 98402; the McCormick Regional Branch Library, 3722 North 26th, Tacoma, WA 98407; the City of Tacoma Environmental Commission, 747 Market Street, suite 345, Tacoma, WA 98402; the Tacoma Pierce County Health Department, 3633 Pacific Avenue, Tacoma, WA 98404; the Pacific Lutheran University Library, 121st and South Park Avenue, Tacoma, WA 98444; and Citizens for a Healthy Bay, 771 Broadway, Tacoma, WA 98402. The complete Administrative Record for the Asarco Site may be reviewed at the EPA Region 10 office in Seattle and at the Main Branch of the Tacoma Public Library.

A copy of the Consent Decree and exhibits (if requested) may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347-7829. In requesting copies, please enclose a check in the amount of $21.25 (without exhibits) or $41.50 (with exhibits) (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-492 Filed 1-8-92; 8:45 am]

BILLING CODE 4410-01-M

William C. Dixon et al.; Lodging of Consent Decree Under the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on the 3 day of December 1991, two proposed Consent Decrees in *United States* v. *William C. Dixon, et al.*, C-91-0043 JPV, were lodged with the United States District Court for the Northern District of California. The Compliant sought civil penalties and injunctive relief against William C. Dixon and Patrick McCormick, pursuant to sections 111 and 112 of the Clean Air Act ("Act"), 42 U.S.C. 7411 and 7412, and the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for asbestos at 40 CFR part 61.

The proposed Consent Decree relating to William C. Dixon requires that he pay $6,000 in settlement of the United States" claims for civil penalties. The defendant, William Dixon, is subject to a three year injunction against violation of the Act and/or the NESHAP for asbestos. The decree requires payment of stipulated penalties in the event of violation of certain notice requirements and work performance standards applicable to renovations involving removal of asbestos.

The proposed Consent Decree relating to Patrick McCormick requires that he pay $2,000 in settlement of the United States claims.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decrees from persons who are not parties to the action. Comments should be addressed to the Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, Washington DC 20530 and should refer to *United States* v. *Williamm C. Dixon, et al.*, D.J. Ref. No. 90-5-2-1489.

The proposed Consent Decrees may be examined at the Region IX office of the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105.

Copies of the Consent Decrees also may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, telephone number (202) 347-2072. A copy of either of the Consent Decrees may be obtained in person or by mail from the Environmental Enforcement Section Document Center. In requesting a copy, please tender a check in the amount of $2.00 for the McCormick Decree and/or $4.75 for the Dixon Decree (25 cents per page reproduction charge) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-405 Filed 1-8-92; 8:45 am]

BILLING CODE 4410-01-M

Bureau of Justice Assistance

State Reimbursement Program for Incarcerated Mariel Cubans

AGENCY: Office of Justice Programs, Bureau of Justice Assistance (BJA).

ACTION: Notice of issuance of solicitation for applications to reimburse States for partial expenses incurred by the incarceration of certain Mariel Cubans.

SUMMARY: The Department of Justice Appropriations Act, 1992, title I of Public Law 102-140, allocates up to $4.963 million to implement the State Reimbursement Program for Incarcerated Mariel Cubans. The State Reimbursement Program for Incarcerated Mariel Cubans provides assistance to the States to defray expenses associated with the incarceration of Mariel Cubans in State facilities. Mariel Cubans affected by the Act are those individuals incarcerated after conviction of a felony, following their parole by the Attorney General, during the influx of Cubans leaving the Port of Mariel in 1980. One of the serious consequences of the 1980 Mariel Cuban Boatlift was the added burden placed upon the criminal justice systems of many states. The Mariel Boatlift included a minority of extremely violent offenders released from Cuban prisons. Many were subsequently convicted of felonies, and were incarcerated in State prisons in the United States. As a result, these States have been burdened with the additional costs of incarceration. The period of incarceration for reimbursement purposes is October 1, 1991, to September 30, 1992.

DATES: The State applications (S.F. 424) must be postmarked no later than February 1, 1992. All inmate data shall be electronically transmitted by the applicant to the Bureau of Justice Assistance for verification purposes no later than February 1, 1992.

ADDRESSES: Bureau of Justice Assistance, Special Programs Division, 633 Indiana Avenue, NW., room 1058, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Louise Lucas, BJA, 202/307-1065.

SUPPLEMENTARY INFORMATION: On October 18, 1991, a survey to determine the feasibility of establishing an electronic data entry system for the Mariel Cuban Reimbursement Program was mailed to all State Departments of Corrections. Based on the completed surveys from 46 States, it was determined that the electronic data entry system would enhance the operation of the program as well as reduce the paper flow of documents from the States. BJA, under separate cover, will provide to the States the necessary information to access the automated data entry system.

I. General Provisions

Eligible Applicants

All States are eligible to apply for and receive grants. "State" means any State of the United States and includes the District of Columbia and the Commonwealth of Puerto Rico.

Participating States

It is expected that the 39 States that participated in the State Reimbursement Program last year will participate again this year. Those States participating in 1991 included: Alaska, Arkansas, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia and Wisconsin. There is the possibility that a few additional States will participate in 1992.

II. Allocations and Use of Funds

Fund Availability

The Act provides a total of $4.963 million for the purpose of making grants to States. Awards will be calculated by taking the aggregate number of verified inmate months from all applications submitted and dividing the months into the appropriation. The verified number of months for each application will then be multiplied by the average inmate cost per month. The amount of reimbursement per prisoner, per annum, shall not exceed $12,000.

Fund Use

The intent of the public law is to reimburse the States for partial expenses incurred by reason of Mariel Cubans having to be incarcerated in State facilities. Therefore, a budget or expenditure plan is not required, as the award will be used solely for reimbursement purposes. Matching funds are not required.

III. Application Content

(a) All State applicants must submit Standard Form 424 (Application for Federal Assistance), and a certified listing of incarcerated Mariel Cuban prisoners. The certified listing shall be a "hard copy" of the electronically transmitted inmate data to BJA. The automated data entry system is designed to include information in the following sequence:

(1) Name (last name first).
(2) AKA (also known as).
(3) Alien Identification Number (e.g., A24 456 789).
(4) Inmate Number.
(5) Date of Birth.
(6) Incarceration Date:
(7) Probable Earliest Release Date.

Submission of Mariel Cuban data in an alternative format must be approved by BJA prior to submission of an application.

(b) The certified listing must be signed by the Governor or one of his or her authorized representatives.

(c) The period of incarceration for reimbursement purposes is October 1, 1991, to September 30, 1992. The computation of funds will be based on an aggregate total of certified prisoners incarcerated for a 12-month period (e.g., if two prisoners are incarcerated for six months during the period, the State will be reimbursed the full amount for one year).

(d) The Act is specific in that the prisoner must have been paroled into the United States by the Attorney General during the 1980 influx of Mariel Cubans. This means those Cubans who Entered Without Inspection (EWI), earlier arrivals (preboatlift), and/or later arrivals (post-boatlift) will not be included and, thus, expenses incurred will not be reimbursed.

(e) State will prevail when a determination is required as to what constitutes a State facility and/or a State prisoner.

IV. Review of State Applications

State applications must be submitted in the required format and at the time prescribed.

(a) The application and certified listing will be reviewed by BJA and a cross-check verification of prisoners will be made by the Immigration and Naturalization Service of the U.S. Department of Justice. This review will be completed no later than April 1, 1992, and grants will be made to the States immediately thereafter.

(b) Compliance is required with Executive Order 12372, "Intergovernmental Review of Federal Programs." This program is covered by Executive Order 12372 and Department of Justice implementing regulations 28 CFR part 30. At the same time applications (S.F. 424) are submitted to BJA, States must submit grant applications to the State's Single Point of Contact, if there is a Single Point of

Contact, and if this program has been selected for coverage by the State process. State processes have 60 days starting from the application deadline to comment on applications.

(c) Compliance is required with Executive Order 12549, Debarment and Suspension, 34 CFR part 85, § 85.510, Participants' Responsibilities, which requires a certification regarding debarment, suspension, ineligibility, and voluntary exclusion (OJP Form 4061/2) from all recipients of Federal funds. This form should be submitted by the State as part of its application.

(e) Upon completion of a review of State applications, BJA will notify the applicant, in writing, of any specific reasons for disapproval of the application, in whole or in part.

V. Civil Rights Assurances

The applying State must specifically assure that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-discrimination laws and regulations, including the following:

(a) Title VI of the Civil Rights Act of 1964;

(b) Section 809(c) of the Anti-Drug Abuse Act of 1988;

(c) Section 504 of the Rehabilitation Act of 1973, as amended;

(d) Title IX of the Education Amendments of 1972;

(e) The Age Discrimination Act of 1975; and,

(f) The Department of Justice Non-Discrimination Regulations, 28 CFR part 42, subparts C, D, E, and G.

Any application for $500,000 or more must be accompanied by a copy of the current Equal Employment Opportunity Program of the corrections department in accordance with the provisions of 28 CFR 42.301 *et. seq.* State applicants that previously applied for and received funding under this initiative, and have also received an Office of Justice Programs approval of their Equal Employment Opportunity Program, need only submit a statistical update of the previously approved program.

Gerald (Jerry) P. Regier,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 92-517 Filed 1-8-92; 8:45 am]

BILLING CODE 4410-18-M

Drug Enforcement Administration

[Docket No. 90-51]

Alan H. Olefsky, M.D., Revocation of Registration

On June 7, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Alan H. Olefsky, M.D., (Respondent), of 5701 W. Sunrise Blvd., Plantation, Florida 33313, proposing to revoke his DEA Certificate of Registration, B01163257, and to deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that the Respondent's continued registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing in a letter dated July 25, 1990. The matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Chicago, Illinois on April 25, 1991. On July 26, 1991, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. On August 23, 1991, Respondent submitted exceptions to Judge Bittner's opinion and recommended ruling and on September 6, 1991, Government counsel filed a response to Respondent's exceptions. On September 13, 1991, the administrative law judge transmitted the record of these proceedings, including Respondent's exceptions and the Government's response thereto, to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that on January 4, 1989, Respondent presented two prescriptions for controlled substances at a pharmacy in Fort Lauderdale, Florida. One prescription was for 60 dosage units of Percocet, a Schedule II narcotic controlled substance, and the other was for 30 dosage units of Halcion .25 mg., a Schedule IV controlled substance. Both prescriptions listed the patient as "Chris Pulin" and bore the purported signature and DEA registration number of Evan K. Newman, M.D. The owner and operator of the pharmacy contacted Dr. Newman who stated that he did not issue either prescription, nor did he have a patient named Chris Pulin. The pharmacist then telephoned the police to report that an individual was at the pharmacy and had presented two fraudulent prescriptions for controlled substances.

Accordingly, officers of the Fort Lauderdale Police Department immediately went to the pharmacy. Both the owner of the pharmacy and his son, who was also a pharmacist and was working as a pharmacy clerk, identified Respondent as the person who presented the prescriptions. Respondent was taken from the pharmacy to the Fort Lauderdale Police Headquarters, where he was interviewed by a detective employed by the Fort Lauderdale Police Department.

During the interview, Respondent insisted that someone else in the pharmacy had tried to present the prescriptions, and that the wrong individual had been arrested. Respondent further said that the incident could jeopardize his life and career, and he refused to reveal his name or birth date. Respondent was subsequently charged in the Circuit/County Court in Broward County, Florida with two counts of obtaining controlled substances by fraud in violation of state law. After the state's witnesses testified, the court directed a verdict of acquittal. The case was dismissed because the information was filed incorrectly as to the charge.

The administrative law judge further found that after Respondent's arrest, his attorney contacted the detective to explain that someone had slipped the prescriptions under Respondent's front door. The detective asked for the address of the person named in the prescriptions and the attorney responded that neither he nor the Respondent had any idea of the address. Further, in a posthearing submission the detective stated that a search of Broward County and Fort Lauderdale records failed to disclose any record regarding a Chris Pulin. Additionally, the Government offered into evidence an affidavit from Dr. Newman stating that he did not issue, nor authorize, the two prescriptions at issue and that the signatures on the prescriptions were forged. Dr. Newman further stated that the DEA registration number appearing on the two prescriptions was his registration number. Dr. Newman also said that he and Respondent had worked at the same health maintenance organization. Additionally, the Government offered other sworn statements regarding the Respondent's conduct and behavior.

At the administrative hearing, Respondent testified that he had received a telephone call from someone he did not know who identified herself as a Ms. Schwartz. According to Respondent, Ms. Schwartz asked him if he could examine an elderly friend of hers who had had a fall and who did not have any health insurance. Respondent advised Ms. Schwartz to take her friend to Health America, a health maintenance organization, since a more thorough examination might be required.

Respondent further testified that a couple of days later, Ms. Schwartz telephoned again and said that her friend had received medical attention and asked if Respondent could fill his prescriptions at a reduced price. That same day, Respondent found an envelope pushed under the door of his apartment. The envelope contained the two prescriptions at issue and a note that contained the name Chris Pulin and his address. Respondent testified that Percocet and Halcion would have been appropriate medications for someone who has sustained injuries in a fall, that the prescriptions did not appear unusual, and that he did not know they were forged. Consequently, Respondent took the prescriptions to the pharmacy to be filled and presented the note bearing Chris Pulin's name and address to the pharmacy clerk along with the prescriptions.

The administrative law judge did not find the Respondent to be a credible witness and concluded that Respondent's explanation of his conduct could most charitably be described as inherently implausible. The administrative law judge recommended that the Administrator revoke Respondent's DEA Certificate of Registration. The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in its entirely. Respondent's registration is clearly inconsistent with the public interest.

Under 21 U.S.C. 823(f) and 824(a)(4), the Administrator has the authority to revoke a registration based upon a sufficient showing that the continued registration would be inconsistent with the public interest. The factors which are considered in determining whether the continued registration would be inconsistent with the public interest are:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority;

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances;

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances;

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances;

(5) Such other conduct which may threaten the public health and safety.

There is no requirement that the Administrator make findings with respect to all five of the listed factors. Instead, the Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances presented in each case, in determining the public interest. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16422 (1989); *England Pharmacy*, 52 FR 1674 (1987); and *Felix Seisin, M.D.*, Docket No. 85–53, 51 FR 3863 (1986).

While all of the factors have been considered in this case, the Administrator finds that the fourth and fifth factors under 21 U.S.C. 823(f) are of importance in evaluating whether the continued registration of the Respondent is contrary to the public interest. The administrative law judge concluded that the Respondent attempted to obtain controlled substances for other than a legitimate medical purpose. Without restating all of the administrative law judge's findings, it is sufficient to state that the substantial evidence in the record clearly supports such findings.

Additionally, and significantly, the Administrator finds that Respondent refuses to accept responsibility for his actions and does not even acknowledge the criminality of his behavior. Instead, the Respondent has chosen to characterize his actions as a "mistake" and attempted to explain or justify his actions by saying that he was simply trying to assist an elderly stranger. The administrative law judge rejected this testimony, as does the Administrator. The Respondent's version of the incident is simply unworthy of belief.

Although the state charges against the Respondent were dismissed, the Administrator is nevertheless greatly concerned about the conduct which led to the arrest. Respondent's conduct demonstrates an absolute disregard for Federal and state law and nothing presented during Respondent's case persuades the Administrator that the Respondent is now willing to carefully abide by the laws and regulations relating to controlled substances. Thus, the Administrator cannot permit the Respondent to maintain his DEA registration. Concern for the public interest demands no less a remedy.

In his exceptions to the administrative law judge's opinion and recommended ruling, Respondent raised several points in urging that he be permitted to retain his registration. First, he argued that the administrative law judge erred in failing to consider all of the factors for determining the public interest. The Administrator disagrees. It is clear that in determining which of the five factors were relevant, the administrative law judge necessarily considered all of the factors in order to arrive at her decision as to the relevant factors. The administrative law judge clearly acted properly.

Second, Respondent argued that the administrative law judge gave undue weight to written statements introduced as evidence by the Government. The Administrator rejects Respondent's argument. The statements were given limited consideration by the administrative law judge. The affidavits in question regarded the Respondent's behavior as it was observed by the attesting individuals. Such affidavits were opinions based on those observations, and they were treated as lay observations by the administrative law judge. No greater weight was given to these statements than that to which they were entitled. The affidavits were not inherently unreliable. They were taken under oath by a police sergeant. Had that individual testified, his testimony concerning the two statements, though hearsay, would have been admissible and worthy of consideration.

Third, the Respondent argued that the suspension of his registration would be grossly disproportionate to the alleged wrongdoing and that if a penalty is warranted under the facts in this case, the Administrator should consider a modified registration subjecting Respondent's prescribing practices to quarterly review. Revocation is an acceptable remedy under the facts in this case. *Sokoloff* v. *Saxbe*, 501 F.2d 571 (2d Cir. 1974).

After considering all of the evidence in the record, the Administrator concludes that Respondent's registration must be revoked at this time. In keeping with the evidence presented, the Administrator will give favorable consideration to a new application for DEA registration, provided that such application is filed not sooner than one year from the effective date of this final order. Such application must be accompanied by evidence that the Respondent has completed continuing education courses totalling at least 30 hours of instruction and has, in all other respects, remained properly licensed and in compliance with all Federal, state and local laws and regulations relating to controlled substances.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, B01163257, be, and it hereby is, revoked. Any pending applications for registration or renewal are hereby denied.

This order is effective February 10, 1991.

Dated: January 2, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-463 Filed 1-8-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ([202] 523-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ([202] 395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Employment and Training Administration

Certification of Unexpended "Reed Act" Obligation Amounts by State Employment Security Agencies (SESAs).
1205-0280.
On occasion.
State or local governments.
11 respondents; 33 total hours; 1 hour per response; no forms.
To identify, account for and monitor balances of obligated "Reed Act" funds in State unemployment trust fund accounts. States with unexpended balances of Reed Act obligations desiring to protect the availability of such must certify the amount by letter to ETA/UIS to establish a "sub-account". Future obligation/deobligation amounts must also be certified in a similar manner.

Work Application/Job Order Recordkeeping.
1205-0001.
Recordkeeping only.
State or local governments.
52 recordkeepers; 416 total hours; 8 hrs. per recordkeeper.
Request is only for retention of information on work applications and job orders.

Title 29 CFR Part 29—Labor Standards for the Registration of Apprenticeship Programs.
1205-0223.
ETA 671.
On occasion.
Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.
Needed by employers, apprentices, and State apprenticeship agencies to set forth labor standards to safeguard the welfare of apprentices and to extend the application of such standards by subscribing policies and procedures concerning the registration for certain Federal purposes of acceptable apprenticeship programs.

Employment Standards Administration

Claims for Compensation by Dependents Information Reports
1215-0155.
CA-5, 5b; 1031; 1074; 1085; 1093; 1615; 1617; 1618.
Individuals or households.
1,835 total hours.

Form	No. respondents	Min. per response	Frequency
CA-5	235	90	On occasion.
CA-5b	70	90	On occasion.
CA-1615	120	30	On occasion.
CA-1617	600	30	Semi-annually.
CA-1085	450	45	On occasion.
CA-1031	1,700	15	On occasion.
CA-1074	70	60	On occasion.
CA-1093	50	30	On occasion.
CA-1618	320	30	Semi-annually.

Reports are claims for compensation by survivors due to the death of a Federal employee, and supplemental reports concerning dependency status in various types of cases.

Patient Pilot Advocate Questionnaire—Physician Interview.
1215-0174
OWCP 54.
One time basis.
Business or other for profit; Small businesses or organizations 800 respondents; 528 total hours; .33 hr. per response OWCP is collecting medical data through telephone interview from treating physicians who are caring for employees covered under the Federal Employees' Compensation Act (FECA) to provide baseline information for a claimant advocate pilot program that will test intervention techniques developed to improve injury outcome and encourage return to work. This is a one-time application, although if successful, it may be continued.

Signed at Washington, DC this 3rd day of January, 1992.

Doris Carter,

Acting Departmental Clearance Officer.

[FR Doc. 92-475 Filed 1-8-92; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

[TA-W-23,874]

General Motors Corp., Boc Linden, Linden, NJ; Second Notice of Negative Determination on Reconsideration

Pursuant to a U.S. Court of International Trade order in *United Auto Workers, Local 595,* versus *Secretary of Labor* (USCIT 90-05-00263), dated December 18, 1991, the Department on reconsideration is affirming its initial denial of eligibility to apply for adjustment assistance for workers at General Motors Corporation's BOC plant in Linden, New Jersey.

On September 30, 1991, the Department, as a result of a U.S. Court of International Trade (USCIT) court order of June 7, 1991, affirmed, on reconsideration, its original notice of negative determination regarding eligibility to apply for adjustment assistance for workers and former workers of General Motors Corporation's BOC plant in Linden, New Jersey.

In its latest submission to the USCIT, the union contended that the Department should have used Ward's 1990 Automotive Yearbook as a source for Volkswagen Golf and Jettas sales instead of the Motor Vehicle Manufacturers Association. The union also argued that Canadian imports of Honda Civics and Toyota Corollas were not included in the Department's analysis. Finally, the union stated that the Department should have used the Automotive News to separate out Subaru wagon sales from Subaru hatchbacks and sedans.

After having further reviewed and obtained further data regarding the subject vehicle sales which the union claimed were not included in the Department's analysis, the Department is revising its analysis to include the new information. The Department's revised analysis includes sales data from Ward's 1990 Automotive Yearbook for Volkswagen Golfs and Jettas. The Toyota. Also, the Department obtained other data that separated the sales for Subaru wagons from Subaru hatchbacks and sedans. The Department also surveyed the Ford Motor Company for its imports of passenger cars from Canada and Mexico in 1988, 1989 and 1990.

The revised sales data show that the sale of imports decreased twice as much as the subject models and twice as much as the sale of other domestic. The revised sales data show that the subject models decreased by 54,295 units; other domestics decreased by 48,108 units while imports decreased by 119,788 units.

The Department's revised analysis found, as before, that both the subject models (Chevrolet Beretta and Corsica passenger cars) and the imports lost market share, while the other domestic segment gained marketshare. The revised sales data show that the subject models decreased their market share by 0.8 percent and imports decreased their market share by 1.1 percent. Other domestic units; however, increased their market share by 1.9 percent. Therefore, the Department's conclusion is the same as before, namely, that imports did not contribute importantly to the unemployment or underemployment of workers at the subject plant.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of General Motors Corporation's BOC plant in Linden, New Jersey.

Signed at Washington, DC, this January 1, 1992.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92-477 Filed 1-8-92; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of December 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,466; Johnson & Johnson Consumer Products, Inc., New Brunswick, NJ

TA-W-26,355; Crown Cork & Seal Co., Inc., Crown Beverage Packaging, Inc., Edison, NJ

TA-W-26,526; Spokane Lumber Co., Tonasket, WA

TA-W-26,504; Carbonaire, Inc., Palmerton, PA

TA-W-26,424; Brown & Sharpe Manufacturing Co., Measuring Systems Div., North Kingstown, RI

TA-W-26,424A; Brown & Sharpe Manufacturing Co., Prescision Measuring Div., North Kingstown, RI

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-26,479; Bayeux Fabrics, Inc., Lincoln Park, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,555; Terex Corp., Hudson, OH

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-26,599; General Safety Corp., Plan #6, Mt. Clemens, MI

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-26,535; Exploration Employment, Inc., Livingston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-26,544; Northern Processors, Inc., Traverse City, MI

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-26,488; Golden City Trailers, Inc., Williston, ND

U.S. imports of oil and gas field machinery is negligible.

TA-W-26,513; GE Astro Space Div., Princeton, NJ

U.S imports of communication satellites were negligible.

TA-W-26,454; Copperweld Steel Co., Inc., Warren, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,522; Mitel, Inc., Boca Raton, FL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-26,266; Dunlop Tire Corp., Huntsville, AL

The investigation revealed that criterion (1) has not been met. Significant number or proportion of the workers did not become totally or totally or partially separated as required for certification.

TA-W-26,149; Corry Hiebert Corp., Corry, PA

U.S. imports of metal office furniture declined in the relevant time period.

TA-W-26,494; Teledyne Adams, Union, NJ

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-26,469; Pilgrim Sportswear, Summit Hill, PA

A certification was issued covering all workers separated on or after October 7, 1990.

TA-W-26,452; Brockton Sole & Plastic, Inc., Brockton, MA

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-26,470; Pittsburgh Cut Flower Co., Gibsonia, PA

A certification was issued covering all workers separated on or after October 9, 1990.

TA-W-26,462; GE Aerospace—GESD, Gibbsboro, NJ

A certification was issued covering all workers separated on or after October 7, 1990.

TA-W-26,472; Tri-Teck Controls, Midland, TX

A certification was issued covering all workers separated on or after September 2, 1990 and before July 31, 1991.

TA-W-26,517; Harkins & Co., Alice, TX

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-26,500; Anadrill Schlumberger, Scott, LA

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-26,501; Parker Hannifin Corp., Atlas Cylinder Div., Eugene, OR

A certification was issued covering all workers separated on or after October 14, 1990.

TA-W-26,497; Western Atlas International/Atlas Wireline Service, Magnolia, AR

A certification was issued covering all workers separated on or after January 1, 1991 and before December 1, 1991.

TA-W-26,474; Aero-Motive, Kalamazoo, MI

A certification was issued covering all workers separated on or after October 28, 1990.

TA-W-26,435; M. Liman Co., Minneapolis, MN

A certification was issued covering all workers separated on or after September 4, 1990.

TA-W-26,436; M. Liman Co., Onamia, MN

A certification was issued covering all workers separated on or after September 4, 1990.

TA-W-26,437; M. Liman Co., Lake City, MN

A certification was issued covering all workers separated on or after September 4, 1990.

TA-W-26,524; Power Tongs, Inc., Farmington, NM

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-26,503; Bigard Drillers, Inc., Mt. Pleasant, MI

A certification was issued covering all workers separated on or after November 4, 1991.

TA-W-26,486; Encore Shoe Corp., Chase City, VA

A certification was issued covering all workers separated on or after October 17, 1990.

TA-W-26,247; Kamei USA, Inc., North Haven, CT

A certification was issued covering all workers separated on or after August 13, 1990.

TA-W-26,499; Akerman, Inc., Waukesha, WI

A certification was issued covering all workers separated on or after October 11, 1990.

TA-W-26,407; G-III Leather Fashion, New York, NY

A certification was issued covering all workers separated on or after September 30, 1990.

TA-W-26,519; Leaf, Inc., Chicago, IL

A certification was issued covering all workers separated on or after October 18, 1990.

TA-W-26,321; Bentley Industries, Inc., Evans City, PA

A certification was issued covering all workers separated on or after September 5, 1990.

I hereby certify that the aforementioned determinations were issued during the month of December, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: January 2, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-480 Filed 1-9-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,446]

Stroehmann Bakeries, Inc., Williamsport, PA.; Negative Determination Regarding Application for Reconsideration

By an application dated December 30, 1991, Local # 6 of the Bakery, Confectionery and Tobacco Workers Union (BC&T) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on December 6, 1991 and published in the **Federal Register** on December 27, 1991 (56 FR 67104).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers produce bakery products—snack cakes, sweet goods and donuts.

The union states that the predominant portion of its bakery products, including

fruit cake production, was transferred to Canada. Also, the application confuses the U.S. import ratio to domestic production with the subject firm's domestic market share.

The Department's denial was based on the fact that the increased import criterion of the Group Eligibility Requirements of the Trade Act was not met. Investigation findings show that U.S. imports of bakery products were negligible in 1990 compared to 1989. The ratio of imports to total domestic production was less than two percent in 1990 compared to 1989. This ratio has nothing to do with the subject firm's domestic market share.

The findings show that the predominate share of business was for the export market (Canadian) and that none of the exported baker production is imported. The findings show that all fruit cake production was transferred to Canada in 1989—a period outside the scope of the workers' petition. The findings also show that the production of snack cakes was transferred to Canada and sweet goods to another domestic facility by December 1991. The loss of export production and the loss of production to another domestic facility would not form a basis, in themselves, for a worker group certification. Also, the findings show that the production of donuts at Williamsport will cease in mid-1992.

The union may wish to file a new petition, if within the next year the Canadian affiliate exports bakery products into the U.S.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 2nd day of January 1992.

Barbara Ann Farmer,

Director, Office of Program Management, Unemployment Insurance Service.

[FR Doc. 92-479 Filed 1-8-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,369]

Teledyne Wisconsin Motor West Allis, WI; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated December 27, 1991, Local 283 of the United Auto Workers (UAW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on November 27, 1991 and published in the **Federal Register** on December 20, 1991 (56 FR 66086).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers produce component parts for air-cooled engines.

The union claims that the workers were certified earlier for trade adjustment assistance and should be certified again since their situation has not changed.

Investigation findings show that the workers were certified earlier under petition TA-W-23,244. That certification was based on the company's internal imports of complete air-cooled engines. The plant has not produced complete engines since April 1990 when all engine production was transferred to an existing company facility in Tennessee.

The Department's denial was based on the fact that the increased import criterion as well as the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. Investigation findings show that there were no company imports of air-cooled engine component parts. The findings also show that production of component parts at West Allis is integrated into the production at other Teledyne facilities. Consequently, workers at West Allis may be certified if their separation was caused importantly by a reduced demand for their production from corporately-affiliated production facilities whose workers independently meet the statutory criteria for certification. These conditions have not been met for workers producing air-cooled engine parts at West Allis.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 1st day of January 1992.

Robert O. DeSlongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92-476 Filed 1-8-92; 8:45 am]

BILLING CODE 4510-30-M

Revised Schedule and Remuneration for the UCX Program

Under section 8521(a)(2) of title 5 of the United States Code, the Secretary of Labor is required to issue from time to time a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services. The schedules are used to calculate the base period wages and benefits payable under the program of Unemployment Compensation for Ex-servicemembers (UCX Program).

The revised schedule published with this Notice reflects increases in military pay and allowances which were effective in January 1992.

Accordingly, the following new Schedule of Remuneration, issued pursuant to 5 U.S.C. 8521(a)(2) and 20 CFR 614.12, applies to "First Claims" for UCX which are effective beginning with the first day of the first week which begins after April 4, 1992.

Pay grade	Monthly rate
(1) Commissioned Officers:	
O-10	$10,157
O-9	9,189
O-8	8,437
O-7	7,597
O-6	6,435
O-5	5,432
O-4	4,462
O-3	3,593
O-2	2,875
O-1	2,144
(2) Commissioned Officers With Over 4 Years Active Duty As An Enlisted Member Or Warrant Officer:	
O-3E	4,103
O-2E	3,432
O-1E	2,827
(3) Warrant Officers:	
W-4	4,056
W-3	3,429
W-2	2,953
W-1	2,461
(4) Enlisted Personnel:	
E-9	3,707
E-8	3,150
E-7	2,731
E-6	2,356
E-5	2,007
E-4	1,679
E-3	1,478
E-2	1,354
E-1	1,191

The publication of this new Schedule of Remuneration does not revoke any prior schedule or change the period of time any prior schedule was in effect.

Signed at Washington, DC, on January 2, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 92-478 Filed 1-8-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-436), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Advancement Expansion Arts Section) to the National Council on the Arts will be held on January 28-29, 1992 from 9 a.m.-5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on January 28, from 9 a.m.-9:30 a.m. The topic will be introductory remarks.

The remaining portions of this meeting on January 28 from 9:30 a.m.-5 p.m. and January 29 from 9 a.m.-5 p.m. are for the purpose of application review on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: January 3, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92-469 Filed 1-8-92; 8:45 am]

BILLING CODE 7537-01-M

Panel; Media Arts Advisory

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Prescreening #2 Section)) to the National Council on the Arts will be held on January 21-22, 1992 from 9 a.m.-6:30 p.m. and January 23 from 9 a.m.-6 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: January 3, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92-468 Filed 1-8-92; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

DOE/NSF Nuclear Science Advisory Committee; Meeting

The National Science Foundation announces the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date and Time: February 7, 1992 from 8:30 a.m. to 5 p.m.

Place: NSF Conference and Training Center, National Science Foundation, 1110 Vermont Avenue, NW., room 500-A, Washington, DC 20550.

Type of Meeting: Open.

Contact Person: John W. Lightbody, Program Director for Nuclear Physics, National Science Foundation, Washington, DC 20550, (202) 357-7993.

Minutes: May be obtained from contact person.

Purpose of meeting: To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.

Agenda:

- Discussion of FY 1993 Budget—Agency Representatives.
- Interim Discussion of Charge on Budget Priorities.
- Nuclear Data Subcommittee Report.
- Discussion of Actions on Separated Stable Isotope Availability.
- Public Comment.

Dated: January 6, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-522 Filed 1-8-92; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Engineering Centers Division; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate the project and provide advice and recommendations. Because the project being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meeting is closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), The Government in the Sunshine Act.

Name: Advisory Panel for Engineering Centers Division.

Date: February 5-6, 1992.

Time: 8:30 a.m.—5 p.m.

Place: Mississippi State University Mississippi State, Mississippi 39762.

Type of Meeting: Closed.

Agenda: Site visit to review and evaluate the Engineering Research Center for Computational Field Simulation.

Contact: Dr. Frederick Betz, Program Director, Engineering Centers Division, National Science Foundation, room 1121, Washington, D.C. 20550, Telephone: 202-357-9707.

Dated: January 6, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-520 Filed 1-8-92; 8:45 am]

BILLING CODE 7555-01-M

Federal Network Council Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Federal Network Council Advisory Committee.

Date and Time: January 29, 1992; 9 a.m. to 4 p.m.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Open.

Contact Person: Ms. Lynn Behnke, Executive Assistant, Federal Networking Council, 4001 N. Fairfax Drive, suite 200, Arlington, VA 22203-1614. Telephone: (703) 522-6410.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide the Federal Networking Council (FNC) with technical, tactical, and strategic advice concerning policies and issues raised in the implementation and deployment of the National Research and Education Network (NREN).

Agenda: FNC Working Group updates, discussion of network usage rules, discussion of intellectual property rights and liability issues, briefing on legislation progress, update of plans for achieving operational coordination among FNC members, and on overview of projects concerning networking in education.

Dated: January 6, 1992.

M. Rebecca Winkler, g

Committee Management Officer.

[FR Doc. 91-521 Filed 1-8-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR parts 50 and 52—Training and Qualification of Nuclear Power Plant Personnel.

3. The form number if applicable: NA.

4. How often the collection is required: Continuing maintenance of training program records and job performance qualification records for the duration of employment.

5. Who will be required or asked to report: Power reactor applicants and licensees.

6. An estimate of the number of responses: 85.

7. An estimate of the total number of hours needed to complete the requirements or request: 66,300 hours (780 hours per applicant/licensee).

8. An indication of whether Section 3504(h), Public Law 96-511 applies: Applicable.

9. Abstract: 10 CFR 50.120, and conforming amendments to 10 CFR part 52 require each applicant for and each holder of a license to operate a nuclear power plant to establish, implement, and maintain a training program for nuclear power plant personnel that provides qualified personnel to operate and maintain the facility in a safe manner in all modes of operation.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs, NEOB-3019, (3150-0011 and 3150-0150), Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395-3084.

The NRC Clearance officer is Brenda Jo Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 31st day of December 1991.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92-510 Filed 1-8-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43 issued to Detroit Edison Company (the licensee) for operation of the Fermi-2 facility located in Monroe County, Michigan.

The proposed amendment would reconcile the Technical Specification (TS) required actions for the Emergency Equipment Cooling Water (EECW) and Emergency Equipment Service Water (EESW) systems and the TS required actions for certain systems which receive EECW/EESW cooling.

Before issuance of the proposed license amendment, 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 safely. 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) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change does not create any new initiating mechanisms or affect any postulated initiating mechanisms for evaluated accidents. The proposed change provides action requirements that address the impact of EECW cooling on certain systems which receive EECW cooling. These action requirements assure that sufficient equipment remains available to safely shutdown the plant as currently evaluated in the (Updated Final Safety Analysis Report) USFAR. The USFAR

evaluation of ECCS performance shows that equipment supported by a single EECW subsystem can meet the acceptance criteria of (10 CFR 50.46). Therefore, the proposed change does not represent a significant increase in the probability or consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not result in any modifications to the plant design or manner of system operation and no safety-related equipment or function will be altered. As stated in (1) above, sufficient equipment will be maintained and will be available to initiate safe shutdown of the plant. The requested changes do not create any new accident mode.

(3) Involve a significant reduction in a margin of safety. As stated in (1) above, the proposed action requirements assure that sufficient equipment is available to safely shutdown the plant. The proposed change may also promote safe plant operation by giving a reasonable out-of-service time for corrective and preventive maintenance and testing activities on the EECW and EESW systems without requiring unnecessary reactor shutdowns.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 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 thirty (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 February 10, 1992, 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 request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition 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 Monroe County Public Library System, 3700 South Custer Road, Monroe, Michigan 48161. 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 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 immediately 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 in the **Federal Register** 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 Services 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 Ledyard B. Marsh: 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 John Flynn, Esq., Senior Attorney, Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

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 5, 1991, as supplemented December 30, 1991, 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 the Monroe County Public Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 2d day of January 1992.

For the Nuclear Regulatory Commission.

John Stang,

Project Manager, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-509 Filed 1-8-91; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG-8008 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Planned Special Exposures" and is intended for Division 8, "Occupational Health." This guide is being developed to provide guidance on the conditions, prerequisites, and requirements for monitoring and reporting for planned special exposures to radiation that are allowed by the revision to 10 CFR part 20, "Standards for Protection Against Radiation."

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff review and does not represent an offician NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC. Comments will be most helpful if received by March 6, 1992.

Although a time limit is given for comments on this draft, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 30th day of December 1991.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 92-511 Filed 1-8-92; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

This draft guide, temporarily identified by its task number, DG-0002, is a proposed appendix X, "Guidance on Complying with New Part 20 Requirements," to Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Use Programs." This proposed appendix discusses the major differences introduced by the revision to 10 CFR part 20, "Standards for Protection Against Radiation," that modify the guidance provided in Regulatory Guide 10.8 for the conduct of medical use programs.

This draft guide is being issued to involve the public in the early stages of the development a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data.

Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by March 6, 1992.

Although a time limit is given for comments on this draft, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Station. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S. 552(a))

Dated at Rockville, Maryland, this 30th day of December 1991.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 92-512 Filed 1-8-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-529-OLA-3 et al.]

Arizona Public Service Co., et al.; Prehearing Conference and Order Scheduling Filing of Pleadings

Before Administrative Judges: Robert M. Lazo, Chairman, Jerry R. Kline, Peter S. Lam; In the Matter of: Arizona Public Service Co., et al. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3)

[Docket Nos. 50-528-OLA-3, 50-529-OLA-3, 50-530-OLA-3; ASLBP No. 92-654-01-OLA-3; (Automatic Closure Interlock for Shutdown Cooling Valves)]

January 2, 1992.

I.

Petitioners for Leave to Intervene, Allan L. Mitchell and Linda E. Mitchell, or their respective counsel; counsel for Licensees, Arizona Public Service Company *et al.*; and counsel for the NRC Staff are directed to attend a prehearing conference on March 24, 1992 beginning at 9:30 a.m. at: Courtroom No. 5, Sixth Floor, United States District Courthouse, 230 North First Avenue, Phoenix, Arizona 85025.

The prehearing conference will continue, to the extent necessary, on March 25, 1992.

The purpose of the prehearing conference is to hear oral arguments on amended and supplemental petitions for leave to intervene and answers thereto. Among matters to be considered by the Atomic Safety and Licensing Board at the conference are those necessary to make a determination as to the parties, if any, to the proceeding and to identify key issues, if any, in the proceeding.

II.

Pleadings shall be filed in accordance with the following schedule:

Pursuant to the provisions of 10 CFR 2.714(b), petitioners, who have filed a request for a hearing and a request for leave to intervene, shall file no later than January 27, 1992 a Supplemental Petition which must include a list of the contentions which petitioners seek to have litigated in the hearing and which satisfy the requirements of paragraph (b)(2) of § 2.714 of the Commission's Rules of Practice.

An answer addressing the admissibility of each contention set forth in a Supplemental Petition shall be filed by Licensees no later than February 14, 1992, and by the NRC Staff no later than March 2, 1992.

The pleadings are to be in the hands of the Licensing Board and other parties on the due date.

The prehearing conference is open to the public.

It is so *Ordered.*

Issued at Bethesda, Maryland, this 2nd day of January 1992.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 92-412 Filed 1-8-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-317]

Baltimore Gas & Electric Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-53, issued to Baltimore Gas & Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant Unit No. 1 located in Calvert County, Maryland.

The proposed amendment would revise Technical Specification (TS) 4.5.1.a.2, Safety Injection Tanks Surveillance Requirements, to exempt Safety Injection Tank (SIT) Isolation Value MOV-644 from the requirement to verify that it is in the open position.

Specifically, the licensee indicates that compliance with TS 4.5.1.a.2 for value MOV-644 would require entry into containment every 12 hours during operation which results in unnecessary radiation exposure with no corresponding safety benefit.

The licensee further indicates that the need for this change could not have been foreseen: MOV-644 was closed to permit repairs to a leaking check value during an unplanned shutdown on December 22, 1991. Upon completion of the repairs, MOV-644 failed to reopen. Eventually, the licensee succeeded in opening the value. Failure of the value to reopen is attributed to a bent value stem. The licensee has welded MOV-644 in the open position until the spring 1992 refueling outage during which repairs or replacement will be performed. In the interim, the licensee is proposing to amend TS 4.5.1.a.2 to exempt MOV-644 from the surveillance requirement.

The remote position indication for MOV-644 has been disabled as the result of a temporary modification. Therefore, the licensee proposes to eliminate, for MOV-644 only, the TS 4.5.1.a.2 surveillance requirement. Welding of the value stem to the value yoke maintains value MOV-644 in the open position, therefore eliminating the need to comply with the TS 4.5.1.a.2 surveillance requirement. This TS change would be effective until the end of the spring 1992 refueling outage.

The licensee states that exigent circumstances pursuant to 10 CFR 50.91 exist with respect to the need for consideration of the proposed amendment. The need for this change could not have been foreseen in that it resulted from corrective maintenance activities being performed during an unplanned outage to repair a leaking check value. Application for an amendment was made as soon as possible following the determination of the appropriate course of action. The current TSs require personnel to enter the containment during power (Mode 1) operation every 12 hours to verify that MOV-644 is in the open position even though it is welded open. This results in unnecessary radiation exposure with no

corresponding safety benefit, which is inconsistent with the objectives of maintaining occupation radiation exposures to as low as reasonably achievable (ALARA). On this basis, the staff finds that a condition of exigency exists and is providing a notice period of 15 days in this notice for the receipt of comments.

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:

The proposed change has been evaluated against the standards in 10 CFR 50.92 and has been determined to not involve a significant hazards consideration, in that operation of the facility in accordance with the proposed amendment:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The open or closed position of Safety Injection Task isolation values are not considered an initiator for any accidents previously evaluated. Therefore, the probability of previously evaluated accidents would not be increased by the requested change.

Previously evaluated accident analyses assume that Safety Injection Tank isolation values are open. The requested change eliminates the verification of that condition for one value but the value has been welded in the open position. Therefore, it has been assured that the value will function as required during any previously analyzed accident and that there will be no increase in consequences due to the requested change.

Therefore, this change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

Welding the valve yoke stem to the valve yoke on MOV-644 ensures that the valve will remain open during Modes 1, 2 and 3, thus eliminating the need for periodic verification of valve position in those Modes. The only new or different type of accident that could be created by failing to verify the isolation valve position would be the unknown closure of the valve. However, this possibility is precluded by welding the valve in the open position. This change in surveillance requirements does not affect the design and function of the isolation valve, nor the operation of the isolation valve as the valve's design and function is to remain open in Modes 1, 2 and 3 and the valve is not allowed to be operated in those Modes.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The margin of safety provided by this surveillance requirement is the assurance that the isolation valve is open. The need to verify that the valve is open has been eliminated by welding the valve in the open position. Therefore, the proposed change would not involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that this change does not involve a significant hazard consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) 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 February 10, 1992, 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 request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition 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 Calvert County Library, Prince Frederick, Maryland.

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 proceedings, 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 the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, 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 immediately 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 15-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 15-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 in the **Federal Register** a notice of 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 Services 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 Robert A. Capra: 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 D. A. Brune, Esq., General Counsel, Baltimore Gas and Electric Company, P.O. Box 1475, Baltimore, Maryland 21203, 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 presiding 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 31, 1991, 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 Calvert County Library, Prince Frederick, Maryland.

Dated at Rockville, Maryland, this 31st day of December 1991.

For the Nuclear Regulatory Commission.

Daniel G. McDonald,

Senior Project Manager, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-513 Filed 1-8-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

Portland General Electric Company, (Trojan Nuclear Plant, Unit 1); Exemption

I.

Portland General Electric Company (PGE, the licensee) is the holder of Facility Operating License No. NPF-1, which authorizes operation of the Trojan Nuclear Plant. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Columbia County, Oregon, on the Columbia River.

II.

Pursuant to 10 CFR 55.59(a), "Each licensee shall—(1) Successfully complete a requalification program developed by the facility licensee that has been approved by the Commission. This program shall be conducted for a continuous period not to exceed 24 months in duration. (2) Pass a comprehensive requalification written examination and an annual operating test." Also, pursuant to 10 CFR 55.59(c)(1), "The requalification program must be conducted for a continuous period not to exceed two years, and upon conclusion must be promptly followed, pursuant to a continuous schedule, by successive requalification programs."

III.

By letter dated March 27, 1991, the licensee requested an exemption under 10 CFR 55.11 from the annual and biennial schedule requirements of 10 CFR 55.59 (a) and (c). The licensee is requesting a 6-month extension in 1991 to align the Trojan requalification program with the National Examination Schedule. This one-time exemption will result in a permanent adjustment to the 24-month requalification cycle and the

annual requalification examination schedule.

Generic Letter 89-03 established the National Examination Schedule and allotted examination months of December and June to Trojan Nuclear Plant. The licensee stated that the current examination schedule would cause hardships due to the compression of the training cycle which would be required. Also, the exemption is necessary to avoid operators' duplicative effort because of the misaligned schedules between the NRC- and licensee-administered requalification examinations.

Compliance with the regulations would create the hardship discussed above. Granting the exemption would allow a one-time, 6-month extension to the annual and biennial schedule requirements, and it would alleviate the hardship discussed above. Also, the licensee has stated that the annual requalification examination for the current retraining cycle will not be affected by the proposed extension.

Pursuant to 10 CFR 55.11, "The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest."

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 55.11, that an exemption as described in section III is authorized by law, will not endanger life or property, and is otherwise in the public interest. Therefore, the Commission hereby grants Portland General Electric Company an exemption from the requirements of 10 CFR 55.59 (a) and (c) not to exceed December 31, 1991.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant impact on the quality of the human environment (56 FR 67637).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of December 1991.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-507 Filed 1-8-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Company, San Diego Gas and Electric Company, the City of Anaheim, California, and the City of Riverside, California; (San Onofre Nuclear Generating Station, Units 2 and 3)

Exemption

I.

The Southern California Edison Company, the San Diego Gas & Electric Company, the City of Anaheim, California, and the City of Riverside, California (the licensees) are holders of Facility Operating License Nos. NPF-10 and NPF-15 which authorize operation of San Onofre Nuclear Generating Station Units 2 and 3. The license provides, among other things, that the licensees are subject to all rules, regulations and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized water reactors at the licensees' site located in San Diego County, California.

II.

Purusant to 10 CFR 55.59(a) and (c), each licensed operator is required to successfully complete a requalification program. This program is to be conducted for a continuous period not to exceed 24 months in duration and upon its conclusion must be promptly followed by a successive requalification program.

III.

By letter dated November 5, 1991, the licensees requested an exemption under 10 CFR 55.11 from the requirements of 10 CFR 55.59 (a) and (c). Pursuant to a recommendation contained in NUREG-1021, "Administration of NRC Requalification Program Evaluations," the licensees are realigning the San Onofre operator requalification program with an NRC National Examination Schedule. The realignment necessitates extending the end date of the current San Onofre requalification program from December 1991 to January 1992. The exemption constitutes a one-time extension of the requalification program duration from 24 to 25 months.

Pursuant to 10 CFR 55.11, "The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest."

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 55.11, that an exemption as described in section III is authorized by law, will not endanger life or property, and is otherwise in the public interest. Therefore, the Commission hereby grants the Southern California Edison Company, et al., an exemption from the requirements of 10 CFR 55.59(a) and (c) not to exceed January 31, 1992.

Pursuant to 10 CFR 51.21, 51.32, and 51.35 the Commission determined that the granting of this exemption will not have a significant effect on the quality of the human environment (56 FR 67637).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of December 1991.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-508 Filed 1-8-92; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth A. Fogash (202) 272-2142.

Upon written request copies available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549-1002.

Extension: Rule 15c3-3; File No. 270-87; Rule 23c-1; File No. 270-253; Form N-5; File No. 270-172.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980, the Securities and Exchange Commission has submitted for extension of OMB approval Rule 15c3-3 [17 CFR 240.15c3-3] under the Securities Exchange Act of 1934, Rule 23c-1 [17 CFR 270.23c-1], under the Investment Company Act of 1940, and Form N-5 [17 CFR 274.5] under Securities Act of 1933 and the Investment Company Act of 1940.

Rule 15c3-3 requires broker-dealers to maintain certain records in connection with their compliance with the Rule's requirements that broker-dealers maintain possession of and segregate customer funds and securities. Approximately 1,000 respondents incur an average burden of 110 hours per year to comply with this rule.

Rule 23c-1 sets forth conditions for the repurchase, by a registered closed-

end investment company, of its own securities. Approximately 23 registered closed-end investment companies use the rule annually. Estimated annual compliance time per registrant is 2.5 hours.

Form N-5 is the registration statement for small business investment companies under the Securities Act of 1933 and the Investment Company Act of 1940. Approximately two registration statements on Form N-5 are filed annually, with an estimated compliance time of 350 hours.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Securities and Exchange Commission rules and forms to Kenneth Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 2, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-523 Filed 1-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30135; File No. SR-GSCC-91-04]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Proposed Rule Change Concerning Changes to the Margin and Funds Collection Process

December 31, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b), notice is hereby given that on November 7, 1991, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify GSCC's procedures for determining member clearing fund requirements, and it would modify the time and manner of collecting required deposits. Specifically, the proposal would: (1) Establish formal procedures that GSCC would use to determine whether a bank or trust company may be approved as an issuer of letters of credit for clearing fund purposes; (2) make all Treasury securities eligible as clearing fund collateral; (3) allow GSCC to reject a letter of credit from a particular institution if letters of credit issued by that institution exceeded 20% of the total clearing fund; (4) allow GSCC to collect 100% of marks-to-the-market on account of a netting member's eligible forward-settling trades; (5) allow GSCC to include in the calculation of a netting member's required clearing fund deposit the weighted average of the netting member's forward net settlement positions over the most recent 20 business days; (6) allow GSCC to correlate quarterly returns of excess clearing fund collateral with refunding periods; (7) require netting members to satisfy a deficiency in the required clearing fund deposit on the day the member is notified of the deficiency; (8) require, in most cases, that clearing fund deficiencies be satisfied by 12 noon or two hours after the deficiency notice has been provided to the netting member, whichever is later; (9) require members to make funds-only settlement payments by 9 a.m.; and (10) supplement GSCC's authority to require additional margin deposits.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Based on almost two years of experience in netting, GSCC has assessed the means by which, through margin (*i.e.*, clearing fund deposits and forward mark allocation payments) and funds payments, it protects itself from the consequences of a potential default by a netting member on its obligations to GSCC. As a consequence of this assessment, GSCC believes that certain changes in its margin and funds collection processes are now appropriate in order to further ensure that a member's activity would not present undue exposure to GSCC. In making these changes, GSCC has sought to avoid imposing undue administrative burdens on its members.

The various changes made by this rule filing are reviewed below (in no particular order).

1. Standards for Approving Issuers of Letters of Credit for Clearing Fund Purposes

The acceptance by GSCC of letters of credit to secure a member's open account indebtedness to the clearing fund is subject to scrutiny based on a number of areas of concern to GSCC, one of which is whether the issuer of the letter of credit is a sufficiently liquid and creditworthy institution. In recent years, this concern has been heightened as the general financial status of the banking industry has become weaker.

Currently, a bank or trust company that is organized under federal or state law may become an approved issuer if it:

(i) Is permitted by law to lend to any single borrower an amount equal to at least $10 million, *or*

(ii) Has a rating for its short-term obligations of "A-1" or better by Standard & Poor's Corporation or "P-1" or better by Moody's Investors Service, Inc.

A foreign bank with a State or Federal branch in the United States may become an approved issuer if: (1) It has either a "P-1" or an "A-1" short-term obligations rating, and (2) it has total worldwide consolidated bank assets of at least $1 billion.

GSCC would revise the standards that it uses to determine whether a bank or trust company may be approved as an issuer of letters of credit for clearing fund purposes—which standards are based on the current standards of the National Securities Clearing Corporation ("NSCC"). These standards for approving issuers of letters of credit for clearing fund purposes would be revised such that any domestic or foreign bank would be required—in order to qualify as an issuing bank—to have: (1) Either $750 million in total shareholders' equity and a short-term obligations rating of not less than A-2 (by Standard & Poor's Corporation) or P-2 (by Moody's Investors Service, Inc.), or $300 million in total shareholders' equity and a short-term obligations rating of not less than A-1 or P-1, and (2) its letters of credit be able to be readily pledged by GSCC pursuant to an arrangement established by GSCC with the trust company that holds GSCC's

margin collateral to obtain credit in an amount equal to at least 80 percent of the letters' stated value.

These standards would be subject to the following understandings, which have been made expressly clear in the rule filing:

(1) The relevant short-term ratings are those for the unsecured, uninsured, unguaranteed short-term obligations of the issuing bank, and not of its parent holding company.

(2) A bank may not be approved as a letter of credit issuer if one of its short-term obligations ratings is lower than A-2 or P-2; thus, a "split" rating of A-2/P-3 or P-2/A-3 is not acceptable.

(3) For a bank to be approved and to continue as an issuing bank for GSCC letter of credit purposes, it must confirm periodically that it is maintaining continued compliance with the applicable capital standards established for it by each of its regulatory authorities.

(4) A foreign bank acting through a branch or agency in the United States may not be approved as a letter of credit issuer unless a sufficient guarantee of performance of such branch or agency is received by GSCC from the bank.

The new issuer standards would ensure that an issuing bank is of sufficient creditworthiness and liquidity, without unduly limiting the choice that members have as to which bank they use to issue letters of credit on their behalf. Specifically, the $750 million equity and top two short-term obligations rating standard would ensure that only a domestic bank that is among the roughly 30 largest banks in the United States and that has a strong short-term obligations rating would be eligible to be approved as a letter or credit issuer. The alternative criterion would allow a smaller (roughly the top 100 largest in the United States), yet still sizable, bank that has a top short-term credit rating to be eligible to be approved as a letter of credit issuer. Thus, size would not be the sole factor in determining whether a bank is eligible to be approved as a letter of credit issuer.

Further, the second requirement (able to be readily pledged under GSCC's pledge arrangement—which currently is with Security Pacific National Trust Company (New York)—for at least 80 percent credit) would ensure that the liquidity benefits provided by the pledge arrangement would be sufficiently realized.

2. Scope of Eligible Collateral

Currently, only Treasury securities with a remaining maturity of one year or less are eligible as margin collateral. Given the safety and liquidity of Treasury securities in general, GSCC believes it is appropriate, in order to provide its netting members with increased flexibility as regards which collateral may be posted for clearing fund deposit purposes, to make all Treasury securities eligible as clearing fund collateral. Those with remaining maturities of more than one year would carry an appropriate haircut—3 percent for Treasury securities with a remaining maturity of up to and including 10 years, and 5 percent for Treasury securities with a remaining maturity of over 10 years.

3. 20 Percent Concentration Limit

Currently, GSCC may not accept a letter of credit issued by any institution, if, as a result of such acceptance, more than 20 percent of the letters of credit held by GSCC as collateral (both for clearing fund and forward mark allocation purposes) would consist of letters of credit issued by the institution, unless the Board of Directors ("Board") determines a higher amount to be appropriate. To date, the application of this limit has been waived by the GSCC Board.

During the roughly two years that GSCC has been providing netting services and requiring margin from its netting members, letters of credit have remained a relatively small portion of the total clearing fund; normally, the level of letters of credit has been between one-fifth to one-fourth of the total value of the clearing fund. In view of this and given that the more relevant measure of exposure to any single issuing bank is the relationship of the bank's letters of credit to the entire clearing fund, the rule filing changes the cap to one that would prohibit GSCC from accepting a letter of credit issued by any institution if, as a result of such acceptance, the lesser of either 20 percent of the total clearing fund or the portion of such letters of credit that are eligible for ready pledge to GSCC's agent bank or banks in order to obtain temporary credit would consist of letters of credit issued by that institution. GSCC would have the discretion to, on a case-by-case basis, waive the application of this limitation.

4. Raise to 100 Percent the Cap on Forward Mark Allocation Amounts

GSCC's margining system for forward-settling trades is designed to ensure that the failure of the five members with the largest debit mark levels on any given day on forward-settling trades (on a per-CUSIP basis) would not disrupt GSCC's ability to successfully settle the day's government securities trades. The applicable margin requirement is calculated each day on a CUSIP-by-CUSIP basis for dealers in a debit position by multiplying their debit mark amount by a fraction, the numerator of which is the total of the debit mark amounts of the members with the five largest debit mark amounts, and the denominator of which is the total of the debit mark amounts of all dealer members.

In view of the concerns regarding depleting large amounts of liquidity from members, a cap of 75 percent was placed on this percentage when forward trades were made eligible for the net in April 1990. After a year's experience in netting and margining forward trades, GSCC now beleves—in view of the large forward net settlement positions that members can and often do incur (particularly during refunding periods)—that the maintenance of this cap at this level is not appropriate.

Thus, the rule filing raises this cap to 100 percent. This would allow GSCC to collect, in most situations, the entire amount of the top five daily member debits in each CUSIP. While the imposition of this measure would not increase the actual dollar amount of margin collected by GSCC in all situations (i.e., forward net settlement positions may be fairly evenly distributed, such that the 75 percent level is not reached), it would increase the dollar amount collected by GSCC in the event that certain members create a relatively large exposure for GSCC vis-a-vis other members.

5. Factor Forward Net Settlement Positions in the 20-Day Average for Clearing Fund Calculation Purposes

GSCC's clearing fund formula provides for the collection of 125 percent of the member's average daily funds-only settlement amount over the most recent 20 business days (which 20-day period may be weighted by GSCC to reflect the currentness of such amounts) and the greater of: (1) the margin amount on the member's net settlement positions taking into account offsetting positions averaged over the most recent 20 business days (which 20-day period may be weighted by GSCC to reflect the currentness of such amounts) or, (2) 50 percent of the margin amount for that business day on the member's net settlement positions calculated without taking into account offsetting positions.

Currently, a member's net securities and funds-only settlement obligations arising from forward-settling trades are factored into the calculation of such member's clearing fund requirement during the post-auction forward-settling

period essentially in the same manner as is done with regard to regular-way trading, except that forward net settlement positions are factored into the 20-day average only for purposes of the current day's calculation. This latter feature was designed to avoid having members' clearing fund requirements be artificially inflated during the post-settlement period as the result of periodic forward trading activity that has since been settled.

GSCC has reconsidered this limited use of forward settlement positions for clearing fund calculation purposes in light of the growing amount of forward activity that enters the net—particularly in non-new issue securities—and the ever increasing amounts of new Treasury security issuances, and now believes that is is more appropriate to have members' settlement obligations arising from forward-settling trades be factored into each 20-day average. In order to avoid draining large amounts of liquidity from members, GSCC would retain the discretion to take specific CUSIPs out of the 20-day average after their issue date had been reached. This discretion likely would be exercised for certain "non-routine" issues, such as members' quarterly refunding activity, which normally is much larger than any other forward trading activity.

6. Correlate Quarterly Returns of Excess Collateral With Refunding Periods

Currently, excess clearing fund collateral is returned in the ordinary course at the end of each quarter. Excess clearing fund collateral otherwise may be returned on a case-by-case determination; this is commonly done after a refunding period has ended because the amount of members' required clearing fund deposits falls dramatically after the settlement of the refunding.

Given this situation, GSCC believes it is more appropriate to use the second business day after each quarterly refunding issue date (when GSCC may have exercised its discretion to take specific CUSIPs out of the 20 day average, as discussed above) as the date on which the amount of excess collateral available for return is calculated. This would likely end the burdensome practice of having returns of clearing fund deposits being made to a large number of members more than once in a quarter.

It should be noted that, whenever GSCC informs members that they may request the return of excess collateral, the members are encouraged to maintain a "cushion" of excess collateral, so that repeated calls for additional collateral can be avoided. After a refunding period, members' clearing fund requirements often drop to a relatively low level, such that if the return of all of the excess collateral is requested, the member could be called for additional collateral prior to or at the time of the return of the "excess" amount. Thus, in order to bridge the readjustment period after a refunding in a manner least burdensome to members, GSCC would intend to strongly urge members—in its notice to them informing them of the amount of excess collateral, if any, that they may have returned—that they maintain an excess amount of collateral in the amount of the lesser of 25 percent of the excess amount or $1 million.

7. Convert All Clearing Fund Deficiency Calls to a Same-Day Basis

There are various circumstances pursuant to which a member may be asked to post additional clearing fund collateral to make up a deficiency. These may be said to fall within three general categories:

(1) There is a monthly call for any clearing fund deficit amount. If there is a deficit call, the member has three business days thereafter to deposit that amount. In practice, few deficiency calls are made pursuant to this monthly report; in most cases, the need for such has been taken care of by GSCC's other deficiency request procedures.

(2) A three-business-day call is triggered if a member's required clearing fund deposit level is 110 percent or more of the value of the member's deposits to the clearing fund as of a particular day.

(3) A same-day call is triggered for various reasons, including if a member's current day's required clearing fund deposit level exceeds by more than either 25 percent or $250,000 the value of its clearing fund collateral.

Given the obvious desirability of having margin deficiencies of any significance be collected as soon as possible, the rule filing eliminates the three-business-day call category, and has all deficiency calls, including the monthly call, be made on a same-day basis. Also, in view of the fact that a same-day call would be triggered by a clearing fund deficit of $250,000, the 110 percent parameter would be eliminated. These procedures, which were originally crafted based on standards applied by GSCC's affiliate, NSCC, are, based on GSCC's experience to date, most appropriate for the government securities marketplace.

8. Move to Earlier in the day the Deadline for Receipt of Additional Required Clearing Fund Deposit

Currently, if GSCC makes a clearing fund call on a same-day basis, the requisite deposit is due by 5 p.m. (except that, if the call is not made until 3 p.m. or later, the deposit is due by noon of the following day). In almost all situations, the deficiency call is made early in the morning; however, the deposit often is not received until late in the day. This is undesirable, for two reasons. First, the additional clearing fund collateral is needed to protect GSCC from the risk of default presented by the current day's settlement activity; thus, the collateral, to serve its function, should be received early in the day. Also, the current 5 p.m. deadline leads to unwarranted uncertainly as to whether the deposit would be made that day.

As a result, GSCC would require deposits to be made by the later of noon or two hours after the deficiency notice has been provided to the member (except that, if the notice is not provided until less than two hours before the close of the cash Fedwire on that day, the member would have until its applicable time deadline for the payment of funds-only settlement amounts to GSCC on the following day to make the additional deposit). GSCC believes that this timeframe is sufficient for a member to arrange for the necessary wire transfer of funds and/or securities or the delivery of an amendment to an outstanding letter of credit increasing the amount of such letter.

It should be noted that this proposed change would compliment the above described change to eliminate three-day deficiency calls in that both changes would promote a more prompt collection by GSCC of margin deficiencies.

9. Require Funds-Only Payment to be Made One Hour Earlier

Currently, if a member owes funds to GSCC, payment of such funds obligation is required to be made by one-and-a-half hours after the opening of the Fedwire (i.e., normally, by 10 a.m.). GSCC believes that moving to earlier in the day the deadline for funds-only payments to be made by members to GSCC is an appropriate measure in order to collect mark and margin amounts closer in time to the period of exposure that they are designed to provide protection to GSCC. Thus, the rule filing would move the deadline for members' morning funds payments to GSCC to a half hour after the opening of

the cash Fedwire (*i.e.*, normally, by 9 a.m.). GSCC would, however, grant an exception for members whose principal operational location is outside of the New York City time zone; such members would remain with the current deadline for making funds payments to GSCC.

GSCC would continue to make funds payments to all members in a funds credit position by two-and-a-half hours after the opening of the Fedwire (*i.e.*, normally, by 11 a.m.), at least until some experience is gained with the new funds debit payment deadline.

10. Discretionary Measures

The rule filing would supplement GSCC's authority to call for additional margin in times of stress, relatively high market volatility, and/or relatively high levels of member activity, by establishing the following enhanced measures of margin that would be triggered—for particular members or for all members—should GSCC determine such to be appropriate. These measures would be implemented only upon notice to, and with the concurrence of, the Membership and Standards Committee.

Specifically, GSCC would be able to raise margin requirements under the following specified circumstances:

A. *Periods of particularly high market activity leading to relatively large member positions.* During a refunding period, or other period of relatively great market activity, during which GSCC has higher-than-normal overall exposure from its members, GSCC would have the authority to calculate a member's clearing fund requirement based on the applicable margin amount on the member's current day's net settlement positions, taking into account offsets, if that amount is greater than either the average margin amount asking into account offsets over a prior set period or 50 percent of the current day's gross margin amount. This would, in effect, allow GSCC to collect, at a minimum, during a "large activity" period, the entire amount of the securities settlement exposure presented on each business day by a member to GSCC.

B. *Circumstances leading to the desirability of using GSCC's own price volatility data as an alternate pricing criterion.* GSCC's margin factor schedule is based on daily price volatility data supplied by a third party (Carroll, McEntee and McGinley, Inc.). This data is delineated based on certain set parameters, such as: (1) Being calculated on a quarterly basis, (2) providing for groups of securities based on the particular maturity range that they fall in, (3) reflecting mean plus two standard deviations, to obtain a 95.4 percent confidence level, and (4) being limited to non-zero coupon Treasury securities.

GSCC now has its own price volatility data base, which reflects prices derived from par-weighted averages of compared trades in every government security CUSIP that is eligible for comparison by GSCC, including zero-coupon government securities, for which there is very limited third-party data available. In certain circumstances—for example, for specific CUSIPs that do not follow the yield curve or for time periods that are shorter and more focused than a quarter (*i.e.*, a refunding period)—this alternate price monitoring data may be a more valid indicator of price volatility for margining purposes.

Thus, the rule filing would allow GSCC to routinely consider, in setting members' clearing fund requirements, using margin factors that also reflect GSCC's price volatility data base.

C. *Significant or potentially significant market volatility over a short time period.* GSCC's clearing fund calculation is, as stated above, based on a member's activity over the prior 20 business day period (except that, as noted above, as regards securities settlement exposure, 50 percent of the non-offsetted margin amount for a particular business day can be triggered as an alternate measure). This measure may not be a sufficiently prudent one during a short time period of relatively high market volatility. Therefore, the rule filing would provide GSCC with the authority to set—on a day-to-day basis—members' clearing fund requirement based on a business day period that is shorter than 20.

D. *Significant or potentially significant market volatility leading to uncertainty of offset class correlations.* The margin amount on a member's net settlement positions is calculated using factors (percentages) that are set based on an assessment of historical daily price volatility data. GSCC gives "credit" for offsetting net settlement positions; in order to allow it to do so only to the extent appropriate, "offset classes" for securities of varying maturity, and "disallowance percentages" among those different offset classes, were established (however, irrespective of the nature of the offset between positions, a minimum margin of 50 percent of the margin amount on the member's "gross" positions is collected).

Given the possibility that, during a short-term period, the yield curve may be such as to lead to uncertainty as to the validity of GSCC's general offset class correlations, the rule filing gives GSCC the authority to suspend, for a temporary or indefinite period, the applicability of certain or all of such offsets.

(b) The proposed rule change would enhance GSCC's ability through margin and funds payments, to protect itself from the consequences of a potential default by a netting member of its obligations to GSCC, and would further ensure that a member's activity would not present undue exposure to GSCC. Thus, they are consistent with the requirements of the Act and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not perceive that the proposed rule change will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. Members would be notified of the rule filing, and comments would be solicited, by an Important Notice. GSCC would notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in

accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of GSCC. All submissions should refer to File No. SR-GSCC-91-04 and should be submitted by January 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-431 Filed 1-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30145; File No. SR-NASD-91-71]

Self Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to a Fee for Form 211 Filings

January 2, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 26, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one constituting a fee that is imposed exclusively on its members under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change that would add new section 15 to Schedule A of the NASD By-Laws. The NASD also proposes that the rule change be implemented on January 1, 1992. Proposed new language is italicized.

Schedule A

Section 15—Fee for Filing Form 211

Each member submitting information to the NASD on Form 211 shall pay a fee of $200.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

(a) Form 211 is required to be filed with the NASD by any member wishing to enter quotes for a security into an interdealer quotation medium. Form 211 contains questions which, when answered fully and truthfully, will demonstrate to the NASD that the member has in its possession the information required under SEC Rule 15c2-11 relating to the issuer whose securities the member wishes to quote.

The NASD estimates that the number of Form 211 filings in 1992 will be at least 1,250, based on present volume. However, in the event the National Quotation Bureau ceases to publish its Pink Sheets, there may be a significant increase in the number of Form 211 filings by members seeking to quote former Pink Sheet securities in the NASD's OTC Bulletin Board.

Upon the filing of a Form 211, the NASD conducts a substantive analysis of the information and makes a determination as to whether the information appears complete and accurate, or whether further inquiry about questionable information is warranted. The NASD estimates that the resources, both staff and equipment, necessary to evaluate the projected number of Form 211 filings will be approximately $330,000 in 1992 based on actual 1991 experience. This figure does not include the resources which would be required to conduct a formal investigation and disciplinary action resulting from a further inquiry into Form 211 filings that contain false or misleading information, or which otherwise may violate Schedule H to the NASD By-Laws or SEC Rule 15c2-11.

In order to recover some of the costs associated with meeting its regulatory obligations, the NASD is proposing to amend Schedule A to the By-Laws by adding a new Section 15 requiring members who submit information to the NASD on Form 211 to pay a fee of $200. The NASD's proposed rule change is expected to generate approximately $250,000 in fees, sufficient to cover approximately seventy-five (75%) of the NASD's projected review costs. The NASD believes that the proposed filing fee is an appropriate method of recovering the costs of an important market regulatory program.

(b) The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other changes among issuers and other persons using any facility or system which the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of rule 19b-4 thereunder in that it constitutes a rule change that establishes a fee imposed by a self-regulatory organization.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments,

all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-433 Filed 1-8-92; 8:45 am]

BILLING CODE 8010-10-M

[Release No. 34-30137; File No. SR-PTC-91-13]

Self-Regulatory Organizations; Participating Trust Company; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Close-Out of Repurchase Agreement Accounting Records

December 31, 1991.

On November 4, 1991, Participating Trust Company ("PTC") submitted a proposed rule change (File No. SR-PTC-91-13) to the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposed rule change appeared in the **Federal Register** on December 16, 1991.[2] No comments were received. This order approves the proposal on an accelerated basis.

I. Description

The proposed rule change would allow PTC to close-out the positions maintained by parties to a repurchase agreement ("repo") [3] upon receipt of a representation from the buyer of securities ("repo buyer" or "repo in participant") that it has the legal right to close-out the repo.[4] The proposed rule change would allow PTC to terminate the crediting of principal and interest ("P&I") equivalents to the repo seller in connection with the close-out.[5]

PTC's rules currently provide that the repo in participant may request a debit to its repo in position "to reflect the fulfillment of its obligation to resell the securities" to the original seller of the securities.[6] If so requested, PTC would debit the repo in position and make a corresponding debit to the repo out position thus eliminating the repo entries and terminating the crediting of the P&I equivalents to the repo seller.

Although not specified in the rule, PTC has allowed the repo in participant, pursuant to the provision regarding the resale of securities,[7] to instruct PTC to eliminate the repo positions in situations, other than the resale of securities to the repo out participant, where, consistent with the participant's contractual rights under a repo, the repo in participant has closed-out its position or otherwise has taken action to terminate its obligations to the repo out participant. The proposal would clarify the procedures PTC would follow in eliminating its repo accounting entries in situations other than the resale of securities to the repo out participant (*e.g.*, the default of the repo out participant of its payment obligations under the terms of the repo).

Under the proposal, the repo in participant would provide to PTC a representation that states the repo in participant has the legal right to close-out the repo and instructs PTC to debit the repo positions of the repo buyer and the repo seller.[8] Pursuant to the repo in participant's representation and instruction, PTC would eliminate the repo out and repo in positions as of the effective date specified by the repo in participant.

In connection with the distribution of P&I attributable to the underlying securities, as long as the effective date of the close-out specified in the representation is prior to a PTC P&I distribution date, the repo buyer would be credited with the P&I equivalent attributable to the underlying securities.[9] PTC would notify the repo out participant of the elimination of the elimination of the positions.

II. Discussion

The Commission believes that the proposed rule change is consistent with the Act and particularly with sections 17A(b)(3)(A) [10] and (F) [11] of the Act. Sections 17A(b)(3)(A) and (F) require that a clearing agency be organized, have the capacity to facilitate, and have rules designed to promote the prompt and accurate clearance and settlement of securities transactions and to safeguard securities and funds in its custody or control or for which it is responsible.

The proposal should better enable PTC to safeguard securities and funds by providing efficient procedures for managing repo positions. The Commission also believes that the procedures embodied in PTC's proposal should aid PTC in meeting this statutory requirement by removing any misunderstandings or ambiguities about PTC's procedures governing the close-out of repo transactions.

The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of filing. Accelerated approval will permit PTC to clarify immediately its repo accounting procedures and will remove the risks associated with any misunderstandings or ambiguities that currently exist.

III. Conclusion

On the basis of the foregoing, the Commission finds that PTC's proposed rule change is consistent with the Act and in particular with section 17A of the Act. The Commission also finds good

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[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 30052 (December 9, 1991), 56 FR 65299.

[3] A "repurchase agreement" is a contractual agreement between a seller of securities and a buyer of securities whereby the seller agrees to repurchase the securities at an agreed upon price within a specified period of time (typically less than thirty days) and the buyer agrees to resell the securities.

[4] PTC provides its participants with a repo accounting facility to facilitate the transfer by book-entry of securities issued by the Government National Mortgage Association ("GNMA"). Under this repo accounting facility, the securities seller ("repo seller" or repo out participant") is credited with a "repo out" position, and the repo buyer is credited with a "repo in" position. The parties to a repo are so credited to reflect the right of the repo seller to repurchase the securities and the repo buyer's corresponding obligation to resell the securities.

[5] PTC's repo accounting facility is a book-entry system that, among other things, provides a method for debiting the repo buyer's account and crediting the repo seller's account for the amount of the P&I payment attributable to the underlying securities ("P&I equivelant").

[6] *E.g.*, in situations where the repo buyer has returned the securities to the repo seller by a regular securities transfer instruction message instead of by the appropriate repo retransfer instruction and the positions remain open by mistake, the repo buyer would make such a request. PTC Rules, article III, rule 1, section 1(b).

[7] PTC's Rules, article III, rule 1, section 1(b).

[8] If the repo buyer does not have such right, the repo seller will have recourse to legal action outside of PTC to enforce its contract.

[9] The PTC P&I distribution date, rather than the record date is the specified deadline because upon default of the repo seller, the repo seller's right under the repo agreement to receive P&I payments terminates. In order to have time to make the new entries to the repo accounting system, PTC requires that it receive the repo buyer's representation at least two days before a PTC distribution date.

[10] 15 U.S.C. 78q-1(b)(3)(A).

[11] 15 U.S.C. 78q-1(b)(3)(F).

cause for approving the proposal prior to the thirtieth day after the date of publication of the notice of filing.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR-PTC-91-13) be, and hereby is, approved on an accelerated basis.

For the Commission, by the division of Market Regulation, pursuant to the delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-432 Filed 1-9-92; 8:45 am]

BILLING CODE 8010-01-M

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30-3(a)(12).

DEPARTMENT OF STATE

[Public Notice 1546]

U.S. MAB National Committee for Man and the Biosphere; U.S. MAB Request for Proposals for Urban Environmental Projects

The United States Man and the Biosphere (U.S. MAB) Program, hereby announces its request for proposals to continue its assistance to the U.S. Peace Corps in the development of a worldwide urban environmental projects initiative as described below.

U.S. MAB will accept proposals of a maximum length of six (6) pages which outline how the objectives described below could be accomplished. A curriculum vitae (c.v.) of a maximum length of four (4) pages for each principal(s), that clearly demonstrates a history of competency in the implementation of such tasks, must accompany the proposal. Proposals may not request more than the sum of forty four thousand, eight hundred and eighty four ($44,884) dollars to implement this initiative. All proposals must specify that all tasks will be completed within twelve months at the headquarters of the U.S. Peace Corps or at other appropriate sites, as directed, beginning, approximately, the last week of February 1992. Payments will be made on a quarterly basis in equal installments.

All proposals and accompanying documents must be received by the U.S. MAB Secretariat no later than the close of business (COB) on February 14, 1992. Proposals and c.v.s will be evaluated on the criteria noted in the following section.

Selection will be made during the week of February 17, 1992. Selected candidate principals must be prepared to implement their proposals on or about February 24, 1992.

Proposals should be sent to: U.S. MAB Secretariat, room 608 SA-37, OES/EGC/MAB, U.S. Department of State, Washington, DC 20522-3706.

Objectives

To provide technical assistance to the U.S. Peace Corps, including but not limited to:

—Coordinate Peace Corps/U.S. Agency for International Development (USAID) support for the Peace Corps urban development initiative, including the identification of project opportunities, developing scopes of work, arranging of contracts and travel for consultancies;

—Review and summarize the Peace Crops' urban development initiative as developed in the Peace Corps annual Integrated Planning and Budget System (IPBS) submission received from Peace Corps field operations and organize the Peace Crops' Office of Training and Program Support (OTAPS) annual support program. The resulting work plan(s) will include the integration of non-Peace Corps resources (e.g., USAID/Regional Housing and Urban Development Offices and the Water and Sanitation and Health (WASH) project) and are reviewed and approved by the appropriate officials in each of the Peace Corps' regional offices.

—Periodically prepare articles and guidelines to be used by the Peace Corps in promoting its urban environmental development initiative.

—Visit U.S. universities to promote the urban environmental program as well as recruit professionally qualified volunteers to participate in Peace Corps' expanding urban program. The urban projects envisioned include such environmental issues as solid waste management, potable water/appropriate sanitation systems and the development of overall growth guidelines for rapidly urbanizing cities of the third world.

—Based on the Cote d'Ivoire urban environmental management project, design and conduct other pilot country specific environmental projects.

—Organize the development of In-Service Training (IST) model(s) for Peace Corps Volunteers (PCVs) working in urban environmentally oriented projects and for local-level host country counterparts, as well as implement country-specific ISTs based on these models.

Selection Criteria

Performance record of the proposed principal.

Demonstrated ability of the proposer to design and deliver assistance in the development of Peace Corps urban development projects and related pre-service and in-service training activities.

Demonstrated ability of the proposer to manage budgets and personnel.

Demonstrated ability of proposer to conduct needs assessments and development project designs.

Fluency in one or more of Peace Corps' official languages: Spanish or French preferred.

For further information concerning technical or grant performance related inquiries, please contact: George Mahaffy, Director, Office of Training and Program Support, U.S. Peace Corps, room 800, 1990 K Street NW., Washington, DC 20526, Telephone: (202) 606-3100.

For further information concerning administrative and grant management inquiries, please contact: Robert E. Soles, Executive Director U.S. MAB, room 608 SA-37, OES/EGC/MAB, U.S. Department of state, Washington, DC 20522-3706, Telephone: (703) 235-2946.

Dated: December 30, 1991.

Roger E. Soles,

Executive Director, U.S. Man and the Biosphere Program.

[FR Doc. 92-403 Filed 1-8-92; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 27, 1991

The following Applications for Certicates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47927.

Date filed: December 23, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 20, 1992.

Description: Joint Application of United Air Lines, Inc. and Pan American World Airways, Inc., pursuant to section 401(h) of the Act and subpart Q of the Regulations, requests approval of the transfer to United of certain of Pan Am's

certificate, exemption authorities and related flight frequency allocations.

Docket Number: 47929.

Date filed: December 23, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 21, 1992.

Description: Joint Application of Executive Airlines, Inc., Flagship Airlines, Inc., Simmons Airlines, Inc., and Wings West Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, including (to the extent applicable) section 401(h) concerning transfer of certificates, that Executive's certificate of public convenience and necessity for Route 537 be amended and reissued in the names of all of the Joint Applicants, subject to a condition that at any given time only one of them may operate or be designated to operate over a limited-entry route.

Docket Number: 47930.

Date filed: December 24, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 21, 1992.

Description: Joint Application of Trans World Airlines, Inc., and USAir, Inc., pursuant to section 401(h) of the Act and subpart Q of the Regulations for approval of the transfer to USAir of TWA's certificate authority to serve the nonstop Philadelphia-London and Baltimore-London routes.

Docket Number: 47931.

Date filed: December 24, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 21, 1992.

Description: Application of Worldwide Airline Services, Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the Act for a certificate of public convenience and necessity authorizing it to engage in scheduled interstate and overseas air transportation of persons, property and mail between points in the United States, its territories and possessions (including the District of Columbia).

Docket Number: 47932.

Date filed: December 24, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 21, 1992.

Description: Application of Worldwide Airline Services, Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of persons, property and mail between a point or points in the United States, its territories and possessions (including the District of Columbia) and a point or points in the Caribbean Basin, Mexico and Europe.

Phyllis T. Kaylor,

Chief, Documentary Services Divisions.

[FR Doc. 92-450 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review Albuquerque International Airport, Albuquerque, NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Albuquerque, New Mexico, for Albuquerque International Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Albuquerque International Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before June 27, 1992.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is December 31, 1991. The public comment period ends February 28, 1992.

FOR FURTHER INFORMATION CONTACT: Donald C. Harris, Airports Division, Southwest Region Office, Fort Worth, TX, 76193-0651, telephone (817) 624-5612. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Albuquerque International Airport are in compliance with applicable requirements of part 150, effective December 30, 1991. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before June 27, 1992. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The city of Albuquerque, New Mexico, submitted to the FAA on July 16, 1991, noise exposure maps, descriptions and other documentation which were produced during development of the Albuquerque International Airport FAR Part 150 Airport Noise Compatibility Plan from 1987 through 1991. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the three airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of Albuquerque, New Mexico. The specific maps under consideration are identified in Exhibit Numbers 7 and 9 in the submission. The FAA has determined that these maps for Albuquerque International Airport are in compliance with the applicable requirements. This determination is effective on December 31, 1991. FAA's determination on an airport operator's noise exposure maps is limited to finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map

submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Albuquerque International Airport, also effective on December 31, 1991. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 27, 1992.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses. Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination of the following locations.

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Southwest Region Airports Division, 4400 Blue Mound Road, Fort Worth, TX 76193–0651.

Mr. Carl B. Rodolph, Acting Aviation Director, Albuquerque International Airport, P.O. Box 9022, Albuquerque, NM 87119.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, TX, December 31, 1991

John M. Dempsey,

Manager, Airports Division.

[FR Doc. 92–462 Filed 1–8–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 733]

Commerce in Explosives; List of Explosive Materials

Pursuant to the provisions of section 841(d) of title 18, United States Code, and 27 CFR 55.23, the Director, Bureau of Alcohol, Tobacco, and Firearms, must publish and revise at least annually in the **Federal Register** a list of explosives determined to be within the coverage of 18 U.S.C. Chapter 40, Importation, Manufacture, Distribution and Storage of Explosive Materials. This chapter covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in section 841(c) of title 18, United States Code.

Accordingly, the following is the 1992 List of Explosive Materials subject to regulation under 18 U.S.C. Chapter 40, which includes both the list of explosives (including detonators) required to be published in the **Federal Register** and blasting agents. The list is intended to also include any and all mixtures containing any of the materials in the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is not all inclusive. The fact that an explosive material may not be on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in section 841 of Title 18, United States Code. Explosive materials are listed alphabetically by their common names followed by Chemical names and synonyms in brackets. This revised list supersedes the List of Explosive Materials dated January 9, 1991, (56 FR 910) and will be effective as of the date of publication in the **Federal Register.**

List of Explosive Materials

A

Acetylides of heavy metals
Aluminum containing polymeric propellant
Aluminum ophorite explosive
Amatex
Amatol
Ammonal
Ammonium nitrate explosive mixtures (cap sensitive)
*Ammonium nitrate explosive mixtures (non cap sensitive)
Aromatic nitro-compound explosive mixtures
Ammonium perchlorate explosive mixtures
Ammonium perchlorate composite propellant
Ammonium picrate [picrate of ammonia, Explosive D]
Ammonium salt lattice with isomorphously substituted inorganic salts
*ANFO [ammonium nitrate-fuel oil]

B

Baratol
Baronol
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)]
Black powder
Black powder based explosive mixtures
*Blasting agents, nitro-carbo-nitrates, including non cap sensitive slurry and water-gel explosives
Blasting caps
Blasting gelatin
Blasting powder
BTNEC [bis (trinitroethyl) carbonate]
Bulk salutes
BTNEN [bis (trinitroethyl) nitramine]
BTTN [1,2,4 butanetriol trinitrate]
Butyl tetryl

C

Calcium nitrate explosive mixture
Cellulose hexanitrate exposive mixture
Chlorate explosive mixtures
Composition A and variations
Composition B and variations
Composition C and variations
Copper acetylide
Cyanuric triazide
Cyclotrimethylenetrinitramine [RDX]
Cyclotetramethylenetetranitramine [HMX]
Cyclonite [RDX]
Cyclotol

D

DATB [diaminotrinitrobenzene]
DDNP [diazodinitrophenol]
DEGDN [diethyleneglycol dinitrate]
Detonating cord
Detonators
Dimethylol dimethyl methane dinitrate composition
Dinitroethyleneurea
Dinitroglycerine [glyceroi dinitrate]
Dinitrophenol
Dinitrophenolates
Dinitrophenyl hydrazine
Dinitroresorcinol

Dinitrotoluene-sodium nitrate explosive mixtures
DIPAM
Dipicryl sulfone
Dipicrylamine
DNDP [dinitropentano nitrile]
DNPA [2,2-dinitropropyl acrylate]
Dynamite

E

EDDN [ethylene diamine dinitrate]
EDNA
Ednatol
EDNP [ethyl 4,4-dinitropentanoate]
Erythritol tetranitrate explosives
Esters of nitro-substituted alcohols
EGDN [ethylene glycol dinitrate]
Ethyl-tetryl
Explosive conitrates
Explosive gelatins
Explosive mixtures containing oxygen releasing inorganic salts and hydrocarbons
Explosive mixtures containing oxygen releasing inorganic salts and nitro bodies
Explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels
Explosive mixtures containing oxygen releasing inorganic salts and water soluble fuels
Explosive mixtures containing sensitized nitromethane
Explosive mixtures containing tetraintromethane (nitroform)
Explosive nitro compounds of aromatic hydrocarbons
Explosive organic nitrate mixtures
Explosive liquids
Explosive powders

F

Flash powder
Fulminate of mercury
Fulminate of silver
Fulminating gold
Fulminating mercury
Fulminating platinum
Fulminating silver

G

Gelatinized nitrocellulose
Gem-dinitro aliphatic explosive mixtures
Guanyl nitrosamino guanyl tetrazene
Guanyl nitrosamino guanylidene hydrazine
Guncotton

H

Heavy metal azides
Hexanite
Hexanitrodiphenylamine
Hexanitrostilbene
Hexogen [RDX]
Hexogene or octogene and a nitrated N-methylaniline
Hexolites
HMX [cyclo-1,3,5,7-tetramethylene-2,4,6,8-tetranitramine; Octogen] Hydrazinium nitrate/hydrazine/aluminum explosive system
Hydrazoic acid

I

Igniter cord
Igniters
Initiating tube systems

K

KDNBF [potassium dinitrobenzo-furoxane]

L

Lead azide
Lead mannite
Lead mononitroresorcinate
Lead picrate
Lead salts, explosive
Lead styphnate [styphnate of lead, lead trinitroresorcinate]
Liquid nitrated polyol and trimethylolethane
Liquid oxygen explosives

M

Magnesium ophorite explosives
Mannitol hexanitrate
MDNP [methyl 4,4-dinitropentanoate]
MEAN [monoethanolamine nitrate]
Mercuric fulminate
Mercury oxalate
Nitric acid and carboxylic fuel explosive
Nitric acid explosive mixtures
Nitro aromatic explosive mixtures
Mercury tartrate
Metriol trinitrate
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum]
MMAN [monomethylamine nitrate]; methylamine nitrate
Mononitrotoluene-nitroglycerin mixture
Monopropellants

N

NIBTN [nitroisobutametriol trinitrate]
Nitrate sensitized with gelled nitroparaffin
Nitrated carbohydrate explosive
Nitrated glucoside explosive
Nitrated polyhydric alcohol explosives
Nitrates of soda explosive mixtures
Nitric acid and a nitro aromatic compound explosive
Nitro compounds of furane explosive mixtures
Nitrocellulose explosive
Nitroderivative of urea explosive mixture
Nitrogelatin explosive
Nitrogen trichloride
Nitrogen tri-iodide
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine]
Nitroglycide
Nitroglycol (ethylene glycol dinitrate, EGDN)
Nitroguanidine explosives
Nitroparaffins Explosive Grade and ammonium nitrate mixtures
Nitronium perchlorate propellant mixtures
Nitrostarch
Nitro-substituted carboxylic acids
Nitrourea

O

Octogen [HMX]
Octol [75 percent HMX, 25 percent TNT]
Organic amine nitrates
Organic nitramines

P

PBX [RDX and plasticizer]
Pellet powder
Penthrinite composition
Pentolite
PYX (2,6-bis(picrylamino)-3,5-dinitropyridine
Perchlorate explosive mixtures
Peroxide based explosive mixtures
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate]
Picramic acid and its salts
Picramide
Picrate of potassium explosive mixtures
Picratol
Picric acid (manufactured as an explosive)
Picryl chloride
Picryl fluroide
PLX [95% nitromethane, 5% ethylenediamine]
Polynitro aliphatic compounds
Polyolpolynitrate-nitrocellulose explosive gels
Potassium chlorate and lead sulfocyanate explosive
Potassium nitrate explosive mixtures
Potassium nitroaminotetrazole

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine]

S

Safety fuse
Salutes, (bulk)
Salts of organic amino sulfonic acid explosive mixture
Silver acetylide
Silver azide
Silver fulminate
Silver oxalate explosive mixtures
Silver styphnate
Silver tartrate explosive mixtures
Silver tetrazene
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel and sensitizer (cap sensitive)
Smokeless powder
Sodatol
Sodium amatol
Sodium azide explosive mixture
Sidium dinitro-ortho-cresolate
Sodium nitrate-potassium nitrate explosive mixture
Sodium picramate
Special fireworks
Squibs
Styphnic acid explosives

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a-tetrazapentalene]
TATB [triaminotrinitrobenzene]
TEGDN [triethylene glycol dinitrate]
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate]
Tetranitrocarbazole
Tetryl [2,4,6 tetranitro-N-methylaniline]
Tetrytol
Thickened inorganic oxidizer salt slurried explosive mixture
TMETN (trimethylolethane trinitrate)
TNEF [trinitroethyl formal]
TNEOC [trinitroethylorthocarbonate]
TNEOF [trinitroethyl orthoformate]
TNT [trinitrotoluene, trotyl, trilite, triton]
Torpex
Tridite
Trimethylol ethyl methane trinitrate composition
Trimethylolthane trinitrate-nitrocellulose
Trimonite
Trinitroanisole
Trinitrobenzene
Trinitrobenzoic acid
Trinitrocresol

Trinitro-meta-cresol
Trinitronaphthalene
Trinitrophenetol
Trinitrophloroglucinol
Trinitroresorcinol
Tritonal

U

Urea nitrate

W

Water bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive)
Water-in-oil emulsion explosive compositions

X

Xanthamonas hydrophilic colloid explosive mixture

FOR FURTHER INFORMATION CONTACT: Linda Deel, Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-8310).

Approved: January 2, 1992.

Stephen E. Higgins,

Director.

[FR Doc. 92-503 Filed 1-8-92; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF VETERANS AFFAIRS

Wage Committee; Meetings

The Department of Veterans Affairs (VA) in accordance with Public Law 92-463, gives notice that meetings of the VA Wage Committee will be held on:

Wednesday, January 22, 1992, at 2 p.m.
Wednesday, January 29, 1992, at 2 p.m.
Wednesday, February 12, 1992, at 2 p.m.
Wednesday, February 26, 1992, at 2 p.m.
Wednesday, March 11, 1992, at 2 p.m.
Wednesday, March 25, 1992, at 2 p.m.

The meetings will be held in room 1161, Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Public Law 92-463, as amended by Public Law 94-409, and as cited in 5 U.S.C. 552(b) (2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, room 1161, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: December 30, 1991.

By Direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92-470 Filed 1-8-92; 8:45 am]

BILLING CODE 8320-01-M

Performance Review Board Members

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice revises that list of members of the Department of Veterans Affairs (VA's) Performance Review Boards which was published in the **Federal Register** (55 FR 49972, dated December 3, 1990).

EFFECTIVE DATE: November 25, 1991.

FOR FURTHER INFORMATION CONTACT: K. Joyce Edwards, Office of Personnel and Labor Relations (053), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 535-8723.

VA Performance Review Board (PRB)

Ronald E. Ray, Assistant Secretary for Human Resources and Administration (Chairperson)
C. Wayne Hawkins, Deputy Chief Medical Director for Administration and Operations
Sylvia Chavez Long, Assistant Secretary for Congressional Affairs
S. Anthony McCann, Assistant Secretary for Finance and Information Resources Management
William T. Merriman, Deputy Inspector General
Bill B. Pearson, Deputy Chief Benefits Director
Richard Pell, Jr., Director, Operations and Policy Staff
Roger R. Rapp, Director of Field Operations, National Cemetery System

Veterans Benefits Administration PRB

Harold F. Gracey, Chief of Staff (Chairperson)
James A. Maye, Director Southern Area
Richard Pell, Jr., Director, Operations and Policy Staff
William D. Stinger, Assistant Chief Benefits Director for Planning
David M. Walls, Director, Western Area

Veterans Health Administration PRB

John T. Farrar, M.D., Deputy Chief Medical Director (CMD) (Chairperson)
Galen Barbour, M.D., Associate CMD for Quality Management
Donald E. Burnette, Regional Director, Eastern Region
Clark R. Doughty, Regional Director, Western Region
Robert H. Roswell, M.D., Associate Deputy CMD (Clinical Programs)
John R. Fears, Associate CMD for Resource Management
Sanford M. Garfunkel, Associate CMD for Operations
Joseph G. Gray, Associate CMD for External Relations
C. Wayne Hawkins, Deputy CMD for Administration and Operations
Richard P. Miller, Regional Director, Southern Region
Richard Pell, Jr., Director, Operations and Policy Staff
Dennis H. Smith, Executive Assistant to CMD
Charles V. Yarbrough, Associate CMD for Administration
Albert Zamberlan, Regional Director, Central Region

Office of Inspector General PRB

Milton McDonald, Deputy Assistant Inspector General for Audit, Department of State (Chairperson)
David A. Brinkman, Assistant Inspector General for Analysis and Follow-up, Department of Defense
H. Rae Scott, Assistant Inspector General for Investigations, Department of Transportation

Dated: December 31, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 92-471 Filed 1-8-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 6
Thursday, January 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, January 22, 1992.

PLACE: 2033 K St., NW., Washington, DC, Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Application of the Mid/America Commodity Exchange for contract market in options on Rough Rice futures
—Program review/1st quarter, FY 92

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–613 Filed 1–7–92; 11:32 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Wednesday, January 22, 1992.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Rule Enforcement Review

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–614 Filed 1–7–92; 11:32 am]

BILLING CODE 6351-01-M

FEDERAL ELECTION COMMISSION

* * * * *

DATE AND TIME: Tuesday, January 14, 1992, 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, January 16, 1992, 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1991–37: Ms. Linda Michelsen of Democratic Election Reporting Education Fund
Advisory Opinion 1991–38: Mr. Gene Karp on behalf of Senator Dennis DeConcini
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Harris,
Administrative Assistant.

[FR Doc. 92–719 Filed 1–7–92; 3:36 pm]

BILLING CODE 6715-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS OFFICE OF THE INSPECTOR GENERAL OVERSIGHT COMMITTEE

Notice

TIME AND DATE: A meeting of the Board of Directors Office of the Inspector General Oversight Committee will be held on January 12, 1992. The meeting will commence at 6:00 p.m.

PLACE: The Washington Court Hotel, 525 New Jersey Avenue, NW., The Ballroom Center, Washington, DC 20001, (202) 628–2100.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.
2. Approval of Minutes of July 9, 1991 Meeting.
3. Consideration of Committee Chairman's Report on December 19, 1991 Meeting with Senate Committee on Governmental Affairs.
4. Consideration of Draft Management Report on the Inspector General's 1990 and 1991 Semiannual Reports.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863–1839.

Date Issued: January 7, 1992.

Patricia D. Batie,
Corporate Secretary.

The Legal Services Corporation's billing code number is #7050–01. AGDA112.OIG/

[FR Doc. 92–654 Filed 1–7–92; 1:35 pm]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS OPERATIONS AND REGULATIONS COMMITTEE MEETING

Notice

TIME AND DATE: A meeting of the Board of Directors Operations and Regulation Committee will be held on January 13, 1992. The meeting will commence at 8:00 a.m.

PLACE: The Washington Court Hotel, 525 New Jersey Avenue, NW., The Ballroom Center, Washington, DC 20001, (202) 628–2100.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.
2. Approval of Minutes of November 13, 1991 Meeting.
3. Consideration of Matters Related to the Design and Development of a Demonstration Project for the Competitive Bidding of Funds Granted by the Legal Services Corporation.

CONTACT PERSON FOR INFORMATION: Patricia Batie, Executive Office, (202) 863–1839.

Date Issued: January 7, 1992.

Patricia D. Batie,
Corporate Secretary.

The Legal Services Corporation's billing code number is #7050–01. AGDA113.OPS/

[FR Doc. 92–655 Filed 1–7–92; 1:35 pm]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS AUDIT AND APPROPRIATIONS COMMITTEE MEETING

NOTICE

TIME AND DATE: A meeting of the Board of Directors Audit and Appropriations Committee will be held on January 12, 1992. The meeting will commence at 4:00 p.m.[1]

[1] Please note that this meeting will be canceled should the President of the United States not reappoint members of the Legal Services Corporation Board of Directors prior to January 12, 1992.

Should the Audit and Appropriations Committee not complete its business by 6:00 p.m., the meeting will recess briefly to permit the Board of Directors Office of the Inspector General Oversight Committee (OIG Committee) to meet. Should this occur, the Audit and Appropriations Committee will reconvene immediately following conclusion of the OIG Committee meeting.

PLACE: The Washington Court Hotel, 525 New Jersey Avenue, NW., The Ballroom Center, Washington, DC 20001, (202) 628–2100.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of December 8, 1991 Meeting.
3. Consideration of Fiscal Year 1991 Carryover Funds.
4. Consideration of Fiscal Year 1992 Consolidated Operating Budget.
5. Consideration of Fiscal Year 1993 Budget Request.
   a. Consideration of the Provision for the Delivery of Legal Services Committee Recommendation Regarding Guidelines Used for Unsolicited Proposals for Corporation Funds.
   b. Consideration of the Provision for the Delivery of Legal Services Committee Recommendation Regarding the Current Corporation Policy Governing Interstate Subgrants.
   c. Consideration of the Fiscal Requirements of the Provision for the Delivery of Legal Services Committee Recommendation Regarding Vehicles Through Which the Corporation Could Assist LSC-Funded Grantees to Recruit and Retain Staff Attorneys.
   d. Consideration of the Fiscal Requirements of the Provision for the Delivery of Legal Services Committee Recommendation Regarding Vehicles Through Which the Corporation Could Facilitate the Work of Client Organizations on a National Level.
   e. Consideration of the Fiscal Requirements of the Provision for the Delivery of Legal Services Committee Recommendation Regarding the Continued Annual Funding of Law School Clinics.
   f. Consideration of the Fiscal Requirements of the Provision for the Delivery of Legal Services Committee Recommendation Regarding Funding for Innovative Grant Proposals.
6. Consideration of Adequate Funding for the Micronesian Legal Services Corporation.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 863–1893.

Date Issued: January 7, 1992.

Patricia D. Batie,

Corporate Secretary.

The Legal Services Corporation's billing code number is #7050–01. AGDA112.AA/

[FR Doc. 92–656 Filed 1–7–92; 1:35 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS PROVISION FOR THE DELIVERY OF LEGAL SERVICES COMMITTEE MEETING

Notice

TIME AND DATE: A meeting of the Board of Directors Provision for the Delivery of Legal Services Committee will be held on January 12, 1992. The meeting will commence at 12:00 p.m.

PLACE: The Washington Court Hotel, 525 New Jersey Avenue, NW., The Ballroom Center, Washington, DC 20001, (202) 628–2100.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of August 24–25, 1989 and December 7, 1991 Meeting Minutes.
3. Consideration of Guidelines Used for Unsolicited Proposals for Corporation Grants.
4. Consideration of the Current Corporation Policy Governing Interstate Subgrants.
5. Consideration of Vehicles Through Which the Corporation Could Assist LSC-Funded Grantees To Recruit and Retain Staff Attorneys.
6. Consideration of Vehicles Through Which the Corporation Could Facilitate the Work of Client Organizations on a National Level.
7. Consideration of Matters Related to the Continued Annual Funding of Law School Clinics.
8. Consideration of the Provision of Funding for Innovative Grant Proposals.

CONTACT PERSON FOR INFORMATION: Patricia Batie, Executive Office, (202) 863–1839.

Date Issued: January 7, 1992.

Patricia D. Batie,

Corporate Secretary.

The Legal Services Corporation's billing code number is No. 7050–01. AGDA112.PRV/

[FR Doc. 92–657 Filed 1–7–92; 1:35 pm]

BILLING CODE 7050–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:30 a.m., Wednesday, January 15, 1992.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Open.

BOARD BRIEFING:

1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Central Liquidity Facility Report and Review of CLF Lending Rate.
3. Proposed Amendment: Part 705, NCUA's Rules and Regulations, Community Development Revolving Loan Program.
4. Proposed Amendment: Part 722, NCUA's Rules and Regulations, Appraisals.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Wednesday, January 15, 1992.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 92–689 Filed 1–7–92; 1:46 pm]

BILLING CODE 7535–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 13, 1992.

A closed meeting will be held on Tuesday, January 14, 1992, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 14, 1992, at 2:30 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the

scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith at (202) 272-2100.

Jonathan G. Katz,

Secretary.

January 6, 1992.

[FR Doc. 92-722 Filed 1-7-92; 3:58 pm]

BILLING CODE 6010-01-M

Corrections

Federal Register
Vol. 57, No. 6
Thursday, January 9, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 401

RIN 0960-AC79

Blood Donor Locator Service

Correction

In rule document 91-30610, beginning on page 66561, in the issue of Tuesday, December 24, 1991, make the following corrections:

1. On page 66562, in the 1st column, in the 2nd full paragraph, in the 13th line, after the word "Secretary", insert "requests for address information, and to accept from the Secretary".

§ 401.600 [Corrected]

2. On page 66565, in the second column, under *Related blood donor records*, in § 401.600 (b)(2)(iii), in the sixth line, "individual" was misspelled.

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31957]

Norfolk and Western Railway Company—Corporate Family Transaction Exemption—Wabash Railroad Company

Correction

In notice document 91-26529 appearing on page 56663 in the issue of Wednesday, November 6, 1991, in the second column, in the file line at the end of the document, "FR Doc. 91-06529" should read "FR Doc. 91-26529".

BILLING CODE 1505-01-D

federal register

Thursday
January 9, 1992

Part II

Environmental Protection Agency

40 CFR Parts 148, 260, 261, et al.
Land Disposal Restrictions for Newly Listed Wastes and Contaminated Debris; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 260, 261, 262, 264, 265, 268, 270 and 271

[FRL-4014-1]

Land Disposal Restrictions for Newly Listed Wastes and Contaminated Debris

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing treatment standards under the land disposal restrictions (LDR) program for certain wastes listed after November 8, 1984, and is also proposing to revise treatment standards for debris contaminated with certain listed hazardous waste or debris that exhibits certain hazardous waste characteristics (hereinafter referred to as contaminated debris). EPA is also proposing several revisions to previously promulgated standards and requirements. Due to critical deadlines for this rulemaking, today's proposal does not reflect the decision in *Shell Oil Co.* v. *EPA*, No. 80-1532 (D.C. Cir. December 6, 1991), where the court found procedural defects in promulgation of the mixture and derived-from rules. EPA recognizes that the court's remand of these rules may affect this proposal and the final rule. EPA requests comment on the impact of that ruling on this proposal.

DATES: Comments on this proposed rule must be submitted on or before February 24, 1992. (Since the Agency has entered into a settlement agreement to promulgate this rule by May 1992, and the capacity variance for much contaminated debris ends on May 8, 1992, no extensions to the comment period will be granted.)

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket Number F-91-CD2P-FFFFF, room 2427 (OS-305), 401 M Street SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. A maximum of 100 pages from the docket may be copied at no cost. Additional copies cost $0.20 per page.

EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ASCII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskette is not mandatory, nor will it result in any advantage or disadvantage to any commenter. Rather, EPA is experimenting with this procedure solely as an attempt to expedite our internal review and response to comments. For further information on the submission of diskettes, contact the Waste Treatment Branch at the phone number listed below.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424-9346 (toll free) or (703) 920-9810 locally. For information on treatment standards for newly listed wastes or contaminated debris, contact the Waste Treatment Branch, Office of Solid Waste (OS-322W), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308-8434. For information on capacity determinations or national capacity variances, contact the Capacity Programs Branch, Office of Solid Waste (OS-322W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308-8440.

SUPPLEMENTARY INFORMATION:

Outline

I. Background
- A. Summary of the Hazardous and Solid Waste Amendments of 1984.
- B. Pollution Prevention (Waste Minimization) Benefits.

II. Summary of Proposed Rule
- A. Newly Listed Wastes.
- B. Changes to Current Regulations.
- C. Contaminated Debris.

III. Detailed Discussion of Today's Proposed Rule: Newly Listed Wastes
- A. Recent Petroleum Refining Wastes (F037 and F038).
- B. Wastes from the Production of Unsymmetrical Dimethylhydrazine (K107-K110).
- C. Wastes from the Production and Dinitrotoluene and Toluenediamine (K111 and K112).
- D. Wastes from the Production of Ethylene Dibromide (K117, K118 and K136).
- E. Wastes from the Production of Ethylenebisdithiocarbamic Acid (K123-K126).
- F. Wastes from the Production of Methyl Bromide (K131 and K132).
- G. Additional Organic U Wastes (U328, U353, and U359).

IV. Detailed Discussion of Today's Proposed Rule: Changes to Existing Regulations
- A. Proposed Revisions to the F001-F005 Spent Solvents Treatment Standards.
- B. Conversion of Wastewater Standards Based on Scrubber Water.
- C. Proposed Revisions to Treatment Standards for K061, F006, and K062.
- D. Inorganic Constituents to be Added to Appendix VIII.
- E. Notification and Certification for Characteristic Wastes.
- F. Applicability of Part 268 for Certain Waste Mixtures No Longer Exhibiting a Characteristic.
- G. Storage and Treatment in Containment Buildings.

V. Detailed Discussion of Today's Proposed Rule: Contaminated Debris
- A. Overview.
- B. Definitions.
- C. Contaminant Categories.
- D. Determining Contaminants Subject to Treatment.
- E. Exclusion of Contaminated Debris from Subtitle C.
- F. Contaminated Debris Treatment Standards.
- G. Regulation of Treatment Residuals.
- H. Other Provisions of the Rule.
- I. Permits for Treatment Facilities.
- J. Comments on the May 30, 1991 ANPRM.

VI. Capacity Determinations
- A. Capacity Analysis Results Summary.
- B. Petroleum Refining Wastes and Other Organic Wastes.
- C. Required and Available Capacity for Newly Listed Wastes Mixed with Radioactive Contaminants.
- D. Required and Available Capacity for Debris Contaminated with Newly Listed Wastes.
- E. Capacity Determination for Underground Injected Wastes.

VII. State Authority
- A. Applicability of Rules in Authorized States.
- B. Effect on State Authorization.

VIII. Effect of Proposed Rule on Other Environmental Programs
- A. Discharges Regulated Under the Clean Water Act.
- B. Discharges Regulated Under the Marine Protection, Research, and Sanctuaries Act.
- C. Groundwater Protection Principles.
- D. Wellhead Protection Under the Safe Drinking Water Act (SDWA).
- E. Air Emissions Regulated Under the Clean Air Act (CAA).
- F. Clean Up Actions Under the Comprehensive Environmental Response, Compensation, and Liability Act.
- G. Applicability of Treatment Standards to Wastes from Pesticides Regulated Under the Federal Insecticide, Fungicide, and Rodenticide Act.
- H. Regulatory Overlap of Polychlorinated Biphenyls (PCBs), Under the Toxic Substances Control Act (TSCA) and RCRA.
- I. Disposal of Asbestos Regulated Under TSCA.

IX. Regulatory Requirements
- A. Economic Impact Screening Analysis Pursuant to Executive Order 12291.

B. Paperwork Reduction Act.
List of Subjects in 40 CFR parts 148, 260, 261, 262, 264, 265, 268, 270 and 271.
Appendix I to the Preamble: Overview of Debris Treatment Technologies
Appendix II to the Preamble: Asbestos Treatment Standards

I. Background

A. Summary of Hazardous and Solid Waste Amendments of 1984

The Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), enacted on November 8, 1984, prohibit the land disposal of untreated hazardous wastes. HSWA requires EPA to set "* * * levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." RCRA section 3004(m)(1). Wastes that meet the treatment standards established by EPA may be land disposed. For purposes of the restrictions, land disposal includes any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave. RCRA section 3004(k).

EPA was required to promulgate land disposal prohibitions and treatment standards by May 8, 1990 for all wastes that were either listed or identified as hazardous at the time of the 1984 amendments, a task EPA completed within the statutory timeframes. RCRA section 3004(d), (e) and (g). EPA is to promulgate prohibitions and treatment standards for wastes identified or listed after the date of the 1984 amendments (wastes referred to in this notice as "newly listed and identified wastes") within six months after the listing or identification takes effect. RCRA section 3004(g)(4). EPA has filed with the District Court a proposed consent decree that would put the Agency on a schedule for adopting prohibitions and treatment standards for newly identified and listed wastes. The promulgation date for the newly identified and listed wastes dealt with in this proposal would be May 1992. (*EDF* v. *Reilly*, Civ. No. 89-0598, D.D.C.)

The land disposal restrictions are effective upon promulgation. RCRA section 3004(h)(1). However, the Administrator may grant a national capacity variance from the immediate effective date and establish a later effective date (not to exceed two years) based on "* * * the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and environment will be available." RCRA section 3004(h)(2). The Administrator may also grant a case-by-case extension of the effective date for up to one year, renewable once for up to one additional year, when an applicant successfully makes certain demonstrations. RCRA section 3004(h)(3). See 55 FR 22526 (June 1, 1990) for a more detailed discussion on national capacity variances and case-by-case extensions.

In addition to prohibition land disposal of hazardous wastes, Congress prohibited storage of any waste which is prohibited from land disposal unless "* * * such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal." RCRA section 3004(j). For storage up to one year, EPA bears the burden of proving that such storage was not solely for the purpose of accumulation of quantities necessary to facilitate proper recovery, treatment or disposal. 40 CFR 268.50(b). For storage beyond one year, the burden of proof shifts to the owner/operator of a treatment, storage or disposal facility to demonstrate that such storage was solely for the purpose of accumulation of quantities necessary to facilitate proper recovery, treatment or disposal. 40 CFR 268.50(c). The provision applies, of course, only to storage which is not also defined as land disposal in section 3004(k).

B. Pollution Prevention (Waste Minimization) Benefits

EPA's progress over the years in improving environmental quality through its media-specific pollution control programs has been substantial. Over the past two decades, standard industrial practice for pollution control concentrated to a large extent on: "end of pipe" treatment or land disposal of hazardous and non-hazardous wastes. However, EPA realizes that there are limits to how much environmental improvement can be achieved under these programs which emphasize management after pollutants have been generated. EPA believes that reducing or eliminating discharges and/or emissions to the environment through the implementation of cost-effective and environmentally sound recycling and source reduction practices can provide additional environmental improvements.

In this section, RCRA requirements and state legislative activities regarding pollution prevention/waste minimization are briefly described. Also described are activities undertaken by the regulated community to incorporate pollution prevention/waste minimization into their waste management plans. Finally, this section outlines how pollution prevention/waste minimization is incorporated into today's proposed rule.

1. General Discussion of Pollution Prevention/Waste Minimization

Under RCRA sections 3002(b) and 3005(h), hazardous waste generators and owners/operators of treatment, storage and disposal facilities (TSDFs) are required to certify that they have a program in place to reduce the volume or quantity and toxicity of hazardous waste to the degree determined to be economically practicable. EPA encourages hazardous waste generators and owners/operators of TSDFs to pursue source reduction and environmentally sound recycling wherever cost effective to reduce the need for and costs of subsequent treatment, storage, and disposal. In many cases, there may be economic as well as environmental benefits for companies that pursue pollution prevention options. Waste minimization planning programs have been mandated by some state governments. For example, several state governments have already enacted waste minimization legislation (e.g., Massachusetts Toxics Use Reduction Act of 1989; Oregon Toxics Use Reduction and Hazardous Waste Reduction Act, July 2, 1989). About six other states have legislation pending that will mandate some type of waste minimization program and/or facility planning. An additional 25 states offer some type of technical assistance to companies that seek alternatives to treatment, storage, and disposal of waste. In addition, several EPA documents on waste minimization are available to the public (see, e.g., Draft Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program: Notice and Request for Comment, **Federal Register** Vol. 54, No. 111, June 12, 1989 (56 FR 25056); and The EPA Manual for Waste Minimization Opportunity Assessments, EPA 600/2-88/025, April 1988).

Program success generally requires that each individual within an organization, regardless of status or rank, be encouraged to make a contribution to minimize waste. Collective and individual pay incentives can be provided for productivity improvements. Waste minimization circles can be established using self-managing teams chosen from a broad spectrum of production and

management personnel. These management teams can be provided with all information necessary to adequately assess waste minimization opportunities. Additionally, it is very beneficial for production personnel to be trained and retrained in the optimum use of plant equipment and raw materials.

Some companies set explicitly defined objectives for the reduction of waste volume and toxicity that are achievable within reasonable time frames. Typically, the objectives should not exceed the ability of the operations personnel to support and maintain them.

In all cases, it is necessary to determine the causes of waste generation. This can be done for individual processes or for several combined processes if the plant process waste streams are particularly complex. Many corporations have implemented this type of "waste minimization assessment" as part of an overall waste minimization program.

For a waste minimization assessment, it is generally necessary to accurately characterize the type of waste generated by volume, toxicity, and source(s). Most companies track their waste generation by a variety of means and then normalize the results to account for variations in production rate(s). One state (Massachusetts) requires each generator of a toxic or hazardous substance to track the rate of waste generation and release/transfer per unit of product. The EPA Manual for Waste Minimization Opportunity Assessments aids generators in identifying waste sources (which can be quite difficult to analyze in complex plant operations) where many processes discharge into one waste stream.

Next, individual processes can be examined to search for cost effective opportunities for waste reduction such as substituting less hazardous raw materials, modifying existing equipment, using novel technologies, making capital improvements, increasing process efficiency, and recycling. EPA and state funded technical assistance programs (e.g., Minnesota Technical Assistance Program—MnTAP, California Waste Minimization Clearing House, U.S. EPA Pollution Prevention Information Clearinghouse) are becoming increasingly available to identify cost effective waste reduction opportunities. Information is also available through industry trade associations, professional consultants specializing in waste minimization, technical literature, and chemical and equipment vendors.

It is important to realize that waste minimization, especially when incorporated into company policy, is a continuous process. Ideally, a cost effective waste minimization program becomes an integral part of the company strategic plan to increase manufacturing productivity.

2. Incorporation of Pollution Prevention/Waste Minimization in Today's Proposal

The Agency has identified a number of waste streams where environmentally sound recycling has been identified as BDAT. For example, we are proposing today in section IV.C to set alternate treatment standards for electroplating sludges (F006) and spent pickle liquor (K026), based on high temperature metals recovery (HTMR). The Agency has determined that these wastes have sufficient concentrations of metals (nickel and chromium), with low concentrations of interfacing chemicals, to be amenable for recovery in HTMR units. Moreover, the Agency is proposing to grant a generic exclusion for F006 and K062 HTMR nonwastewater residuals, provided that these residuals meet designated concentration levels, are disposed of in Subtitle D units, and exhibit no characteristics of hazardous waste. (This exclusion is similar to the one that was promulgated on August 8, 1991 for K061. See 56 FR 41164, August 19, 1991.) The Agency expects that these provisions will encourage more generators to recycle their wastes, if this alternative is more cost effective than conventional treatment and disposal. In addition, treatment standards for the newly listed petroleum refining wastes (F037 and F038) are based on the recovery technologies critical fluid extraction and thermal desorption, as well as incineration.

II. Summary of Proposed Rule

On May 30, 1991, EPA published an advance notice of proposed rulemaking to solicit comment on most of what is included in today's proposed rule. EPA also solicited comment at that time on several ideas to streamline the LDR program, such as universal standards for organic wastes. EPA is still evaluating the comments received on streamlining the LDR program and expects to publish a proposal regarding these ideas in the summer of 1992.

A. Newly Listed Wastes

EPA has promulgated a number of hazardous waste listings since enactment of HSWA in 1984. Section III of today's notice describes the treatment and/or recycling technologies that have been identified as BDAT for 20 of these listings and proposes LDR treatment standards based on BDAT. Wastes included in today's proposal include petroleum refining wastes (F037 and F038), wastes from the production of unsymmetrical dimethylhydrazine (K107–K110), wastes from the production of dinitrotoluene and toluenediamine (K111 and K112), wastes from the production of ethylene dibromide (K117, K118, and K136), wastes from the production of ethylenebisdithiocarbamic acid (K123–K126), wastes from the production of methyl bromide (K131 and K132), and several organic U wastes (U328, U353, and U359). Future proposals will include newly listed wastes not covered in today's proposal. Soil contaminated with the newly listed wastes for which standards are proposed today will be addressed in a future proposal.

B. Changes to Current Regulations

The Agency is proposing revisions to the existing treatment standards for organic constituents in F001–F005 wastes, including conversion from the existing TCLP standards to standards based on total concentrations. The existing numerical treatment standards include concentrations for 25 solvent constituents. In addition, the Agency is proposing the conversion of wastewater standards for 24 F and K waste codes based on actual wastewater treatment data for the constituents of concern. Several of the proposed revisions to existing standards and the proposed standards for newly listed wastes in today's notice are based on transfer of data used to develop standards for F039 (multisource leachate); in these cases, the Agency particularly requests comment on whether data submitted by commenters should be considered in regard to F039 as well as the proposed revision or standard.

EPA is proposing today alternate treatment standards for F006 and F062, and EPA is also proposing to extend the K061 generic exclusion published on August 19, 1991 (56 FR 41164) to certain F006 and K062 wastes. Also, revisions are proposed regarding notification and certification for characteristic wastes, and regarding the status under part 268 of wastes listed for a characteristic.

Finally, EPA is proposing to establish a new waste management unit known as a containment building. (The two types of wastes presently intended for storage in containment buildings (of which EPA is aware) are spent potliners from primary aluminum production and lead plates and groups from processing spent lead acid batteries. There is no question that the land disposal prohibitions apply to these materials because they are both solid wastes and hazardous wastes. With regard to lead plates and groups,

the materials are solid wastes under the federal regulations because they are spent materials being reclaimed. 40 CFR 261.2(c)(3). (The plates and groups are "spent material" because they are part of the spent lead acid battery, which battery is a spent material because it has been used, become contaminated, and cannot be used further without processing. See § 261.1(c)(1).) There is also no jurisdictional bar to these materials being classified as solid wastes. The plates and groups are discarded material within the meaning of RCRA section 1004(27) because they are part of the spent battery, which is discarded by its user. *American Petroleum Institute* v. *EPA*, 906 F.2d 729, 741 (D.C. Cir. 1990) ("*API*"); *American Mining Congress* v. *EPA*, 824 F.2d 1177, 1187 n.14 (D.C. Cir. 1987). The spent plates and groups are also "part of the waste disposal problem" and therefore solid wastes. *API*, 906 F.2d at 741; *American Mining Congress* v. *EPA*, 907 F.2d 1179, 1186 (D.C. Cir. 1990).[1] EPA also has interpreted the regulations as defining battery plates and groups to be solid wastes.[2] Since battery plates and groups typically exhibit the TCLP for lead, 55 FR 22637 (June 1, 1990), they are also hazardous wastes and thus covered by the land disposal prohibitions if land disposed. *Id.*)

C. Contaminated Debris

Debris contaminated with listed prohibited wastes is already subject to the treatment standards for those wastes, as is debris exhibiting a hazardous waste characteristic for which EPA has promulgated treatment standards. Today, the Agency is proposing to revise the treatment standards for debris. The Agency is also proposing treatment standards for debris that is contaminated with those newly listed wastes for which standards are proposed in this notice. The Agency is proposing to require contaminated debris to be treated prior to land disposal, using specific technologies from one or more of the following families of debris treatment technologies: extraction, destruction, or immobilization. In the alternative, contaminated debris may continue to be handled in accordance with the Agency's contained-in policy.

The LDR standards for contaminated debris specify the use of a particular technology, or one of several alternative technologies, for a particular debris type/contaminant combination. Six different categories of debris have been specified as well as ten different categories of contaminants.

To ensure effective treatment (i.e., treatment sufficient to constitute BDAT), the treatment must be performed in accordance with the proposed performance standards (see Appendix IX). The consequence of performing this treatment would be two-fold. Not only would the debris no longer be prohibited from land disposal, but EPA would consider the treated debris to no longer be or require management as a hazardous waste provided that a destruction or extraction technology is used for all debris types/contaminant combinations and provided that the treated debris does not exhibit any characteristic of hazardous waste. Such treated debris could, therefore, be reused, returned to the natural environment, or disposed of in a Subtitle D facility. See section V.E.1 where EPA requests comment and data to support the design of performance standards for immobilization technologies that would be sufficient to allow contaminated debris treated by such technologies to be excluded from Subtitle C management.

However, if the treatment unit was not operated in accordance with the specified performance standards, the treated debris ordinarily would remain prohibited from land disposal because it had not been treated by the specified methods and would likewise be subject to the rest of the Subtitle C regulations.

The debris could be determined to meet levels protective of human health and the environment in accordance with the contained-in policy.

Residuals generated from the treatment of debris contaminated with listed wastes would still be hazardous wastes by virtue of the derived-from rule and would be subject to the hazardous waste management system. The Agency is today proposing that residuals generated from the treatment of contaminated debris be subject to the F039 nonwastewater and wastewater numerical treatment standards. A detailed discussion is provided in section V.E.

The Agency considered and rejected proposing numerical standards for contaminated debris because of the difficulty of sampling contaminated debris. Nevertheless, the Agency requests comment on the feasibility of setting such numerical standards; in addition, the Agency requests comment on whether such standards should apply to all contaminated debris or just certain types of debris that can be sampled without difficulty. Further, the Agency requests comment on how such samples should be collected. As an alternative method of compliance, the Agency requests comment on continued application of the existing LDR standards.

Today's proposal also deals with the issue of inherently hazardous contaminated debris. Inherently hazardous contaminated debris is debris that is fabricated from metals identified as D004–D011 and that exhibits as fabricated the toxicity characteristic under both the Toxicity Characteristic Leaching Procedure and the Extraction Procedure. The Agency is proposing today to require treatment of inherently contaminated debris for: other contaminants subject to treatment that are present. If the debris continues to exhibit the toxicity characteristic due to its inherent content after treatment, it must be either immobilized prior to land disposal under Subtitle C or recycled as provided in § 261.6(a)(3)(iv). Inherently hazardous debris that is not contaminated with other contaminants subject to treatment may be recycled without treatment or immobilized and disposed in a Subtitle C facility, under today's proposal.

Finally, the Agency is proposing that debris contaminated with both radioactive and hazardous waste (mixed waste) comply with the treatment standards for contaminated debris in addition to any regulation of that material under the Atomic Energy Act (AEA). The Agency is also proposing that debris contaminated with mixed waste for which special treatability groups have been established be subject to the debris standards rather than to

[1] Spent plates and groups can clearly be viewed as part of the waste disposal problem not only because they are discarded by their initial users, *API*, 906 F.2d at 741, but also because they are presently stored in the open in piles (hence the need to develop containment building standards to accommodate management that is not within the clear scope of the land disposal definition in section 3004(k)), and because of the history of environmental damage incidents resulting from improper management of these wastes. 50 FR 650, 658–60 (January 4, 1985).

[2] See Memorandum from Sylvia Lowrance, Director, Office of Solid Waste to Regional Waste Management Division Directors, August 26, 1988 (battery plates and groups are potentially eligible for a variance from being a solid waste pursuant to § 260.31(c) as a material that has been partially but not fully reclaimed provided the variance criteria are satisfied; however, the battery plates and groups are obviously solid wastes while application for a variance is pending, since the variance only applies to materials classified as solid wastes); Letter from Stephen Cochran, Acting Chief, Review Section to Lee Norman, Industrial Safety and Health Consultants, Inc., November 28, 1988 (battery plates and groups are spent materials, and therefore solid wastes when reclaimed, because they are part of the spent battery); 55 FR at 22637 (June 1, 1990) (storage of battery plates and groups (referred to as "battery parts" in this FR notice) is a form of prohibited land disposal and is prohibited under the prohibition for D008 wastes, but a two-year national capacity variance is warranted).

the specified treatability group standards. The exception to this is standards promulgated for the D008 radioactive lead treatability group; in this case, the contaminated debris will be subject to both the debris standards and the D008 radioactive lead standards. Treatment of the contaminated debris must occur before treatability group treatment.

It should be noted that the Agency is currently evaluating issues related to contaminated media. In order to improve the overall quality of its regulatory decision-making, the Agency has begun to look at groups or clusters of regulations in a specific area to develop a more integrated approach. One of these regulatory clusters, the "contaminated media cluster," is designed to develop a more integrated Agency approach for its policies and regulations dealing with waste remediation programs. The contaminated media cluster project is gathering information to develop a comprehensive view of the quantities and types of waste needing remediation, the types of risks they represent, the current regulatory and statutory framework for these wastes, elements of an effective clean up process, and the costs and benefits of such clean up. The culmination of that work will be a strategy that will include a set of objectives and operating principles for the Agency's remediation programs.

This proposed LDR rule for contaminated debris has been closely coordinated with the regulatory cluster on contaminated media. In an ongoing effort of this cluster, the Agency is considering a strategic approach that focuses on waste management standards specific to the problems of remediating already contaminated soil and debris. This proposal supports that approach by considering contaminated debris a unique entity and providing flexibility in treating and disposing of contaminated debris.

III. Detailed Discussion of Today's Proposed Rule: Newly Listed Wastes

Since the enactment of HSWA in 1984, EPA has promulgated a number of hazardous waste listings under 40 CFR part 261 subpart D and has expanded the number of wastes covered under 40 CFR part 261 subpart C. This section of today's notice describes the treatment and/or recycling technologies that have been identified as BDAT for 20 of these "newly listed" wastes. The Agency is proposing treatment standards under 40 CFR 268.41, .42, and .43 for these wastes based on the transfer of performance data from treating other hazardous wastes that have been determined to be similar or more difficult to treat than these wastes.

This section does not, however, propose treatment standards for the following newly listed hazardous wastes: those recently identified under the TC rule (D018–D043); characteristic wastes generated by mineral processing activities; spent potliners from aluminum manufacturing (K088); and listed wastes from wood preserving (F032, F034, and F035). These wastes, as well as wastes from coking operations and chlorotoluene production, will be addressed in subsequent **Federal Register** notices. EPA anticipates proposing land disposal restrictions for many of the aforementioned wastes in the spring of 1992, with the remainder addressed in the spring of 1993.

A. Recent Petroleum Refining Wastes (F037 and F038)

F037—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: Oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in storm water units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in 40 CFR 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing.

F038—Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in storm water units that do not receive dry weather flow, sludges generated from once-through non-contact cooling waters segregated for treatment from other process or oil cooling wastes, sludges and floats generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 are not included in this listing.

On November 2, 1990 (55 FR 46354), EPA listed two additional wastes generated by the petroleum refining industry as hazardous wastes F037 and F038. These two newly listed hazardous wastes are generated in the primary and secondary separation of oil/water/solids from petroleum refinery process wastewaters and oily cooling wastewaters. These sludges have waste properties similar to other petroleum refining wastes listed as K048 and K051. (For a more detailed description of all of these petroleum refining wastes, see 45 FR 74884, May 19, 1980; 55 FR 46354, November 2, 1990; 56 FR 21955, May 13, 1991; and the associated listing background documents.) These listings became effective on April 2, 1991.

1. Characterization Data

The Agency has two sets of waste characterization data for untreated F037 and F038 wastes. One is a compilation of data gathered by EPA from 1981 to 1984, including data submitted by the regulated community. These data, which characterize wastes from petroleum refining wastewater treatment systems, were published in a Notice of Data Availability on February 11, 1985, (50 FR 5637). A second set of data, consisting of waste characterization data collected by EPA after 1984, was presented as part of a Notice of Data Availability published on April 13, 1988 (53 FR 12182). All of these data are summarized in the proposed BDAT Development Background Document for F037 and F038 which is available in today's docket.

Based on somewhat limited characterization data, EPA has identified 18 hazardous constituents that are known to be present in wastewater or nonwastewater forms of F037 and/or F038. These 18 constituents have also been demonstrated to be present in other related petroleum refining wastes (K051 and K048) at approximately the same levels (i.e., many constituents are present in concentrations with the same order of magnitude). This appears to be directly related to the similarities in generation of these wastes: F037 and F038 are generated in similar waste management units as those generating K051 and K048; all four of these wastes result from the processing and refining of similar raw materials (i.e., petroleum products); and all four of these wastes are generated from the treatment of similar oily wastewaters.

EPA believes, however, that additional hazardous constituents are likely to be present in F037 and F038 wastes because they are known to be present in K048 and K051 wastes. Up to six additional organics that are present in K048 wastes could: also be found in wastewater or nonwastewater forms of

F038 (i.e., ethyl benzene, xylenes, bis(2-ethylhexyl) phthalate, di-n-butyl phthalate, flourene, and phenol). Similarly, there are up to eight organics in K051 that EPA believes could be present in F037 wastes (i.e., ethyl benzene, xylenes, acenaphthene, anthracene, bis(2-ethylhexyl) phthalate, di-n-butyl phthalate, flourene, and phenol). Cyanides are also believed to be present in both F037 and F038 wastes. In an Advance Notice of Proposed Ruelmaking (ANPR) published on May 30, 1991 (56 FR 24444), EPA solicited additional characterization data for F037 and F038 wastes. In response, the American Petroleum Institute indicated that it was gathering such information. As of the writing of this rule, EPA has not yet received these characterization data, but will place them in the administrative record for today's notice if they become available.

Based on the above, EPA is proposing to regulate the same constituents in F037 wastewaters and nonwastewaters that are currently regulated in the corresponding wastewater and nonwastewater forms of K051. Similarly, those constituents currently regulated in K048 wastes are proposed for regulation in F038 wastes. A detailed discussion of those constituents proposed for regulation and those for which EPA lacks characterization data can be found in the Proposed BDAT Background Document for F037 and F038.

The specific constituents proposed for regulation in F037 and F038 wastes along with their treatment standards, are presented in the tables at the end of this section. EPA believes that, by requiring treatment of these constituents, all other constituents being present will also be treated. Some of the proposed constituents are believed to be at detectable levels in F038 and F037 and thus, may deserve regulation as in K048 and K051. EPA also believes that the constituents proposed for regulation are as difficult to treat as other constituents of the same type that may be present in F037 and F038. Also, EPA does not expect that either the proposed or any other constituents would interfere with the treatment of the regulated constituents. In addition, there is available information that K048–K052, F037, and F038 can be and may have been co-treated in the same or similar treatment units. As such, EPA believes that regulating the same constituents present in K048 and K051 should reduce the administrative requirements and compliance efforts for all of these petroleum wastes.

2. Identification of Technologies Capable of Complying with BDAT Standards for F037 and F038

F037 and F038 are generated by the petroleum refining industry in units similar in design and purpose to API separators and DAF float units generating K048 and K051. Also, F037 and F038 result from the processing of similar raw materials (i.e., petroleum products) and from the treatment of similar wastewaters. Owing to these similarities, all of the applicable and demonstrated technologies for K048 and K051 wastes are also believed to be applicable to F037 and F038 wastes. EPA requested comment on this point in the May 30, 1991 ANPR. While several commenters generally concurred with this observation, others pointed out that F037 and F038 are likely to show "higher percentages of soil particles and lower concentrations of oil." They believe, therefore, that these wastes could be "characteristically different from K048 and K051 wastes." They also pointed out that the heat content of F037 and F038 is variable and is typically under 5,000 BTU/lb. Based on these physical and chemical characteristics, some commenters appear to believe that F037 and F038 could be less suitable for recovery and fuel burning practices.

EPA's data show that many hazardous wastes (including K048–K052) are routinely commingled for the purpose of treatment by technologies such as incineration and fuel substitution. The commingling of K048–K052 wastes may also occur for recovery purposes in units such as solvent recovery, thermal desorption, or high temperature thermal distillation. Therefore, F037 and F038 can presumably be commingled with K048–K052 for the purpose of treatment or recovery.

The practice of commingling F037 and F038 with K048–K052 for incineration or fuel substitutional purposes appears to be supported by at least one commenter. In addition, several commenters pointed out similarities between the physical and chemical behaviors of F037 and F038 to K051 and K048 when treated by incineration or when burned in cement kilns. Based on waste characterization data, F037 and F038 also appear to be amenable to incineration, fuel substitution, and recovery technologies. EPA thus believes these two wastes are amenable to all these treatment technologies on which the existing K048–K052 treatment standards for organics are based.

Envex and Southern Thermal Dynamics (STD) submitted comments to the ANPR describing thermal processes that may enable the recovery of valuable organics from petroleum wastes as well as volume reduction of those wastes needing land disposal. None of these recovery technologies are prohibited from being used to treat K048–K052, F037, or F038, provided all treatment residues from these processes comply with all applicable treatment standards. EPA lacks performance data for evaluating Envex's recovery process at this time.

EPA has received two data sets from STD. One data set, submitted on July 1, 1991, was previously submitted to EPA during the development of K048–K052 treatment standards (55 FR 22595 (June 1, 1990)). These data are based on the performance of STD's high temperature thermal distillation unit (identified as the "HT–5" process) on simulated petroleum wastes. For K048–K052 wastes, EPA determined that STD's HT–5 process (formerly owned, exclusively, by T.D.I. Systems, Inc.) could achieve the treatment standards promulgated for K048–K052 wastes and, as such, was considered to be an equivalent BDAT technology to incineration and solvent extraction. (See June 1, 1990 (55 FR 22596)). The second data set, submitted on August 21, 1991, consists of 17 hour composite samples characterizing untreated and treated K051 wastes using the HT–5 process. These preliminary data also appear to indicate that this process can achieve the treatment standards promulgated on June 1, 1990. These two data sets are also part of our data base and are subject to further review and analysis.

CF Systems submitted performance data to EPA during the Third Third rulemaking showing that wastes having lower concentrations of organics, such as those in F037 and F038, can also be treated by their solvent extraction process to the levels proposed today. CF has submitted additional data in response to EPA's ANPR. These data are currently under review and available for public comment. Other solvent extraction processes and incineration (both of which are considered BDAT for K048–K052 wastes) have also been demonstrated on sludges that have similar physical and chemical characteristics to F037 and F038.

It appears from these data (including data supporting K048–K052 treatment standards) that F037 and F038 can be treated to meet the treatment standards applicable to K048–K052 and that these proposed treatment standards may substantially reduce the mobility and toxicity of hazardous constituents in F037 and F038. As a result, EPA is

proposing to transfer K051 and K048 nonwastewater performance data to F037 and F038 nonwastewaters.

Treatment standards for the metals in K048–K052 nonwastewaters were based on the performance of stabilization as BDAT. Owing to the similarities in waste composition of F037 and F039 to K048–K052, stabilization is also considered BDAT for the metals in F037 and F038 nonwastewaters.

In today's rule, EPA, is also proposing to revise existing treatment standards for organic constituents in K048–K052 wastewaters (see Section IV.B. of today's preamble). The existing K048–K052 wastewater treatment standards are based on the levels of detection that organic constituents achieved in incineration scrubber waters. The proposed revisions, if adopted, would promulgate instead, treatment standards that are based on the levels the organics of concern can achieve in treated wastewater effluents resulting from one or more wasetwater treatment processes. Thus, consistent with today's proposed revisions for wastewater forms of K051 and K048, EPA is proposing the transfer of wastewater treatment performance data that were used to develop treatment standards for organics in F039 wastewaters as the basis of the proposed wastewater treatment standards for wastewater forms of F037 and F038. In the May 30, 1991, ANPR, EPA requested comment on this transfer of wastewater performance data to F037 and F038 (as well as to K048–K052). The ANPR also specifically requested comments documenting the treatment of organics in wastewater forms of F037 and F038 by biological treatment, carbon adsorption, PACT treatment, and wet air oxidation.

Wastewater treatment data available on the constituents known or believed to be present in F037 and F038 wastes indicate that biological treatment would be able to treat the organics in F037 and F038. Comments from the American Petroleum Institute and the Petroleum Environmental Research Forum to the ANPR appear to support this conclusion.

For metals in wastewater forms of K048–K052, BDAT was determined to be chemical precipitation with lime and sulfide followed by vacuum filtration, EPA does not expect any constituents in F037 and F038 to interfere or behave differently from those constituents in K048 and K051.

Since EPA is proposing concentration levels as the treatment standards for all forms of F037 and F038, other treatment or recovery technologies capable of reaching the proposed treatment standards would not be precluded from being used except where achieved through impermissible dilution.

3. Potential Overlap with the TC

The rule expanding the universe of wastes exhibiting the toxicity characteristic (TC) became effective on September 25, 1990, large-quantity generators and treatment, storage, and disposal facilities. The rule became effective on March 29, 1991, for small-quantity generators. Because a sizable number of the F037 and F038 sludges and/or the wastewaters from which these sludges are generated also may exhibit the TC, some of these wastes may have been regulated as hazardous under the TC rule before the F037 and F038 listing rule became effective. The percentage of wastes that will exhibit the TC is uncertain, and depends largely on the behavior of oily waste in the Toxicity Characteristic Leaching Procedure (TCLP).

EPA believes that some refineries may have responded to the TC rule and/or the F037 and F038 listings by reconfiguring their wastewater treatment process such that the wastes are no longer hazardous or are managed in API separators or in DAF units and, as such, are considered K048 or K051 wastes, which are already subject to the LDR treatment standards. The exact quantities of newly identified F037 and F038 sludge that are currently being managed in this manner (or may be managed this way in the future) is unclear. As such, the Agency is soliciting data and comment on these potential changes in management of F037 and F038 wastes, the resultant increases in quantities of K048 and K051 wastes generated, and their effect on demand in treatment capacity.

PROPOSED BDAT TREATMENT STANDARDS FOR F037

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/kg)
Anthracene	28
Benzene	14
Bonzo(a)anthracene	20
Benzo(s)pyrene	12
Bis(2-ethylhexyl)phthalate	7.3
Chrysene	15
Di-n-butyl phthalate	3.6
Ethylbenzene	14
Naphthalene	42
Phenanthrene	34
Phenol	3.6
Pyrene	36
Toluene	14
Xylenes (total)	22

PROPOSED BDAT TREATMENT STANDARDS FOR F037—Continued

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/kg)
Cyanides (total)	1.8

Regulated constituent	Maximum for any single grab sample—TCLP (mg/l)
Chromiun (total)	1.7
Nickel	0.20

PROPOSED BDAT TREATMENT STANDARDS FOR F037

[Wastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/l)
Acenaphthene	0.059
Anthracene	0.059
Benzene	0.14
Benzo(a)anthracene	0.059
Benzo(a)pyrene	0.061
Bis(2-ethylhexyl)phthalate	0.28
Chrysene	0.059
Di-n-butyl phthalate	0.057
Ethylbenzene	0.057
Fluorene	0.059
Naphthalene	0.059
Phenanthrene	0.059
Phenol	0.039
Pyrene	0.067
Toluene	0.080
Xylenes (total)	0.32
Cyanides (total)	0.028
Chromium (total)	0.20
Lead	0.037

PROPOSED BDAT TREATMENT STANDARDS FOR F038

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/kg)
Benzene	14
Benzo(a)pyrene	12
Bis(2-ethylhexy)phthalate	7.3
Chrysene	15
Di-n-butyl phthalate	3.6
Ethylbenzene	14
Naphthalene	42
Phenanthrene	34
Phenol	3.6
Pyrene	36

PROPOSED BDAT TREATMENT STANDARDS FOR F038—Continued

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/kg)
Toluene	14
Xylenes (total)	22
Cyanide (total)	1.8

Regulated constituent	Maximum for any single grab sample—TCLP (mg/l)
Chromium (total)	1 7
Nickel	0.20

PROPOSED BDAT TREATMENT STANDARDS FOR F038

[Wastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/l)
Benzene	0.14
Benzo(a)pyrene	0.061
Bis(2-ethylhexly)phthalate	0.28
Chrysene	0.059
Di-n-butyl phthalate	0.057
Ethylbenzene	0.057
Fluorene	0.059
Naphthalene	0.059
Phenanthrene	0.059
Phenol	0.039
Pyrene	0.067
Toluene	0.080
Xylenes (total)	0.32
Cyanides (total)	0.028
Chromium (total)	0.20
Lead	0.037

B. Wastes from the Production of Unsymmetrical Dimethylhydrazine (K107–K110)

K107—Column bottoms from product separation from the production of 1,1-dimethylhydrazine from carboxylic acid hydrazine.

K108—Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine from carboxylic acid hydrazine.

K109—Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine from carboxylic acid intermediates.

K110—Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine from carboxylic acid intermediates.

Four wastes generated in the production of 1,1-dimethylhydrazine (UDMH) salts from carboxylic acid hydrazides were listed as hazardous on May 2, 1990 (55 FR 18496). (For a detailed description of wastes K107 through K110, refer to the final rule listing these wastes as hazardous and the associated listing background document.)

The Agency has also proposed to list two additional wastes, K137 and K138, generated in the production of 1,1-dimethylhydrazine (UDMH) salts from carboxylic acid hydrazides as hazardous on May 2, 1990 (55 FR 18507). These two additional wastes were proposed for listing on the basis of comments received in response to the proposed listings of K107–K110 (49 FR 49556). [3] For a detailed description of K137 and K138, refer to the Federal Register notice proposing to list these wastes as hazardous (155 FR 18507).

EPA is proposing to regulate wastes from the production of unsymmetrical imethylhydrazine by setting methods of treatment as the standard. This is based on the decision to regulate U098—the listing for off-specification, out-dated, or discarded 1,1-dimethylhydrazine—as set forth in the Final Rule for Third Third wastes (55 FR 22520 (June 1, 1990)). In that rule, the treatment standards for U098 wastes were established that specify the use of thermal or chemical treatment as BDAT. In particular, the standards specified the use of incineration as a method for nonwastewater forms of U098, and incineration or chemical oxidation followed by carbon adsorption for wastewater forms of U098. EPA believes that specifying methods of treatment appears to be the most appropriate type of standard for wastes containing primarily UDMH due to its relative instability in water and the resultant difficulties in accurate quantification in treatment residues. (In fact, the Third Thirds rulemaking classified U098, 1,1-dimethylhydrazine, as a reactive waste rather than a toxic organic waste based on its instability in water and amenability to oxidation.) While certain analytical methods were used successfully in the investigations that supported the listing of these wastes as hazardous, these methods were designed to measure UDMH present at high concentrations rather than at levels near the detection limit (as expected in residues from treatment).

While preliminary contacts with industry did not confirm that any facility is currently generating these UDMH wastes, the Agency is proposing standards in the event that these wastes may be generated some time in the future.

In the May 30, 1991 Advance Notice of Proposed Rulemaking, EPA solicited detailed comment about the compositions of these waste streams, performance data from attempts to treat these or similar waste streams by thermal, biological or other treatment processes, and analytical problems encountered or anticipated in quantifying constituents in these wastes. EPA received no comments specific to these wastes.

C. Waste from the Production of Dinitrotoluene and Toluenediamine (K111 and K112)

K111—Product wash waters from the production of dinitrotoluene via nitration of toluene.

K112—Reaction byproducts from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.

On October 23, 1985, six wastes (K111 through K116) generated in the production of dinitrotoluene (DNT), toluenediamine (TDA), and toluene diisocyanate (TDI) were listed as hazardous (50 FR 42936). (For a detailed description of the wastes, refer to the final rule listing these wastes as hazardous and the associated listing background document.) Treatment standards for four of the six wastes, K113 through K116, were promulgated in the Second Third final rule (54 FR 26623). The Agency is now developing treatment standards for the two remaining wastes, K111 and K112.

K111 wastes—defined as product wash waters from the production of dinitrotoluene via nitration of toluene—are generated at facilities engaged in manufacturing inorganic chemicals, dyes and pigments, explosives, and organic chemicals in the course of organic synthesis operations. K112 wastes—defined as reaction by-product water from the drying column in the production of toluenediamine via the hydrogenation of dinitrotoluene—are generated in intermediate processes at facilities engaged in manufacturing photographic chemicals, plastics and resins, organic chemicals, textiles and polyurethane, as well as in the production of toluenediamine as an end product.

[3] A proposed consent decree between EPA and the Environmental Defense Fund pledges EPA to determine whether K137 and K138 are to be generated anytime between the signature of the Consent Decree and July 31, 1997; if this is the case, EPA must list these wastes as hazardous wastes by July 31, 1998 and promulgate final treatment standards by January 31, 1999.

Characterization information indicates that K111 wastes are generated as aqueous liquids with significant quantities of sulfuric and nitric acids, and are likely to be corrosive. As corrosive wastes meeting the D002 definition criteria (40 CFR 261.22) such streams are already subject to land disposal restrictions. Other organic components that could be present and potentially used as surrogates for concentration-based standards are nitrocresols, nitrophenols, nitrobenzoic acid and the more stable dinitrotoluenes. K112 is an aqueous liquid with small quantities of toluenediamines. K111 and K112 wastes also may include metals such as nickel (from catalysts).

EPA is proposing to regulate K111 and K112 wastewaters and nonwastewaters by specifying methods of treatment as standards. This is primarily due to the fact that the major organic constituents of K111 and K112 (the dinitrotoluenes and toluidines) are relatively unstable in water, and SW-846 (and equivalent) test methods cannot quantify them reliably so that the regulated community can analyze these wastes and their treatment residues on a routine basis to demonstrate compliance.

The alternative to establishing treatment standards expressed as required methods is to develop concentration-based standards. Concentration-based standards for the organics in K111 and K112 wastes (as stated above) appear to be inappropriate because the toxic organics anticipated to be present are not amenable to quantification in complex matrices.

However, if surrogate organics could be identified that could be used to demonstrate that these organic constituents of concern could be treated, the Agency would consider developing concentration-based standards. In fact, EPA solicited analytical data on the composition of these streams in the May 30 ANPR, in order to determine whether they contain constituents that can act as analytical surrogates to verify destruction of the organic constituents of concern, but received no response on this issue.

Thus, incineration for nonwastewaters, and incineration or chemical oxidation followed by activated carbon adsorption for wastewaters are being proposed as treatment standards for K111 and K112 wastes. One commenter responding to the May 30 ANPR, 56 FR 24462, suggested that K111 may be explosive because of the high DNT concentration and that incineration is therefore not an appropriate method of treatment. This commenter also provided EPA with preliminary treatability data for K111 and K112 wastes in biological treatment systems. EPA has solicited additional treatability data from this commenter and is currently evaluating whether standards based on biological treatment are appropriate. EPA requests data characterizing the treatability of these wastes in biological systems from other commenters.

D. Wastes from the Production of Ethylene Dibromide (K117, K118, and K136)

K117—Wastewater production from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethylene.

K118—Spent adsorbent solids from purification of ethylene dibromide via bromination of ethylene dibromide via bromination of ethylene.

K136—Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethylene.

Three wastes generated in the production of ethylene dibromide (EDB) were listed as hazardous on February 13, 1986 (51 FR 5327). (For a detailed description of K117, K118, and K136, refer to the final rule listing these wastes as hazardous and the associated listing background document.) Although EPA banned the use of ethylene dibromide (EDB) in the US, EPA believes that EDB wastes may still be generated by pesticide manufacturers intending to sell EDB overseas.

K117 is a liquid stream containing ethylene dibromide, bromoethane, bromochloroethane and chloroform. K118 is a solid waste consisting of spent adsorbents saturated with ethylene dibromide, 1,1,2-tribromomethane, bromochloroethane, bromomethane and bis(2-bromo)ethyl ether. K136 is an organic liquid with high concentrations of ethylene dibromide.

Information available to the Agency suggests that only one facility generates K118 and reports disposing of it in a hazardous waste permitted landfill. This facility also reports recycling its K117 stream, a briny high-bromine stream that it returns to the bromine production unit.

The EDB wastes K117, K118 and K136 resemble very closely the organobromine wastes U029 (bromomethane), U030 (4-bromophenyl phenyl ether), U066 (1,2-dibromo-3-chloropropane), U067 (ethylene dibromide, EDB), U068 (dibromomethane) and U225 (bromoform) regulated in the Third Third final rule. Therefore, concentration-based standards have been developed for K117, K118 and K136 wastes based on a transfer of data used to calculate the U029, U030, U066, U067, U068 and U225 Third Third standards; these data were based on incineration of EDB wastes performed and monitored by EPA's Office of Toxic Substances (see the two tables at the end of this section for the proposed standards).

Incinerating brominated organic compounds raises the issue of preventing emissions of molecular bromine (Br_2) from the incinerator by shifting the combustion reaction product equilibrium to favor the formation of hydrogen bromide (HBr). These concerns can be addressed on a site specific basis through the omnibus permitting provision. Limited data available to EPA suggest that adding sulfur to the combustion mixture prevents generation and subsequent emissions of molecular bromine. EPA also realizes that organobromine wastes also offer opportunities for recycling—at least one facility is known to recover bromine from brominated wastes by thermal processing.

In response to the May, 1991, Advance Notice of Proposed Rulemaking (ANPR) soliciting comment and data on the composition and treatment of these wastes, a commenter discussed the difficulties in incinerating brominated wastes, but presented no engineering data describing how an incinerator could be designed or operated to reduce bromine emissions. One commenter also indicated that steam stripping could also be used to treat these wastes. As a result, EPA is currently evaluating performance data submitted on steam-stripping and may specify its use as BDAT for K117 and K118 or promulgate a numerical treatment standard based on these data as an alternative to the incineration-based numbers proposed here. These data are included in the public record for the ANPR.

Comments from another facility described a process for recycling K117 which includes bromine recovery. This commenter requested EPA to set incineration followed by bromine reclamation from the incinerator scrubber water as BDAT. EPA solicits comment on this.

PROPOSED BDAT TREATMENT STANDARDS FOR K117, K118, AND K136

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/kg)
Ethylene dibromide	15
Bromomethane	15
Chloroform	5.6
1,1,2-Tribromomethane	15

PROPOSED BDAT TREATMENT STANDARDS FOR K117, K118, AND K136

[Wastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/1)
Ethylene dibromide	0.028
Bromomethane	0.11
Chloroform	0.046
1,1,2-Tribromomethane	0.63

E. Wastes from the Production of Ethylenebisdithiocarbamic Acid (K123–K126)

K123—Process wastewater (including supernatants, filtrates and wash waters) from the production of ethylenebisdithiocarbamic acid and its salts.

K124—Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.

K125—Purification solids (including filtration, evaporation and centrifugation solids) from the production of ethylenebisdithiocarbamic acid and its salts.

K126—Baghouse dust and floor sweepings in milling and packaging operations from the production of ethylenebisdithiocarbamic acid and its salts.

Four wastes generated in the production and formulation of the fungicide ethylenebisdithiocarbamic acid (EBDC) and its salts were listed as hazardous on October 24, 1986 (51 FR 37725). (For a detailed description of K123 through K126, refer to the final rule listing these wastes as hazardous and the associated listing background document).

In general, waste characterization information indicate that K123 wastes are aqueous liquids, K124 wastes are caustic aqueous liquids, K125 wastes are filtration and distillation solids, and K126 wastes are dry dust-like solids. Ethylene thiourea appears to be the primary organic component of all four wastes.

The Agency's preliminary contacts with industry indicate that one facility generates these wastes; this facility currently sends them to a publicly owned treatment works (POTW) after neutralization to an appropriate pH.

Methods of treatment are being proposed for K123, K124, K125, and K126 wastes because the principal organic components of these wastes are ethylenebisdithiocarbamic acid (EBDC) and ethylene thiourea, both of which are relatively unstable in water and thus appear to be particularly difficult to quantify. EDBC and ethylene thiourea were regulated in the Third Third rulemaking U114 and U116 respectively, both with methods of treatment as standards.

Concentration-based standards are an alternative to specifying treatment methods. EPA will, however, only set concentration-based standards for organics in K123 through K126 wastes if reliable analytical information shows the wastes contain significant concentrations of organics that are consistently amenable to quantification in complex matrices (i.e., the treatment residues) or if surrogate treatment parameters can be identified. Available data suggest that none of the hazardous organic constituents of concern in K123 through K126 wastes are easily quantified in treatment residues from treatment of other types of wastes. Nevertheless, to determine whether concentration-based standards are appropriate for the organics in these four wastes, EPA solicited analytical data on their composition in both treated and untreated wastes in the May 30, 1991, ANPR, 56 FR 24463. Based on the lack of comments received, other constituents or parameters could not specifically be identified that could act as analytical surrogates (i.e., indicators to verify destruction of the organic constituents of the stream that are difficult to analyze). Consequently, EPA could not propose concentration-based standards using surrogates. EPA is, therefore, proposing thermal and chemical methods of treatment as standards for K123, K124, K125 and K126. These methods of treatment, incineration for nonwastewaters and incineration or chemical oxidation followed by either biological treatment or carbon adsorption for wastewaters, appear to be appropriate standards for these wastes.

In the May 30, 1991 Advance Notice of Proposed Rulemaking, EPA solicited detailed comment about the compositions of these waste streams, performance data from attempts to treat these or similar waste streams by thermal, biological or other treatment processes, and analytical problems encountered or anticipated in quantifying constituents in these wastes. EPA received no comments specific to these wastes.

F. Wastes from the Production of Methyl Bromide (K131 and K132)

K131—Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.

K132—Spent adsorbent and wastewater separator solids from the production of methyl bromides.

Two wastes generated during the production of methyl bromide were listed has hazardous on October 6, 1989 (54 FR 41402). For a more detailed description of wastes K131 and K132, please refer to the October 1989 rule for the initial listing of these wastes and the associated listing background documents.[4]

K131 wastes are extremely acidic aqueous liquids containing methyl bromide, dimethyl sulfate and sulfuric acid, plus other brominated ethanes and methane- and ethane-based alcohols and ethers. K132 wastes consist of adsorbent solids saturated with liquids containing methyl bromide.

The methyl bromide wastes resemble the organobromine wastes U029, U030, U066, U067, U068 and U225 regulated in the May 1990 Third Third final rule. Because of this similarity, EPA is proposing to regulate methyl bromide in the K131 and K132 waste streams with the standards promulgated for U029 (methyl bromide) in the Third Thirds rulemaking: 0.11 mg/1 in wastewaters and 15 mg/kg in nonwastewaters. BDAT for these wastes is incineration.

However, responses to the May, 1991, Advanced Notice of Proposed Rulemaking, in which EPA solicited detailed comment about these waste streams in terms of composition, feasibility of analysis and treatability, indicate that the one generator of these wastes uses steam stripping to treat these wastes. EPA is currently evaluating steam-stripping performance data from this commenter in order to evaluate steam stripping as BDAT for these wastes. Therefore, EPA may designate steam-stripping as BDAT for

[4] One plant recycles a particular methyl bromide stream in a way that may not involve discarding. EPA requested, and obtained, a voluntary remand to investigate further whether such stream is a RCRA solid waste. Today's proposal would not apply to this material if it is ultimately determined not to be a solid waste, and also does not apply during the period the Agency is studying the issue.

K131 and K132 and promulgate a set of numerical treatment standards based on steam stripping rather than the incineration-based numbers proposed here.

PROPOSED BDAT TREATMENT STANDARDS FOR K131 AND K132

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample Total composition (mg/kg)
Bromomethane (methyl bromide)	15

PROPOSED BDAT TREATMENT STANDARDS FOR K131 AND K132

[Wastewaters]

Regulated constituent	Maximum for any single grab sample Total composition (mg/1)
Bromomethane (methyl bromide)	0.11

G. Additional Organic U Wastes (U328, U353, and U359)

This section addresses the investigation of BDAT for three specific wastes listed under 40 CFR 261.33 since November, 1984. These are identified with the alphanumeric waste code that starts with a "U".

1. Ortho-toluidine and Para-toluidine (U328 and U353)

Ortho-toluidine and para-toluidine, which when discarded become U328 and U353, are manufactured from processes similar to those used in manufacturing dinitrotoluene and toluenediamine. U328 and U353, thus, may be similar to wastes identified as K111 and K112. The textile industry and the dyes and pigments industry generate o-toluidine and p-toluidine as intermediates and reagents for printing textiles and making colors fast to acids in the dyeing process. Both compounds also are components in ion exchange column preparation, used as antioxidants in rubber manufacturing, and used as lab reagents in medical glucose analyses.

EPA is proposing methods of treatment as the standards for U328 and U353 wastewaters and nonwastewaters. Methods of treatment, rather than treatment levels, appear to be the most appropriate type of treatment standard for these wastes, because the organic compounds for which the wastes are listed are considered to be relatively unstable in water such that consistent quantification of o-toluidine and p-toluidine in raw wastes and treated residuals may preclude the development of a concentration-based standard for these wastes, i.e., the alternative to specifying methods of treatment. In addition, these two organic compounds resemble other organic compounds, namely 4-chloro-o-toluidine (U049) and o-toluidine hydrochloride (U222) for which similar standards have been promulgated.

The Agency, therefore, is proposing incineration or thermal destruction as required methods of treatment for the nonwastewater forms of these wastes, and chemical oxidation followed by either biological treatment or carbon adsorption for the wastewater forms of these wastes. (Although not a primary technology for wastewaters, incineration could be proposed as an alternative method of treatment for wastewaters.)

The molecular structures of these compounds—but not their stability in water—resemble U049, 4-chloro-o-toluidine and U222, o-toluidine hydrochloride. U049 and U222 are amenable to analytical quantification and were demonstrated to be amenable to treatment by incineration by data from EPA's incinerator tests performed to support earlier rulemaking. Therefore EPA believes that incineration as a method of treatment is the appropriate standard for these wastes.

The Agency's preliminary contacts with industry indicate that one facility generates both U328 and U353. This facility estimates U328 generation at 4000 lb/yr and U353 generation at 1000 lb/yr but did not say how they disposed of these wastes.

In the May, 1991, Advanced Notice of Proposed Rulemaking, EPA solicited detailed comment about the compositions of these waste streams, performance data from attempts to treat these or similar waste streams by thermal, biological or other treatment processes, and analytical problems encountered or anticipated in quantifying constituents in these wastes. EPA received no comments specific to these wastes.

2. 2-Ethoxyethanol, U359

U359 is generated in the printing, organic chemical manufacturing and leather and tanning industries and then used in various other processes in paint removers, cleansing solutions and dye baths, as a solvent for inks, duplicating fluids, nitrocellulose, lacquers and other substances, as a chemical intermediate in 2-ethoxyacetate manufacture and in the process of leather finishing. EPA anticipates this waste to be co-treated and co-disposed with F005 wastes listed for 2-ethoxyethanol.

The Agency's preliminary contacts with industry indicate that only two facilities generate U359. One reports generating U359 as minimal spills and other losses during handling and also as laboratory waste (about 100 gallons a year); the facility sends these wastes off-site for treatment and disposal. The other reports generating unspecified quantities of U359 from spill cleanups and other sources; these wastes are treated by incineration and biological treatment depending on water content.

EPA is proposing to regulate U359 wastewaters and nonwastewaters by setting methods of thermal and chemical treatment as the standard. Methods of treatment, namely (1) incineration for nonwastewaters and (2) incineration or chemical oxidation followed by either biological treatment or carbon adsorption for wastewaters, appear to be appropriate standards for this waste because no SW-846 methods exist for quantifying 2-ethoxyethanol which is unstable in water and thus particularly difficult to quantify.

The proposed treatment standards for U359 wastes are the same treatment methods set in the Third Thirds rulemaking for U154, methanol wastewaters and nonwastewaters, namely (1) incineration for nonwastewaters and (2) incineration or chemical oxidation with carbon adsorption or biodegradation for wastewaters. Furthermore, in incineration tests performed to support previous rulemakings, incineration was demonstrated to reduce butanol to levels near the analytical limit of detection.

In the May, 1991, Advanced Notice of Proposed Rulemaking, EPA solicited detailed comment about the compositions of 2-ethoxyethanol waste streams, performance data from attempts to treat these or similar waste streams by thermal, biological or other treatment processes, and analytical problems encountered or anticipated in quantifying constituents in these wastes. One commenter offered to work with

EPA to develop an analytical method to quantify 2-ethoxyethanol in wastewaters. This commenter submitted preliminary data from biological treatment of a wastewater high in 2-ethoxyethanol and encouraged EPA to develop numerical treatment standards for 2-ethoxyethanol. EPA is currently soliciting further information from this commenter.

IV. Detailed Discussion of Today's Proposed Rule: Changes to Existing Regulations

A. Proposed Revisions to the F001–F005 Spent Solvent Treatment Standards

F001—The following spent halogenated solvents used in degreasing: Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of 10 percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005 and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

F002—The following spent holgenated solvents: Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,1,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane, and 1,2,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of 10 percent or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

F003—The following spent nonhalogenated solvents: Xylene acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent nonhalogenated solvents; and all spent solvent mixtures/blends containing before use, one or more of the above nonhalogenated solvents, and a total of 10 percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

F004—The following spent nonhalogenated solvents: Cresol and cresylic acid and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of 10 percent or more (by volume) of one or more of the above nonhalogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

F005—The following spent nonhalogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing before use, a total of 10 percent or more (by volume) of one or more of the above nonhalogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

The agency is, today, proposing revisions to the treatment standards for organic constituents in both the nonwastewater and wastewater forms of F001–F005 wastes. The Agency is soliciting comments on the proposed changes to the treatment standards as well as any treatment data that may be available to assist in further refinement of the treatment standards.

1. Regulatory Background

a. *Listing definitions.* On May 19, 1980 (45 FR 33119), the Environmental Protection Agency (EPA) listed 27 commonly used organic solvents as hazardous wastes when spent or discarded. The solvents were listed as EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005. These listed wastes included certain spent halogenated and nonhalogenated solvents, including still bottoms from the recovery of these solvents.

On December 31, 1985 (50 FR 53315), the Agency promulgated an amendment to the listings to include mixtures containing a total of 10 percent or more (by volume) of one or more of the listed solvents (the 10 percent threshold always applied to solvent mixtures before use). The Agency believed that establishing a threshold level well below the minimum solvent concentration typically used in solvent formulations would bring the majority of solvent mixtures used in commerce into the hazardous waste management system, while excluding dilute mixtures. Furthermore, data showed that, at concentrations above 10 percent, solvents have been demonstrated to cause substantial harm to human health. The Agency also received numerous comments regarding the scope to the spent solvent listings. As clarified in the December 31, 1985, **Federal Register** (50 FR 53315), the listings cover only those solvents that are used for their "solvent" properties, i.e., to solubilize (dissolve) or mobilize other constituents. Manufacturing process wastes where solvents were used as reactants or ingredients in the formulation of commercial chemical products are not covered by the listing.

The final definition of the spent solvents listing did not include four solvents that were added to the F001–F005 listing on February 25, 1986: Benzene, 2-ethoxyethanol, 2-nitropropane, and 1,1,2-trichloroethane (51 FR 40607).

b. *F001–F005 Treatment Standards.* The Agency promulgated treatment standards for F001–F005 spent solvent wastes on November 7, 1986 (51 FR 40593). Lab packs containing these solvents were also subject to these treatment standards. The Agency did not include treatment standards for commercial chemical products, manufacturing chemical intermediates, and off-specification commercial chemical products (U and P wastes) that corresponded to the F001–F005 listings. The rule also did not cover the four newly listed solvents in the F001–F005 listings: Benzene, 2-ethoxyethanol, 2-nitropropane, and 1,1,2-trichloroethane (51 FR 6537).

The Agency promulgated the TCLP (i.e., the leaching procedure itself, but not the characteristic) in the final rule specifically for evaluation of the solvent and dioxin-containing wastes. As stated in 53 FR 17584, EPA's land disposal restrictions for solvent waste codes F001–F005 (51 FR 40572) uses the TCLP value as a measure of performance. At the time that EPA promulgated the treatment standards for F001–F005, useful data were not available on total constituent concentrations in treated residuals, and as a result, the TCLP data were considered to be the best measure of performance.

However, for all organic constituents whose treatment standards have been promulgated after the November 7, 1986 rule, EPA has based the treatment standards on the total constituent concentration found in the treated waste. EPA has based its decision on the fact that these technologies exist to destroy the various organic compounds. Accordingly, the best measure of performance should reflect the extent to which the various organic compounds have been destroyed or the total amount of constituent remaining after treatment.

c. *Methylene chloride standard revised.* As part of the First Third rule, the Agency revised and promulgated the BDAT treatment standard for methylene chloride in F001–F005 wastewaters from the pharmaceutical industry (53 FR 31152). The revised treatment standard was based on the transfer of treatment data for wastewater from agricultural facilities. The revised treatment standard was based on steam stripping data for methylene chloride and was based on total constituent analysis.

d. *Amendment to F001–F005 listing definition.* In the Third Third rule (55 FR 22576), the Agency promulgated treatment standards for 1,1,2-trichloroethane, benzene, 2-ethoxyethanol, and 2-nitropropane for the F002 and F005 spent solvents. These four organic constituents were added as hazardous constituents to the F002 and F005 hazardous waste listings in 1986 (see 51 FR 6737, February 25, 1986). EPA did not amend treatment standards for the other solvent constituents in F002 and F005. The Agency promulgated concentration-based treatment standards for wastewater forms of 1,1,2-trichloroethane and benzene based on performance data generated from one, or a combination of two or more, of the following BDAT technologies: Biological treatment, steam stripping, carbon adsorption, and liquid extraction, among others. The treatment standards promulgated for 1,1,2-trichloroethane and benzene in nonwastewater forms of F002 and F005 were based on performance data from incineration. These treatment standards are expressed as concentration-based standards in the treated waste.

EPA had determined that the available data were insufficient to establish concentration-based treatment standards for wastewater and nonwastewater forms of F005 containing 2-nitropropane and 2-ethoxyethanol and instead promulgated methods of treatment as the treatment standards.

2. Overlap Between F001–F005 Solvents and Other BDAT Standards

Many of the solvent constituents that are regulated in F001–F005 wastes are also regulated in the First, Second, and Third Third rules. In the April 18, 1988 and the May 17, 1988 proposed First Third rules, treatment standards for the following K wastes, containing solvent constituents also regulated in F001–F005 wastes, were proposed: K001, K015, K016, K018, K019, K020, K021, K022, K025, K030, K037, K048, K049, K050, K051, K052, K086, K087, K103, and K110. The treatment standards for these wastes were promulgated on August 17, 1988.

In the Second Third proposed rule, treatment standards for the following K wastes containing constituents that are also regulated in F001–F005 wastes were proposed: K011, K013, K014, K028, K029, K060, and K096. These treatment standards were promulgated on June 23, 1989.

In the November 22, 1989 proposed rule for the Third Third wastes, EPA proposed two alternative sets of concentration-based treatment standards for wastewater forms of the majority of the U and P wastes, many of which were solvent constituents found in F001–F005 wastes. One set of treatment standards was based on the concentration of each constituent in incinerator scrubber water. The second set of standards was based on wastewater treatment performance data for each constituent. On the basis of comments received, the Agency established and promulgated treatment standards for wastewater forms of the Third Third waste codes based on wastewater treatment performance data. These treatment standards were promulgated on June 1, 1990 (55 FR 22601). The solvent wastes affected by this change included: Acetone (U002), n-butyl alcohol (U031), carbon disulfide (P022), carbon tetrachloride (U211), chlorobenzene (U037), cresols and cresylic acid (U052), cyclohexanone (U057), 1,2-dichlorobenzene, ethyl acetate (U112), ethylbenzene, ethyl ether (U117), isobutanol (U140), methanol, methylene chloride (U080), methyl ethyl ketone (U161), methyl isobutyl ketone (U161), nitrobenzene (U169), pyridine (U196), tetrachloroethylene (U210), toluene (U220), 1,1,1-trichloroethane (U226), 1,1,2-trichloro-1,2,2-trifluoroethane, trichloroethylene (U228), trichlorofluoromethane, and xylene (U239).

The Agency also proposed treatment standards for nonwastewater forms of U and P wastes on November 22, 1989. (The U wastes that contain constituents regulated in the F001–F005 final rule are the same as the Third Third U wastes discussed above.) After the comment period, the Agency revised the proposed treatment standards for approximately 75 constituents. These changes were based on three data sources: The Interlaboratory Ash Study, an in-house study by EPA's Office of Research and Development, and EPA's reevaluation of its own calculation and methodology. These changes took the form of either different numerical values for concentration-based standards or promulgating incineration as a method of treatment for wastes for which EPA had not proposed concentration-based standards. The nonwastewater concentration-based standards, promulgated on June 1, 1990, reflect the performance of well-designed and well-operated incineration systems and were developed primarily using the results from 14 incineration test burns (55 FR 22604).

Treatment standards for the following F and K wastes containing solvent constituents present in F001–F005 solvent wastes were also proposed and promulgated in the Third Third: F025, K001, K011, K013, K014, K015, K021, K022, K025, K026, K029, K035, K037, K042, K048, K049, K050, K051, K060, K073, K083, K085, K086, K095, K096, and K105.

3. Comments Received from the May 30, 1991, Advance Notice of Proposed Rulemaking on Revisions to Standards for F001–F005 Solvent Wastes

The Agency received a number of comments on the proposed rulemaking revisions to the F001–F005 solvent waste treatment standards that were outlined in the ANPR; all the comments were generally favorable to the idea of basing the nonwastewater treatment standards for organic constituents in F001–F005 spent solvents from the existing TCLP standards to standards based on total concentrations as an alternative to the existing TCLP standards.

4. Proposed Changes to the F001–F005 Treatment Standards

The Agency is today proposing to revise the treatment standards for both nonwastewater and wastewater forms of F001–F005 wastes. (See Table at end of this section for specific treatment levels.) The methodology used to develop the treatment standards for both nonwastewater and wastewater forms of F039 (multisource leachate) was used in determining the revised treatment standards for the F001–F005 spent solvents. These revisions do not, however, include the four solvents that were added to the solvents listings: Benzene, 2-exthoxyethanol, 2-nitropropane, and 1,1,2-trichloroethane. Treatment standards for these constituents were promulgated in the Third Third final rule in accordance with the previously mentioned methodology.

In addition, the Agency is changing the measure of performance for F001–F005 solvents from treatment standards based on the TCLP to standards based on total concentration of organic constituent in the waste. This is appropriate in that EPA has previously determined that treatment technologies for organics exist to destroy the various organic compounds. Accordingly, the best measure of performance is the extent to which the various organic compounds have been destroyed or the total amount of constituent remaining after treatment.

a. *Revisions to the Standards for Cresols.* In the Solvents and Dioxins rule, the Agency promulgated BDAT treatment standards for "cresols." At that time, the Agency did not distinguish between the various isomers that are present in cresols. As a result, the Agency promulgated a concentration-

based treatment standard for cresol wastewaters of 2.82 mg/1 based on the performance of activated carbon adsorption. For nonwastewaters, the Agency had no data on TCLP extracts of residues from the incineration of cresols (cresylic acid) to use in the derivation of the BDAT treatment standard. EPA, instead, used chemical structure as the basis for transferring the treatment data to cresols (cresylic acid) spent solvents. The data from which the treatment standard for incineration of methylethyl ketone was derived was transferred to cresols (cresylic acid). The treatment standard of 0.75 mg/1 for nonwastewaters is based on the transferred data.

In the Third Third rule, EPA promulgated treatment standards for U052 waste. U052 is listed as "cresols (cresylic acid)." Cresylic acid is the name given to a mixture of three isomeric cresols (methyl phenols), in which the meta-cresol predominates. U052 typically contains various levels of ortho-cresol, metacresol, and para-cresol. Analytical methods are usually reported for o-cresol (CAS No. 95-48-7) and a combination of m- and p-cresols, because m-cresol and p-cresol cannot be distinguished by the analytical methods. Thus, the Agency promulgated concentration-based standards for U052 based on an analysis for o-cresol and the mixture of m-cresol and p-cresol.

Based on this, the Agency is today proposing to modify the current treatment standards for the constituent "cresols" in F001-F005 wastes. The Agency is proposing to transfer the treatment standards from U052 wastes for o-cresol and a mixture of m-cresol and p-cresol wastewaters and nonwastewaters to F001-F005 wastes based on total concentration of constituent(s) in the waste stream.

b. *Modification to the Regulatory Placement of F001-F005 Standards.* The Agency is also proposing to change the regulatory table as it pertains to F001-F005 wastes. The Agency has identified a placement error for F001-F005 spent solvent wastewaters. The regulated hazardous constituents in F001-F005 and their respective wastewater treatment standards are in Table CCWE—Constituent Concentrations in Waste Extract (40 CFR 268.4). However, this placement is in error; the correct location for these standards should be in Table CCW—Constituent Concentrations in Wastes (40 CFR 268.43). As such, the tables will be changed accordingly. Furthermore, in that the Agency is proposing to change the nonwastewater treatment standards from the TCLP standard to a total concentration-based standards, this part of the table will also change (if the proposal is finalized) by placing the nonwastewater standards for F001-F005 spent solvents in Table CCW—Constituent Concentrations in Wastes.

PROPOSED REVISIONS TO TREATMENT STANDARDS FOR F001-F005 SPENT SOLVENT WASTES

Regulated constituent	Proposed treatment standard		
	Treatment	Wastewater (mg/1)	Non-wastewater (mg/kg)
Acetone	BT	0.28	160
n-Butyl alcohol	BT	5.6	2.6
Carbon disulfide.	BT	0.014	NR
Carbon tetrachloride.	BT	0.057	5.6
Chlorobenzene	BT	0.057	5.7
Cresol (m- and p- isomers.	AS	0.77	3.2
o-Cresol	BT	0.11	5.6
Cyclohexanone	BT	0.36	NR
1,2-Dichlorobenzene.	BT	0.088	6.2
Ethyl acetate	AS	0.34	33
Ethyl benzene	BT	0.057	6.0
Ethyl ether	RO	0.12	160
Isobutyl alcohol	BT	5.6	170
Methanol	BT	5.6	NR
Methylene chloride.	SS	[2]0.089	33
Methyl ethyl ketone.	BT	0.28	36
Methyl isobutyl ketone.	BT	0.14	33
Nitrobenzene	SS+AC	0.068	14
Pyridine	ANFF	0.014	16
Tetrachloroethylene.	SS	0.056	5.6
Toluene	SS	0.08	28
1,1,1-Trichloroethane.	SS	0.054	5.6
Trichloroethylene.	SS	0.054	5.6
1,1,2-Trichloro-1,2,2-trifluoroethane.	As+Fil	0.057	28
Trichloromonofluoromethane.	LL+SS+AC	0.02	33
Xylenes (total)	WAO	0.32	28

[1] Wastewater treatment technologies on which the treatment standards were based are indicated in this column; all of the nonwastewater treatment standards were based on incineration.

[2] The methylene chloride treatment standard for wastewaters generated from pharmaceutical plants is 0.44 mg/1.

NR: Not regulated.

Key to Treatment Technologies

AC—Activated carbon; ANFF—Anaerobic fixed film biological treatment; As—Activated sludge biological treatment; BT—Biological treatment; GAC—Granulated Activated Carbon; Fil—Filtration; LL—Liquid liquid extraction; PACT—Powdered Activated Carbon Treatment; RO—Reverse osmosis; SS—Steam stripping; WAO—Wet air oxidation.

B. Conversion of Wastewater Standards Based on Scrubber Water

K015—Still bottoms from the distillation of benzyl chloride.

K016—Heavy ends or distillation residues from the production of carbon tetrachloride.

K018—Heavy ends from the fractionation column in ethyl chloride production.

K019—Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.

K020—Heavy ends from the distillation of vinyl chloride in vinyl chloride production.

K023—Distillation light ends from the production of phthalic anhydride from naphthalene.

K024—Distillation bottom tars from the production of phthalic anhydride from naphthalene.

K028—Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.

K060—Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.

K048—Dissolved air flotation (DAF) float from the petroleum refining industry.

K049—Slop oil emulsion solids from the petroleum refining industry.

K050—Heat exchanger bundle cleaning sludge from the petroleum refining industry.

K051—API separator sludge from the petroleum refining industry.

K052—Tank bottoms (leaded) from the petroleum refining industry.

K087—Decanter tank tar sludge from coking operations.

K093—Distillation light ends from the production of phthalic anhydride from ortho-xylene.

K094—Distillation bottoms from the production of phthalic anhydride from ortho-xylene.

U028—Bis (2-ethylhexyl) phthalate.

U069—Di-n-butyl phthalate.

U088—Diethyl phthalate.

U102—Dimethyl phthalate.

U107—Di-n-octyl phthalate.

U190—Phthalic anhydride (measured as Phthalic acid).

On November 22, 1989 (54 FR 48372), EPA proposed as part of the Third Third rule concentration-based treatment standards for numerous listed wastes based on the performance of incineration. For the wastewaters, the treatment standards were based on the concentration of the constituents of concern in incineration scrubber waters. In the final rule (55 FR 22520), however, EPA altered its approach to setting these standards and promulgated treatment standards for wastewaters based on actual wastewater treatment data for the constituents of concern. This change was adopted for a number of reasons.

First, it was stated in the final rule for the Second Third wastes (54 FR 26629) and reiterated in the final rule for Third Third wastes (55 FR 22577) that, when the Agency had appropriate wastewater treatment data from well-designed and well-operated wastewater treatment

units, it preferred to use those data rather than scrubber water data to develop wastewater treatment standards. This is because incineration is not a normal treatment method for wastewaters. In addition, alternative standards were proposed in the Third Third notice for multisource leachate (F039) wastewaters based on a transfer of performance data from various sources, including: The Office of Water's Industrial Technology Division (ITD) and National Pollution Discharge Elimination System (NPDES) data (specifically from the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) database); the Hazardous Waste Engineering Research Laboratory (HWERL) database (HWERL is the former name of EPA's Risk Reduction Engineering Laboratory); the Office of Solid Waste's BDAT data (from previous land disposal restriction rules); and additional wastewater treatment data from articles on wet air oxidation (WAO) and powdered activated carbon treatment (PACT).

Second, commenters on the proposed Third Third rule had urged the Agency to develop treatment standards for wastewater forms based on residues from wastewater treatment technologies rather than incineration scrubber waters. Commenters on previous rules had also stated that when EPA had performance data from technologies treating wastewaters containing the same or similar constituents that EPA could use it to develop BDAT treatment standards. Commenters emphasized that these performance data represented the treatment of organic-containing wastewaters better than incineration scrubber waters alone. Finally, comments on the proposed rules for the First Third, Second Third, and Third Third wastes almost unanimously supported the option of promulgating wastewater treatment standards based on the performance of specific wastewater treatment rather than incinerator scrubber water constituent levels.

The Agency reviewed all of the aforementioned data during the Third Third comment period to determine whether it could be considered BDAT. In reviewing these data, the Agency considered influent concentrations of the treated constituent, whether the treated stream was representative of that U, P, F, or K wastewater, and how achievable the detection limit was in similar or other matrices based on other data received. Upon conclusion of these analyses, the Agency revised the proposed wastewater standards for most of the Third Third F, K, U, and P wastes based on the data received prior to proposal: constituent-specific concentration-based standards as found in F039 wastewaters. Detailed information on the development of the wastewater treatment standards can be found in the amendment to the background document titled "Final Best Demonstrated Available Technology (BDAT) Background Document for U and P Wastes and Multi-Source Leachates (F039)," Volume A: "Wastewater Forms of Organic U and P Wastes and Multi—Source Leachates (F039) for Which There Are Concentration-Based Treatment Standards." (This document can be found in the RCRA docket for the Third Third final rule.)

As part of the First Third and Second Third rules, EPA promulgated treatment standards for wastewater forms of 24 K and U wastes (i.e., K015, K016, K018, K019, K020, K023, K024, K028, K030, K048, K049, K050, K051, K052, K087, K093, K0494, U028, U069, U088, U102, U107, and U190). These wastewater treatment standards were based on data from incineration scrubber waters. Upon review of all available data and comments, the Agency believes that the best demonstrated available technology for these wastewaters is better represented by concentration-based treatment standards based on wastewater treatment data rather than scrubber waters. Therefore, the Agency is proposing to modify the concentration-based treatment standards for these wastewaters. The waters affected by this change come primarily from three general treatability groups: chlorinated organics, petroleum wastes, and phthalate wastes. The Agency believes that this proposed change is consistent with the changes made to the wastewater standards in the final Third Third rule. It should be noted, however, that any technology not otherwise prohibited (e.g., impermissible dilution) may be used to meet the concentration-based treatment standard for these wastewaters, including incineration.

Finally, during the development of the Third Third rule, the Agency determined that for pentachloroethane (a regulated constituent in K018, K028, and K031), complications arose in terms of how reliably the constituent could be quantified (55 FR 22611). As such, the Agency made a decision to promulgate technology-specific treatment standards (i.e., a method (or methods) of treatment) rather than a constituent specific standard. As such, the Agency is today proposing to delete pentachloroethane from further regulation in the wastewater forms of K018, K028, and K030, and to rely on other constituents to act as surrogates for the treatment of pentachloroethane.

COMPARISON OF PROMULGATED WASTEWATER STANDARDS TO THE PROPOSED REVISIONS FOR VARIOUS F AND K WASTES

Waste code and regulated organic constituent	Promulgated standard (mg/l)	Proposed revision (mg/l)	Technology basis for BDAT
K015—Anthracene	1.0	0.059	BT
Benzal chloride	0.28	0.28	—
Benzo (b and/or k) fluoranthene	0.29	0.055	AS
Phenanthrene	0.27	0.059	BT
Toluene	0.15	0.080	SS
K016—Hexachlorobenzene	0.033	0.055	AS+Fil
Hexachlorobutadiene	0.007	0.055	AS+Fil
Hexachlorocyclopentadiene	0.007	0.057	BT
Hexachloroethane	0.033	0.055	AS+Fil
Tetrachloroethene	0.007	0.056	SS
K018—Chloroethane	0.007	0.27	SS
Chloromethane	0.007	0.19	SS
1,1-Dichloroethane	0.007	0.059	SS
1,2-Dichloroethane	0.007	0.21	SS
Hexachlorobenzene	0.033	0.055	AS+Fil
Hexachlorobutadiene	0.007	0.055	AS+Fil
Pentachloroethane	0.007	NR	—
1,1,1-Trichloroethane	0.007	0.054	SS

COMPARISON OF PROMULGATED WASTEWATER STANDARDS TO THE PROPOSED REVISIONS FOR VARIOUS F AND K WASTES—Continued

Waste code and regulated organic constituent	Promulgated standard (mg/l)	Proposed revision (mg/l)	Technology basis for BDAT
Hexachloroethane	0.007	0.055	AS+Fil
K019—bis(2-chloroethyl)ether	0.007	0.033	AS
Chlorobenzene	0.006	0.057	BT
Chloroform	0.007	0.046	SS
1,2-Dichloroethane	0.007	0.21	SS
p-Dichlorobenzene	0.008	0.09	AS
Fluorene	0.007	0.059	BT
Hexachloroethane	0.033	0.055	AS+Fil
Naphthalene	0.007	0.059	BT
Phenanthrene	0.007	0.059	BT
1,2,4,5-Tetrachlorobenzene	0.017	0.055	SS
Tetrachloroethene	0.007	0.056	SS
1,2,4-Trichlorobenene	0.023	0.055	PACT
1,1,1-Trichloroethane	0.007	0.054	SS
K020—1,2-Dichloroethane	0.007	0.21	SS
1,1,2,2-Tetrachloroethane	0.007	0.057	GAC
Tetrachloroethene	0.007	0.056	SS
K023—Phthalic anhydride (measured as phthalic acid)	0.54	0.069	BT
K024—Phthalic anhydride (measured as phthalic acid)	0.54	0.069	BT
K028—1,1-Dichloroethane	0.007	0.059	SS
trans 1,2-dichloroethane	0.033	0.054	SS
Hexachlorobutadiene	0.007	0.055	BT
Hexachloroethane	0.033	0.055	AS+Fil
Pentachloroethane	0.033	NR	—
1,1,1,2-Tetrachloroethane	0.007	0.057	PACT
1,1,2,2-Tetrachloroethane	0.007	0.057	GAC
Tetrachloroethene	0.007	0.056	SS
1,1,1-Trichloroethane	0.007	0.054	SS
1,1,2-Trichloroethane	0.007	0.054	SS
K030—o-Dichlorobenezne	0.008	0.088	BT
p-Dichlorobenzene	0.008	0.09	AS
Hexachlorobutadiene	0.007	0.055	AS+Fil
Hexachloroethane	0.033	0.055	AS+Fil
Pentachloroethane	0.007	NR	—
1,2,4,5-Tetrachlorobenzene	0.017	0.055	AS+Fil
Tetrachloroethene	0.007	0.056	SS
1,2,4,-Trichlorobenzene	0.023	0.055	PACT
K048—Benzene	0.011	0.14	SS
Benzo(a)pyrene	0.047	0.061	BT
Bis(2-ethylhexyl)phthalate	0.043	0.28	BT
Chrysene	0.043	0.059	BT
Di-n-butyl phthalate	0.06	0.057	BT
Ethylbenzene	0.011	0.057	BT
Flourene	0.05	0.059	BT
Napthalene	0.033	0.059	BT
Phenanthrene	0.039	0.059	BT
Phenol	0.047	0.039	BT
Pyrene	0.045	0.067	BT
Toluene	0.011	0.080	WAO+PACT
Xylenes (total)	0.011	0.32	WAO
K049—Anthracene	0.039	0.059	BT
Benzene	0.011	0.14	SS
Benzo(a)pyrene	0.047	0.061	BT
Bis(2-ethylhexyl)phthalate	0.043	0.28	BT
Carbon disulfide	0.011	0.014	BT
Chrysene	0.043	0.059	BT
2,4-Dimethylphenol	0.033	0.036	BT
Ethylbenzene	0.011	0.057	BT
Napthalene	0.033	0.059	BT
Phenanthrene	0.039	0.059	BT
Phenol	0.047	0.039	BT
Pyrene	0.045	0.067	WAO+PACT
Toluene	0.011	0.080	SS
Xylenes (total)	0.011	0.32	WAO
K050—Benzo(a)pyrene	0.047	0.061	BT
Phenol	0.047	0.039	BT
K051—Acenaphthene	0.05	0.059	BT
Anthracene	0.039	0.059	BT
Benz(a)anthracene	0.043	0.059	BT
Benzene	0.011	0.14	SS
Benzo(a)pyrene	0.047	0.061	BT
Bis(2-ethylhexyl)phthalate	0.043	0.28	BT
Chrysene	0.043	0.059	BT
Di-n-butyl phthalate	0.06	0.057	BT
Ethylbenzene	0.011	0.057	BT
Fluorene	0.05	0.059	BT
Napthalene	0.033	0.059	BT

COMPARISON OF PROMULGATED WASTEWATER STANDARDS TO THE PROPOSED REVISIONS FOR VARIOUS F AND K WASTES—Continued

Waste code and regulated organic constituent	Promulgated standard (mg/l)	Proposed revision (mg/l)	Technology basis for BDAT
Phenanthrene	0.047	0.059	BT
Phenol	0.047	0.039	BT
Pyrene	0.045	0.067	WAO+PACT
Toluene	0.011	0.080	SS
Xylenes (total)	0.011	0.32	WAO
K052—Benzene	0.011	0.14	SS
Benzo(a)pyrene	0.047	0.061	BT
o-Cresol	0.011	0.11	BT
p-Cresol	0.011	0.77	AS
2,4-Dimethylphenol	0.033	0.036	BT
Ethylbenzene	0.011	0.057	BT
Naphthalene	0.033	0.059	BT
Phenanthrene	0.039	0.059	BT
Phenol	0.047	0.039	BT
Toluene	0.011	0.080	SS
Xylenes (total)	0.011	0.32	WAO
K087—Acenaphthalene	0.028	0.059	BT
Benzene	0.014	0.14	SS
Chrysene	0.028	0.059	BT
Fluoranthene	0.028	0.068	BT
Indeno(1,2,3-cd)pyrene	0.028	0.055	AS
Naphthalene	0.028	0.059	BT
Phenanthrene	0.028	0.059	BT
Toluene	0.008	0.080	SS
Xylenes (total)	0.014	0.32	WAO
K093—Phthalic anhydride (measured as Phthalic acid)	0.54	0.069	BT
K094—Phthalic anhydride (measured as Phthalic acid)	0.54	0.069	BT
U028—Bis(2-ethylhexyl)phthalate	0.54	0.028	BT
U069—Di-n-butyl phthalate	0.54	0.057	BT
U088—Diethyl phthalate	0.54	0.2	BT
U102—Dimethyl phthalate	0.54	0.047	BT
U107—Di-n-octyl phthalate	0.54	0.017	AS
U190—Phthalic anyhdride (measured as phthalic acid)	0.54	0.069	BT

Key to Treatment Technologies: AC—Activated Carbon; ANFF—Anaerobic fixed film biological treatment; As—Activated sludge biological treatment; BT—Biological treatment; Fil—Filtration; GAC—Granulated Activated Carbon; LL—Liquid liquid extraction; PACT—Powdered Activated Carbon Treatment; RO—Reverse osmosis; SS—Steam stripping; WAO—Wet air oxidation; NR—Not regulated.

C. Proposed Revisions to Treatment Standards for K061, F006, and K062

1. Removal of the Low Zinc Subcategory for K061 Wastes

The Agency is today proposing to transfer the treatment standards recently promulgated for high zinc K061 nonwastewaters (56 FR at 41164–41178 (August 19, 1991)) to K061 nonwastewaters in the low zinc subcategory. By so doing, there would no longer be a need for subcategorization of K061 wastes by their zinc content. Thus, EPA is also proposing to abolish both the high zinc and the low zinc subcategories. In the First Third rulemaking, the decision to separate K061 nonwastewaters was based on the premise that high temperature metals recovery (HTMR) was not typically applied to wastes containing less than 15 percent zinc, because zinc was not considered to be technically or economically recoverable for all wastes in this low zinc subcategory. Consequently, the high zinc standards were developed based on the performance of HTMR as BDAT and the low zinc standards on the performance of stabilization as BDAT. (Note: This did not preclude, however, the recovery of zinc from wastes in the low zinc subcategory.)

After the First Third rulemaking, EPA received data and comment concerning the decision to divide K061 based on zinc content. Commenters said that many K061 wastes with a zinc content less than 15 percent are sent for recovery and that the cutoff level was unnecessary. In addition, data were submitted demonstrating that there exist HTMR technologies capable of recovering metals other than zinc (e.g., chromium and nickel) from the low zinc K061 wastes. In addition, these data show that residues from the HTMR of other metals from K061 wastes in the low zinc subcategory will comply with the same standards as the residues from the HTMR of zinc from K061 wastes in the high zinc subcategory. In addition, EPA believes HTMR of either zinc or these other metals is the "best" treatment technology for all K061 wastes because HTMR decreases the amount of material sent for land disposal, recovers potentially valuable resources, and incorporates metals that are not recovered into an stable slag matrix. Hence, the Agency is proposing to establish HTMR as BDAT for all K061 wastes and transfer the existing standards for high zinc subcategory wastes to all other K061 wastes. By establishing these standards as concentration-based standards, the Agency is not requiring that HTMR be used; rather, any technology that can meet the revised treatment standard can be used, including stabilization.

In today's rule, the Agency is also proposing a concentration-based treatment standard for vanadium based on the performance of HTMR. In the rulemaking for K061 high zinc, several commenters submitted performance data for vanadium while others stressed concern about meeting the originally proposed vanadium treatment standard but claimed because of the short time-frame of the K061 high zinc comment period they could not gather data. Since vanadium has a high boiling point and can concentrate in the slag residual instead of volatilizing (like zinc, lead, and cadmium), the Agency believed that more data should be gathered before developing a final treatment standard

for vanadium. Consequently, EPA reserved the vanadium treatment standard to give facilities an opportunity to gather and submit data on vanadium. The proposed standard shown below as developed based on available HTMR performance data for vanadium. The Agency encourages those commenters who indicated difficulties achieving the vanadium level to submit data.

PROPOSED TREATMENT STANDARDS FOR K061 (LOW AND HIGH ZINC SUBCATEGORIES)

[Nonwastewaters]

Regulated constituent	Maximum for any single composite sample— TCLP (mg/l)
Antimony	2.1
Arsenic	0.055
Barium	7.6
Beryllium	0.014
Cadmium	0.19
Chromium (Total)	0.33
Lead	0.37
Mercury	0.009
Nickel	5.0
Selenium	0.16
Silver	0.30
Thallium	0.078
Vanadium	0.23
Zinc	5.3

2. Alternative Treatment Standards for F006 and K062 Nonwastewaters Based on HTMR

The Agency is proposing alternative treatment standards based on HTMR as BDAT for F006 and K062 nonwastewaters with recoverable amounts of metals (e.g., greater than 1.5 percent chromium and nickel combination). In addition, EPA is proposing a new regulatory section (40 CFR 268.46) for such alternative standards. This section would be used for any treatment standards that would serve as alternatives for compliance with standards in 40 CFR 268.41, .42, and .43. These alternative standards are being proposed in order to achieve the same goal of treatment using BDAT, but generally are designed to provide alternative means of compliance with the promulgated standards.

The Agency has received data and comment indicating that other listed metal-bearing wastes, such as F006 and K062 containing chromium and nickel, have sufficient concentrations of metals and low concentrations of interfering chemicals that make them amenable for recovery of metals in various types of HTMR units. Data indicate that residues from their recovery (the require land disposal) can apparently achieve the BDAT standards based on HTMR that were recently promulgated for high zinc K061 nonwastewaters, but for a few constituents cannot achieve the treatment standards based on stabilization for F006 and K062. EPA believes that because the stabilization performance data represented treatment of less concentrated wastes than the HTMR data (e.g., average F006 nickel concentrations of 6450 mg/kg compared to 180,400 mg/kg), and because HTMR recovers metals (e.g., 99 percent of the nickel), treatment standards for 14 metals based on HTMR will provide a better level of protection to human health and the environment than the treatment standards based on stabilization.

The Agency is not proposing these standards as replacement of the existing standards for F006 and K062 wastes, but rather as alternatives to them. While many F006 and K062 wastes are amenable to recovery, the Agency does not have sufficient waste characterization information to specifically define the universe of F006 and K062 wastes that are recoverable. However, by establishing generic exclusion levels (see below) and alternative treatment standards for HTMR residues from the recovery of these wastes, EPA is providing a mechanism that will encourage recovery of metals rather than land disposal. (See also the discussion of how these generic exclusion levels apply to HTMR residues rather than stabilized K061 wastes in the final rule for K061 high zinc subcategory.)

The Agency is proposing to establish HTMR as an alternative BDAT for F006 and K062 nonwastewasters and is proposing to transfer the treatment performance of HTMR for high zinc K061 wastes to F006 and K062 as alternative treatment standards. Some HTMR data submitted for the development of standards for the high zinc K061 wastes also represented treatment of K062 and F006 (i.e., influent to the HTMR process contained a mixture of K061 (both high and low zinc subcategories), K062, and F006). Furthermore, it appears to be common to mix different metal waste types to achieve specific feed mixtures as a means of optimizing metals recovery.

For F006 nonwastewaters, the Agency is also proposing to establish a treatment level for cyanide because it is a common constituent in most F006 wastes. While the Agency has no specific performance data on the destruction of cyanides in HTMR units, HTMR provides technical similarities to incineration and is expected to achieve a level of destruction similar to incineration. (In fact, HTMR occurs at higher temperatures than incineration: Approximately 1200–1600°C versus less than 1100°C.)

TREATMENT STANDARDS FOR K062

[Nonwastewaters]

Regulated constituent	Proposed alternative treatment standards based on HTMR performance maximum for any single composite sample TCLP (mg/l)	Promulgated treatment standards based on stabilization maximum for any single grab sample TCLP (mg/l)
Antimony	2.1	NA
Arsenic	0.055	NA
Barium	7.6	NA
Beryllium	0.014	NA
Cadmium	0.19	NA
Chromium (total)	0.33	0.094
Lead	0.37	0.37
Mercury	0.009	NA
Nickel	5.0	NA
Selenium	0.16	NA
Silver	0.30	NA
Thallium	0.078	NA
Vanadium	0.23	NA
Zinc	5.3	NA

NA—Not Applicable

TREATMENT STANDARDS FOR F006

[Nonwastewaters]

Regulated constituent	Proposed alternative treatment standards based on HTMR performance maximum for any single composite sample TCLP (mg/l)	Promulgated treatment standards based on stabilization maximum for any single grab sample TCLP (mg/l)
Antimony	2.1	NA
Arsenic	0.055	NA
Barium	7.6	NA
Beryllium	0.014	NA
Cadmium	0.19	0.066
Chromium (Total)	0.33	5.2
Lead	0.37	0.51
Mercury	0.009	NA
Nickel	5.0	0.32
Selenium	0.16	NA
Silver	0.30	0.072
Thallium	0.078	NA
Vanadium	0.23	NA
Zinc	5.3	NA

Regulated constituent	Proposed alternative treatment standards based on HTMR performance maximum for any single composite sample (mg/kg)	Promulgated treatment standards based on alkaline chlorination maximum for any single grab sample (mg/kg)
Cyanides (Total)	1.8	590
Cyanides (Amenable)	NA	30

NA—Not Applicable

3. Generic Exclusion of F006 and K062 HTMR Nonwastewater Residues

The Agency is proposing to exclude nonwastewater residues generated by HTMR of F006 and K062 wastes in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, and rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in 40 CFR 260.10) from the hazardous waste regulations when disposed in a subtitle D unit, provided the residues meet the generic exclusion levels and part 268 treatment standards for all constituents, and provided the residues do not exhibit one or more of the hazardous waste characteristics.

Generic exclusion levels have already been established for K061 and EPA believes that a similar rationale can be used to develop exclusion levels for F006 and K062. The Agency concluded in the final rulemaking for K061 high zinc wastes that K061 (both low and high zinc) HTMR nonwastewater residues that meet the generic exclusion levels and part 268 treatment standards for all constituents and that exhibit no characteristics will not be hazardous. The decision to generically exclude nonwastewater HTMR K061 residues was based on the fact that the treatment process is well-defined and thus does not require an in-depth evaluation of each facility's processes. The Agency determined that the "derived-from" rule's presumption of hazardousness no longer should apply to HTMR K061 residues with toxic metals treated to specified levels. The Agency made this determination after considering the factors in section 3001(f) specified for delisting decisions and after satisfying the underlying philosophy of the delisting provisions.

The proposed generic exclusion levels include all of the Appendix VIII and indicator metals that might reasonably be expected to be present in the HTMR nonwastewater residues from processing F006 and K062 wastes by HTMR. (This is consistent with RCRA section 3001(f) requiring EPA to evaluate whether toxic constituents in addition to those for which a waste is listed could make a waste hazardous.)

The Agency evaluated the treatment standard levels using its vertical and horizontal spread (VHS) landfill model, which predicts the potential for groundwater contamination from wastes that are landfilled. See 50 FR at 7882 (Feb. 26, 1985), 50 FR at 48896 (Nov. 27, 1985), and the RCRA public docket for this notice for a detailed description of the VHS model and its parameters. Using the health-based levels developed for delisting (i.e., removing a listed waste from 40 CFR part 261) and a waste volume of greater than 8,000 cubic yards per facility which corresponds to a dilution factor of 6.3 (a worst case estimate for purposes of the VHS model), EPA determined the "generic" concentration levels which it considers safe to human health and the environment.

The BDAT and VHS-based levels are not identical, since each set was calculated for a different purpose: The BDAT standards are technology-based levels, while the VHS results derive from health-based modeling. The Agency determined that to be eligible for this generic exclusion, the residues must meet the lower of the two sets of standards for each constituent, because the exclusion was not site-specific and the difference between the technology and health-based levels was quite small (see 56 FR at 41170, August 19, 1991 for more detail about this determination).

Since the high zinc rulemaking, EPA has proposed to use the EPA Composite Model for Landfills (The "EPACML") instead of the VHS model to evaluate hazardous waste delisting petitions. 56 FR at 32993 (July 19, 1991). If this new model is finally adopted and replaces the VHS model, it may be used to establish generic exclusion levels for K061, K062, and F006 HTMR nonwastewater residues. At this time, however, the Agency has decided to propose the generic exclusion levels developed using the VHS model.

The proposed exclusion levels would apply only if the residues are land disposed in a subtitle D unit. The residues would remain a hazardous waste if used in a manner constituting disposal because EPA does not yet have proper means of evaluating hazards posed by uses, since the VHS or EPACML models do not evaluate the potential exposure pathways posed by these uses.

It is important to point out that the current vanadium exclusion level for HTMR residues (i.e., the level finalized in the K061 high zinc rulemaking) is health-based since the treatment standard was reserved. Also, the Agency is proposing to add an exclusion level for zinc. Using the health based level of 7 mg/l for zinc (see 1990 Health Effects Assessment Summary Table, Third Quarter, OERR, 9200.b-303-(90-3)) multiplied by the 6.3 dilution factor, a concentration level of 44 mg/l is calculated using the VHS model.

For F006 nonwastewaters, the Agency is not proposing exclusion levels for organics although they can be common constituents in F006 wastes. While the Agency has no specific performance data on the destruction of organics in HTMR units, HTMR operates at higher temperatures and longer residence times than incineration; hence, HTMR is expected to achieve a level of destruction similar to or better than incineration. Consequently, the Agency believes that regulation of organic constituents in HTMR residues is not required since any organic constituents will be destroyed to nondetectable levels in the HTMR residents, and that regulation of the fourteen metals and cyanide will ensure proper operation of the HTMR system. The following tables present the proposed concentration levels which must be met to qualify for the generic exclusion.

Finally, the Agency requests comment on requiring those who seek to exclude their F006 and K062 nonwastewater HTMR residues from Subtitle C regulation through the proposed generic exclusion, to carry the burden of proving their compliance with the generic exclusion requirements by "clear and convincing" evidence. This standard of proof is a widely recognized legal concept that requires proof beyond a slight balance (a standard often referred to as proof by a "preponderance" of the evidence). However, this standard is less than the "beyond a reasonable doubt" standard applied in criminal cases.

Although the exclusion criteria clearly require HTMR treatment and disposal in a Subtitle D unit, it may not always be clear that the HTMR residues meet the specified exclusion levels and treatment standards, and do not exhibit a characteristic of hazardous waste. Under this allocation of the burden of proof, if EPA raises significant questions (e.g., whether testing was performed according to proper protocols), those seeking to exclude their waste would be required to satisfy EPA that the terms of the exclusion have been met. (This could

be particularly appropriate where the relevant information is in the control of those seeking to exclude their waste.) No additional procedures or submissions necessarily would be required to implement this approach. However, EPA seeks comment on appropriate procedures, if any, should the Agency finalize this approach.

PROPOSED GENERIC EXCLUSION LEVELS FOR K061 AND K062 HTMR RESIDUES

[Nonwastewaters]

Constituent	Maximum for any single composite sample—TCLP (mg/l)
Antimony	0.063
Arsenic	0.055
Barium	6.3
Beryllium	0.0063
Cadmium	0.032
Chromium (total)	0.33
Lead	0.095
Mercury	0.009
Nickel	0.63
Selenium	0.16
Silver	0.30
Thallium	0.013
Vanadium	0.23
Zinc	44.0

PROPOSED GENERIC EXCLUSION LEVELS FOR F006 HTMR RESIDUES

[Nonwastewaters]

Constituent	Maximum for any single composite sample
	TCLP (mg/1)
Antimony	0.063
Arsenic	0.055
Barium	6.3
Beryllium	0.0063
Cadmium	0.032
Chromium (total)	0.33
Lead	0.095
Mercury	0.009
Nickel	0.63
Selenium	0.16
Silver	0.30
Thallium	0.013
Vanadium	0.23
Zinc	44.0

Regulated constituent	Maximum for any single composite sample
	(mg/kg)
Cyanide (Total)	1.8

D. Inorganic Constituents To Be Added to Appendix VIII

In today's rule, the Agency is proposing to begin expanding the list of inorganic constituents in Appendix VIII by adding vanadium, and its compounds. These constituents have either been demonstrated to be aquatic toxins and/or of sufficient human toxicity to warrant inclusion in Appendix VIII. (See the record for this rulemaking located in the RCRA docket for environmental and health effects information.) In addition, vanadium and its compounds have the potential to be present in metal-bearing wastes that can be processed in HTMR units and HTMR residues. Hence, EPA determined in the Land Disposal Restrictions (LDR) rulemaking for high zinc K061 that enough information existed to regulate these constituents so that human health and the environment are protected.

The LDR program typically considers all inorganic constituents currently in 40 CFR part 261 Appendix VIII as potential subjects of treatment standards. The Agency could permissibly regulate these constituents under the ultimate protectiveness standard in sections 3004(d), (e), and (g), which complements the requirement in section 3004(m) that treatment standards minimize migration of or concentration of Appendix VIII constituents. See *NRDC* versus *EPA*, 907 F. 2d 1146, 1171–72 (D.C. Cir. 1990) (dissenting opinion). However, it would be simpler, in EPA's view, to include these constituents in Appendix VIII and avoid the need for continued explanations in future rules that might control these constituents.

The Agency believes that it is important that vanadium and its compounds be added to Appendix VIII, and regulated in residuals resulting from metals recovery. In past LDR rulemakings, commenters have expressed concern that cross-media transfer should be evaluated when determining the Best Demonstrated Available Technology. By expanding Appendix VIII to include these inorganic constituents, EPA hopes in the future to eventually establish a comprehensive list of inorganic constituents that will enhance the Agency's ability to accomplish this goal by evaluating the potential for constituent releases to air, land, and water that may impact aquatic ecosystems and potentially have acute or cumulative effects on humans. EPA is currently investigating sources such as RCRA, CERCLA, SARA, the Clean Air Act (CAA), the Safe Drinking Water Act (SDWA), and the Clean Water Act (CWA) to help determine which inorganics are candidates for inclusion into the comprehensive multi-media list of inorganics.

Besides aiding in treatment technology selection, another potential use of a multi-media composite list of constituents would be the establishment of universal treatment standards and universal generic exclusion levels for inorganic constituents. Inorganic constituents, particularly metals, are of special concern to EPA since they cannot be broken down into an innocuous form the way hazardous organics can be. EPA believes that a comprehensive list of inorganic constituents is an integral part of formulating these universal treatment standards and generic exclusion levels. Investigating a composite list of constituents would allow the Agency to address the potential for cross-media transfer of these constituents.

E. Notification and Certification for Characteristic Wastes

One of the issues in the Third Third rulemaking involved the § 268.9 tracking requirements for characteristic waste. Section 268.9(d) requires the generator or treater of a characteristic waste that is no longer hazardous to send a notification and certification to the appropriate EPA Regional Administrator or authorized state, stating that the waste has been treated as required, and identifying the Subtitle D facility receiving the waste. This documentation is required for each off-site shipment to a subtitle D facility. Similarly, § 261.3(c)(2)(ii)(C) requires an LDR notification and certification to be sent to the appropriate EPA Regional Administrator or authorized state prior to Subtitle D landfill disposal of K061 residues from high temperature metal recovery that meet the generic exclusion levels and do not exhibit any hazardous waste characteristics. The Agency believed that sending the tracking forms to Subtitle D facilities would have counterproductive effects, and determined that the notifications and certifications should be sent to the appropriate EPA Regional Administrator or state authorized to implement the land disposal restrictions program. The Agency requests comment regarding the level of burden on the regulated community being caused by these tracking requirements. See 55 FR 22662–64.

In an effort to reduce the paperwork burden on the regulated community, the Agency is proposing to amend §§ 268.9(d) and 261.3(c)(2)(ii)(C) to replace the current reporting requirement. The Agency requests

comment on its proposal and on several alternatives.

EPA proposes to require that, in the case of characteristic waste that meets the treatment standards and is no longer hazardous and for K061 residues that meet the generic exclusion levels, the initial generator or treatment facility prepare a one-time notification and certification to be kept on-site, but not sent to EPA or the states. The notification and certification would need to be updated if the process generating the waste changed and/or if the Substitle D facility receiving the waste changed. The rationale for proposing the change is that it may not be necessary for EPA or the states to be notified of K061 that meets generic exclusion levels or characteristic wastes that meet treatment standards and are nonhazardous; however, EPA and the states still need to be able to verify such treatment and shipments when conducting inspections of waste management operations.

EPA requests comment on this proposal and on the following three alternatives. The first alternative would be to require the initial generator or treatment facility to send a one-time notice to the EPA Regional Administrator or authorized state with a new notice if the waste changes. This would reduce the paperwork burden of the current notification requirement for each shipment, while still keeping regulatory authorities informed when a particular waste type that is treated and nonhazardous is disposed. The second alternative would be to require the initial generator or treatment facility to maintain records on-site for each shipment. Facilities would be saved the trouble of notifying regulatory authorities, yet would provide EPA with a means to measure volumes of the treated wastes. This alternative would, however, still impose the burden of keeping records for each shipment. The last alternative would be a periodic notification and certification submitted by the generator and/or treatment facility to the EPA Region or authorized state on a monthly, quarterly, or annual basis. Such a report would include information on all treated waste that was shipped to a Subtitle D facility during the reporting period. Periodic reporting would reduce the frequency of reports over the current per-shipment requirement, while still allowing EPA and the states to assess waste volumes.

F. Applicability of Part 268 for Certain Waste Mixtures No Longer Exhibiting a Characteristic

EPA is proposing a clarification regarding the applicability of the part 268 treatment standards to certain waste mixtures described at 40 CFR 261.3(a)(2)(iii): "a mixture of a solid waste and a hazardous waste that is listed in subpart D (of Part 261) solely because it exhibits one or more characteristics of hazardous waste as identified in subpart C, (but which) no longer exhibits a characteristic." The issue concerns the standards which must be met before a waste listed for a characteristic is in compliance with the land disposal restrictions.

In the preamble to the technical amendment to the Third Third rule, the Agency stated that even after the characteristic is removed from a waste listed for a characteristic, the waste must be treated to meet part 268 treatment standards (56 FR 3871, January 31, 1991). This would mean, for example, that wastes such as F003 must meet the numerical standards set for those wastes. Today's proposal would further clarify the point by amending § 261.3(a)(2)(iii) to indicate, consistently, that the same requirement applies to mixtures involving these wastes. As stated in the technical amendment to the Third Third rule (56 FR 3871, January 31, 1991), for waste listed for a characteristic, once the characteristic is removed and part 268 treatment standards are met, the waste need not be disposed in a Subtitle C disposal unit.

G. Storage and Treatment in Containment Buildings

In some cases, hazardous wastes that are prohibited from land disposal must be stored or treated for short periods of time to facilitate recycling, recovery, treatment, or transport off site to meet LDR standards. Some of these hazardous wastes are generated in large volumes (often in batches), contain no or very small quantities of free liquids, and may not easily be amenable to management in RCRA tanks or containers. Rather, this type of hazardous waste is sometimes stored or treated on concrete pads inside a building. EPA currently classifies this type of management unit as an indoor waste pile, which is considered prohibited land disposal (see section 3004(k)). Lead slags and spent potliners from primary aluminum production are examples of hazardous wastes that may be managed in such units; contaminated debris may also be managed in such units. Many believe that if a hazardous waste is managed inside a unit that is designed and operated to contain the hazardous waste within the unit, akin to storage in a RCRA tank or container, this mode of hazardous waste management does not pose the types of potential harms Congress sought to address in defining land disposal, such as uncertainties as to containment of hazardous constituents placed on the land, the goal of initial appropriate management of the waste, and the potential for persistence, toxicity, mobility and bioaccumulation of hazardous wastes placed on the land. See section 3004(d)(a)(A)—(C). Therefore, in order to examine this issue fully, EPA is proposing that the management of hazardous wastes such as lead slags, spent potliners, and contaminated debris within such units, to be termed "contaminant buildings," would not be viewed as placement on the land and consequently not land disposal if this proposal is finalized. To allow storage and treatment of prohibited wastes in containment buildings, EPA is proposing to establish a new definition of containment building, amend the existing definition of pile to exclude containment buildings, and include containment buildings within the storage prohibition of § 268.40. Also, EPA is proposing to establish specific design and operating standards for such units under parts 264 and 265 and also to allow generators' containment buildings to be eligible, under § 262.34, for a 90-day generator exemption from permitting if their unit(s) meets all of the technical requirements for containment buildings. (It should be noted that this proposal, if adopted, would also remove such units at generator sites from the scope of the loss of interim status provisions in section 3005(e) (2) and (3).) EPA requests public comment on the appropriateness of establishing a new unit—"containment building"—to manage hazardous wastes. EPA is also considering and seeking comment on other ways to accomplish the same goal of allowing protective management of wastes in indoor buildings without necessitating compliance with the LDR treatment standards.

1. Revised Definition of Pile

EPA is proposing to revise the regulatory definition of pile to exclude containment buildings. Specifically, the Agency proposes to revise the definition of "pile" explicitly to exclude containment buildings that accumulate or treat prohibited wastes under the proposed requirements of parts 264 and 265. Although the Agency has previously classified roofed structures used to manage dry wastes as indoor waste piles, the Agency believes that there could be distinctions between an indoor waste pile that constitutes land placement and a containment building.

Under existing § 264.250, indoor waste piles are required to exclude liquids or material containing free liquids, be protected from surface water run-on, control dispersal of waste by means other than wetting, and not generate leachate through decomposition or other reactions. In contrast, the containment building design and operating standards (discussed below) generally provide a higher level of containment and may be in many ways comparable to RCRA tanks—that is, the hazardous waste is contained during storage or treatment. For example, containment buildings would be fully enclosed, have self-supporting wall and floor systems, are equipped with a secondary containment system if the hazardous waste contains very small quantities of free liquids, and are provided with fugitive dust emission controls.

2. Definition of Containment Building

EPA is proposing to define in § 260.10 a new unit, "containment building," that is used to store or treat hazardous wastes and that is designed and operated in compliance with special requirements that ensure containment. (Although EPA is defining containment buildings to allow storage and treatment of certain types of prohibited wastes, hazardous wastes that are not yet prohibited may also be managed in such units subject to the special requirements discussed below.)

3. Applicability of the 90-Day Accumulation Exclusion in § 262.34

Under § 262.34, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided, among other requirements, that he complies with the subject I, J, or W requirements in 40 CFR part 265. To date, the Agency has limited applicability of the 90-day provision to containers, tanks, or drip pads (see 55 FR 50450, December 6, 1990). EPA solicits comment on the association of containment buildings with generator production activities. See 45 FR 12730 (February 26, 1980). EPA today proposes to extend the 90-day generator exemption in § 262.34 to containment buildings.

Under today's proposal, all containment buildings would have to meet the same technical standards and, consequently, provide the same level of protection to human health and the environment. As such, EPA today is proposing to require that containment buildings operating under the proposed Part 265, Subpart DD interim status standards be designed, operated, and maintained to meet the same technical requirements as permitted containment buildings.

EPA is requesting comment on whether generators who store or treat hazardous waste in containment buildings pursuant to the 90-day accumulator exemption should be required to maintain, on site for the operating life of the containment building, a description of all procedures that would be followed to ensure that all wastes are removed from the containment building at least once every 90 days. Documentation of each waste removal would be required to be in the generator's on site files recording, at a minimum, the quantity of waste removed, and the date and time of removal. The Agency is aware that certain operations, for example, the continuous processing of wastes, or blending of wastes, may complicate the generator's ability to determine and thus document when a waste ceased to be accumulated within the containment building. EPA is requesting public comment on how best to ensure and document that a generator complies with the requirement limiting the time any waste is accumulated within the containment building to less than 90 days.

If the generator can not meet the 90-day time limit or if a hazardous waste is stored or treated in a containment building off site, the unit must be permitted in accordance with the existing permitting regulations.

It is anticipated that some existing units, previously classified as piles, would, as a result of today's proposal, be modified so as to be converted to a containment building. It is feasible that there may be releases of hazardous wastes that could be impacted by today's proposal. An issue that EPA is evaluating is whether the Agency will or should retain RCRA corrective action authority at new units and at those existing interim status or permitted units that subsequently become 90-day generators with containment buildings as their only RCRA activity. The Agency points out that, even without RCRA corrective action authority, generators would still be liable for any releases under the provisions of CERCLA. Also, EPA solicits comments on the extent facility wide corrective action authority for releases of hazardous constituents for solid waste management units at generator facilities will be forgone under this proposal. Public comment regarding the issue of corrective actions at generators' containment buildings, particularly for indoor piles that have been or will be converted to containment buildings, is welcome. In addition EPA, requests public comment on whether the 90-day generator accumulation provision should be extended to containment buildings or whether all such containment building should be required to be RCRA-permitted under subtitle C. In providing comments on this point, the Agency specifically requests commentors to articulate the rationale for requiring all containment buildings to be RCRA-permitted under subtitle C.

4. Special Requirements

The special requirements for containment buildings restrict the types of hazardous wastes that may be stored or treated in the unit and specify performance standards for the design and operation of the unit to ensure a measure of protection of human health and the environment greater than that provided by an indoor waste pile. See proposed subpart DD, parts 264 and 265.

(a) Acceptable Wastes. EPA intends that containment buildings be used to store or treat only dry wastes, i.e., those with no free liquids or those hazardous wastes that contain very small quantities of free liquids. The containment standards discussed below will ensure that hazardous waste that is dry or contains very small quantities of liquids will not pose a hazard to human health or the environment. The Agency's intent regarding the meaning of a very small quantity of liquid may best be indicated by the following example.

Example: A secondary lead smelting facility processes used lead-acid batteries to recover the lead. One of the steps involved in this process, battery cracking, necessarily generates wet lead-bearing materials. For process efficiency, among other reasons, free liquids are removed to the extent feasible prior to the materials being staged for furnace feed. However, some residual moisture (free liquid) remains and cannot easily be removed. In this example, although an attempt has been made to eliminate free liquids, the nature of the material precludes the complete removal of such liquid and, as such, can be viewed as incidental.

If liquids cannot be removed from the hazardous waste to a very small level, the hazardous waste stored in such a building would be considered a waste pile, a form of land disposal. Also, please note that if EPA allows very small quantities of liquids in hazardous waste to be stored in a containment building, the Agency would be making a distinction between these units and indoor waste piles which must only be used to manage no free-liquid wastes. Public comment is invited on the Agency's proposal to allow hazardous waste containing very small quantities of free liquids to be stored in

containment buildings and, if so, how EPA should define the term "very small.' The Agency specifically requests comment on whether the liquids release test or paint filter liquids test should be used for testing wastes to be stored.

(b) Design and Operating Standards. EPA is proposing the following design and operating standards for both permitted units and units operated under interim status. (See proposed subpart DD, parts 264 and 265.)

Hazardous wastes managed in these units must be fully contained within the unit. As such, the Agency believes the unit must be completely enclosed with a floor, walls and a roof to prevent exposure to precipitation and wind. Many of the hazardous wastes presently managed in these units may have a significant volume of fine particulates. Enclosure within a structure will prevent the escape of these fine particulates from the unit. Contact of the waste with precipitation also needs to be avoided to prevent the formation of and migration of leachate which could potentially result in release of hazardous waste into the environment. Also, exposure to precipitation could cause chemical reactions, including corrosion of the unit, to occur.

The unit would need to be constructed of man-made materials with sufficient structural strength to support itself, the waste contents, and any personnel and heavy equipment that operate within the unit. Factors such as settlement, frost-heave, and exposure to wind force need to be taken into consideration in designing the unit. Any surface that is to be in contact with the hazardous waste should be chemically compatible with the waste. Because the intended use for these units is storage or treatment, the unit would have to be designed to accommodate appropriate levels of loading and unloading activity during its operating lifetime.

As previously stated, this proposal requires a containment building to be designed and operated in a manner so that any hazardous waste placed inside the unit be contained. EPA is proposing several measures to ensure that the hazardous waste does not escape into the environment. Although these units are intended for dry hazardous wastes (i.e., those with no free liquids), the Agency realizes that very small quantities of free liquids may be associated with certain hazardous wastes not capable of storage/treatment in a tank or container. Containment buildings used to store/treat hazardous wastes with very small quantities of free liquids would have to be provided with a means by which to manage any such liquid that collects on the containment building floor. Surfaces (e.g., the floor) that would be in contact with free liquids must inhibit the migration of liquid into the concrete matrix and facilitate the collection and removal of such liquid. For example, concrete surfaces must be provided with a penetrating sealer or a coating that inhibits the migration of liquid into the concrete matrix. EPA requests comment on appropriate methods for ensuring compliance with this criteria. Containment buildings used to manage hazardous wastes containing very small amounts of free liquid also would need to be provided with secondary containment that is capable of detecting, collecting, and holding any leaks/accumulated liquid until the collected material is removed. A secondary containment system for a containment building that manages hazardous waste with very small levels of liquids must meet the same performance standards as required for a hazardous waste tank system under 40 CFR parts 264 and 265, subpart J. EPA is proposing that secondary containment only need be provided if the containment building will be used to manage hazardous waste containing a very small quantity of free liquid. The Agency invites public comment on whether secondary containment should be a requirement for every containment building, including those that only will be used to store or treat hazardous waste containing no free liquids. Under this approach, if hazardous wastes with more than very small quantities of free liquids or hazardous wastes that decompose and generate free liquids are stored in a unit that otherwise meets the special requirements for a containment building, the unit would be subject to regulation as a waste pile land disposal unit.

Another measure to ensure containment of hazardous waste managed in these units is a requirement that the level of the waste inside the unit cannot exceed the height of the unit's walls intended to come in contact with the hazardous waste. The Agency believes it is a good housekeeping practice to prevent stored/treated hazardous waste from spilling over the walls of the unit and, in the case of certain hazardous wastes, to be able to contain any potential "landsliding" of material out of the unit. It is important to note that the walls being referred to in this provision are those walls, or portions of the unit's walls, that have been designed and constructed to be in contact with the hazardous waste and capable of supporting the weight of the waste. The following example makes this distinction.

Example: A facility has constructed a containment building to accumulate its hazardous waste prior to conducting treatment to meet LDR standards. The unit has a reinforced concrete floor and 10-foot high reinforced concrete walls. The remainder of the sidewalls, built atop the concrete wall and extending to the roof, is steel framing with fiberglass panels. In this example, the hazardous waste stored/treated inside the unit must not be piled any higher than the 10-foot reinforced concrete walls. The remainder or upper portion of the walls are not designed to support the weight of the waste and may not provide adequate containment of the waste, i.e., hazardous waste may escape through the panel joints.

Yet another concern that needs to be addressed regarding wall construction is the issue of specifications for doors and other openings that are part of a wall and used for equipment and/or personnel. EPA believes these doors and openings should be capable of providing the same level of structural support and containment as the rest of the wall. Although EPA today is not proposing specific standards for doors and openings that are part of a wall providing support and containment of hazardous waste managed within a containment building, public comment is invited on this issue.

As noted earlier, EPA believes the routine handling of hazardous waste within these units demands the frequent, if not constant, presence of personnel and handling equipment, e.g., front-end loaders, cranes. As such, particularly when the hazardous waste is comprised of small particulates or where handling of the hazardous waste generates dust, the potential for tracking hazardous waste out of the unit may be significant. A containment building must contain any hazardous waste stored/treated inside it. Therefore, EPA is proposing that measures be taken to ensure the containment of hazardous waste within the unit. Washing-down of vehicles prior to exiting the unit and dedicating vehicles for the sole purpose of operating within the unit are examples of measures that owners/operators of these units would need to take when the potential exists for tracking of hazardous waste out of the unit. (These measures could only occur, however, if EPA decides to allow the introduction of free liquids in containment buildings as part of treatment.)

Given the dusty nature of certain hazardous wastes that may be managed in these units and/or the dusty conditions that may be caused by the handling of the hazardous waste within the unit, EPA is proposing that measures also be taken to control fugitive dust emissions. In these situations, the

owner/operator would be required to install and operate a system whereby a negative pressure is maintained within the unit and particulates are collected, e.g., by fabric filter or electrostatic precipitator. Such a system would be designed and operated to function effectively at all times, including those periods when doors are opened for vehicle entry/departure.

An important goal of an inspection plan is the need to ensure the unit is operating as designed This goal is achieved through the establishment of an inspection program that ensures maintenance of the structural integrity of the unit and leaks/releases will be promptly detected, should they occur. EPA is proposing that an inspection schedule for these units be adhered to whereby, at least once each operating day (as is required for tanks and tank systems), monitoring/leak detection equipment, the containment building, and the area surrounding the containment building is checked to ensure the unit is being properly operated and that no leaks/releases have occurred. These observations would need to be recorded in the facility's operating log. Comment on the applicability and adequacy of each of the design and operating measures discussed above is welcomed. A requirement that the Agency is considering but is not proposing today is the written certification by an independent registered professional engineer (i.e., one who is not an employee of the company, or of its parent or subsidiary); the benefit of such a certification would be to ensure that any new or existing containment building is designed and constructed with sufficient structural integrity to safely manage and contain the hazardous waste. Public comment is requested on the need for this certification and which factors should be considered in an assessment of the integrity of the unit.

Finally, EPA is aware that in certain situations, such as hazardous waste site remediation efforts, a containment building can serve to enhance the performance of bioremediation treatment technologies; however, because such structures for site remediation are likely to be temporary in nature, they currently are not constructed with floors or sidewalls that would meet performance standards proposed today. EPA is evaluating if such temporary containment buildings should be designed and constructed to the same standards as more permanent containment buildings or whether perhaps a separate subcategory of design and operating requirements is merited for these bioremediation treatment buildings. Public comment is invited on this issue. In particular, EPA solicits comment on whether less stringent requirements, such as allowing the use of synthetic liners and non-load bearing walls, can be considered adequately protective.

As noted elsewhere in today's preamble, EPA would allow wastes to be treated as well as stored in containment buildings. Examples of such treatment could include the various types of technologies that are discussed in Appendix I to this preamble for treatment of contaminated debris. Because many of these technologies require the use of liquid, the Agency proposes to allow such technologies to be conducted in containment buildings. In some cases, such treatment would be conducted in tanks or containers in such buildings. When this occurs, the standards for tanks and containers would also apply. For example, a treatment system to treat debris waste could include a containment building with a tank inside that is used for stabilization; following treatment the waste may be stored in the containment building (subject to all existing storage requirements). In this example, the tank standards would have precedence in regard to the debris being treated in the tank, while the containment building standards would have precedence in regard to the treated debris that is being stored in the containment building.

In other cases, treatment in tanks and containers may not be possible. For example, personnel may not be able to apply safely many of the prescribed debris treatment technologies to large bulky debris in confined tanks and containers. Therefore, EPA is also proposing to allow the actual treatment in containment buildings that utilizes the addition of liquid as part of BDAT treatment. Where this is done, appropriate mechanisms need to be provided to control liquids utilized during the treatment of waste. The design standards EPA proposes today include primary containment via walls and floors along with secondary containment. Also, any drainage or accumulation of liquids applied to contaminated debris must comply with relevant statutes and regulations. For example, if debris liquid residuals are land disposed from the containment building they must first be treated to meet the F039 treatment standards. EPA believes that liquids should be removed from the containment building at the earliest practicable time that protects human health and the environment. EPA also solicits comments as to what other, if any, performance standards may be necessary to ensure that liquids in containment buildings are managed to protect human health and the environment. The Agency specifically requests comments on how often liquid application as part of contaminated debris treatment occurs or may occur. Also, the Agency requests comment on whether treatment utilizing the addition of liquid should be done in a dedicated portion of the containment building or whether the whole building could be used.

5. Wastes Eligible for Accumulation/Treatment in Containment Buildings

Under this proposal, many land disposal prohibited wastes potentially may be eligible to be stored or treated in containment buildings in order to facilitate/accomplish compliance with the prescribed BDAT standards. EPA considered two options regarding which hazardous wastes should be eligible for management in these units: (1) All hazardous wastes, including contaminated debris; and (2) only contaminated debris and certain additional bulky, high volume hazardous wastes that the Agency currently understands cannot be practicably stored/treated in tanks or containers.

Prior to being incorporated into this proposal, EPA was considering developing a Policy Directive whereby certain hazardous wastes, i.e., aluminum spent potliners, recycled lead batteries, and possibly electric arc furnace dusts, were definitively identified as candidates for management within containment buildings. Although EPA believes other hazardous wastes with no or very small quantities of liquids could also be more practicably managed in containment buildings rather than tanks or containers, information on such wastes was and remains lacking. EPA requests data on other hazardous wastes that could qualify for management within containment buildings.

EPA is proposing today to allow any hazardous waste, including contaminated debris, that is dry or contains only very small quantities of liquids to be stored/treated in containment buildings. Although EPA conceived these units to manage dry, bulky land disposal restricted wastes whose volume and/or physical characteristics make storage or treatment in a tank or container infeasible or impractical, the Agency sees no reason to restrict the eligibility of hazardous wastes for management in these units only to those hazardous

wastes for which EPA has data available (or even only to land disposal prohibited wastes), no matter what type of hazardous waste is accumulated. A containment building managing any hazardous waste that is dry or containing only very small incidental quantities of liquids, when designed and operated in accordance with the standards being proposed today, should ensure protection of human health and the environment. Nevertheless, the Agency requests comment on whether the applicability of this particular provision should be limited to certain types of wastes; if so, please indicate which wastes.

6. Amendment of § 268.50 Storage Prohibition and Permit Requirements

Under existing § 268.50, the storage of hazardous wastes prohibited from land disposal is also prohibited unless, among other requirements, the waste is stored in tanks or containers on site solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate recovery, treatment, or disposal. At the time EPA adopted this provision, tanks and containers were the only types of storage units that did not also involve land disposal. Under today's proposal, there would be other types of storage units (i.e., containment buildings, subpart X storage units) not involving land disposal. EPA is thus proposing to conform § 268.50 to include these units.

Today's rule also proposes to amend Appendix I of § 270.42 by adding section M which will classify permit modifications for containment buildings. In addition, today's proposal would amend the modifications for enclosed waste piles by adding an item which classifies a modification to an enclosed waste pile to meet the standards for a containment building as a Class 2 modification. EPA believes that many facilities will make modifications to their permitted enclosed waste piles to meet the standards for containment buildings. For more information on these permit modification procedures, see 53 FR 37912, September 28, 1988.

V. Detailed Discussion of Today's Proposed Rule: Contaminated Debris

A. Overview

Debris that is contaminated with a prohibited waste or that exhibits a prohibited characteristic is presently subject to the treatment standard for that listed waste or characteristic. See, e.g., 55 FR 22649 and RCRA section 3004(e)(3). However, although contaminated debris (as well as contaminated media) are subject to the LDR prohibitions, there is no requirement that they have the same treatment standards as the wastes with which they are contaminated. Indeed, because contaminated debris may be a matrix significantly different from the underlying prohibited waste, it is appropriate as a technical matter to investigate whether different treatment standards are needed.

Today, EPA is proposing separate treatment standards for contaminated debris, so that, in effect, contaminated debris would be dealt with as a separate treatability group. Under today's proposal, contaminated debris must be treated by specified technologies based on the type of debris and type of contaminant(s) present. In addition, as described more fully below, debris also may be treated by any method (other than impermissible dilution) and would no longer be a prohibited waste or a hazardous waste if it achieves levels at which debris no longer "contains" hazardous waste. If the debris already achieves those levels as generated, it also would not be a hazardous waste or require treatment.

EPA has sought to specify a group of BDAT technologies for each type of debris, with the choice of which technology from within the group left up to the person managing the waste. The technologies in each group include widely used treatment methods. EPA is thus seeking to preserve as much flexibility for treatment of debris as possible.

Contaminated debris would be defined as debris that exhibits a prohibited characteristic of hazardous waste or that is contaminated with a prohibited listed waste. Contaminated debris must be treated by one of the specified treatment technologies for each "contaminant subject to treatment" defined as: (1) For debris contaminated with a prohibited listed waste, the BDAT constituents for the listed waste and any Appendix VIII, part 261, constituent that the owner or operator could reasonably know may be contaminating the debris; and (2) for debris exhibiting the Extraction Procedure [5] toxicity characteristic, the constituent(s) for which it fails the characteristic. (The Agency is also requesting comment on requiring treatment of any appendix VIII, part 261, constituent that the owner or operator could reasonably know may be contaminating any contaminated debris—i.e., debris that exhibits a prohibited characteristic as well as debris that is contaminated with a prohibited listed waste.) An owner or operator need not identify "contaminants subject to treatment" if a generic treatment technology is used. A generic treatment technology is one that the Agency believes will provide effective treatment for all Appendix VIII constituents. EPA is proposing six such technologies in this rule.

To ensure effective treatment, the treatment unit would be required to meet performance standards or design and operating conditions specified in the rule. In addition, the treatment unit would be subject to the part 264 and 265 standards for treatment facilities to ensure protection of human health and the environment.

As noted above, the proposal addresses not only the issue of when contaminated debris is sufficiently treated, but the further question of when it is a hazardous waste. Under the proposal, treated debris would be conditionally excluded from the definition of hazardous waste. The exclusion is conditioned on: (1) The use of an extraction or destruction treatment technology rather than an immobilization technology; and (2) the treated debris must not exhibit a characteristic of a hazardous waste. If an immobilization technology is used, the treated debris remains subject to Subtitle C regulation.[6]

In addition, EPA may determine on a case-by-case basis that untreated contaminated debris, or contaminated debris treated by a technology other than that specified by the proposed rule (and other than impermissible dilution), is not mixed with, or does not contain hazardous waste and, thus, need not be managed as a hazardous waste. The rule, if adopted, would thus codify the contained-in principle that the Agency currently applies on a case-by-case basis. If toxic constituents are not present at levels that could pose a hazard to human health or the

[5] If debris is a hazardous waste solely because it exhibits the toxicity characteristic for any of the 40 constituents listed in § 261.24, it would be defined as contaminated debris only if it exhibited the toxicity characteristic for one or more of the 14 constituents of the EP toxicity characteristic. Further, today's proposal would require such debris to be treated only for those EP constituents for which it exhibited the toxicity characteristic. EPA is proceeding in this fashion because it prefers to deal with all issues relating to prohibitions for wastes identified by the expanded toxicity characteristic in one single proceeding. See 56 FR 55166–172 (October 24, 1991) soliciting data to be used in developing treatment standards for wastes identified by the TC.

[6] See section V.E.1. where EPA requests comment and data to support the design of performance standards for immobilization technologies that would be sufficient to allow contaminated debris treated by such technologies to be excluded from Subtitle C management.

environment (and if the debris does not exhibit a characteristic), the debris would be excluded from the definition of hazardous waste. EPA seeks comment on further criteria to be applied in making this case-by-case exclusion determination.

Residuals generated by treatment of contaminated debris would be subject to the numerical LDR standards EPA established for waste code F039 (multi-source leachate wastewater and nonwastewater treatment standards) under §§ 268.41 and 268.43. Unlike the debris treated using extraction or destruction technologies, these residuals are not excluded from the hazardous waste rules—that is, after these residuals meet the LDR standards, they must be managed at a subtitle C facility, unless the residuals are no longer defined as a hazardous waste.[7]

B. Definitions

Before discussing the specific standards that are being proposed today for contaminated debris, it is necessary to first define several terms.

1. Definition of Debris

Debris is defined as solid material that: (1) Has been originally manufactured or processed, except for solids that are listed wastes or can be identified as being residues from treatment of wastes and/or wastewaters, or air pollution control devices; or (2) is plant or animal matter; or (3) is natural geologic material exceeding a 9.5 mm sieve size including gravel, cobbles, and boulders (sizes as classified by the U.S. Soil Conservation Service), or is an inseparable mixture of such materials with soil, liquid, sludge, or other solid waste materials (i.e., inseparable by simple mechanical removal processes). See proposed amendment to § 268.2. (This definition would essentially incorporate the existing regulatory definition of inorganic solid debris in § 268.2, and adds further categories of materials that can legitimately be viewed as debris.) EPA requests comment on the proposed definition of debris, and particularly on the terms or phrases "solid material," "originally manufactured or processed," and "simple mechanical removal."

We identified the following six categories of debris—in essence, six treatability groups. The groups are specifically designed to reflect the ability of treatment technologies to decontaminate them: (1) Metal objects; (2) brick, concrete, rock, and pavement; (3) glass; (4) wood; (5) paper and cloth; and (6) rubber and plastic. The treatment standards discussed in Section V.F below are established as a function of these debris categories as well as the type of contaminant(s) present (see Section V.C below).

Debris can be generated from a wide variety of activities including remedial actions at Superfund and RCRA corrective action sites, routine generation (e.g., discarded drums and containers), and sporadically generated debris (e.g., building demolition materials). Debris includes many different objects, such as concrete blocks and bricks, structural steel, drums and tanks, glass and plastic bottles, cloth, paper, appliances, battery cases, tires, and gas cylinders. A survey of the types of debris found at over 200 waste sites (primarily Superfund sites) revealed that the most frequently found debris consists of metal objects (typically drums and tanks), brick, concrete, and rock.

Categories of debris at hazardous waste sites, in order of decreasing frequency of occurrence, are:

- Metal objects, including drums, tanks, pipes, iron bars, and steel beams;
- Brick, concrete, rock, and pavement, including concrete blocks, concrete foundations, cinder blocks, concrete sidewalks, and asphalt pavement;
- Wood, including wood furniture, pallets, plywood, wood walls, wood floors, leaves, live vegetation, wood telephone poles, trees, and railroad ties;
- Rubber and plastic, including tires, hoses, battery cases, PVC piping, plastic bags, fiberglass tanks, and plastic sheets;
- Paper and cloth, including books, magazines, cardboard, paper packing, paper insulation, fiber drums, rags, and mattresses; and
- Glass, including bottles, windows, beads, glass bricks, and glass containers.

In addition to the six categories of debris listed above, EPA identified other miscellaneous types of debris (PCB-contaminated debris and debris contaminated with radioactive materials, see Sections V.H.2 and V.H.4). Special standards would apply to these types of debris. In addition, EPA determined late in the development of today's proposed rule that standards are needed for asbestos debris. Accordingly, the Agency is requesting comment on technologies that would be considered BDAT for contaminated asbestos debris. See Section V.H.3. Finally, EPA specifically requests comment on whether there are other types of debris for which treatment standards should be established.

2. Definition of Contaminated Debris

The Agency is proposing to define contaminated debris as debris that contains a hazardous waste listed in subpart D of part 261 for which land disposal restriction (LDR) standards have been promulgated under 40 CFR part 268, or that exhibits a characteristic of hazardous waste identified in subpart C of part 261 for which LDR standards have been promulgated under part 268.[8] The Agency is proposing to define "contains RCRA hazardous wastes" to mean that RCRA listed hazardous wastes are contained on the surface or contained in the pore structure of the debris. This proposed definition would to a large extent codify the Agency's current interpretations of when debris would be a hazardous waste, and obviously does not alter the fact that such contaminated debris is already subject to regulation under the Subtitle C rules. See *Chemical Waste Management* v. *EPA*, 869 F.2d 1526, 1539–40 (D.C. Cir. 1989) upholding as a reasonable interpretation of the mixture and derived from rules EPA's conclusion that environmental media contaminated with listed wastes remain subject to regulation as hazardous waste.

We note that material-specific LDR standards have already been established for some materials that meet the definition of contaminated debris (e.g., lead acid batteries). In such cases, the LDR standard for the specific debris would take precedence over the standards proposed today.

A person who generates debris must determine if the debris is contaminated. The debris is contaminated if it contains a prohibited listed waste or if it exhibits a prohibited characteristic of hazardous waste. For newly-generated debris, the generator can readily determine if the debris is contaminated with a listed hazardous waste. For debris that has been re-generated by, for example, a Superfund clean-up or RCRA Corrective Action, the generator must use all information that is reasonably available to determine if the debris is contaminated with a listed hazardous waste.[9] To determine whether the

[7] See footnote 6.

[8] Although debris that exhibits the TC (see § 261.24) for any of the 40 constituents regulated under the TC is a hazardous waste, only debris that exhibits the TC for the 14 Extraction Procedure (EP) constituents would be defined by today's proposal as contaminated debris subject to the proposed treatment standards. When the Agency proposes BDAT standards for wastes that exhibit the TC for the remaining 26 constituents, we plan also to propose to expand the definition of contaminated debris to include debris exhibiting the TC for those additional constituents.

[9] See, e.g., the preamble to the National Contingency Plan (55 FR 8666 (March 8, 1990)).

debris exhibits a characteristic of hazardous waste, the generator must use either best professional judgment or, as practicable, analysis of a representative sample of debris.

3. Debris Subject to the Proposed Rule

As summarized above, EPA is proposing that all debris that is contaminated with (1) prohibited listed wastes and (2) listed wastes for which EPA is proposing prohibitions and treatment standards in today's rule, be subject to the debris treatment standards proposed here. In addition, any debris exhibiting the characteristic of ignitability, corrosivity (probably impossible, since only liquids can be corrosive, see § 261.22(a)), or reactivity would be covered, as would wastes identified by the toxicity characteristic that also exhibit the old EP characteristic. The types of contaminated debris not covered in this rule may be amenable to the same approach proposed here, but EPA prefers to defer these issues until such time as the debris becomes prohibited from land disposal. Given the time constraints of the May 8, 1992 lapsing of national capacity variances for already prohibited debris, the Agency believes it appropriate not to increase the scope of this rulemaking.

C. Contaminant Categories

To develop treatment standards for contaminated debris, the Agency divided the toxic constituents that may contaminate debris into 10 categories based on similar physical and chemical properties:

- Halogenated pesticides and aromatics;
- Dioxins, furans, and their precursors;
- Halogenated aliphatic compounds;
- Nitrated compounds;
- Non-polar aromatics, heterocycles, and other organic compounds;
- Polynuclear aromatic hydrocarbons;
- Other nonhalogenated polar organic compounds;
- Nonvolatile metals;
- Volatile metals; and
- Non-metal inorganics.

These contaminant categories take into account differences in the applicability and effectiveness of treatment technologies for those particular contaminants. EPA proposes to assign all toxic constituents listed in Appendix VIII, part 261, except for radionuclides (see Section V.H.4), to these contaminant categories as indicated in Table 2 of proposed § 268.45. (In addition, we note that proposed Table 2 contains several constituents that are not on Appendix VIII, part 261. As discussed in Section D below, contaminated debris that is contaminated with a prohibited listed waste must be treated for the BDAT constituents for that listed waste. For reasons discussed in Section D below, some BDAT constituents are not on Appendix VIII.)

One determines the contaminant category for which the debris must be treated by the type of hazardous constituent with which the waste is contaminated. For example, if debris is contaminated with F001 solvents, the debris must be treated using a technology specified in proposed Table 1 of § 268.45 (see discussion in Section V.F.2 below) as acceptable for halogenated aliphatics. This is determined by identifying the BDAT constituents for F001 in existing §§ 268.41 and 268.43 and determining from Table 2 of proposed § 268.45 that they all are included in the halogenated aliphatics contaminant category. If the debris also exhibits EP toxicity for cadmium, for example, the debris must also be treated using a technology specified in Table 1 of § 268.45 as acceptable for nonvolatile metals, because proposed Table 2, § 268.45, assigns cadmium to the nonvolatile metal category. This approach allows EPA to regulate debris contaminated with any prohibited listed waste without individually addressing every RCRA listed waste.

EPA specifically requests comment on whether the proposed contaminant categories and the assignment of constituents to those categories as proposed in Table 2 of § 268.45 is an appropriate scheme for assigning constituents to similar treatability groups. We note that one alternative approach is the "Table of Treatability Groups Used to Develop the Proposed Treatment Standards for U and P Waste Codes" that the Agency previously developed. See 54 FR 48392–48418 (Nov. 22, 1989).

D. Determining Contaminants Subject to Treatment

Contaminated debris must be treated for each contaminant category (e.g., polynuclear aromatics; volatile metals) represented by each contaminant that is "subject to treatment." See proposed Table 2 to § 268.45. The contaminants that are "subject to treatment" are: (1) For each listed hazardous waste known to contaminate the debris, the constituents for which LDR concentration limits have been established (i.e., "BDAT constituents") that are present at detectable levels as well as all constituents on Appendix VIII, part 261, that an owner or operator of a treatment facility could reasonably know may contaminate the debris at detectable levels; (2) for debris that exhibits the Toxicity Characteristic (TC), those constituents for which the debris exhibits the Extraction Procedure (EP) [10] toxicity characteristic; and (3) for debris that exhibits the reactivity characteristic due to presence of cyanide, cyanide.

When debris is contaminated with a prohibited listed waste, EPA is proposing that the debris be treated for any Appendix VIII, Part 261, constituent that the owner or operator could reasonably know may contaminate the debris at levels of analytical detection (using procedures prescribed in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846 (Second Edition, 1982 as amended by Update I (April 1984), and Update II (April 1985)) because the Agency wants to ensure treatment of all toxic constituents given that the treated debris is conditionally excluded from Subpart C regulation.[11] See section V.E. below. If, for example, an owner or operator of a treatment facility could reasonably know that a debris is contaminated with a solid waste that may contain Appendix VIII constituents (for example, because a particular material was produced or used at a site), and if the debris could subsequently be contaminated with detectable levels of those Appendix VIII constituents, the debris must be treated for the contaminants. EPA requests comment on how to define what "reasonably know" means in regard to appendix VIII constituents that may be contaminating debris.

Further, the Agency specifically requests comment on whether the rule

[10] See footnote 8.

[11] EPA requests comment on whether in the final rule to waive the requirement to identify as contaminants subject to treatment any Appendix VIII constituent that an owner or operator could reasonably know may contaminate the debris at levels of analytical detection if an owner or operator elects to continue to manage the treated debris as hazardous waste. In addition, EPA requests comment on whether Appendix VIII constituents that an owner or operator could reasonably know may contaminate the debris should be considered "contaminants subject to treatment" only if they are present at levels of potential health significance rather than merely at detectable levels as proposed. Commenters should provide supporting rationales for measures of significance. One possibility on which EPA solicits comment are the F039 levels, which correspond to the levels that residues from debris treatment would meet in order to be land disposed (albeit in Subtitle C facilities). Ultimately, EPA would use the *de minimis* levels, assuming it proves technically feasible to develop such levels, as the measure of when treatment of hazardous constituents is unnecessary See 55 FR 6642 (February 26, 1991).

should also require that debris that is hazardous solely because it exhibits a characteristic (i.e., toxicity, ignitability, or reactivity) be treated for all constituents on appendix VIII, part 261, that an owner or operator of a treatment facility could reasonably know may contaminate the debris at detectable levels. The Agency noted in the Third Third rule that it would seek to adopt this approach where feasible. See 55 FR 22654. This approach clearly fulfills the statutory goal of requiring treatment that minimizes short- and long-term threats posed by land disposal of hazardous waste. See section 3004(m) and 55 FR 22652. In the Third Third rule, EPA was able to develop such treatment standards for only a few characteristic wastes (certain reactive cyanides, lead batteries, certain mercury wastes, and high TOC ignitable liquids) due partially to time constraints, and to the formidable technical problems of determining appropriate treatment levels for all possible hazardous constituents found in the huge variety of characteristic waste matrices.

It appears that the technical task may be easier for characteristic debris. There are fewer matrices to consider (there is probably no corrosive debris, and little ignitable debris, since these characteristics identify chiefly liquid wastes), and there may be little reactive debris. Also, because the treatment standards for debris consist of treatment methods, and treatment of residues to F039 levels, the problem in the Third Third of determining *a priori* a whole range of treatment concentrations is not present here.[12] EPA solicits comment on these points, and also notes (as discussed more fully below) that today's rule applies the Third Third approach to reactive cyanide debris by requiring effective treatment of cyanide in both the debris and treatment residues so that, for at least this waste, EPA anticipates a standard resulting in treatment that removes a characteristic and treats hazardous constituents.

To determine whether debris contaminated with a listed prohibited waste may be contaminated with appendix VIII constituents (other than the BDAT constituents for the prohibited waste) at levels of analytical detection, an owner or operator of a treatment facility must make a reasonable effort to identify the generator of the debris. If the generator can be identified, generator or other information (e.g., general knowledge about the types and concentrations of chemicals used by the generator that may be in waste or other materials that may contaminate debris) must be used to identify Appendix VIII constituents that may contaminate the debris at detectable levels. Sampling and analysis of the debris is not required given the difficulty of obtaining representative samples of complicated matrices (e.g., mixtures of debris types such as stumps, plastic or metal piping, boulders, lumber).

EPA solicits comment on documentation to support the determination of contaminants subject to treatment. In particular, EPA requests comment on whether documentation must include a description of efforts to identify the generator of the debris and determinations regarding the types of appendix VIII constituents that are present at the site of generation and that may be contaminating the debris, and whether such documentation must be provided in the operating record for the treatment facility (or for debris treated on site, in a generator's waste analysis plan developed pursuant to § 268.7(a)(4)).

EPA notes that an owner or operator need not make determinations regarding the presence of contaminants subject to treatment if a treatment technology that effectively treats all appendix VIII constituents is used. Such generic treatment technologies (for one or more debris categories) are identified in proposed appendix X to the rule. (Note that the generic treatment technologies are generic for all contaminants but are not generic for all debris types.) We are proposing that five surface removal technologies and thermal destruction be considered generic technologies. Surface removal technologies (e.g., abrasive blasting, scarification and grinding) effectively treat all types of contaminants because the contaminants are removed from the debris with the surface layer. As noted in proposed appendix X (see discussion in Section V.F.3 below), EPA believes that many debris types can be effectively treated by these technologies (i.e., when the performance standards of proposed appendix IX are met). EPA considers thermal destruction to be a generic technology because organic contaminants are destroyed and metal contaminants partition to the ash residue which is subject to the F039 treatment standards (see Section V.G below). Thermal destruction would be a generic technology for organic debris types only, however, because if inorganic debris contaminated with a metal contaminant of concern is treatment by thermal destruction, the inert debris that may be separated from the residue would continue to be considered contaminated debris subject to treatment for the metal. Thus, when an inert debris contaminated with a metal contaminant is treated by thermal destruction, a treatment train is required to treat the inert debris remaining for the metal contaminant. Given that presence of a metal contaminant subject to treatment drives this decision, thermal destruction cannot be a generic treatment technology for inert debris.

E. Exclusion of Contaminated Debris from Subtitle C

Under today's proposed rule, contaminated debris may be excluded from the definition of hazardous waste by either: (1) Treatment by the technology specified in proposed § 268.45 and appendix IX (see Section V.F below), provided that the technology is an extraction or destruction technology [13] and that the treated debris does not exhibit a hazardous characteristic; or (2) a case-by-case determination by EPA upon request of the generator or treatment facility owner or operator that an untreated debris, or a debris treated by a technology other than specified in § 268.45 and appendix IX, is a solid waste (e.g., discarded concrete, metal or plastic drums, or piping) that is not mixed with a hazardous waste, or is not a solid waste (e.g., rock) that does not contain hazardous waste at significant levels. The latter approach would codify the Agency's existing practice with respect to when hazardous wastes are "contained-in" or mixed with debris.

EPA is proposing the following decision rules regarding the interplay of the debris treatment standards and the contained-in policy. First, if debris is found not to contain or be mixed with a hazardous waste it need not be treated by a prescribed method of treatment. The debris may be deemed not to contain or be mixed with a hazardous waste as a result of treatment (which need not be a prescribed treatment method) or as generated. The level could not be achieved by impermissible dilution. The legal basis for this decision rule is that the Agency tentatively believes that these levels could be viewed as levels at which potential threat to human health and the environment are minimized and

[12] Under the Third Third, however, residue from treating characteristic debris would not require further treatment if the residue was a new treatability group not exhibiting a characteristic. See 55 FR 22661. If the debris and residue are considered to be the same nonwastewater treatability group, however, then the residue would remain prohibited. If EPA were to take this view, the F039 standards would appear to be the appropriate treatment standards.

[13] See footnote 6.

therefore that further treatment is unnecessary. See section 3004(m).

Second, the same principles apply in the case of toxic characteristic debris (i.e., debris that exhibits both TC and EP toxicity, plus the type of reactive debris known to be contaminated with toxic constituents, namely reactive cyanide debris). Thus, such debris, if found to no longer be contaminated with hazardous constituents at the contained-in level, would not require further treatment in order to be land disposed and would not be a hazardous waste. On the other hand, merely removing the characteristic but not treating by a prescribed method (or determining that the debris does not contain hazardous constituents at the contained-in level) would not be sufficient. Although such debris would no longer be a hazardous waste, it could not be legally land disposed. See generally 55 FR 22651–654 (June 1, 1990). Such a result appears necessary here if the prescribed treatment methods are to have any practical applicability to toxic characteristic debris. The result is also needed to prevent dilution to remove the characteristic in lieu of treatment that adequately minimizes threats posed by the contaminated debris.

EPA is thus proposing to allow two alternatives that can be followed so that contaminated debris is no longer prohibited from land disposal and is no longer a hazardous waste. The first is to treat by one of the methods specifically listed in the rule (see proposed § 268.45) [14] in accordance with the conditions set out in proposed Appendix IX (or by an alternative equivalent method approved on a case-by-case basis). The other is to treat by a different method and obtain a determination that the debris no longer contains hazardous waste, or to obtain that demonstration before treating the waste. See proposed § 261.3(e). The levels could not be achieved by impermissible dilution. Residues from treating debris contaminated with listed wastes would still be listed wastes and could not be land disposed unless and until they meet the F039 treatment standards. In addition, such residues would remain hazardous wastes unless and until delisted.

1. When Debris Stops Being a Hazardous Waste

As just discussed, the first way contaminated debris would no longer be a hazardous waste would be to treat the debris with an extraction or destruction technology [15] according to the provisions of the proposed rule (and for the debris not to exhibit a hazardous characteristic after treatment). The Agency believes that, based on literature surveys, data analyses, and engineering judgment, the extraction and destruction technologies specified in today's proposed rule under § 268.45 when certified by the owner or operator to be designed and operated in compliance with the standards of appendix IX, coupled with the oversight by EPA (or authorized State) will effectively reduce the hazardous waste contaminant in or on the debris to levels that will not pose a hazard to human health or the environment absent Subtitle C control.[16]

EPA is also considering extending the proposed exclusion from Subtitle C management for debris that is treated by extraction and destruction technologies to debris that is treated by immobilization technologies. However, the Agency does not have sufficient data or information to support such an outcome at the time of this proposal. Therefore, we specifically solicit comment and data to support the design of performance standards for immobilization technologies that would be sufficient to allow contaminated debris treated by such technologies to be excluded from Subtitle C management. If such information is provided, the Agency will extend the exclusion accordingly.

EPA is also soliciting comment on the issue of whether certain types of treated debris should remain within the Subtitle C program. In particular, there may be debris that is contaminated with hazardous constituents, such as dioxins, that adhere strongly to debris surfaces and so are less amenable to surface removal treatment technologies such as water washing or spalling. Thus, it may be that the final rule will differentiate among certain debris types, contaminants, and removal (and conceivably destruction) technologies in determining which types of treated debris are no longer subject to Subtitle C regulation following BDAT treatment. (The foregoing discussion assumes, of course, that no case-by-case contained-in demonstration is made for the treated debris.)

The Agency's "contained-in" policy states that environmental media (groundwater, soil, and sediment) contaminated with a RCRA listed hazardous waste must be managed as if the media were a hazardous waste until it no longer "contains" the hazardous waste. The Agency has interpreted the contained-in policy to apply to media and debris that contain a waste (such as contaminated soil, groundwater, clothing, and rock). Currently, media that are contaminated with hazardous waste must be managed as if they were hazardous wastes until they no longer "contain" the listed waste, no longer exhibit a characteristic, or are delisted. The Agency has not issued any general rules as to when, or at what levels, environmental media or debris contaminated with hazardous wastes are no longer considered to "contain" those hazardous wastes. EPA believes that such levels for media are most appropriately determined on a site-specific basis by the EPA Region (or authorized State) overseeing the cleanup of such materials, such as a Superfund or Corrective Action remediation. Such levels for media are generally determined according to risk.

Under a close reading of existing rules, debris (such as concrete or piping) is a solid waste when discarded. If the debris is contaminated with a listed hazardous waste, it remains in the Subtitle C system unless and until delisted. (See § 261.3(a)(2)(iv) (the mixture rule).) Other debris is not a "solid waste" and so would not be subject to the mixture rule when contaminated with a listed hazardous waste. Such debris would stop being managed as a hazardous waste once it no longer "contains" a listed waste (see further discussion below). 53 FR 31147 (August 17, 1988) and *Chemical Waste Management* v. *EPA*, 869 F.2d 1356 (D.C. Cir. 1989).

EPA is proposing to deal with these two classes of debris (i.e., debris that is a solid waste and debris that is not a solid waste) in the same manner in this rule. By doing so, the debris would no longer be subject to Subtitle C if it is treated in accord with the methods designated in the rule, or no longer has listed wastes present at concentrations at which the debris would be considered to contain hazardous waste. EPA is proposing this result because there may be no environmental difference between solid waste debris and debris that is not a solid waste, and so the same rules as to when the debris no longer should be subjected to Subtitle C regulation could apply in either case. It simply appears to make no sense that two classes of debris which appear environmentally indistinguishable be subject to very different regulatory regimes for exiting the hazardous waste system (i.e., delisting for one class, but case-specific determinations for the other). (In

[14] See footnote 6.

[15] See footnote 6.

[16] Note that, to be excluded, treated debris may not exhibit a hazardous characteristic.

addition, EPA will refer to both classes of debris as "contaminated debris" from this point on in this notice.) EPA also requests comment on an alternative approach, which would continue to apply the "derived from" and "mixture" rules to contaminated debris that is composed of solid waste and listed hazardous waste.

EPA also requests comment on requiring the generator or owner or operator to maintain the burden of demonstrating compliance with the treatment and certification requirements.

2. Case-by-Case Determination that Untreated Debris is Excluded from Subtitle C

Some contaminated debris may contain or be mixed with very low levels of toxic (appendix VIII, part 261) constituents, even before treatment. In addition, an owner or operator of a treatment facility may choose to treat contaminated debris by a technology that does not meet the requirements of § 268.45 and appendix IX. In either case, today's rule would codify the existing contained-in policy. The owner or operator of the treatment facility (or any person in possession of the debris, such as the generator) thus may request from EPA (or an authorized State) a case-by-case determination that the levels of toxic constituents present will not pose a hazard to human health and the environment absent Subtitle C control.

F. Contaminated Debris Treatment Standards

In this section, we discuss: (1) The 18 treatment technologies proposed as BDAT; (2) the debris treatment standards as a function of debris and contaminant category; (3) performance standards that must be met to ensure effective treatment and to comply with the BDAT standards; (4) how the rule would apply to mixtures of contaminant categories; (5) how the rule would apply to mixtures of debris categories; (6) deactivation of characteristic debris; (7) standards for debris that is inherently toxic (i.e., it fails the TC and EP for metal contamination because it is fabricated from a toxic metal); and (8) mixtures of soil and contaminated debris.

1. Identification of BDAT Treatment Technologies

The Agency has identified 18 treatment technologies as Best Demonstrated Available Technology (BDAT) for one or more debris types and contaminant categories. We considered a treatment technology to be "available" if the technology itself or the services of the technology are able to be purchased, and the technology substantially diminishes the toxicity of the waste or reduces the likelihood of migration of the waste's hazardous constituents. The technologies identified in today's notice have been used to treat contaminated debris at Superfund sites, to remove radioactive metals from debris, to treat debris-like material contaminated with compounds similar to one or more of the compounds in the debris contaminant categories or, based on engineering judgment, are applicable to debris.

A technology is considered to be demonstrated for a particular waste if the technology currently is in commercial operation for treatment of the waste or constituent of interest or similar wastes or constituents of interest, including wastes not regulated under RCRA, such as PCBs and radioactive waste. For some of the debris/contaminant combinations identified in today's proposal, EPA identified demonstrated technologies either through a review of the literature in which current waste treatment practices were discussed, or through information provided by specific facilities currently treating the waste or similar wastes. EPA also considered as demonstrated technologies those used to separate or otherwise process chemicals and other materials which are similar to the waste or constituent of interest. Due to the variable nature of debris and the number of combinations of contaminants which may exist on debris, no single technology is identifiable as BDAT for all possible cases within each specific debris/contaminant combination. EPA is proposing to identify more than one technology as the BDAT standard for debris/contaminant combinations in order to give the regulated community flexibility in addressing particular contaminated debris wastes.

To identify BDAT technologies, the Agency also reviewed the properties of debris which may directly affect the efficiency of treatment technologies. Debris characteristics which may affect the performance or effectiveness of treatment technologies to clean various types of debris include:

- Destructibility;
- Hardness and brittleness;
- Moisture content;
- Permeability;
- Size, homogeneity, and location (in situ versus ex situ);
- Surface texture; and
- Total organic carbon (TOC).

All treatment standards for debris in today's rule are expressed as a treatment method. EPA considered establishing concentration-based standards whereby a numerical treatment level would be required for the treated debris. A concentration-based treatment standard would provide maximum flexibility in the choice of treatment technology because any effective treatment, including recycling or any combination of treatment technologies, unless prohibited (e.g., impermissible dilution) or unless designed as land disposal (e.g., land treatment), could be used to achieve the standards. However, the Agency did not have a means of calculating valid concentration-based standards given the matrix variations of debris and the difficulties in sampling and analyzing many debris types. By identifying numerous technologies that qualify as BDAT, the Agency is seeking to provide substantial flexibility.

The Agency is today proposing that the following 18 treatment technologies are BDAT for contaminated debris for specific combinations [17] of contaminants and debris types:

- Extraction Technologies:
  - —Abrasive blasting
  - —Acid washing
  - —Electropolishing
  - —Liquid phase solvent extraction
  - —Thermal desorption
  - —Scarification and Grinding
  - —Spalling
  - —Vapor phase solvent extraction
  - —Vibratory finishing
  - —Water washing and spraying
- Destruction Technologies
  - —Biodegradation
  - —Chemical oxidation
  - —Chemical reduction
  - —Photochemical treatment
  - —Thermal destruction
- Immobilization Technologies
  - —Macroencapsulation
  - —Microencapsulation
  - —Sealing

Additional information on these technologies can be found in Appendix I of today's preamble. Detailed information on the various treatment technologies can be found in the Technical Support Document.[18]

2. Contaminated Debris Treatment Standards

EPA has grouped the 18 treatment technologies that EPA is proposing as BDAT (see section V.F) into three

[17] We note that EPA considers six technologies (see proposed Appendix X to the rule) to be generic treatment technologies that can effectively treat all contaminants on specific debris types.

[18] See U.S. EPA, *Technical Support Document for the Contaminated Debris Proposed Rule*, November 1991.

general families of technologies: (1) Extraction; (2) destruction; and (3) immobilization. Based on an extensive review of the available technical literature, data received following the May 30, 1991 ANPR, contacts with trade associations, and the Agency's best engineering judgment, EPA developed a Debris Treatment Standards table (proposed Table 1 to § 268.45) establishing which specific technologies are BDAT for specific combinations of debris and contaminant categories. When marked "YES" on that table, the Agency believes that a treatment technology operated in compliance with the design and operating standards or the performance standards provided by appendix IX, part 268, will effectively treat the debris contaminated with one or more contaminants from the designated contaminant category.[19] When marked "NO", the Agency believes that the technology is not appropriate or acceptable for that debris/contaminant combination and may not provide adequate treatment of toxic constituents. Note that technologies marked "YES" may not always be appropriate (e.g., operator safety concerns, equipment damage) for the debris/contaminant category, but the Agency believes they will effectively remove or destroy the contaminant. Contaminants that may present a safety hazard to workers when using a particular treatment technology are noted in appendix IX where the design and operating or performance standards are specified.

Technologies marked "NO" in Table 1 are not prohibited from being used on debris as a pretreatment step, but do not qualify as BDAT. Use for initial treatment will allow mixtures of debris or debris contaminated with many contaminants to be treated for all debris/contaminant combinations using a treatment train. For example, crushed metal drums that are contaminated with both metal and organic contaminants subject to treatment may be treated with a treatment train using an extraction technology (e.g., thermal desorption) to remove the organic contaminants followed by an immobilization technology (e.g., macroencapsulation) to treat the metal contaminants.

The proposed technology-based approach offers the regulated community flexibility in selecting technologies for treatment of debris. However, until EPA can develop performance standards for immobilization technologies, EPA prefers extraction and destruction technologies over immobilization because the contaminants are either removed or destroyed.[20] When a treatment train is employed which involves an immobilization technology, for obvious reasons, immobilization must be the final treatment employed. See proposed § 268.45(a)(3). Further treatment of immobilized products would result in a deterioration of the immobilized waste and an increase in the likelihood that the immobilization product will leach hazardous constituents.

Further, as discussed below, because the contaminants have been removed or destroyed, most contaminated debris treated by extraction or destruction technologies in compliance with the standards of proposed appendix IX, part 268, would no longer be considered to be contaminated (unless it exhibits a characteristic of hazardous waste), and would be excluded from the definition of hazardous waste. Contaminated debris treated by immobilization technologies are still considered to contain a hazardous waste, and thus must be land disposed in a Subtitle C facility.[21]

EPA recommends that the owner or operator of the treatment facility consider the thermal, chemical, physical, and biological properties of the debris and the contaminants on the debris before selecting a treatment technology. The Agency plans to develop a nonregulatory implementation assistance document to provide assistance on how to select the most appropriate technologies for a given debris/contaminant combination.

3. Requirements to Ensure Effective Treatment

To ensure effective treatment and that the debris no longer contains hazardous waste and, thus, is excluded from the definition of hazardous waste (provided that an extraction or destruction technology is used and that the treated debris does not exhibit a hazardous characteristic), the rule would require that the treatment technology meet specific performance standards or be designed and operated under specific operating conditions. See Appendix IX to the proposed rule. In addition, we are requesting comment on whether to require a treatment facility owner or operator that intends to claim the exclusion for the treated debris to submit to EPA a one-time written notice at least 30 days prior to first treating a debris/contaminant category stating that the owner or operator intends to claim the exclusion and certifying that the treatment technology will be operated in compliance with the design and operating or performance standards provided by appendix IX. These issues are discussed below.

a. *Performance and design and operating standards.* The Agency developed performance standards or design and operating requirements for each of the treatment technologies based on an analysis of the supporting data base.[22] The data base was developed by conducting an extensive review of the available technical literature, reviewing the data received following the May 30, 1991 ANPR, and contacting vendors and trade associations to obtain reports describing treatment of contaminated debris at waste sites in the United States. The literature search identified the types of debris and types of contaminants on debris typically found at waste sites, and treatment technologies applicable for debris treatment. In particular, the Agency searched the Record of Decision data base and the Alternative Treatment Technology Information Center data base for information on debris treatment methods, contacted Remedial Project Managers and other governmental officials at the State level to discuss debris treatment technologies in use or under evaluation in their Region or State, and contacted over 50 vendors to collect information about the operation, performance, and effectiveness of their technology. The Agency summarized the design and operating and performance standards for successfully demonstrated treatment operations and incorporated them into proposed Appendix IX to part 268.

When data were not available for treatment of specific debris/contaminant combinations, the Agency used best engineering judgment to transfer design and operating and performance standards from technologies that are expected to be effective on those specific debris/contaminant combinations.

The Agency is proposing performance standards rather than design and operating standards for a technology where supporting data are available. An example of a performance standard is the requirement that abrasive blasting of metal debris must remove all paint, surface coating, rust, visible cracks and crevices, scale, corrosion, and visible staining to leave a white metal finish. An example of design and operating standards are the standards for biodegradation that specify the pH,

[19] See footnote 13.

[20] See footnote 6.

[21] See footnote 6.

[22] See footnote 13.

temperature, moisture level, and oxygen concentration of the slurry. We are proposing performance standards where possible because performance standards may provide more effective treatment for a debris/contaminant category given the variability in physical forms of debris within a category. Further, performance standards give the owner and operator the flexibility to tailor the design and operation of the treatment unit to the specific debris being treated to ensure effective treatment as demonstrated by compliance with a performance standard.

EPA specifically requests comments and supporting data on whether the standards proposed in appendix IX will ensure completely effective treatment—leaving a nonhazardous debris as well as significantly reducing the toxicity and mobility of hazardous constituents—for the debris/contaminant categories specified in § 268.45. Further, EPA specifically requests data or information supporting the development of performance standards for those technologies where the Agency is currently able to propose primarily design and operating requirements only. If EPA determines based on public comments and further analysis that the performance standards for a particular technology may not ensure effective treatment for particular debris types or contaminant categories specified in proposed Table 1 of § 268.45 as acceptable, the final rule could provide either that such technology is not BDAT in that situation or that the treated debris could be land disposed but would not be excluded from Subtitle C regulation.

Late in the process of developing today's proposed rule, we realized that the performance standards proposed in appendix IX, part 268, may preclude the need for specifying acceptable technologies as a function of debris type as provided by Table 1 of § 268.45. Appendix IX provides performance standards that vary, when necessary, according to type of debris. Thus, it may be redundant to specify acceptable technologies by debris category in Table 1.[23] Table 1 could be revised in the final rule to specify acceptable technologies solely as a function of contaminant category.

We note further that the performance standards and design and operating conditions being proposed for the various methods of treatment would not be part 264 or 265 standards and so need not be implemented by means of permits or interim status standards. Nor is the Agency finding that performing these types of treatment in these ways is necessary to protect human health and the environment.[24] Rather, these standards are adopted pursuant to section 3004(m) to assure that treatment minimizes the hazardous constituents' toxicity or mobility. Furthermore, by optimizing treatment, rather than simply performing the treatment without any criteria of how it is to be properly operated, the Agency can find further that most treated debris no longer contains a hazardous waste, and so is no longer subject to subtitle C regulation (assuming that the treatment is an extraction or destruction technology[25]).

b. *Notification and certification requirements.* In addition to the standards being proposed today, the Agency also requests comment on whether to apply new notification and certification requirements in order for EPA to provide oversight to ensure that a treatment unit is meeting the design and operating or performance standards established in appendix IX, part 268. EPA may need the opportunity to provide such oversight for debris that will be excluded from regulation (i.e., debris that is treated with an extraction or destruction technology and that does not exhibit a hazardous characteristic) upon treatment to ensure that the debris is effectively treated. For contaminated debris that remains within the subtitle C hazardous waste management system upon treatment, the existing notification and certification requirements of § 268.7 will apply. For contaminated debris that is no longer considered hazardous, EPA proposes in § 268.7(d) a one-time notification and certification to be kept in the facility files for each combination of debris/contaminant categories.

In particular, for debris that will be excluded from Subtitle C upon treatment, the Agency is requesting comment on whether to require the owner or operator of the treatment unit to provide EPA a written notification prior to treating a debris/contaminant category that provides certain information (as discussed below) and certifies that the technology will be operated under the standards of appendix IX, part 268. This would give EPA the opportunity to review the information and inspect the facility (if considered necessary) where EPA has questions on whether the technology will, in fact, be operated in compliance with the standards because of factors such as an unusual or difficult to treat debris or contaminant, or the enforcement history of the facility. In providing comments, EPA specifically requests suggestions on the timing of the notice.

EPA could require that the following information be included in the notification to enable EPA to determine the difficulty of meeting the standards of appendix IX, part 268:

- Name and address of the owner and operator of the facility as well as the location of the treatment unit;
- Date that the notification is submitted to EPA;
- Brief description of the treatment technology;
- Types and quantities of debris to be treated, and source of the debris; and
- Each contaminant for which the debris is subject to treatment, and a determination whether the untreated debris exhibits a hazardous characteristic.

4. Mixtures of Contaminant Categories

Today's treatment standards apply to mixtures of different waste streams. Where a waste mixture consists of different debris or contaminant categories and has more than one technology treatment standard, all standards must be met prior to land disposal. See proposed § 268.45 (a)(3) and (a)(4). This may result in the use of a treatment train, in which several technologies are employed to treat the waste. In such cases, as noted previously, immobilization, where required, must be the last technology employed. In the event that such a waste mixture cannot feasibly be treated by the different treatment methods, the Agency will accept petitions for a variance from the treatment standard pursuant to § 268.44.

5. Mixtures of Debris Categories

When debris is a mixture of debris categories, treatment would be required for each debris category according to proposed § 268.45(a)(3). The owner or operator of the treatment facility may

[23] We also noted that the performance standards for a particular technology could be met for some debris/contaminant category combinations even though Table 2 would preclude use of the technology. For example, Table 2 precludes the use of abrasive blasting of plastic even though abrasive blasting of rigid plastic pipe to remove surface combination should be an effective treatment technology and could meet the performance standards specified in Appendix IX for nonpermeable debris like glass (i.e., removal of all paint, surface coatings, scale, visible cracks and crevices, and visible staining).

[24] Although the performance standards are not intended to provide protection of human health and the environment (HHE) from the treatment operation itself, the standards will ensure protection of HHE when the treated debris becomes excluded from Subtitle C and may be disposed of in a municipal waste landfill. Thus, EPA expects that permit writers will add conditions to the permit to ensure compliance with the performance standards.

[25] See footnote 6.

either: (1) Treat the debris using a technology which qualifies as BDAT for all debris/contaminant combinations within the matrix, or (2) treat the debris using a treatment train such that BDAT for each debris/contaminant category is achieved by at least one of the technologies in the treatment train.

If a debris is a mixture of debris categories but the application of the specified treatment technology for one debris category (normally the primary debris category) will cause the secondary debris category to be removed from the primary debris in the treatment residue in a form such that it no longer meets the definition of debris, the debris treatment standards have been met. The treatment residue is subject to the numerical F039 treatment standards and remains subject to Subtitle C (like all treatment residues). An example is metal equipment that is contaminated with a prohibited listed waste, and has a paper label. If abrasive blasting is used to treat the pipe, the paper label will be removed and shredded, and will become part of the treatment residue.

6. Treatment of Characteristic Debris

Contaminated debris that exhibits ignitability or reactivity [26] must be treated to deactivate the ignitability or reactivity characteristic. See proposed § 268.45(a)(2). If such debris is also contaminated with "contaminants subject to treatment," [27] it must be deactivated before the debris can be treated for the contaminants subject to treatment unless the treatment for the contaminants also will deactivate the debris.

As discussed above, EPA is also soliciting comment as to whether there should be treatment of "contaminants subject to treatment" if debris that is hazardous waste solely because it exhibits the ignitability or reactivity characteristic is contaminated with appendix VIII, part 261, constituents. Effective treatment of such contaminants would require deactivation as an initial treatment step. EPA also solicits comment on whether dilution should be considered permissible treatment for ignitable and reactive debris.

Debris that exhibits reactivity because of the presence of cyanide, however, would be subject to treatment with a technology specified for cyanide. Cyanides would be included in CC10 (nonmetal inorganics) in proposed Table 2 of § 268.45. We are proposing to require treatment of cyanide rather than simply deactivation of the reactivity characteristic because cyanide is a toxic constituent. In addition, treating cyanide-reactive waste for cyanide would be consistent with the existing land disposal restrictions. See existing § 268.43—Waste Code D003 (Reactive cyanides subcategory identified by § 261.23(a)(5)).

7. Debris That Continues to Exhibit the Toxicity Characteristic Due to Fabrication With Toxic Metals

Some types of debris may continue to exhibit the (prohibited) Extraction Procedure (EP) toxicity characteristic. Examples are: Refractory brick containing metals such as chromium; certain metal alloys containing nickel and chromium, such as stainless steel; treated wood that contains wood preserving compounds such as chromium, and arsenic; battery casings that contain lead; lead pipe; and lead paint chips. EPA is proposing rules covering two possibilities: Where such debris is contaminated with contaminants subject to treatment, and when the debris is not. Where the debris is contaminated, EPA is proposing that the contaminants be treated by the appropriate method. If the debris continued to exhibit a characteristic because of its fabricated content (i.e., exhibited both the TC and EP for a metal), it would have to be immobilized before land disposal. An alternative, however, would be to recycle the debris, which in most cases would be scrap metal (as defined in § 261.1) exempt from further subtitle C regulation. See § 261.1(a)(3)(iv). EPA in fact is proposing treatment of contaminants subject to treatment for this type of characteristic debris, but soliciting comment on this alternative for other types of characteristic debris, because of the likelihood that most of the debris will be managed in this unregulated mode as recycled scrap metal. It is thus important that other contaminants not be present to avoid environmental contamination at unregulated sites and also to avoid unexpected contaminants in the recycling process itself.[28]

If the inherently hazardous debris is not contaminated with contaminants subject to treatment, it could either be immobilized and disposed, or recycled, and if scrap metal, be exempt from further regulation.

To illustrate, suppose a restaurant is demolished and several stainless steel counters are the only metal included among other debris consisting of concrete, brick, wood, plaster, and glass. There are no listed wastes present, and the restaurant demolition debris does not exhibit ignitability, corrosivity, or reactivity. A representative sample of the debris would include stainless steel, concrete, brick, wood, plaster, and glass in the same proportions as they are found in the restaurant demolition debris. Unless such a representative sample exhibits the toxicity characteristic under the Toxicity Characteristic Leaching Procedure (TCLP), the restaurant demolition debris would not be considered hazardous.

However, if a representative sample of the restaurant demolition debris exhibits the toxicity characteristic for chromium under the TCLP, due to the presence of the stainless steel, all the restaurant demolition debris would be considered hazardous. Deliberate dilution of the debris to obtain a sample that would not exhibit the toxicity characteristic is prohibited; such deliberate dilution of a sample would violate the sampling protocols of SW-846 which are incorporated by reference in § 260.11. If the stainless steel in this example is segregated from the other restaurant demolition debris, it may be recycled as provided in § 261.6(a)(3)(iv) without treatment under proposed § 268.45 because it is not contaminated with any other contaminants subject to treatment. The Agency suggests that metal be removed from demolition sites for recycling prior to demolition, to the most cost effective extent possible, particularly where the site does not involve the production or use of listed hazardous wastes; in this way, the potential for generating contaminated debris may be lessened.

EPA recognizes, however, that in some situations where recycling is impracticable, treatment with an immobilization technology may also be impracticable. EPA specifically requests comment and supporting information on situations where recycling is impracticable for inherently hazardous debris and where immobilization is also

[26] We note that contaminated debris cannot exhibit corrosivity under § 261.22 because only liquids may exhibit corrosivity while debris is defined as a solid material. However, contaminated debris (i.e., debris that is mixed with a listed waste or exhibits a hazardous characteristic) may *contain* a corrosive waste (e.g., crumpled drums containing corrosive liquids). In this situation, not only would the debris be subject to the debris treatment technology requirements, but the corrosive waste must be deactivated.

[27] I.e., because it exhibits the TC and EP or is contaminated with a listed prohibited waste.

[28] Residues from treating inherently hazardous debris, however, could be considered a new treatability group not exhibiting a characteristic and therefore not prohibited. An alternative would be to require treatment to F039 standards, viewing both the debris and treatment residues as part of a nonwastewater treatability group.

impracticable for such debris. Further, EPA requests comment on regulatory controls that may be applied to such debris in a manner that is workable and protective of human health and the environment.

8. Mixtures of Soil and Contaminated Debris

When soil is agglomerated on debris or compacted/contained inside the cracks and crevices of debris, it is difficult to separate. Soil (e.g., clay) adhering to debris is considered contaminated soil if it is removed during treatment of contaminated debris (e.g., water washing and spraying). Nonwastewater residuals containing soil that are separated during the treatment of residuals from debris treatment will be subject to the forthcoming contaminated soil standards.

G. Regulation of Treatment Residuals

Four general categories of residuals from the treatment of contaminated debris have been identified: (1) Nonwastewater residuals containing soil; (2) treated debris; (3) nonwastewater residuals derived from the treatment of contaminated soil and debris that are neither soil nor debris; and (4) wastewater [29] residuals derived from the treatment of contaminated soil and debris. (This discussion assumes contamination with a listed waste.) The Agency is today proposing to continue to subject nonwastewater residuals containing soil to the existing LDR standards, to conditionally exclude treated debris from Subtitle C as discussed previously, and to transfer the F039 nonwastewater and wastewater treatment standards to the non-soil, non-debris, nonwastewater, and wastewater residuals (i.e., categories 3 and 4) generated by the treatment of contaminated debris.

We also discuss in the section the rationale for transferring the F039 multisource leachate standards to debris treatment residues. Finally, we also discuss the special requirements for residues from the treatment of cyanide-reactive debris and ignitable nonwastewater residue.

1. Nonwastewater Residues Containing Soil

Nonwastewater residuals containing soil may be generated when soil is removed from contaminated debris during debris treatment operations (e.g., water washing and spraying). Nonwastewater residuals containing soil that are separated from debris during the treatment of contaminated debris are subject to the existing LDR standards for the listed waste that contaminated the debris and the LDR standards for the toxicity characteristic that the debris exhibited until standards specific for contaminated soil are promulgated.

2. Treated Debris

Treatment technologies other than thermal destruction of an organic debris will generate a treated debris residue. (See discussion below regarding residue from thermal destruction.) If the debris has been treated for all "contaminants subject to treatment," the treated debris is excluded from Subtitle C provided it was treated with an extraction or destruction technology [30] and the treated debris does not exhibit a hazardous characteristic.

3. Nonwastewater, Nonsoil, Nondebris Residuals

Under today's proposed rule, nonwastewater residuals that are nonsoil and nondebris would be subject to the F039 nonwastewater treatment residual standards. These residuals may be land disposed after meeting the F039 standards, but are subject to Subtitle C. The residue would be subject to the F039 nonwastewater treatment standards under existing § 268.43 for all contaminants subject to treatment (see proposed § 268.45(b)) and for all constituents in appendix VIII, part 261, that are added to the debris or residue during treatment.

Note that EPA considers residue generated by surface removal technologies other than spalling (e.g., abrasive blasting, electropolishing, acid washing, waster washing and spraying) to be nonwastewater, nonsoil, nondebris residue. Although the residue will usually contain particles of debris (e.g., abrasive blasting of concrete) along with the contaminants, we believe that it is more appropriate to subject the residue to the F039 standards rather than to further treatment as contaminated debris. Such residues generally have the physical characteristics of a treatment residue (e.g., small particle size) rather than the debris. Residue from spalling, however, will generally closely resemble the debris and so would be subject to further treatment as contaminated debris.

We note further that the solid residue from thermal treatment (e.g., incineration) may contain both inert debris as well as ash resulting from destruction of waste and organic debris. If the contaminated debris is not contaminated with a metal "contaminant subject to treatment," inert debris that is separated from the ash residue is considered treated debris rather than residue subject to F039 standards.[31] (The ash residue would be subject to the F039 standards).

4. Wastewater Residuals

Wastewater residuals are liquid residuals derived from the treatment of contaminated debris (e.g., rinsate from acid washing operations) that are neither soil nor debris. These wastewater residuals would be subject to the F039 wastewater treatment residual standards under the proposed rule. (Any nonwastewaters generated in the course of treating the wastewater such as precipitated solids will be subject to the F039 nonwastewater standards). As with nonwastewater residuals, the wastewater residual would be subject to the F039 wastewater treatment standards under existing § 268.43 for all contaminants subject to treatment (see proposed § 268.45(b)) and for all constituents in appendix VIII, part 261, that are added to the debris or residue during treatment.

5. Nonanalyzable Constituents

The Agency has also considered the issue of nonanalyzable constituents. Nonanalyzable constituents may be identified as "contaminants subject to treatment" if debris is contaminated with a prohibited listed waste and the owner or operator of the treatment facility could reasonably know that the debris is also (i.e., in addition to the BDAT constituents for the prohibited

[29] Wastewaters are wastes that contain less than 1 percent by weight total organic carbon (TOC) and less than 1 percent by weight total suspended solids (TSS). See existing § 268.2(f).

[30] See footnote 6.

[31] We note that, although the separated inert debris may be contaminated with the ash residue through surface coating (e.g., dust) or by entrainment within the debris (e.g., pockets of ash residue entrained in crumpled metal containers), the inert debris will pose little hazard to human health and the environment because the nonmetal toxic contaminants in the debris have been destroyed. If debris is contaminated with a metal contaminant subject to treatment, the inert debris remaining in the residue from thermal treatment would be subject to additional treatment (e.g., extraction, immobilization) for the metal contaminant. We note further that if organic debris (e.g., wood, cloth or paper, or rubber or plastic) remains after treatment by thermal destruction, EPA considers such debris to be contaminated debris subject to the treatment standards. If the organic debris has not been destroyed, EPA is concerned that the organic contaminants subject to treatment may not have been destroyed (or metal contaminants subject to treatment contaminating the organic debris may not have been liberated and partitioned to the ash residue (where they are subject to the F039 treatment standards)).

waste) contaminated with an appendix VIII, part 261, constituent that is nonanalyzable.[32] Even though the owner or operator will not be able to determine whether the nonanalyzable constituent contaminates the debris at detectable levels, the Agency believes it is reasonable to take the conservative view to require treatment of such nonanalyzable constituents.

Treatment residues must be treated to meet the F039 multisource leachate standards for all contaminants subject to treatment. See proposed § 268.45(e). When a prohibited hazardous waste containing a constituent without an EPA-approved analytical method contaminates the debris, EPA considers the treatment residue to be treated for the nonanalyzable constituent when the residue is shown to meet the F039 standards for the BDAT constituents for the prohibited waste. This is because the BDAT constituents act as a surrogate for the nonanalyzable constituent. This is consistent with the approach taken by the Agency during the regulation of F039 multisource leachate. At that time, the Agency believed that the constituents with EPA-approved analytical methods would act as surrogates for constituents without EPA-approved methods.

6. Rationale for Transferring F039 Standards to Debris Treatment Residuals

Limited characterization data are available on the residuals from debris treatment and no specific treatment performance data on debris residuals are currently available. As part of the F039 regulation effort, the Agency did collect and summarize treatment performance data on several wastewater treatment technologies. For nonwastewater F039, the Agency compiled treatment performance data from the incineration of many waste codes subject to LDRs. These two databases (the F039 wastewater and nonwastewater databases) represent an appropriate data source for transfer to residuals from the treatment of contaminated debris.

The advantage of using the F039 wastewater database is that this data represents treatment performance of the best demonstrated and available wastewater technologies currently in use for treating various wastes. This database represents treatment of wastes with high variabilities of constituents and constituent concentrations.

The F039 nonwastewater database represents incineration treatment performance data for various wastes with high variabilities of constituents and constituent concentrations. Incineration has often been identified as the best demonstrated and available technology for the treatment of organic constituents in nonwastewaters. The use of F039 treatment performance data to determine concentration-based treatment standards for contaminated debris treatment residuals, therefore, represents a feasible and environmentally sound option. This regulatory approach maximizes use of the Agency's available treatment performance data and has been promulgated successfully with the multisource leachate regulation during the Third Third rulemaking.

For those contaminants subject to treatment that partition to the debris treatment residual and that do not have treatment standards under F039, standards could be developed in the future using a transfer of data from a similar constituent in F039 or in another waste code. This procedure is common in the BDAT program and will allow all of the debris contaminants subject to treatment to have a concentration-based residue treatment standard. In the interim, however, EPA believes that constituents with approved analytical methods would act as surrogates for constituents that do not have such approved methods. Thus, when the residue is treated to meet the F039 standards for contaminants with approved methods, the contaminants without approved methods will also be effectively treated. The Agency also addressed this concern in the same manner during the regulation of F039 multisource leachate.

There are several advantages to using the F039 transfer approach for the regulation of contaminated debris treatment residuals. The residuals likely to be generated from the treatment of contaminated debris will contain, in many cases, treatable concentrations of various contaminants that have been removed during the debris treatment process. For example, extraction technologies would include the removal of contaminants from the debris material. The contaminants removed and any extraction chemicals used (e.g., spent solvent wash or rinsing solution) would constitute the contaminated debris treatment residual. This residual could contain any number of contaminants at varying concentrations. This residual would require additional treatment before it would be safe to land dispose.

As is the case with multisource leachate, the types of contaminants and their concentrations in contaminated debris treatment residuals will vary greatly. The characterization of debris treatment residuals will depend on many factors, such as the hazardous waste on the contaminated debris, the degree to which the treatment technology (such as extraction) removes the contaminants, etc. In addition, this approach does not require that the original waste codes contaminating the debris be identified; only the constituents of concern on/in the debris that are likely to be in the residuals from debris treatment must be identified. The approach is thus consistent with the universal treatment standard approach discussed in EPA's ANPR of May 30, 1991 (56 FR 24444).

The Agency also explored the development of new treatment standards for debris treatment residuals but believes that this action would be both costly and time consuming. Since debris residuals are likely to be highly variable, it would be very difficult to characterize these wastes as a group.

The Agency also evaluated establishing specified technology-based treatment standards for wastewater and nonwastewater forms of these residuals. However, this regulatory option is more restrictive than setting a numerical treatment standard since it would require industry to use a specific technology. Setting concentration-based treatment standards allows industry greater flexibility in choosing innovative treatment technologies; it also helps to promote the development of new treatment technologies.

7. Special Requirements for Cyanide-Reactive Residue

Residue from the treatment of debris that is reactive because of cyanide would be subject to the F039 standards for cyanide under § 268.43 of this chapter. As with cyanide-reactive waste, EPA believes that BDAT for cyanide-reactive debris should require treatment of cyanide because of its toxicity.

8. Special Requirements for Ignitable Nonwastewater Residue

Today's rule would subject ignitable nonwastewater residue containing equal to or greater than 10 percent total organic carbon to the technology-based standards for D001: "Ignitable Liquids

[32] We note that the prohibited listed waste may also contain toxic nonanalyzable constituents. The list of BDAT constituents for the prohibited waste, however, accounts for the presence of nonanalyzable constituents by, in some cases, designating as BDAT constituents nontoxic, surrogate constituents. When the prohibited waste (or contaminated debris) is treated for the surrogate constituent, EPA believes that the nonanalyzable constituent will also be treated.

based on § 261.21(a)(1)" under § 268.42. Those standards would require that the residue be treated by fuel substitution (i.e., burning as fuel in a boiler or industrial furnace), recovery of organic constituents (e.g., distillation, carbon adsorption), or incineration. EPA has established these technologies as BDAT for high total organic carbon ignitable liquids because they will effectively remove or destroy toxic organic constituents.

H. Other Provisions of the Rule

In this section, we discuss several other provisions of the proposed rule: (1) Waste codes for contaminated debris; (2) relationship of the proposed rule to existing TSCA rules for PCBs; (3) standards for debris containing asbestos and asbestos debris; (4) special requirements for debris contaminated with radioactive waste; (5) sham contamination of debris with a waste to avoid LDR number standards for the waste; (6) sampling and analysis of debris; (7) procedures for demonstrating the equivalency of new technologies; and (8) applicability of existing treatment standards to contaminated debris.

1. Waste Codes for Contaminated Debris

The waste code applicable to contaminated debris is determined under the same approach used for other hazardous waste. For example, if debris is contaminated with a listed waste F006, the contaminated debris carries that waste code. If the debris exhibits the toxicity characteristic for arsenic, it carries waste code D004.

Contaminated debris that is treated according to proposed § 268.45(a)(1) and appendix IX, part 268, by an extraction or destruction technology and that does not exhibit a characteristic would no longer be a hazardous waste (and would no longer carry a waste code). Contaminated debris that is treated by an immobilization technology and remains in Subtitle C [33] would carry the waste code for the waste or the toxicity characteristic for which it was immobilized.

Although residues from the treatment of contaminated debris are subject to the LDR standards for F039, the residue normally carries the waste code of the contaminated debris. However, residue from treating debris that is hazardous solely because it exhibits a characteristic would not carry the waste code for the characteristic after treatment to deactivate the residue.

[33] See footnote 6.

2. Relationship of Debris Rule to TSCA PCB Rules

a. *TSCA disposal requirements.* Under the Toxic Substances Control Act (TSCA), disposal of debris contaminated with PCBs is regulated under 40 CFR 761.60. In addition, disposal of debris and materials resulting from the cleanup of certain PCB spills is subject to the PCB Spill Cleanup Policy, as provided under 40 CFR 761.125. On June 10, 1991, EPA published (56 FR 26738) an Advance Notice of Proposed Rulemaking which, among other things, asked for suggestions on how to amend the current PCB disposal rules to provide flexibility in disposing of PCB contaminated media (see 1.A. Large Volume, Non-Liquid Wastes). The current PCB disposal rules (40 CFR 761.60) were not designed to address large volumes of non-liquid wastes, such as certain classes of soils, sludges, and sediments. EPA is reviewing the comments submitted on the ANPR in anticipation of publishing a Notice of Proposed Rulemaking.

b. *Proposed approach for overlap of RCRA and TSCA requirements.* The Agency is today proposing that RCRA contaminated debris that is also a waste PCB under 40 CFR part 761 be required to comply with both the TSCA and RCRA regulations, by satisfying the more stringent applicable requirements, including incineration or treatment followed by land disposal in a Subtitle C facility. This is EPA's consistent approach to this issue. See 55 FR 22678 (June 1, 1990), and 52 FR 25770 (July 8, 1987).

The Agency is today proposing the use of specific treatment technologies as standards for the treatment of contaminated debris. These standards also apply to debris contaminated with PCBs and RCRA hazardous wastes. Debris treated by an extraction or destruction technology would remain subject to TSCA rules only, whereas debris treated by an immobilization technology would remain subject to applicable requirements under both statutes.

3. Treatment Standards for Asbestos Debris

Asbestos is a naturally occurring family of fibrous mineral substance. The typical size of asbestos fibers is 0.1 to 10 micrometers in length, a size that is not generally visible to the human eye. Some longer fibers are used in making textile products. Asbestos is a popular commercial product because it is noncombustible, resistant to corrosion, has a high tensile strength, and a low electrical conductivity. When disturbed, asbestos fibers may become suspended in the air for many hours, thus increasing the extent of asbestos exposure for individuals within the area.

Asbestos fibers have been mixed with various types of binding materials to create an estimated 3,000 different commercial products. Asbestos has been used in brake linings, floor tile, sealants, plastics, cement pipe, cement sheet, paper products, textile products and insulation, and other products such as fireproof garments, curtains, and shields, paper, insulating boards, and insulating cements. The amount of asbestos contained in these products varies significantly from 1 to 100 percent, but is typically less than 50 percent.

We determined late in the process of developing this proposed rule that asbestos itself could also be contaminated debris if it is mixed with a prohibited waste or exhibits a prohibited characteristic.[34] However, asbestos is not included in the six categories of debris in proposed Table 1 to § 268.45 for which the Agency is proposing treatment technologies as BDAT. Consequently, we specifically request comment on whether the final rule should include a column in proposed Table 1 for asbestos debris.[35] In addition, we request comment on whether the technology/contaminant category combinations presented in appendix II to this preamble will provide effective treatment for toxic constituents in asbestos debris. As discussed below, although the treated asbestos debris would be excluded from Subtitle C if it was treated with an extraction or destruction technology and the asbestos debris did not exhibit a hazardous characteristic, the treated debris will still be subject to applicable controls under OSHA, NESHAPS, and TSCA.

a. *Existing federal regulatory controls on asbestos.* The EPA and the Occupational Safety and Health Administration (OSHA) have major responsibility for the regulatory control over exposure to asbestos. Emissions of asbestos to the ambient air are controlled under section 112 of the Clean Air Act, which establishes the National Emission Standards for Hazardous Air Pollutants (NESHAPs).

[34] Note that if asbestos which is not contaminated with a prohibited waste and does not exhibit a prohibited characteristic is separated from contaminated debris, the asbestos debris would not be subject to the proposed debris treatment standards.

[35] If a debris is comprised of asbestos and another type of debris, the debris must be treated for each debris category. See section V.E. 5 of the text.

The regulations specify control requirements for most asbestos emissions, including work practices to be followed to minimize the release of asbestos fibers during handling of asbestos waste materials. These regulations do not identify a safe threshold level for airborne asbestos fibers.

The OSHA regulations are established to protect workers handling asbestos or asbestos-containing products. The current OSHA regulations include a maximum workplace airborne asbestos concentration limit of 0.2 fibers/cc on an 8-hour time weighted average basis, and a ceiling limit of 10 fibers/cc in any 15-minute period. The standards include requirements for respiratory protection and other safety equipment, and work practices to reduce indoor dust levels. See 29 CFR part 1910.

The transport and disposal of asbestos is regulated by TSCA under 40 CFR part 763, subpart E, appendix E, and by NESHAPs under 40 CFR part 61, subpart M. The NESHAP requirements for asbestos disposal begin at the point of removal. The asbestos material must be wet when removed and should be kept wet through the final disposal. A surfactant must be used in wetting of the asbestos. If an asbestos waste is removed dry, it must be wetted after removal until it is collected and sealed in leak-tight containers while wet. The recommended container is a leak-tight 6 millimeter thick plastic bag. The void space or air should be minimized prior to sealing the bag. Double bagging, plastic lined cardboard, or plastic-lined metal containers are considered to provide better containerization. Slurries of asbestos waste can be contained in leak tight drums if they are too heavy for plastic bags. Both EPA and OSHA specify that the containers be tagged with a warning label, e.g., Caution: Contains Asbestos Fibers. Avoid Creating Dust. May Cause Serious Bodily Harm.

An alternative handling method for wet asbestos waste is to use a vacuum truck. The slurry is transported in the vacuum truck to the disposal site. Air from the vacuum intake is dried and filtered through High Efficiency Particulate Air (HEPA) filter.

Improperly containerized waste is a violation of NESHAPs and the EPA should be notified. As a form of recordkeeping, a "cradle-to-grave" system is established under TSCA by a chain-of-custody form.

At the disposal site, EPA requires either no visible emissions to the air or the minimization of emissions by covering the containerized waste within 24 hours of receipt with at least 6 inches of a non-asbestos material or an approved dust suppressing agent. It is recommended that the landfill operator have a separate area for asbestos disposal. The final closure of an area containing asbestos requires a cover of an additional 30 inches of compacted non-asbestos material to provide a 36 inch final cover. Other disposal site requirements include the control of public access by the use of approved warning signs and, if necessary physical barriers. Any variation to the disposal methods must receive prior approval by the Administrator.

b. *Treatment standards.* The single largest use of asbestos in the U.S. is in building products. Given the tremendous versatility of asbestos-containing material used in these products, EPA believes that a significant portion of asbestos debris will be generated through building renovation and demolition. EPA also believes that some of this debris may be contaminated with a prohibited listed waste (or may exhibit a prohibited characteristic) either as initially generated or after improper land disposal subject to Superfund or Corrective Action. Thus, asbestos debris could be contaminated debris subject to today's proposal rule (e.g., chromium-contaminated asbestos pipe and equipment insulation). Given that asbestos debris is not included in the six categories of debris for which we are today proposing treatment technologies in Table 1 of § 268.45, we specifically request comment on adding required treatment technologies for asbestos debris to Table 1.

Although it may be technically feasible to treat contaminated asbestos debris (or a debris mixture containing asbestos) using many of the 18 debris treatment technologies discussed in previous sections, many of the treatment technologies are not practicable for asbestos debris because of the potential for occupational exposure or environmental release of asbestos. In particular, based on engineering judgment, EPA believes that the following debris treatment technologies, while perhaps technically feasible in some situations, are not practicable for asbestos treatment because of the potential for occupational or environmental exposure (i.e., controls under OSHA, NESHAPs, and TSCA could not reasonably be met): Abrasive blasting, electropolishing, scarification and grinding, spalling, thermal desorption, vibratory finishing, thermal destruction (except vitrification), microencapsulation, and sealing.

On the other hand, EPA believes that the following technologies will be effective in treating specific contaminants present in or on asbestos debris, but would probably require the use of filtration devices to control air or wastewater emissions containing asbestos to prevent occupational and environmental exposure in compliance with applicable controls under OSHA, NESHAPs, and TSCA: Acid washing; liquid phase solvent extraction; vapor phase solvent extraction; water washing and spraying; biodegradation; chemical oxidation; chemical reduction; photochemical treatment; and macroencapsulation.

Accordingly, we have evaluated these nine technologies that may be applied to asbestos debris in compliance with applicable controls under OSHA, NESHAPs, and TSCA to identify those contaminant categories that they could effectively treat. See Appendix II of this preamble. The Agency specifically requests comment on the applicability of these technologies to asbestos debris and whether effective treatment would be ensured for the contaminant categories identified in appendix II when the technology performs according to the requirements of proposed Appendix IX to the rule.[36]

4. Special Requirements for Radioactive Debris

a. *Definition of mixed wastes.* Mixed wastes are those wastes that satisfy the definition of radioactive waste subject to the Atomic Energy Act (AEA) and also contain a RCRA listed hazardous waste or exhibit a hazardous characteristic. On July 3, 1986 (51 FR 4505), EPA determined that the hazardous waste portions of mixed waste are subject to RCRA regulation.

The majority of mixed wastes can be divided into three categories based on the radioactive component of the waste: (1) Low-level wastes, (2) transuranic (TRU) wastes, and (3) high-level wastes. Low-level wastes include radioactive waste that is not classified as spent fuel from commercial nuclear power plants, or that is not defense high-level radioactive waste from producing weapons. TRU wastes are those wastes containing elements with atomic numbers greater than 92, the atomic number of uranium. High-level radioactive wastes are defined as spent fuel from commercial nuclear power plants, and defense high-level radioactive waste from the production of weapons.

b. *RCRA Requirements.* On June 1, 1990 (55 FR 22520), EPA promulgated

[36] Residues from the treatment of asbestos debris would be subject to the F039 standards as proposed for residues from treatment of any other debris.

treatment standards for four treatability groups of mixed waste: (1) Specific high level wastes, (2) D008 radioactive lead solids, (3) mixed waste containing elemental mercury, and (4) mercury containing hydraulic oil contaminated with radioactive materials. The Agency further asserted that "all promulgated treatment standards for RCRA listed and characteristic wastes apply to the RCRA hazardous portion of mixed radioactive (high-level, TRU, and low-level) wastes, unless EPA has specifically established a treatability group for that specific category of mixed waste."

However, there are a number of potential problems presented by applying the existing land disposal restriction standards to mixed waste contaminated debris, including the achievability of the existing standard and the consistency of these standards with AEA regulations. For instance, the specified technology to be used for mixed waste containing elemental mercury is "Amalgamation with Zinc as a Method of Treatment." This technology effectively reduces the leachability of liquid mercury. However, this technology may not effectively reduce the leachability of mercury contained in the pores of wood or cloth debris.

Also, incineration of mixed wastes containing radioisotopes of carbon and hydrogen would result in the spread of these isotopes through uncontrolled emissions of carbon dioxide and water vapor. This could result in an increase of the radiation hazard, which would conflict with the requirements of AEA.

The Agency is today proposing that mixed waste contaminated debris be required to comply with the treatment standards for contaminated debris (in addition to any regulation of that material under AEA), rather than to the treatment standards for the contaminating waste. This includes debris contaminated with mixed waste for which special treatability groups have been established (as discussed above) will be subject to debris standards rather than to the specified treatability group standards.

The exception would be the D008 radioactive lead treatability group, which would be subject to both debris standards and the treatability group standards when contamination includes other hazardous waste in addition to D008. EPA views that debris which is also in the radioactive lead treatability group to be similar to inherently hazardous debris, and is thus proposing a similar approach. We note further that application of both the D008 lead solids standard and the applicable debris standard would not conflict with the existing D008 lead solids standard unlike the existing standards for mixed waste, as noted above. Further, application of both standards would also address the hazardous associated with D008 as well as any other hazardous wastes present on the debris.

5. Sham Contamination of Debris

a. *Sham contamination.* Sham contamination of debris is the deliberate addition of a hazardous waste to debris to avoid compliance with the LDR standards for that hazardous waste. When a rule is promulgated that defers or excludes certain solid wastes from regulation, the ability to differentiate whether the addition of hazardous waste is a sham situation or a legitimate situation is always an issue. The Agency believes, however, that there is little incentive to deliberately contaminate debris to avoid compliance with the treatment standards because the debris would still have to be treated prior to land disposal and any residual generated from the treatment would still have to meet the F039 treatment standards.

The Agency considered requiring generators to certify that debris had been contaminated inadvertently and not as a result of deliberate action to avoid compliance with the LDRs. However, the Agency felt it would be difficult to require such certification, particularly at sites where the source of the original contamination is unknown, and it would be difficult to manage from an enforcement perspective.

b. *Impermissible dilution.* The Agency also considered whether deliberate contamination of debris is likely to occur followed by impermissible dilution of the contaminant to avoid compliance with the debris treatment standards. However, the Agency feels that existing regulations on permissible and impermissible dilution are quite specific as to when they apply. Current regulations (40 CFR 268.3(a) and (b)) specify when dilution is a permissible or impermissible treatment process.

The rules on dilution and the Agency's interpretive statements regarding those rules indicate that the dilution prohibition has a two-fold objective: (1) To ensure that prohibited wastes are actually treated; and (2) to ensure that prohibited wastes are treated by methods that are appropriate for that type of waste. EPA has indicated that prohibited wastes which are aggregated are normally not diluted impermissible if they are treated legitimately (i.e., subject to effective treatment, 55 FR 22666) in centralized treatment systems, irrespective of the dilution inherent in such a system. Thus, if dilution is a legitimate type of treatment, or a necessary pretreatment step in a legitimate treatment system, such dilution is permissible.

EPA is proposing that in the case of debris that is ignitable or reactive, but nontoxic (i.e., it is not contaminated with a prohibited listed waste and does not exhibit EP toxicity), any type of deactivation would be a permissible means of removing the characteristic property. However, the Agency is soliciting comment on treating "contaminants subject to treatment" in characteristic debris, and were EPA to adopt such an approach, dilution prohibitions would probably apply due to concern for adequate treatment of toxics. 55 FR 22657, 22665–66. For toxic debris, including reactive cyanide debris that must be treated for cyanide, dilution in lieu of the prescribed method of treatment or to reach contained-in levels is impermissible since such dilution would occur for purposes of evading the treatment standards. See § 268.3. Since no wastewater treatment is involved (i.e. debris is a solid, not a liquid), the Agency need not balance any of the difficult issues relating to relationship of the RCRA prohibition and Clean Water Act subtitle D treatment impoundments receiving diluted non-hazardous, formerly characteristic wastewaters. See 55 FR at 22656–58. Centralized treatment of contaminated debris would be allowed under the proposal, of course, so that aggregation of debris amendable to the same type of treatment is permissible under the proposal.

6. Sampling and Analysis

Sampling and analysis of contaminated debris would not required to comply with the proposed treatment standards. Nonetheless, the Agency is considering developing implementation assistance regarding sampling and analysis techniques for debris because it will: (1) Facilitate the actions at Superfund sites of the on-scene coordinators (OSCs) and remedial project managers (RPMs); and (2) assist the Agency and generators and treatment facility operators in determining whether debris exhibits the toxicity characteristic or whether debris contaminated with a prohibited listed waste is contaminated with detectable levels of appendix VIII, part 261, constituents.

The Agency considered requiring sampling and analysis of treated debris to demonstrate that the treatment technologies effectively treated the toxic contaminants. Sampling would

potentially identify inadequate or fraudulent debris treatment, as well as other conditions where performance of the specific technology was insufficient. However, the Agency believes that requiring sampling and analysis of treated debris, or establishing concentration-based treatment standards, is not workable given the difficulty of sampling debris. Nevertheless, the Agency requests comment on the feasibility of numerical standards for those types of debris that can be sampled without difficulty. The Agency also requests comment on which types of debris are amendable to sampling and how such samples should be collected.

The Agency believes that when the specified treatment technologies are designed and operated to meet the performance standards prescribed by proposed appendix IX of the rule, the debris will be effectively treated. As discussed previously, EPA specifically requests comment on whether the performance standards are adequate to ensure effective treatment.

7. Procedures for Demonstrating Equivalency of New Technologies

A generator or treater can demonstrate that an alternative technology can achieve the equivalent level of performance as that of the specified treatment method (40 CFR 268.42 (b)). This demonstration must be specific for both debris category and contaminant category and may be based on: (1) The demonstration of a technology utilizing a target analyte or surrogate or indicator compound that indicates effective treatment of the hazardous waste constituents contaminating a particular debris type; (2) the development of new analytical and/or sampling methods for quantifying the hazardous constituents; or (3) other demonstrations of equivalence for alternative method of treatment based on statistical comparisons of technologies, including comparisons of specific design and operating parameters. As a result, a new treatment standard based on this demonstration, as well as any analytical and sampling methodology used in the demonstration, could then be proposed to be applicable to other debris categories and contaminant categories.

8. Applicability of Existing Treatment Standards to Contaminated Debris

EPA is specifically requesting comment on whether the existing LDR standards for the listed waste(s) with which a debris is contaminated and the existing LDR standards for the EP toxicity characteristic should be allowed as an alternative to the debris treatment standards of proposed § 268.45 and appendix IX, part 268.

I. Permits for Treatment Facilities

EPA is concerned that adequate treatment capacity may not be available for contaminated debris. The national capacity variances for these wastes have expired, or will expire by May, 1992. Consequently, EPA intends to use the discretion provided by existing permitting standards to allow the construction of new treatment units at both permitted facilities and facilities operating under interim status.

1. Capacity Shortfall

EPA's capacity analysis is based on data received in response to the ANPR for wastes covered in this proposal, from a series of "Roundtable meetings" that EPA held in May and June of 1991 with representatives of companies involved in the management and disposal of contaminated debris, and from the TSDR and Generator Surveys. Comments from the Roundtable meetings indicate that decommissioning of large chemical plants and increasing remediation activities can significantly increase the estimated volume of contaminated debris.

Waste generators and TSDFs report that most of the contaminated debris volumes are currently landfilled without prior treatment. Stabilization or incineration are the reported treatment technologies for the small amounts of contaminated debris that are currently treated before landfilling. In addition, EPA has received information on materials-handling problems limiting the amount of contaminated debris that currently can be treated by stabilization and incineration. In general, the size of the debris must be reduced (e.g., by shredding, grinding, etc.) before it can be treated, and heavy duty equipment reportedly is currently not available at most treatment facilities. Therefore, EPA believes, based on qualitative assessment, that very large quantities of contaminated debris will require treatment and that available treatment capacity will be very limited in the short term. By May 8, 1992, all the national capacity variances will expire for as much as 800,000 tons of debris contaminated with previously regulated wastes (i.e., wastes for which LDR standards have been promulgated). This is coincidental to the effective date for LDR standards for additional newly listed and identified wastes.

Notwithstanding this projected capacity shortfall in the near term, EPA believes that there is sufficient flexibility in its existing regulations for facilities and generators to add additional treatment capacity and new waste treatment processes in a short period of time. However, EPA welcomes any additional capacity information that commenters can provide to aid the Agency's decisions in the final rule.

2. Permitted Facilities

Permitted treatment, storage, and disposal facilities may add new treatment processes and additional capacity by applying for a permit modification under the Federal regulations at § 270.42 (see 53 FR 37912, September 28, 1988, for a full explanation of the permit modification procedures). Although the regulations at § 270.42 were promulgated under pre-HSWA authority, EPA may use these regulations in authorized States when necessary to implement HSWA provisions such as the land disposal restrictions. See 53 FR 37933.

The types of modifications needed to add new capacity or processes would likely require the submittal of a Class 2 or 3 modification. The Class 2 modification process requires Agency action on the request within 120 days. This action would consist of approval or denial, reclassification as a Class 3 modification, or authorization to conduct the activities for up to 180 days pending Agency action. Furthermore, for Class 2 modifications, construction to implement the requested facility change may commence 60 days after submission of the request. There is no deadline for Agency action for Class 3 modifications, which apply to more substantial facility changes. Permitted facilities may also apply for a temporary authorization to initiate necessary activities while a Class 2 or 3 permit modification request is undergoing review, or to undertake a treatment or storage activity which will be of short duration. EPA may grant a temporary authorization for a term of up to 180 days. Any request for a temporary authorization must demonstrate compliance with the part 264 standards and also meet the criteria of § 270.42(e) for approval. Interested public (i.e., those that have previously expressed interest in any permitting action for the facility) will receive notice by mail of a facility's request for a temporary authorization, and another mail notice if EPA approves the request. The temporary authorization may be renewed once if the additional procedures of § 270.42(e) are followed, including the submission of appropriate permit modification information and the initiation of public meetings and public comment period. See 53 FR 27919, September 28, 1988 for additional discussion of temporary authorizations.

Some of the contaminated debris treatment processes that are proposed as BDAT under § 268.45 would take place in units that EPA is proposing to define as containment buildings. See discussion above in Section IV.G. To assist in the development of treatment capacity by permitted facilities to meet the requirements of this proposed rule, the Agency is proposing a change to the criteria that must be met to grant a temporary authorization. The existing regulation at § 270.42(e)(3)(ii)(B) allows approval of the request if the activity is necessary to treat or store restricted wastes in tanks or containers in accordance with part 268. Today's proposal would amend these criteria to include the treatment or storage of contaminated debris in containment buildings meeting the requirements in proposed subpart DD, parts 264 and 265.

3. Interim Status Facilities

Treatment, storage, and disposal facilities managing hazardous waste under interim status may add new treatment processes or additional treatment or storage capacity by using the existing procedures for changes during interim status in § 270.72. Under these procedures, a facility must submit to EPA a revised Part A permit application and justification explaining the need for the change. The change must then be approved by EPA.

In order for the change to be approved by EPA, it must meet one of several criteria, such as being necessary to comply with a Federal, State, or local requirement. However, changes may not be made if they amount to reconstruction of the facility. This occurs when the capital investment for the changes to the facility exceed 50 percent of the capital cost of a comparable entirely new facility.

Section 270.72(b)(6) lifts the reconstruction limit for changes to treat or store in tanks and containers hazardous waste subject to land disposal restrictions imposed by part 268, provided that such changes are made solely for the purpose of complying with part 268. EPA believes that this exemption should also apply to treatment or storage of contaminated debris in containment buildings for the reasons stated above. Accordingly, today's rule proposes to amend § 270.72(b)(6) to make treatment or storage in containment buildings as regulated under proposed subpart DD, parts 264 and 265, exempt from the reconstruction limit.

4. Documentation of Compliance with Proposed Appendix IX, Part 268

Proposed appendix IX, part 268, would establish performance or design and operating requirements for the treatment technology specified by proposed Table 1, § 268.45, for each combination debris/containment category. Although contaminated debris treatment facilities are subject to the appropriate part 264 or 265 facility standards, we did not codify the proposed Appendix IX treatment technology requirements under part 264 or 265 because the treatment technology requirements would apply to any (nonprohibited) waste treatment unit treating contaminated debris, including, subpart J tank systems, subpart I containers, subpart O incinerators, subpart X miscellaneous units, and proposed subpart DD containment buildings.[37] Rather than amending each of those subparts to include the Appendix IX requirements or to reference Appendix IX, today's proposed rule would simply require (in proposed § 268.45) owners and operators of contaminated debris treatment facilities to comply with the requirements and to document compliance in the operating record required under subpart E, parts 264 and 265.

In addition, we expect that permit writers will use the omnibus permit authority of § 270.32(b)(2) to add conditions to the RCRA operating permit issued under subpart B, part 270, to ensure that contaminated debris treatment facilities comply with the appendix IX requirements. EPA believes that compliance with the appendix IX requirements are necessary to protect human health and the environment from treated debris given that it would be conditionally excluded from Subtitle C regulation. EPA specifically requests comment on whether the use of omnibus permit authority would be an effective approach to ensure compliance with the appendix IX requirements, or whether EPA should amend the facility standards under parts 264, 265, 266 (for boilers and industrial furnaces), and 268 (for containment buildings, as proposed today) to require contaminated debris treatment facilities to comply with the appendix IX requirements.

5. On-Site Treatment in Containers and Tanks

EPA notes that generators who store or treat contaminated debris on-site in tanks or containers for a period not exceeding 90 days are not subject to permit requirements. See existing § 262.34. However, the tank or container must be designed and operated in compliance with the requirements of subparts I or J of part 265 to ensure protection of human health and the environment. (Further, today's rule would require that treatment of contaminated debris in tanks or containers (or any other treatment unit) meet the requirements of proposed § 268.45(a) and appendix IX, part 268, to ensure effective treatment. See proposed § 268.45(c)). In section IV.G.3 of today's notice, EPA proposes to extend the 90-day generator exemption in § 262.34 to containment buildings, a new waste management unit proposed today.

J. Comments on the May 30, 1991 ANPRM

Sixty-six commenters responded to the May 30, 1991 ANPR. Of these 66, 40 commenters provided over 250 comments on the potential BDAT for contaminated debris section in the ANPR. Almost half of the comments received focus on the treatment standards and their applicability to debris. Many of the commenters suggested a different approach to the establishment of treatment standards, while others agreed with EPA's approach or requested clarifications of statements that were made in the ANPRM.

Of the remainder of the comments, 15 addressed the Agency's contained-in policy. Almost all of these 15 comments supported the establishment of a level at which debris would no longer "contain" hazardous waste. One commenter suggested that health-based standards be established for these levels and that the contained-in policy be codified with these levels. In other issues, 36 comments were received concerning how to establish a waste code for contaminated debris. Of these, 16 supported a new waste code for debris and 5 supported the retention of existing waste codes. Three comments suggested a new waste code for debris, but only if the source of contamination was unknown.

Nine comments were received on the issue of how to manage refractory brick. Most of these comments addressed refractory brick content and recycling. About half noted that refractory bricks are recycled into cement. The other comments noted that the chromium content is much lower than 40 percent and suggested that the bricks may not even be considered hazardous.

Other issues raised by commenters addressed inherent content, permitting, representative sampling, and capacity

[37] And subpart H, part 266 boilers and industrial furnaces.

concerns over disposal of debris. Most of the comments on inherent content supported macroencapsulation or some other type of treatment for inherently hazardous debris. For permitting, commenters were concerned that the Agency not include decontamination as an activity requiring a RCRA permit. One commenter suggested a "permit by rule" provision for decontamination or debris washing. Several commenters requested additional guidance on representative sampling of debris, and one commenter urged the Agency to expedite de minimis rulemaking in order to relieve capacity concerns over disposal of debris.

VI. Capacity Determinations

This section presents the data sources, methodology, and results of EPA's capacity analysis for today's newly listed wastes. Specifically, Section VI summarizes the results of the capacity analysis for petroleum refining wastes and other organic wastes; wastes mixed with radioactive contaminants; and debris contaminated with the newly listed wastes.

The capacity analysis for the newly listed wastes for which the Agency is today proposing treatment standards relied on information obtained from several sources. Primary data sources include the National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (the TSDR Survey), the National Survey of Hazardous Waste Generators (the Generator Survey), data received in response to the ANPRM for the Newly Identified and Listed Wastes (56 FR 24444), data received in voluntary data submissions, and information requests authorized under section 3007 of RCRA.

EPA conducted the TSDR Survey during 1987 and 1988 to obtain comprehensive data on the nation's capacity for managing hazardous waste and on the volumes of hazardous waste being land disposed. For the capacity analysis, EPA used the TSDR Survey information on the volumes of waste streams managed in land-disposal units and requiring alternative treatment/recovery due to the land disposal restrictions and on available capacity of hazardous waste management technologies.

EPA conducted the Generator Survey in 1987. This survey requested information on waste volumes and waste characteristics of hazardous waste generated, and provided capacity information for facilities not included in the TSDR Survey.

In general, EPA's capacity analysis methodologies focus on the amount of waste currently land disposed that will require alternative treatment. Wastes that are not land disposed (e.g., discharges under NPDES or to a POTW) are not included in the required capacity estimates. Also, land-disposed wastes that do not require alternative treatment (e.g., those that are currently treated using an appropriate technology) are excluded form the required capacity estimates. Land-disposed wastes requiring alternative treatment or recovery capacity that is available on site or within the same company are also omitted from required commercial capacity estimates. Therefore estimates for available capacity at commercial hazardous waste management facilities are based on the net available commercial capacity for the newly listed wastes.

A. Capacity Analysis Results Summary

Table VI.A.1 lists each waste code for which EPA is proposing LDR standards today. For each code, this table indicates whether EPA is proposing to grant a two-year national capacity variance for surface-disposed or deepwell disposed wastes. As seen by this table, the Agency is proposing to grant national capacity variances only for storage and treatment of petroleum wastes in surface impoundments, debris contaminated with newly listed wastes, and mixed radioactive wastes.

TABLE VI.A.1.—SUMMARY OF PROPOSED CAPACITY VARIANCE DECISIONS FOR NEWLY LISTED WASTES

Waste code	Variance for surface-disposed wastes?	Variance for deepwell-disposed wastes?
F037-S.I.	Yes	No.
F038-S.I.	Yes	No.
F037	No	No.
F038	No	No.
K107	No	No.
K108	No	No.
K109	No	No.
K110	No	No.
K111	No	No.
K112	No	No.
K117	No	No.
K118	No	No.
K123	No	No.
K124	No	No.
K125	No	No.
K126	No	No.
K131	No	No.
K132	No	No.
K136	No	No.
U328	No	No.
U353	No	No.
U359	No	No.
Mixed Rad. Waste	Yes	No.
Contam. Debris	Yes	No.

B. Petroleum Refining Wastes and Other Organic Wastes

This section presents the capacity analysis for today's newly listed petroleum refining wastes and other organic wastes.

1. Comparison of Required and Available Capacity for Newly Listed Petroleum Refining Wastes (F037 and F038) and Other Organic Wastes

Table VI.B.1 summarizes available capacity for each alternative treatment or recovery technology required for petroleum refining wastes (F037 and F038) and newly listed organic wastes. This table also summarizes the required capacity for each technology. The analysis of commercial capacity for newly listed wastes is based primarily on data from the TSDR Survey capacity data set, data received in response to previous LDR notices and regulations, and data received in voluntary data submissions. Analysis of data indicates that commercial capacity is currently available for wastewater treatment, stabilization and combustion of liquids. However, commercial capacity for combustion of sludges and solids is currently expanding, and the expected availability of capacity for the newly listed wastes is dependent on planned capacity being fully operational by May 1992.

Commercial capacity for combustion of sludges and solids is available at both incinerators and at industrial furnaces (primarily cement kilns that have used hazardous waste as fuel). Due to the expected increase in demand for combustion of sludges and solids (because many wastes have BDAT standards based on incineration), and also because of the new regulations for burning of hazardous wastes in boilers and industrial furnaces, many commercial cement kiln facilities are currently changing their operating practices to comply with new regulatory requirements and to significantly expand their capacity. Current analyses of these planned changes indicate a major increase in capacity will occur prior to May 1992, and that consequently there is no need for a national capacity variance. However, the Agency does recognize that planned activities are not always completed as scheduled. Thus, the Agency plans to continue to monitor the on-going changes in commercial combustion capacity, and will modify the capacity estimates as new data indicates. The Agency requests public comment on the current and planned commercial capacity for combustion of sludges and solids, and is especially

interested in receiving data on the status of planned changes to that capacity.

TABLE VI.B.1.—COMPARISON OF REQUIRED AND AVAILABLE CAPACITY FOR NEWLY LISTED PETROLEUM REFINING AND OTHER ORGANIC WASTES

Technology	Available capacity (thousand tons/year)	Required capacity (thousand tons/year)
Biological Treatment	188	<1
Chemical Precipitation	813	<1
Combustion of Liquids	696	<1
Combustion of Sludges and Solids.	301	76
Stabilization	1,204	15

2. Required Capacity for Petroleum Refining Wastes (F037 and F038)

EPA is proposing treatment standards for F037 and F038 nonwastewaters that are based on a transfer of the performance of the technologies previously established for K048–K052 nonwastewaters (55 FR 22520). Nonwastewater treatment standards for F037 and F038 wastes are based on solvent extraction or thermal desorption, and incineration for organic constituents, and stabilization for metals. EPA is proposing to transfer multi-source leachate (F039) wastewater performance to F037 and F038. That is, for F037 and F038 wastewaters, the proposed standards are based on biological treatment for organics and chemical precipitation for metals.

The capacity analysis for the F037 and F038 petroleum refining wastes was conducted using information collected from a number of data sources. The primary data sources include data submitted voluntarily from refineries, the F037 and F038 Regulatory Impact Analysis (RIA), from the listing of the F037 and F038 wastes, the Petroleum Refinery Data Base (PRDB), the TSDR Survey, and the Generator Survey.

The RIA was prepared by EPA in 1990 in support of the listing rule for F037 and F038 wastes (55 FR 46354). The RIA includes in industry overview and profile of facilities affected by the listings, an analysis of baseline waste management practices, and regulatory compliance scenarios. The PRDB is based on a mail survey conducted by EPA in 1983 and has been updated to contain 1985 refining information. The TSDR Survey and Generator Survey were discussed previously (in the introduction to section VI).

Supplemental data sources include two reports prepared by Midwest Research Institute (MRI), which support the F037 and F038 listing and the Toxicity Characteristic (TC) rule, and which summarize sampling and analysis data collected by EPA for 16 petroleum refining facilities; no-migration petitions submitted by petroleum refineries for land treatment units; and the California Hazardous Petroleum Waste Data Base, which contains information on wastes that fit the F037 and F038 definition.

Using the available data and the Agency's best engineering judgment, EPA developed estimates of F037 and F038 waste volumes based on current management practices as well as options for alternative management due to the LDR requirements. The Agency also developed estimates of available on-site treatment/recovery capacity and evaluated information submitted by refineries and treatment technology vendors on the viability of constructing on-site treatment/recovery capacity and the time that would be required to make such additions.

EPA estimates that approximately 74,000 tons per year of dewatered F037 and F038 wastes (nonwastewaters) from routine waste treatment will require alternative treatment. The Agency also considered the accumulated sludge quantities in surface impoundments, but believes that this waste will either be disposed of prior to the LDR effective date or will be managed by on-site closure of surface impoundments. Although there apparently is treatment capacity sufficient to accommodate these wastes, there is a complexity factor due to the fact that many of these wastes are generated in unretrofitted impoundments (i.e., impoundments not satisfying the minimum technology requirements specified in sections 3004(o) and 3005(j)(11)). These wastes would thus be land disposed in a prohibited manner before they are treated. These impoundments can of course be retrofitted or replaced with tank systems, but not by the effective date of this rule, or for some time thereafter. See RCRA section 3005(j)(6), allowing four years to retrofit or close impoundments receiving newly identified or listed wastes (and no other hazardous wastes). Because alternative treatment or storage capacity that could accommodate these wastes before they are land disposed is not available, EPA is proposing a national capacity variance for F037 and F038 wastes generated in surface impoundments.

The lack of alternative storage/treatment capacity raises two significant legal issues. The first is that during the period of a national capacity variance, restricted wastes disposed in surface impoundments can only do so in impoundments meeting the minimum technology requirements of section 3005(j). See § 268.5(h), RCRA section 3004(h)(4) and *Mobil Oil* v. *EPA*, 871 F. 2d 149 (D.C. Cir. 1989). On the other hand, section 3005(j)(6) states that impoundments receiving newly identified or listed hazardous wastes have up to four years from the date of promulgation of the rule making the waste hazardous to retrofit or close the impoundment. As will be described more fully in another **Federal Register** notice, EPA believes tentatively that these provisions are in irreconcilable conflict, and accordingly that EPA has significant discretion in determining how best to interpret them. The Agency further intends to propose that in the case of wastes subject to a national capacity variance, that impoundments managing such wastes (and no other wastes subject to an earlier prohibition) that the impoundments still have four years to retrofit or close.

EPA is using that same resolution here. However, this is not the only issue to reconcile in the present proceeding. This is because there is available treatment capacity for these petroleum refining wastes. In such cases, the strong statutory policy is to treat hazardous wastes rather than allow them to be land disposed. See RCRA sections 1002(7) and 1003 (4), (5), and (6). Although land disposal in impoundments remains necessary during the four year period allocated by statute for retrofitting, the Agency does not see why the wastes have to stay in the impoundments untreated for that period. They can be removed and sent for the mandated treatment. In this regard, section 3005(j)(11) requires that hazardous wastes in retrofitted impoundments be removed annually for treatment. The required annual sludge removal practice would be compatible with continuous use of the surface impoundment and would not require that they be taken out of service to conduct sludge removal. The Agency is of the initial view that the same result should apply to the unretrofitted impoundments holding restricted wastes for which treatment capacity exists. The Agency's initial view is that this is a reasonable resolution of the conflict between sections 3004(h) and 3005(6) in that it gives maximum effect to both the policy to use treatment where treatment is available, but not eliminating the four year retrofit period for impoundments receiving exclusively newly identified and listed wastes. EPA requests comment on this issue.

EPA is also considering a similar resolution with respect to closing those impoundments that choose to close

rather than to retrofit at the end of the four-year period. The Agency is considering prohibiting impoundments from leaving prohibited wastes in place when they close if capacity is available to treat the wastes. Thus, if there is treatment available, the impoundments must be clean closed. In this way, not only is the statutory goal of treatment accommodated, but hazardous wastes are not left in the least secure type of land disposal unit for an indefinite period, raising the very environmental concerns that the land disposal prohibitions were enacted to prevent (RCRA sections 3004(d)(1) (A)–(C) and 1002(7)). Consequently, EPA may limit the options available for impoundments managing wastes for which there is available treatment to retrofitting or clean closure. Owners and operators would, however, have up to four years from the date of promulgation of the rule listing or identifying the waste to make these changes. The Agency requests comment on this issue; in responding to this issue, the Agency specifically requests comment on how much additional F037 and F038 would become subject to LDRs if such impoundments were requested to clean close.

Thus, the estimate of the total F037 and F038 waste generation requiring alternative treatment is 74,000 tons per year (nonwastewaters). There are no data indicating that any land-disposed wastewaters will require alternative treatment, and therefore this volume is assumed to be zero.

Based on the estimate that 74,000 tons per year of dewatered F037 and F038 wastes will require alternative treatment, EPA believes that there is adequate capacity for the treatment of all land disposed F037 and F038 wastes, except those wastes that are generated in surface impoundments; therefore, EPA is proposing to grant a national capacity variance only for F037 and F038 wastes that are generated in surface impoundments. EPA is not proposing a variance for other nonwastewaters or for wastewaters.

3. Required Capacity for Other Newly Listed Organic Wastes

This section presents EPA's analysis of required capacity for other newly listed organic wastes including organic U waste, UDMH wastes, toluene diisocyanate (TDI) wastes, ethylene dibromide (EDB) wastes, ethylenebisdithiocarbamic (EBDC) wastes, and methyl bromide wastes.

(a) Organic U Wastes (U328, U353, and U359).

U328—Ortho-toluidine
U353—Para-toluidine
U359—2-Ethoxyethanol

For U328, U353 wastes, EPA is proposing to establish incineration or thermal destruction as methods of treatment for the nonwastewater forms of these waters, and chemical oxidation followed by either biological treatment or carbon adsorption as methods of treatment for the wastewater forms of these wastes. For U359, EPA is proposing to establish concentration standards based on incineration for the nonwastewaters and incineration or chemical oxidation followed by carbon adsorption or biodegradation for the wastewaters.

Generation and management information of the organic U wastes was collected by EPA during 1990 and early 1991 under the authority of section 3007 in RCRA. This capacity analysis incorporates data from that section 3007 information request.

The Agency estimates that less than 100 tons of U328, U353, and U359 wastes are being land disposed and require further treatment. Most of the U359 waste generated in 1989 was incinerated on-site, and the remainder (less than one percent) was incinerated off-site. In addition, unspecified and variable volumes of untreated wastewater contaminated with U359 are reportedly generated on occasion at one generator's facility, however this wastewater undergoes biological treatment on site. Because these wastes are rejected products, and the product has a market value, the Agency believes these wastes would be generated in small volumes.

Based on the available data (see Table VI.B.1), EPA believes that sufficient capacity exists for treatment of the U328, U353, and U359 wastes; therefore, EPA is not proposing to grant a national capacity variance for U328, U353, and U359 wastewaters or nonwastewaters.

(b) UDMH Wastes (K107, K108, K109, K110).

K107—Column bottoms from product separation from the production of 1,2-dimethylhydrazine (UDMH) from carboxylic acid hydrazides
K108—Condensed column overheads from product separation and condensed reactor vent gases from the production of UDMH for carboxylic acid hydrazines.
K109—Spent filter cartridges from product purification from the production of UDMH for carboxylic acid hydrazines.
K110—Condensed column overheads from intermediate separation from product purification from the production of UDMH for carboxylic acid hydrazines.

For UDMH wastes, EPA is proposing to establish incineration as the method of treatment for the nonwastewaters, and incineration or chemical oxidation followed by carbon adsorption as methods of treatment for the wastewaters.

EPA listed four UDMH waste (K107, K108, K109, K110) that are generated from the production of UDMH (unsymmetrical dimethylhydrazine, or 1,1-dimethylhydrazine) from carboxylic acid hydrazides. Also, some of these wastes are ignitable or corrosive and as such are currently subject to LDR standards.

Generation and management information concerning the UDMH wastes was collected by EPA during 1990 and early 1991 under the authority of section 3007 in RCRA. This capacity analysis incorporates data from that section 3007 information request.

The response to the section 3007 request noted that the only manufacturer who used the proprietary process generating UDMH wastes has ceased UDMH production. Therefore, the Agency assumes that no UDMH will require treatment prior to land disposal.

Based on available data, EPA believes that sufficient capacity exists for treatment of the UDMH wastes; therefore, EPA is not proposing to grant a national capacity variance for K107, K108, K109, and K110 wastewaters and nonwastewaters.

(c) Toluene Diisocyanate Wastes (K111–K112).

K111—Product washwaters from the production of dinitrotoluene via nitration of toluene.
K112—Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.

For toluene diisocyanate (TDI) wastes, EPA is proposing to establish incineration as the method of treatment for nonwastewaters, and incineration or chemical oxidation followed by carbon adsorption as methods of treatment for wastewaters.

Generation and management information concerning the TDI wastes was collected by EPA during 1990 and early 1991 under the authority of section 3007 in RCRA. This capacity analysis incorporates data from that section 3007 information request. In addition, the Agency has contacted other facilities in order to obtain further information concerning K111 and K112 waste generation, management practices, and residuals.

The Agency has identified less than 100 tons of K111 and K112 nonwastewaters and no K111 or K112 wastewaters requiring alternative treatment. The majority of the K111 and K112 wastes generated are currently treated using a variety of alternative

treatment or recovery methods and discharged through NPDES. The data indicate that the residuals from treatment of K111 and K112 were further treated before being land disposed.

Based on available data (see Table VI.B.1), EPA believes that sufficient capacity exists for treatment of the TDI wastes; therefore, EPA is not proposing to grant a national capacity variance for K111 and K112 wastewaters or nonwastewaters.

(d) Ethylene Dibromide (EDB) Wastes (K117–K118, K136).

K117—Wastewaters from the reactor vent gas scrubber in the production of ethylene dibromide (EDB) via the bromination of ethene.

K118—Spent absorbent solids from the purification of EDB produced by bromination of ethene.

K136—Still bottoms from the purification of EDB.

For K117, K118, and K136 wastes, EPA is proposing to establish concentration-based standards based on a transfer of data used to calculate the U029 (bromomethane), U030 (4-bromophenyl phenyl ether), U066 (1,2-dibromo-3-chloropropane), U067 (ethylene dibromide, EDB), U068 (dibromomethane) and U225 (bromoform) Third Third Rule standards for nonwastewaters and wastewaters.

Generation and management information concerning EDB wastes was collected by EPA during 1990 and early 1991 under the authority of section 3007 in RCRA. This capacity analysis incorporates data from that section 3007 information request. In addition, the Agency reviewed information provided in response to the ANPR (56 FR 24444).

Based on the available information, EPA has identified 1,650 tons of nonwastewater residuals from treatment of K118 that is currently land disposed and will require alternative treatment. K118 wastewater streams currently undergo treatment before disposal, and EPA has identified no K117 or K136 waste generation.

Based on available data and using incineration as the treatment technology (see Table VI.B.1), the Agency believes that sufficient capacity exists for treatment of the EDB wastes, and, therefore, the Agency is not proposing to grant a national capacity variance for K117, K118, and K136 wastewaters or nonwastewaters.

(e) Ethylenebisdithiocarbamic (EBDC) Wastes (K123, K124, K125, and K126).

K123—Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid (EBDC) and its salts.

K124—Reactor vent scrubber water from the production of EBDC and its salts.

K125—Purification solids (including filtration, evaporation, and centrifugation solids) from the production of EBDC and its salts.

K126—Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of EBDC and its salts.

For EBDC wastes, EPA is proposing to establish incineration or thermal destruction as the method of treatment for nonwastewaters, and incineration, thermal destruction, or chemical oxidation followed by activated carbon as methods of treatment for wastewaters.

Generation and management information concerning the EBDC wastes was collected by EPA during 1990 and early 1991 under the authority of section 3007 in RCRA. This capacity analysis incorporates data from that section 3007 information request.

The Agency has identified less than 100 tons of K125 nonwastewaters which are currently land disposed and will require alternative treatment; no volumes of K123, K124, or K126 wastes are currently being land disposed, and there is no generation of K125 wastewaters, K124 wastes, or K126 wastes.

Based on available data, EPA believes, sufficient capacity exists for treatment of the EBDC wastes; therefore, EPA is not proposing to grant a national capacity variance for K123, K124, K125, and K126 wastewaters or nonwastewaters.

(f) Methyl Bromide Wastes (K131 and K132).

K131—Wastewater from the reactor and acid dryer from the production of methyl bromide.

K132—Spent adsorbent and wastewater separator solids from the production of methyl bromide.

For methyl bromide wastes, the Agency is proposing concentration-based standards based on standards promulgated for U029 (methyl bromide) in the Third Third rulemaking.

Generation and management information of the methyl bromide wastes was collected by EPA during 1990 and early 1991 under the authority of section 3007 in RCRA. This capacity analysis incorporates data from that section 3007 information request. In addition, the Agency reviewed information provided in response to the ANPR (56 FR 24444).

EPA has identified no K131 wastes or K132 wastewaters currently being land disposed and less than 100 tons of K132 nonwastewaters being land disposed and requiring alternative treatment or recovery. All identified K131 wastes currently generated are sent off site for acid reclamation. EPA identified less than ten tons of K132 nonwastewaters that are steam stripped before being landfilled off-site.

Based on available data and using incineration as the treatment technology (see Table VI.B.1), the Agency believes that sufficient treatment capacity exists for treatment of the methyl bromide wastes; therefore, EPA is not proposing to grant a national capacity variance for K131 and K132 wastewaters or nonwastewaters.

C. Required and Available Capacity for Newly Listed Wastes Mixed With Radioactive Contaminants

EPA has defined a mixed RCRA/radioactive waste as any matrix containing a RCRA hazardous waste and a radioactive waste subject to the Atomic Energy Act (53 FR 37045, 37046, September 23, 1986). Regardless of the type of radioactive constituents that these wastes contain (e.g., high-level, low-level, or transuranic), they are subject to the RCRA hazardous waste regulation, including the land disposal restrictions.

Radioactive wastes that are mixed with spent solvents, dioxins, California list wastes, or First Third, Second Third, and Third Third wastes are subject to the land disposal restrictions already promulgated for those hazardous wastes. EPA granted national capacity variances for all of these wastes because of a lack of national treatment capacity. Today's rule addresses the radioactive wastes that contain newly listed hazardous wastes being restricted in today's rulemaking.

Based on comments received from previous rulemakings and from the ANPR (56 FR 24444), the Department of Energy (DOE) is the primary generator of mixed RCRA/radioactive wastes. A variety of non-DOE facilities also may generate these mixed RCRA/radioactive wastes, including nuclear power plants, academic and medical institutions, and industrial facilities.

After reviewing the data, EPA believes there is uncertainty about exactly how much mixed wastes are produced, although comments indicated in the ANPR that volumes generated are small. Although DOE is in the process of increasing its capacity to treat mixed RCRA/radioactive wastes, data supplied by DOE indicate a significant current capacity shortfall for the treatment of all already generated and stored mixed RCRA/radioactive wastes (i.e., spent solvents, wastes mixed with dioxins, California list wastes, and First,

Second, and Third Third wastes). EPA's review of non-DOE data sources showed a significant lack of commercial treatment capacity as well. In addition, the quantities of mixed radioactive wastes containing newly listed wastes are uncertain. Consequently, the volumes of mixed radioactive wastes requiring commercial treatment cannot be predicted. Although this uncertainty exists, any new commercial capacity that becomes available will be needed for mixed radioactive wastes that were regulated in previous LDR rulemakings and whose variances expire by May 1992. Thus, EPA has determined that sufficient alternative treatment capacity is not available and is proposing to grant a two-year national capacity variance for mixed RCRA/radioactive wastewaters and nonwastewaters contaminate with newly listed wastes whose standards are being proposed today.

D. Required and Available Capacity for Debris Contaminated with Newly Listed Wastes

This capacity analysis focuses on debris contaminated with wastes whose treatment standards are proposed herein.[38] An estimated 80 percent of all debris contaminated with previously regulated wastes is presently disposed in hazardous waste landfills without prior treatment and will require treatment after May 8, 1992.[39] In order to determine the available capacity to treat debris with wastes covered by this rule, EPA has assumed that any new commercial capacity that becomes available will be needed for debris that is contaminated with wastes regulated in previous LDR rulemakings and whose variances expire by May 1992.

EPA used several data sources to estimate the total volume of land-disposed contaminated debris. These sources include: responses to the ANPR for the newly listed and identified wastes (56 FR 24444); information provided during a series of roundtable meetings held by the Agency in May and June of 1991 with representatives of companies involved in the management and disposal of contaminated debris; Records of Decision (RODs) of Superfund sites; the National Survey of Treatment, Storage, Disposal and Recycling Facilities (TSDR Survey); and the National Survey of Hazardous Waste Generators (Generator Survey).[40]

In general, EPA found severe limitations in estimating the total volume of contaminated debris because the available data are incomplete and poorly defined. The reason for this lack of comprehensive data is several-fold: First, the regulated community reported that their data generally are not classified by debris but rather by waste code and waste description; second, the data from the TSDR and Generator Surveys were not collected and categorized specifically for debris; and debris were often mixed with soils,[41] and were frequently contaminated with more than one waste, thereby making the contaminated debris matrix and volume determinations difficult; third, TSDR and Generator Surveys do not include data on debris contaminated with newly listed and identified wastes because they were not considered hazardous wastes in 1986; and fourth, debris that have been cleaned [decontaminated] are generally not reported as hazardous wastes because they are no longer considered contaminated debris.

1. Waste Generation

The capacity analysis in today's proposed rule is based on data received in response to the ANPR for wastes covered in this proposal, the industry roundtable meetings, and the TSDR and Generator Surveys. For the total of currently land-disposed debris contaminated with RCRA hazardous wastes, EPA's most likely estimate is approximately one million tons per year based on the reported percentage of the total of all hazardous waste land disposed. EPA solicits comment on its estimate of the quantity of contaminated debris that is land disposed. Comments from the roundtable meetings indicate that decommissioning of large chemical plants and increasing remediation activities can significantly increase the estimated volume of contaminated debris.

The largest volume of debris generated from routine operations and contaminated with wastes covered in this proposal results from debris contaminated with F037 and F038 petroleum refining wastes. EPA's estimate for this volume is 8000 tons per year. In addition, industry response to the ANPR indicates that additional volumes of debris contaminated with F037 and F038 wastes may be generated from modernization of petroleum refinery sewer and wastewater systems. EPA's estimate for debris contaminated with the remainder of wastes covered in this proposal is less than 2,000 tons per year.

2. Current Management Practices

Waste generators and TSDFs report that most of the contaminated debris volumes are currently landfilled without prior treatment. Stabilization or incineration are the reported treatment technologies for the small amounts of contaminated debris that are treated prior to landfilling. However, EPA has received information that materials-handling problems may limit the quantity of contaminated debris that currently can be treated by stabilization and incineration. Specifically, the size of many types of debris must be reduced before they can be treated (e.g., by shredding or grinding). However, heavy duty equipment such as shredders and grinders are generally not part of the treatment process at hazardous waste treatment facilities and could be difficult to install prior to the effective date of this rule, although EPA is exploring options that will expedite the permitting process for such equipment. Consequently, the available capacity to treat contaminated debris may initially be limited. In addition, large volumes of materials that are currently cleaned (decontaminated) and then managed as nonhazardous wastes may require additional management as contaminated debris.

3. Available Capacity and Capacity Implications

EPA is proposing that contaminated debris be treated prior to land disposal using one or more of the following families of debris treatment: Extraction, destruction, or immobilization. While materials-handling problems may limit the available destruction (e.g., incineration) and immobilization (e.g., stabilization) capacities, inadequate capacity exists for many of the proposed technologies in the extraction family. Much of the capacity of extraction technologies currently used to decontaminate debris, such as water washing and steam cleaning, will not be permitted prior to the effective date of

[38] UDMH (K107–K110), dinitrotoluene (K111), toluene diamine (K112), ortho and para toluidine, ethylene dibromide, methyl bromide, 2-ethoxy ethanol (U359), ethylene bis-dithiocarbamic acid, and F307 and F038 petroleum refining wastes.

[39] Previously regulated wastes include solvents and dioxin wastes, California list wastes, and First Third, Second Third, and Third Third wastes. EPA has granted national capacity variances to soil and debris contaminated with First Third, Second Third, and Third Third wastes. The variances for debris contaminated with Third Third wastes will expire on May 8, 1992.

[40] EPA conducted the surveys during 1987 and 1988 to obtain comprehensive data on the nation's capacity for managing hazardous waste and the volumes of hazardous waste being land disposed as well as data on waste generation, waste characterization, and hazardous waste treatment capacity in units exempt from RCRA permitting.

[41] Data submitted by TSDFs in roundtable meetings sometimes combine contaminated debris with soil. Furthermore, TSDFs have stated that historical waste data are generally not kept by debris classifications.

this rule, although EPA is exploring options to expedite the permitting of these technologies. In conclusion, EPA anticipates that the capacity available to treat contaminated debris at the time this rule becomes effective will be limited.

EPA is proposing to grant a two-year national capacity variance for debris contaminated with newly listed wastes. The treatment capacity available for contaminated debris will be very limited due to the very large quantities of debris contaminated with previously listed wastes requiring treatment at the same time this rule becomes effective. This variance would allow sufficient time for the installation and permitting of the treatment systems necessary to handle the quantities of contaminated debris affected by this rule.

As discussed above, by May 8, 1992, all the capacity variances will expire for as much as 800,000 tons of debris contaminated with previously regulated wastes. This date is coincidental to the effective date of standards proposed for these newly listed and identified wastes. Any new commercial capacity will be needed for debris that is contaminated with wastes regulated in previous LDR rulemakings and whose variances expire by May 1992. This, as well as the condition that required materials handling equipment (such as grinding) has not come on-line or may be delayed, is the basis of our qualitative argument. The Agency solicits comments on this approach and on estimates of available treatment capacity.

E. Capacity Determination for Underground Injected Wastes

As explained in previous preambles concerning land disposal restrictions (see, e.g., 52 FR 32450, August 27, 1987; 53 FR 30912, August 16, 1988; 55 FR 22520, June 1, 1990), EPA is allocating available capacity first to those wastes disposed in surface units, next to wastes resulting from CERCLA and RCRA clean ups, and finally to underground injected wastes. Based on this approach, the Agency is proposing the following effective dates for injected wastes.

1. Newly Listed Wastes With Proposed Treatment Standards Which Current Data Indicate Are Not Being Injected

The wastes K107, K108, K109, K110, K111, K112, K123, K124, K125, K126, K136, U328, U353 and U359 are the newly listed wastes, for which numerical standards or specified methods are being proposed, and which current data indicate are not being underground injected. Therefore, EPA is proposing that these wastes be prohibited from underground injection upon the date of final promulgation of this rule. The Agency requests comment on whether any of these wastes are being injected; comment is also requested on what quantities of wastes are being injected, and on the characteristics of these wastes.

2. Newly Listed Wastes With Proposed Treatment Standards Which Current Data Indicate Are Being Injected

The wastes F037, F038, K117, K118, K131, and K132 are the newly listed wastes for which current data indicate are being underground injected by UIC Class I hazardous waste injection wells. The treatment standards for F037 and F038, petroleum refining wastes, are based upon transfer of the performance of technologies previously established for K048–K052 wastes. Based on the Hazardous Wastes Injection Wells Inventory data base, EPA believes that F037 and F038 wastes are being underground injected yearly by permitted injection wells. Although the amount of F037 and F038 so disposed is uncertain, EPA believes that it is relatively small and therefore, the Agency believes that there is adequate alternative treatment capacity for these wastes. Based on preliminary evaluation of data received during the comment period of the ANPR, and the Agency believes that there is adequate available alternative treatment capacity for the currently injected volumes of K117, K118, K131, and K132 wastes assuming segregation of K117, K118, K131, and K132 source wastewaters from the other process waters.

Therefore, the Agency is not proposing to grant any national capacity variances for any underground injected F037, F038, K117, K118, K131, and K132 wastes, and is proposing that these wastes be prohibited from underground injection upon the date of final promulgation of this rule. The Agency specifically requests comments on volumes and characteristics of these wastes being injected, and current and planned management.

VII. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements was promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's rule is being proposed pursuant to sections 3004 (d) through (k), and (m), of RCRA (42 U.S.C. 6924 (d) through (k), and (m)). It is proposed to be added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble. Table 2 in 40 CFR 271.1(j) is also proposed to be modified to indicate that this rule is a self-implementing provision of HSWA.

EPA is also proposing the new management unit, containment buildings, which involves redefinition of the term "pile," pursuant to HSWA. This proposed provision would assure adequate means of implementing the treatment standards, either by providing a means that treatment can occur without constituting impermissible land disposal, or by providing a safe staging area that would not constitute land disposal before best treatment. Cf. 56 FR at 41175 (August 19, 1991) (portion of rule assuring availability of capacity adopted pursuant to HSWA). Thus, this portion of the rule would also be adopted pursuant to HSWA and take effect immediately in authorized States.

B. Effect on State Authorization

As noted above, EPA is today proposing a rule that, when final, will be implemented in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is proposed pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that HSWA interim authorization will expire on January 1, 1993 (see 40 CFR 271.24(c)).

Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modification to EPA for approval. The deadline by which the State would have to modify its program to adopt these regulations is specified in § 271.21(e). The deadline would be July 1, 1993 if this rulemaking is finalized before June 30, 1992. This deadline can be extended in certain cases (see § 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's proposed rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modifications are approved. Of course, states with existing standards could continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these regulations in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these regulations must include standards equivalent to these regulations in their application. The requirements a state must meet when submitting its final authorization application are set forth in 40 CFR 271.3.

The regulations being proposed today need not affect the State's Underground Injection Control (UIC) primacy status. A State currently authorized to administer the UIC program under the Safe Drinking Water Act (SDWA) could continue to do so without seeking authority to administer the amendments that will be promulgated at a future date. However, a State which wished to implement Part 148 and receive authorization to grant exemptions from the land disposal restrictions would have to demonstrate that it had the requisite authority to administer sections 3004 (f) and (g) of RCRA. The conditions under which such an authorization may take place are summarized below and are discussed in a July 15, 1985 final rule (50 FR 28728).

VIII. Effect of Proposed Rule on Other Environmental Programs

A. Discharges Regulated Under the Clean Water Act

As a result of the LDR program, some generators might switch from land disposal of restricted wastes to discharge of the wastes to publicly-owned treatment works (POTWs) to avoid incurring the costs of alternative treatment. Also as a result of LDRs, additional hazardous waste generators might discharge their wastes to surface waters. Any shift from land disposal to direct or indirect discharge has some potential to impact local ecosystems.

B. Discharges Regulated Under the Marine Protection, Research, and Sanctuaries Act

There could have been a potential demand for some of the hazardous wastes included in today's proposed rulemaking to be shifted from land disposal to ocean dumping and ocean-based incineration. If the cost of ocean-based disposal plus transportation were lower than the cost of land-based treatment, disposal, and transportation, this option could seem to be an attractive alternative. In addition, ocean-based disposal could seem attractive to the regulated community if land-based treatment were not available.

However, the Ocean Dumping Ban Act of 1988 has restricted ocean dumping of sewage sludge and industrial wastes to existing authorized dumpers until December 31, 1991, after which "* * * it shall be unlawful for any person to dump (sewage sludge or industrial wastes) into ocean waters * * *". Therefore, the Ocean Dumping Ban Act has made moot any economic or other incentive to ocean dump industrial hazardous wastes, including the wastes subject to this regulation.

C. Groundwater Protection Principles

In July 1989, EPA Administrator Reilly established a Groundwater Task Force chaired by Deputy Administrator Habicht to develop concrete principles and objectives to ensure effective and consistent decisionmaking in all Agency decisions affecting groundwater. The outcome of this effort is the current EPA Groundwater Protection Strategy, intended to set forth an aggressive approach to protecting the nation's currently used and reasonably expected to be used groundwater resources and direct the course of the Agency's efforts over the coming years. The final strategy was released on May 8, 1991.

The Groundwater Protection Strategy sets forth a statement of EPA groundwater principles that has as its overall goal the prevention of adverse affects to human health and the environmental integrity of the nation's currently used and reasonably expected to be used groundwater resources. The strategy also provides for the Groundwater Regulatory Cluster which will implement the strategy. This proposed rule is part of the Groundwater Regulatory Cluster and will integrate the groundwater principles on prevention, remediation, and federal, state and local responsibilities. For this proposed rule, the applicable principles of the strategy deal with prevention and the appropriate federal and state roles in implementation.

This proposed rule incorporates and is consistent with the groundwater protection principles. This is a source control rule supporting prevention of groundwater contamination. This proposed rule restricts certain wastes and contaminated debris to be disposed of only after treatment, thereby providing protection of groundwater at disposal sites.

With respect to prevention, the strategy specifies that groundwater should be protected to ensure that the nation's currently used and reasonably expected to be used drinking water supplies, both public and private, do not present adverse health effects. Groundwater that is hydrologically connected to surface water should also be protected to the extent that it does not interfere with the attainment of surface water quality standards, which

are designed to protect the integrity of associated ecosystems. Groundwater protection could be achieved through a variety of means including: Pollution prevention programs, source control, siting controls, the designation of wellhead protection areas and future water supply areas, and the protection of aquifer recharge areas.

With respect to federal, state and local responsibilities, the primary responsibility for developing and implementing comprehensive groundwater protection programs continues to and should be vested with the states. Key supporting principles of the strategy which this proposed rule addresses are: (1) The states should retain the primary responsibility for the management and protection of groundwater resources, and (2) EPA should support states in developing adequate groundwater protection programs. In carrying this out, EPA is committed to identifying opportunities for providing deference to state regulations, standards or policies as implementation objectives.

The relation of this proposed rule to wellhead protection as a method of prevention is described below.

D. Wellhead Protection Under the Safe Drinking Water Act (SDWA)

Section 1428 of the SDWA contains requirements for the development and implementation of state Wellhead Protection (WHP) Programs to protect wells and wellfields which are used or may be used to provide drinking water to public systems. Under section 1428, each state must adopt and submit to EPA for approval a WHP program. These state WHP programs are major components of states' comprehensive approach to groundwater protection described in the groundwater protection principles defining federal/state relationships.

SDWA required all states to submit a WHP program to EPA by June 19, 1989 for EPA review and approval. SDWA requires all federal agencies having jurisdiction over any potential source of contaminants identified by a state program to comply with all the requirements of the state program.

Any private or public entity subject to LDR regulations must also be in compliance with the appropriate state's wellhead protection program. The Agency reiterates that the land disposal of hazardous wastes must comply not only with the land disposal restrictions and other RCRA regulations, but with other environmental programs, such as the Wellhead Protection Program under the Safe Drinking Water Act.

E. Air Emissions Regulated Under the Clean Air Act (CAA)

There are two air emission concerns with respect to the land disposal restrictions. The first is a cross-media concern about air emissions that occur as a result of treatment, such as incineration, of metal-bearing waste causing a release of metal emissions to the atmosphere. Another concern is with air emissions from the land disposal of the treatment residual. Air emissions control programs are under development using both the CAA and RCRA to address these concerns.

1. Cross-media Concerns

Specific cross-media air emissions concerns have been identified for certain treatment standards applicable to the newly listed wastes and contaminated debris included in this proposal, but EPA believes that existing Clean Air Act controls adequately address the potential problems. Incineration of debris containing mercury can result in air emissions of elemental mercury and other hazardous air pollutants that may be "contained-in" the debris. The Agency has promulgated a National Emission Standard for Hazardous Air Pollutants (NESHAP) for mercury emissions under section 112 of the CAA (40 CFR part 61, subpart E). There are also regulations for the prevention of significant deterioration (PSD) of air quality that would address any mercury emissions that are not regulated by the NESHAP.

The NESHAP limits mercury emissions to the atmosphere from mercury processing facilities, mercury cell chlor-alkali plants, and plants that incinerate and/or dry wastewater treatment plant sludges. In all these cases, the NESHAP limits mercury emissions across the entire processing facility to the extent necessary to protect human health.

Under the amendments to the CAA, almost all sources of significant air emissions will be required to apply for and obtain a permit. Permits are required for any major source, any source subject to air toxics regulation and all sources subject to new source performance standards. If the mercury emissions from the incineration of the hazardous waste debris were to come from a major source, a source subject to air toxics regulations or a source subject to NSPS, then such emissions would be limited by conditions specified in the permit and be subject to monitoring, recordkeeping, and reporting requirements.

The Agency is also concerned whether incineration of hazardous waste containing brominated organics or organo-nitrogen compounds, including contaminated debris, may adversely affect air quality. The presence of bromine complicates the evaluation of incineration of these contaminated debris wastes.

2. Air Emissions from Land Disposal of Treatment Residuals

There are several general regulatory development programs under RCRA that address treatment technology air emissions. The Agency has initiated a three-phased program under section 3004(n) of RCRA to address air emissions from hazardous waste management units other than incinerators. The first phase addresses organic air emissions as a class from two types of emission sources. The first source category is process equipment (pumps, valves, etc.) that contact hazardous waste that contain greater than 10 percent organic compounds, including units such as distillation columns and incinerators. The second source category is certain vents on various treatment technologies, such as air or steam strippers. These standards were finalized in the **Federal Register** on June 21, 1990 (55 FR 25454).

The second phase of standards development under section 3004(n) of RCRA addresses organic air emissions as a class from tanks, containers, and surface impoundments. Treatment technologies that occur in tanks or containers that are not controlled by the Phase I standards would be controlled by these standards. With respect to surface impoundments, the Agency has also proposed standards to control air emissions from the management of wastes in them (see 56 FR 33490, July 22, 1991). In the third phase of the section 3004(n) standards development, the Agency will develop additional standards for the sources addressed in the first two phases as necessary to address residual risks.

In addition to the section 3004(n) standards, standards to control both organic and metal emissions from the combustion of hazardous waste in incinerators and boilers and industrial furnaces have been promulgated.

In particular, on February 21, 1991 (56 FR 7134), EPA promulgated regulations expanding controls on hazardous waste combustion to regulate air emissions from the burning of hazardous waste in boilers and industrial furnaces. The final rule limits emissions of toxic organic compounds, toxic metals, hydrogen chloride, chlorine gas, and particulate matter from boilers and industrial furnaces burning hazardous waste.

In certain cases, waste treatment may occur using treatment technologies or in units that are not required to obtain RCRA permits. Guidance for the control of air emissions from these sources, such as exempt biological treatment tanks, is being developed under the CAA.

None of the regulatory efforts discussed above specifically address air emissions from the land disposal of treatment residuals in landfills, land treatment units, or waste piles because the Agency presently presumes that these units will only receive wastes that have been treated to meet the BDAT treatment standards and, thus, not present an air emissions problem. However, while the Agency is still evaluating whether such standards are needed for landfills, land treatment units, or waste piles, EPA has proposed new standards and amendments to existing standards that would reduce organic air emissions from certain tanks, surface impoundments, and containers. See 56 FR 33490, July 22, 1991. The Agency is also developing a proposed rule to limit air emissions from land disposal units seeking to land dispose of wastes under a no migration variance.

F. Clean Up Actions Under the Comprehensive Environmental Response, Compensation, and Liability Act

LDRs for contaminated debris may have significant effects on the selection and implementation of response actions that are taken under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). However, it should be noted that EPA's proposed treatment standards for debris will limit that impact, compared to existing standards.

The clean-up standard set at CERCLA sites are risk-based, while LDR treatment standards are technology-based. Therefore, the technology-based treatment standards may be more or less stringent than the risk-based clean-up standards developed based on the CERCLA selection of remedy criteria. However, if the remedial action did not involve "placement" of the waste on the ground, then only the risk-based clean-up standards would be applicable. If "placement" were to occur, then the more stringent standard would apply.

It should be noted that even though the hazardous substances at a CERCLA remediation site may have been disposed prior to the effective date of RCRA, if the action involves removal of wastes subject to RCRA LDRs after the prohibition effective date for those wastes, the land disposal restrictions are legally applicable (51 FR 45077, November 7, 1986). See also *Chemical Waste Management* v. *EPA*, 869 F.2d at 1535–37 (D.C. Cir. 1989). For example, if contaminated debris is excavated from a unit, treated, and redisposed, EPA has indicated that "placement" (see RCRA section 3004(k)) of the waste in a land disposal unit has occurred, and the applicable treatment standards must be met (see 53 FR 51444 and 51445, December 21, 1988). However, if the waste is capped in place, removal or "placement" has not occurred, and the treatment standards are not legally applicable.

G. Applicability of Treatment Standards to Wastes from Pesticides Regulated Under the Federal Insecticide, Fungicide, and Rodenticide Act

A number of pesticide waste generators have been unaware of the LDRs because their industry has not been affected to the same extent as other industries, such as manufacturing. Still these generators might only be regulated under today's proposal to a small extent. Generators of significant quantities of pesticide P and U wastes are farmers and commercial pesticide applicators. The provisions of 40 CFR 262.70 and 268.1 exempt farmers from regulation under the LDR program; however, no such exemption exists for commercial applicators. Such generators of hazardous wastes have traditionally land disposed their pesticide wastes. With the implementation of the Third Third final rule, these generators must comply with LDR requirements when they dispose of a restricted hazardous waste. Under today's proposal, U and P pesticide wastes that contaminate debris would be subject to the new debris treatment standards.

H. Regulatory Overlap of Polychlorinated Biphenyls (PCBs) Under the Toxic Substances Control Act (TSCA) and RCRA

Certain P and U listed wastes contain PCBs. The PCB component of such a waste mixture is regulated primarily under TSCA (although it may also be a California list waste and subject to RCRA regulation), while the listed P or U component of the waste is regulated under RCRA. Such a mixture of listed/PCB waste must meet the applicable requirements under both statutes. If incineration is the specified treatment standard for a contaminated debris, then such a waste must go to an incinerator permitted under both TSCA and RCRA. Any ash residual from incineration must meet the treatment standard for the listed hazardous waste component prior to land disposal. For PCB-containing items, the option to dispose of them in a TSCA landfill would also be an option provided that no RCRA hazardous waste had contaminated the debris.

I. Disposal of Asbestos Regulated Under TSCA

Asbestos is not regulated as a hazardous waste under RCRA, but for today's proposal, asbestos-containing material is an issue. In many instances, asbestos debris will contain hazardous waste. This type of debris can come from a number of sources, including demolition of old manufacturing plants or asbestos abatement activities at hazardous waste management facilities. Generators of asbestos-containing debris would be required to comply with treatment standards specified in section V.K of today's proposal.

IX. Regulatory Requirements

A. Economic Impact Screening Analysis Pursuant to Executive Order 12291

Executive Order No. 12291 requires that regulatory agencies determine whether a new regulation constitutes a major rulemaking and, if so, it requires that the agency conduct a Regulatory Impact Analysis (RIA). An RIA consists of the quantification of the potential benefits, costs, and economic impacts of a major rule. A major rule is defined in Executive Order No. 12291 as a regulation likely to result in:

- An annual effect to the economy of $100 million or more; or
- A major increase in costs or prices for consumers, individuals, industries, Federal, State, and local government agencies, or geographic regions; or
- 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.

The Agency estimated the costs of today's proposed rule to determine if it is a major regulation as defined by the Executive order. The Agency expects today's rule to have an annual incremental effect below $100 million. Also, the Agency does not believe the rule will significantly effect consumers, individuals, industries, Federal, State and local government agencies, or geographic regions, or have significant adverse effects on competition, employment, investment, innovation, or international trade. Therefore, the Agency determines that today's proposed rule is not a major rule.

Because today's proposed rule is not a major rule, the Agency has performed an

Economic Impact Screening Analysis, rather than an RIA, focusing its analyses on the costs and economic impacts of the rule only. The Agency has not assessed the benefits attributable to today's proposed rule.

1. Approach for Petroleum Refining Wastes (F037 and F038)

In the analysis of the petroleum refining wastes, the Agency first reviewed the work completed for the listing of F037 and F038, which EPA promulgated in October 1990, (see 55 FR 46386; subsequently referred to here as the Listing Rule or Listing RIA). [42] At that time, EPA recognized the the listing of F037 and F038 would eventually necessitate treatment of these wastes prior to their disposal, although a slight delay would occur before promulgation of LDR treatment standards for the wastes. Because the composition of F037 and F038 is very similar to that of K048–52 wastes, for which LDRs had been established in the First Third and Third scheduled waste rules, the Listing RIA developed costs, benefits, and economic impacts for the land disposal restrictions for F037 and F038 based on the BDATs previously specified for K048–52.

For the Listing RIA, the Agency assessed the cost and economic impacts by using a compliance scenario that included treatment before land disposal: dewatering of the waste, followed by incineration (either on-site or off-site) or solvent extraction (on-site). EPA estimated that 474,000 tons of F037 and F038 sluges (with an average water content of 55 percent) were generated annually. The costs for the listing and treatment of F037 and F038 were captured for the portion of these wastes not already regulated as hazardous by the Toxicity Characteristic (TC). This portion was estimated to be a volume within the range of 172,000 tons to 330,000 tons annually.

For today's proposed rule, the Agency had updated the volume estimates from the Listing RIA based on additional information obtained on the generation of these wastes as a part of the capacity determination. (See section VI.B for the capacity analysis of F037 and F038). Currently, the Agency projects that the petroleum refining industry generates a total of 173,000 tons of F037 and F038 petroleum sludges annually from routine operations (including F037/38 wastes that also exhibit the toxicity characteristic), of which 117,000 tons are land disposed. EPA has not included aqueous wastes from the dewatering of F037 and F038 in this estimate, because these wastewaters are discharged to POTWs or under provisions of NPDES permits, and thus are not subject to RCRA regulation.

In some cases the Agency used assumptions for waste volumes in the cost analysis which differed from those in the capacity analysis. The capacity analysis estimated 74,000 tons of F037 and F038 would require alternative treatment as a result of today's rule. On-site treatment capacity was expected to be in place for the remaining 99,000 annual tons by the time the rule is final. The cost analysis estimated only 56,000 tons are treated to meet the BDAT standards for this rule in the baseline. This volume is based on a capacity estimate for an earlier point in time, which examined the capacity in use prior to upgrading by facilities to prepare for the final rule's promulgation. The cost analysis therefore includes these facility preparation costs as costs attributed to today's proposed rule, costs that technically need not be considered attributed to this rule. The 56,000 tons per year falls out of the cost analysis because it does not result in any incremental costs for the rule. EPA therefore estimates 117,000 annual tons of F037 and F038 are land-disposed and would require alternative treatment.

The Agency is aware that some additional quantity of petroleum refining wastes is currently managed in surface impoundments, and that these surface impoundments are likely to be replaced, as a result of today's rule, with tank units capable of achieving equivalent wastewater treatment. These surface impoundments were not included in the capacity analysis due to their greater-than-two-year clean out period. Two years is the capacity analysis time window. The Agency does request comments on the potential costs of its proposed requirement that these wastes in unretrofitted surface impoundments be removed and treated annually.

The annual amount of F037 and F038 generated in these replacement units is difficult to predict. The Agency is currently uncertain what the difference in sludge generation rates would be in tanks which are likely to replace the existing surface impoundments. In addition, alterations in the process flow could change both the type and amount of wastes produced at a facility. Furthermore, it is likely that facilities would implement waste minimization practices in conjunction with their switch from surface impoundments to tanks. The Agency specifically solicits information about these wastes and their disposal costs. Late comments on these wastes received in response to the May 31, 1991 ANPR are being considered.

EPA estimates that of the 117,000 annual tons of land disposed F037 and F038, 14 percent is generated and land disposed in California. California has its own LDR program, and under it F037 and F038 waste will be restricted from land disposal as of May 8, 1992 under final standards substantially equivalent to those proposed in today's rule. Therefore, even if federal regulations are not promulgated, F037 and F038 waste would be restricted in this state. As a result, EPA estimates that 100,000 tons annually of F037 and F038 will require treatment prior to land disposal as a result of today's proposed rule.

For the baseline scenario, the Agency estimates that 64 percent of land disposed waste is managed on-site and the remaining 36 percent is sent off-site. Of the waste managed on-site, 95 percent is managed using land treatment and 5 percent is managed using landfilling. Of the waste sent off-site, all is disposed by landfilling.

For the Phase I LDR cost analysis, the Agency made the following assumptions for the off-site post-regulatory compliance scenario: (1) 13 percent of the F037 and F038 volume would be treated off-site, (2) 10 percent of the waste treated off-site would go to incineration at a cost of $1,700 per ton, and the remaining 90 percent would go to cement kilns at a price range from $700 per ton to $1,200 per ton. The post-regulatory scenario assumes disposal of residuals in Subtitle C units.

Estimated volumes of off-site and on-site F037 and F038 wastes provide another example of differing assumptions made for the capacity and economic analyses. The capacity analysis assumes 74,000 tons per year will be treated off-site once the rule is promulgated. The cost analysis assumes approximately 13,000 tons per year is treated off-site in the post-regulatory scenario. This difference in assumptions is due to the separate roles of each analysis. The capacity analysis provides a snapshot of the compliance scenarios directly following the promulgation of the rule in order to determine if there is a need for a national capacity variance. The cost analysis attempts to reflect probable compliance scenarios based on reasonable long-term economic choices. For today's proposed rule, the Agency believes that much of the F037 and F038 waste will have to be treated off-site directly following the rule's

[42] *Regulatory Impact Analysis for the Listing of Primary and Secondary Oil/Water/Solids Separation Sludges from the Treatment of Petroleum Refinery Wastewaters*, prepared for EPA Office of Solid Waste by DPRA, October 1990.

promulgation. However, EPA expects that on-site treatment capacity will be developed as soon as possible due to the high cost of the off-site treatments. Therefore, the Agency believes that the use of different off-site assumptions is valid, and is consistent with the distinct perspectives each analysis embraces.

The Agency assumed that 87% of the F037 and F038 waste would be treated on-site in the post-regulatory scenario. Of this on-site volume, 37 percent would be treated by solvent extraction at $250 per ton, 37 percent would go to incineration at $400 per ton, and 26 percent would go to on-site cokers at $200 per ton. The post-regulatory scenario also assumes disposal of residuals in Subtitle C units. Although the Listing RIA did not include a volume of waste going to on-site cokers, recent information gathered for the capacity analysis indicates that some F037 and F038 wastes would be disposed of in such a manner.

2. Approach for Remaining Wastes

To determine the cost and economic impacts of the proposed rule for wastes other than F037 and F038, EPA first identified the industries that would be affected. The Agency analyzed these industries to determine the amounts of the affected wastes that they generate, how these wastes are currently managed, and how these wastes would have to be managed to comply with LDR treatment standards.

The incremental cost of today's proposed rule for each waste was estimated by comparing resulting Phase I post-regulatory costs with the costs of current, or baseline, conditions. Because of the lack of site-specific data for this screening analysis, the Agency developed costs for the baseline and post-regulatory scenarios assuming off-site commercial treatment for all wastes included in the cost analysis. Off-site treatment is based on prices quoted by vendors, and generally exceeds the costs of on-site treatment.

The following paragraphs explain the approach used to evaluate costs for each of the wastes covered by today's proposed rule.

a. *Newly listed organic wastes.* All newly listed organic wastes included in today's rule are land disposed in relatively small quantities. The baseline for all newly listed wastes is defined as continued land disposal in units meeting minimum technological requirements.

b. *K061, F006, K062.* Today's proposed rule establishes numeric treatment standards for the low zinc subcategory of K061 based on high temperature metals recovery (HTMR). Simply stated, the Agency is proposing to abolish the high and low subcategorization and establish one set of treatment standards for all K061 nonwastewaters. The baseline for the cost analysis assumes compliance with the existing treatment standards for low-zinc K061, which are based on stabilization.

Today's rule establishes numeric treatment standards based on HTMR as alternative treatment standards for K062 and F006. The Agency has not quantified the costs of HTMR for these two wastes. It believes that any operators using HTMR for K062 and F006 will be using the technology only because it is more cost-effective (i.e., less expensive) than current management practices.

c. *Contaminated debris.* The majority of contaminated debris is already regulated under the Solvents and Dioxins, California list, and the First Third, Second Third, and Third Third LDR rules due to the waste code-carry-through principle.[43] A significant volume of contaminated debris is currently under a national capacity variance that expires May 8, 1992. Once this capacity variance expires, under the current regulatory structure all regulated contaminated debris would be required to meet the existing treatment standards for the RCRA waste code which is the source of the contamination.

For this contaminated debris with existing regulations, the standards in today's proposed rule are expected to be simpler and less costly than the existing standards. The cost savings are expected to result from the use of extractive technologies to meet the new standards. If the Agency promulgates today's rule by May 8, 1992 (as is currently scheduled), most contaminated debris would then be subject to these potentially less costly treatment standards. Therefore, no significant cost impacts for debris already regulated by LDRs are expected to be associated with the proposed rule, and may in some cases represent negative costs (i.e., cost savings) from the existing treatments established in the previous regulations covering contaminated debris. EPA requests data and comment from affected parties on cost savings associated with this proposal.

EPA estimates that fewer than 10,000 tons of debris contaminated with Phase I wastes are land disposed annually (the cost analysis is based upon a contaminated debris volume of 8000 tons per year). Because LDR treatment standards have not previously applied to debris contaminated with Phase I wastes, the Agency assumes that in the baseline, contaminated debris is disposed of in subtitle C landfills. In the post-regulatory scenario, EPA projects that 21 percent of debris would be treated using an extraction technology, 63 percent would be treated using an immobilization technology, and the remaining 16 percent would be treated using a destruction technology. Today's rule provides a generic exclusion from hazardous waste regulation for debris treated by extraction and destruction technologies. Therefore, it is assumed that debris treated by extraction technologies will be disposed of in subtitle D landfills. However, the cost analysis conservatively assumes that residuals from destruction technologies may often continue to go to subtitle C landfills. The use of immobilization technologies still requires disposal in a subtitle C landfill (note that EPA is today soliciting comment and data to support the design of performance standards for immobilization technologies that would be sufficient to allow contaminated debris treated by such technologies to be excluded from Subtitle C management).

To simplify its cost analysis, the Agency modeled one treatment technology for each of the three general categories, i.e., washing as the extraction technology, stabilization as the immobilization technology, and incineration as the destruction technology. The unit costs used for washing, stabilization, and incineration of contaminated debris were, respectively, $550 per ton, $800 per ton, and $2,300 per ton. These costs include treatment of residuals.

However, the Agency expects to clarify its cost analysis when it publishes the final rule. Therefore, EPA encourages commenters to provide any information on the costs of the specific treatment technologies EPA is proposing for contaminated debris. EPA also specifically asks for any estimates on the costs of constructing, permitting and conducting treatment inside the proposed containment buildings. EPA also welcomes comments on the differences in contaminated debris treatment costs if EPA excluded immobilized debris from Subtitle C management.

d. *Wastes not considered.* The costs associated with two groups of wastes—F001 through F005 spent solvents and 24 K- and U-wastes with wastewater standards based on scrubber waters—were not quantified by the Agency in this screening analysis. The Agency previously regulated these wastes and is revisiting them in the proposed rule only to modify the basis for concentration

[43] The waste code-carry-through principle states that a material mixed with a listed waste bears the waste code of the listed waste.

standards for the purpose of standardization (i.e., consistency in testing procedures and bases for treatment standards) and clarification (i.e., appropriate placement in the Code of Federal Regulations). These proposed modifications would not significantly change the required management practices for any of these wastes, and therefore the Agency expects such changes to have negligible cost impacts.

3. Results

a. *Total cost estimate.* Altogether, the standards promulgated in the proposed rule are estimated to cost industry between $39 million and $45 million per year.[44] Table IX-1 presents quantities of the wastes affected by today's proposed rule. The estimated cost of compliance with the proposed rule for each waste is presented in Table IX-2. Neither table includes F001 through F005 spent solvents or the 24 K- and U-wastes covered by today's proposed rule, because the effect of the rule on these wastes is very small, as explained above.

b. *Wastestream cost estimates.* Petroleum Refining Wastes (F037 and F038)

For the Phase I LDRs for F037 and F038, the Agency estimates a total annual incremental cost to range between $30 million and $37 million. This figure is based on an annual F037 and F038 land disposed volume of 100,000 tons per year in states other than California. Also, this figure excludes the costs associated with the quantity of tank-generated F037/F038 that will result after the conversion of surface impoundments.

On the high end of the cost range shown, 35% of the post-regulatory cost are from off-site treatment of petroleum refining wastes. The high cement kiln price used in this analysis, $1200 per ton, may be an overestimate of the long term price for cement kilns. Presently, cement kilns appear to be charging at rates below incinerators; as more cement kilns are able to handle wastes their prices may decrease. Because of the high prices charged by cement kilns, the Agency has analyzed the costs for F037/38 in a range, as shown above.

Newly Identified Organic Wastes

1. Three organic U wastes (U328, U353, U359). The Agency estimated an annual incremental cost of $150,000 for the standards developed for these wastes from the three organic U wastes (U328, U353, and U359). This figure is based on an annual land disposal volume estimate of 100 tons.

The standards for these wastes developed in the proposed rule are chemical oxidation followed by carbon adsorption for the wastewaters, and incineration for the nonwastewaters.

2. Wastes from unsymmetrical dimethlyhydrazine (UDMH) production (K107, K108, K109, K110). The Agency did not calculate costs of treatment standards for wastes from the production of unsymmetrical dimethlhydrazine (UDMH) (K107, K108, K109, and K110). This decision was made based on information that these are no longer generated.

3. Wastes from toluene diisocyanate (TDI) production (K111, K112). The Agency estimated an annual incremental cost of $150,000 for the standards developed for the wastes from the production of TDI (K111 and K112). This figure is based on an annual land disposal estimate of 100 tons for these two waste codes. The Agency has identified no K111 or K112 requiring further treatment.

TABLE IX-1.—SUMMARY OF QUANTITIES OF LDR PHASE I WASTES

Waste	Annual land disposal rate	Waste form	Generation type	Management type
Newly Listed Wastes:				
Petroleum Refining Sludges (F037 and F038).	100,000 tons of routinely generated waste currently land disposed, excluding waste generated in California.[a]	Dewatered Sludge	Routine	Solvent Extraction; Incineration; Cement Kilns.
Three Organic U Wastes (U328, U353, and U359).	Fewer than 100 tons.	Nonwastewater; Wastewater	Routine	Incineration or Thermal Destruction; Chemical Oxidation and Carbon Adsorption or Bio Treatment.
Production Wastes from Unsymmetrical Dimethlhydrazine (K107, K108, K109, and K110).	No longer produced.	Nonwastewater; Wastewater	Routine	Chemical Oxidation and Carbon Adsorption.
Wastes from Toluene Diisocyanate Production (K111 and K112).	Fewer than 100 tons.	Nonwastewater; Wastewater	Routine	Incineration; Incineration or Chemical Oxidation and Carbon Adsorption.
Wastes from Ethylene Dibromide Production (EDB) (K117, K118, and K136).	1,650 tons of K118; no K117 or K136.	Nonwastewater; Wastewater	Routine	Incineration.
Ethylene Bisdithiocarbamic Acid (EBDC) Production Wastes (K123-K126).	Fewer than 100 tons of K125. K123, K124, and K126 no longer land disposed.	Nonwastewater; Wastewater	Routine	Incineration.
Methyl Bromide Wastes (K131 and K132).	100 tons of K132 nonwastewater; K131 no longer land disposed.	Nonwastewater; Wastewater	Routine	Incineration.
Wastes with Existing Treatment Standards:				
Electric Arc Furnace Dust (K061)	67,000 tons of low zinc K061.[b]	Solid	Routine	High Temperature Metals Recovery.
Phase I Contaminated Debris[c]	8,000 tons.	Solid	Routine and Intermittent	Destruction; Immobilization; Extraction.

[a] EPA is aware that this estimate excludes an unknown quantity of F037 and F038 that will be generated as a result of settling operations in tanks after refineries undergo conversion of surface impoundments to tanks.

[b] Of the set of wastes potentially affected by a new BDAT of high temperature metal recovery (including K061, K062, and F006), the Agency is considering cost effects for K061 only. The quantity given for K061 is based on *generation* quantity instead of on quantity land disposed.

[c] The quantity presented here is for newly regulated debris. Debris that already has existing LDR treatment standards will also be affected by the change in treatment standards. Land disposal of a proportion of the newly regulated debris, contaminated with F037 and F038, may be restricted regardless of the enactment of provisions contained in the proposed rule due to the California Land Ban, effective May 8, 1992.

[44] Wastewaters account for only $150,000 per year, or less than one percent, of the cost of the proposed rule. The costs estimated for the quantities of wastewater shown in Table IX-1 are relatively low because most wastewaters are discharged to publicly owned treatment works (POTWs) or to coastal and inland waterways under National Pollution Discharge Elimination System (NPDES) permit provisions. When wastewaters are discharged in this manner, they are not subject to the treatment standards required by the LDRs under RCRA.

TABLE IX-2.—SUMMARY OF ANNUAL COSTS OF LDR PHASE I WASTES

Waste	Annual land disposal rate	Post-regulatory costs	Baseline costs [a]	Incremental costs
Newly Listed Wastes:				
Petroleum Refining Sludges (F037 and F038)	100,000 tons of routinely generated waste currently land disposed, excluding waste generated in California.[b]	$44,100,000 to $50,400,000 [b]	$13,900,000 [b]	$30,200,000 to $36,500,000 [b]
Three Organic U Wastes (U328, U353, and U359)	Less than 500 tons	$230,000	$80,000	$150,000
Production Wastes from Unsymmetrical Dimethlhydrazine (K107, K108, K109, and K110).	No longer produced	$0	$0	$0
Wastes from Toluene Diisocyanate Production (K111 and K112).	Less than 200 tons	$200,000	$50,000	$150,000
Wastes from Ethylene Dibromide Production (EDB) (K117, K118, and K136).	1650 tons K118; K117 treated pre-land disposal; K136 not land disposed.	$2,800,000	$410,000	$2,400,000
Ethylene Bisdithiocarbamic Acid (EBDC) Production Wastes (K123–K126).	Less than 100 tons of K125; K123, K124, and K126 no longer land disposed.	$170,000	$25,000	$150,000
Methyl Bromide Wastes (K131 and K132)	100 tons of K132. K131 no longer land disposed.	$170,000	$25,000	$150,000
Wastes with Existing Treatment Standards:				
Electric Arc Furnace Dust (K061)	67,000 tons of Low Zinc K061.[c]	$20,000,000 [c]	$30,000,000 [c]	($10,000,000)[c]
Newly Regulated Contaminated Debris [d]	8,000 tons	$7,700,000 [d]	$2,000,000 [d]	$5,700,000 [d]
Total		$55,400,000 to $61,700,000 [e]	$16,500,000 [e]	$38,900,000 to $45,200,000 [e]

[a] Baseline for all wastestreams presented in the table assumes all wastes are landfilled.

[b] The range of costs shown represents a unit price for cement kilns of between $700 per ton and $1200 per ton. This range is reflected in the total costs shown for each column as well. EPA is aware that this estimate excludes an unknown quantity of F037 and F038 that will be generated as a result of settling operations in tanks after refineries undergo conversion of surface impoundments to tanks.

[c] Of the wastes in the group that includes K061, K062, and F006, the Agency is developing costs for K061 only. For the baseline management practices for high chromium and high nickel K061, the Agency assumed stabilization is used, while in the post-regulatory management scenario, high temperature metal recovery is used.

[d] The contaminated debris affected by the proposed rule is divisible into two groups: first, debris that already has existing LDR treatment standards from previous rules (costs associated with this category of debris are expected to be negative), and second, debris that would be newly regulated by the LDRs because of its contamination with wastes included in today's proposed rule. Only costs for this second group of debris have been included in the agency's analysis.

[e] These totals do not include the costs for K061, which is currently calculated to have a negative incremental cost.

The standards for TDI wastes developed in the proposed rule are incineration or chemical oxidation followed by carbon adsorption for the wastewaters, and incineration for the nonwastewaters.

4. Wastes from ethylene dibromide (EDB) production (K117, K118, K136). The standards for wastes from ethylene dibromide production (EDB) (K117, K118, and K136) have an estimated annual incremental cost of $2.4 million. This figure is based on annual land disposal estimates of 1,650 tons of K118 nonwastewater residuals.

The Agency has identified no K136 generation. Currently, K117 wastewater streams undergo treatment before disposal, and therefore these wastes will not be affected by the proposed rule. The standards for EDB wastes are concentration-based. The Agency expects that these numerical standards will be met through incineration for the K118 wastes.

5. Wastes from ethylene bisdithiocarbamic acid (EBDC) production (K123–K126). The annual incremental cost estimated for ethylene bisdithiocarbamic acid production wastes (K123–K126) is $150,000. This figure is based on the Agency's determination that less than 100 tons of K125 nonwastewaters are currently land disposed and will require alternative treatment. EPA has identified no quantities of K123, K124, or K126 currently being land disposed. The method of treatment established for the EBDC nonwastewaters is incineration.

6. Wastes from methyl bromide production (K131, K132). The standards for wastes from methyl bromide production (K131, K132) have an estimated annual incremental cost of $150,000. The standards for K131 and K132 in today's proposed rule are concentration-based. The Agency expects that these numerical standards will be met through incineration.

The estimated incremental cost is based on an annual land disposal estimate of 100 tons of K132 nonwastewater. EPA has identified no K131 wastewaters or nonwastewaters being land disposed and requiring alternative treatment or recovery.

7. K061, F006, K062. The only wastes in this group for which the Agency developed cost estimates is K061 low-zinc wastes. The standards for these wastes are based on high temperature metals recovery. These standards, as applied to K061, have an estimated annual decremental cost of $10 million, i.e., the new standards are less costly than the existing standards. This figure is based on an annual generation estimate of 67,000 tons. The Agency has used a generation estimate rather than a land disposal estimate for this waste because of uncertainty regarding the quantity of low zinc K061 that is currently land disposed.

Contaminated Debris

There are two groups of contaminated debris in this rule. The first group includes all previously regulated debris. This group includes contaminated debris regulated under the HSWA land disposal restriction scheduled waste rules (i.e., Solvents and Dioxins, California List Wastes, First Thirds, Second Thirds, Third Thirds), and is estimated to be approximately 1 million tons per year. The second group includes all debris contaminated with wastes regulated in today's proposed rule;[45] the Agency estimates that less than 10,000 tons per year of debris is contaminated with these wastes (the cost analysis is based on a volume of 8000 tons annually). (See section VI.B for the capacity analysis of contaminated debris.)

The Agency has proposed three technology categories for the treatment of debris in order to handle the diverse composition of contaminated debris. These three categories of treatment are immobilization, extraction, and destruction. Under each treatment category there exist many technologies which may be used for compliance with the debris standards. For the cost analysis of contaminated debris, the following technologies were selected to correspond with each treatment category: For immobilization, stabilization was selected; for extraction, washing was selected; and for destruction, incineration was used.

On May 8, 1992, all of the national capacity variances for the debris regulated in the HSWA land disposal restriction scheduled waste rules will have expired. All contaminated debris in the first group would then be required to meet the existing standards for debris established in the scheduled waste rules. Since the management standards proposed today are expected to be no more costly, and in some cases less costly than the treatment standards currently required for contaminated debris under the waste code carry-through principle, today's proposed rule is estimated to have no cost impact for this group of debris.

Based on preliminary data submitted by several large commercial facilities as part of the capacity analysis being conducted for this rule, the Agency was able to estimate the percentage of debris contaminated with newly regulated wastes which would be treated under each treatment category. For the cost analysis the Agency estimated that approximately 1,700 tons will be treated with extraction technologies, 5,000 tons will be treated by immobilization, and 1,300 tons will be treated by incineration. Based on these figures, the total incremental cost of treated debris contaminated with newly regulated wastes is estimated to be $6 million annually.

c. *Economic impacts.* Because this analysis is limited to a screening analysis, a full economic impacts analysis was not performed. The Agency, however, did qualitatively assess the economic impacts attributable to today's rule.

1. Petroleum Refining Wastes (F037 and F038)

The Listing RIA considered the economic impact of the F037 and F038 listing in light of anticipated land disposal restrictions on these wastes. The impacts estimated in the Listing RIA were driven by facility costs and the economic viability of facility owners. The results of the Listing RIA's economic impacts analysis are summarized below.

In the Listing RIA, four to eight refineries (depending on the cost scenario) had cost impacts greater than one percent of sales (cost impacts exceeding one percent of sales can be viewed as an indicator of potentially significant economic impact). Three refineries exceeded two percent under a high-cost scenario (indicating more severe economic impacts). Nine out of ten affected refineries in a high-cost scenario had costs below 0.5 percent of sales, and over three-quarters of the refineries fell below 0.25 percent, indicating no significant impacts.

The analysis of small entities presented in the Listing RIA indicated that there were potentially seven non-integrated refineries (i.e., refineries that did not produce their own crude and market their own products) with cost-to-sales ratios greater than one percent under the high-cost scenario. A further analysis of employment effects and potential closures was not possible due to insufficient fiancial data for individual refineries.

Therefore, drawing the comparison for economic impacts between the Listing RIA and today's proposed rule, the Agency estimates that today's rule will have annual incremental compliance cost for F037 and F038 waste of between

[45] A third group of contaminated debris, debris considered hazardous because of contamination with waste without current or proposed LDR treatment standards, is unaffected by this rule.

$30 million and $37 million, while the F037/38 Listing RIA estimated an annual cost of $37 million to $71 million.[46] Therefore, the Agency believes that the economic impacts of today's rule, qualitatively, will be less than the impacts estimated by the Listing Rule RIA.

2. Remaining Wastes

Considering the economic impacts of LDRs for the newly listed organic wastes other than F037 and F038, the Agency estimates the costs associated with all wastes to be insignificant. The only newly listed waste having an annual incremental cost above $150,000 is ethylene dibromide (EDB) production wastes at $2.4 million. The major producers of EDB are Dow Chemical, Ethyl Corporation, Great Lakes Chemical, and PPG Industries. Of these firms, only Great Lakes Chemical land disposes waste from EDB production. Based on the financial viability of Great Lakes Chemical, it is unlikely that it would be significantly affected by regulation of EDB wastes.

A quantitative assessment of the economic impacts associated with the contaminated debris standards was not possible due to data limitations. The Agency has no site-specific information on the volumes of either the previously regulated or the newly listed contaminated debris by waste code or SIC code.

The Agency expects that the impacts for the previously regulated debris will not be significant since today's proposed standards are likely to be no more costly, and in some cases less costly than the standards which currently exist. The impacts of the newly listed debris standards are uncertain. The estimated incremental cost for these standards is $6 million annually. If a relatively large number of facilities bear the burden of this cost, it is likely that these standards will not have a significant impact.

B. Paperwork Reduction Act

The information collection requirements in this proposal were promulgated in previous land disposal restriction rulemakings and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2050-0085. No new information collection requirements are being proposed today.

It should be noted that today's proposal seeks to reduce the paperwork burden on the regulated community by proposing to minimize reporting for wastes that are no longer hazardous.

Send comments regarding any aspect of this collection of information 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."

List of Subjects in 40 CFR Parts 148, 260, 261, 262, 264, 265, 268, 270 and 271

Administrative practice and procedure, Designated facility, Environmental protection, Hazardous materials, Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Labeling, Packaging and containers, Penalties, Recycling, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: December 18, 1991.

William K. Reilly,

Administrator.

For the reasons set out in preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Section 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

2. Section 148.17 is added to subpart B to read as follows:

§ 148.17 Waste specific prohibitions—newly listed wastes.

(a) Effective (insert effective date of regulations), the wastes specified in 40 CFR 261 as EPA hazardous waste numbers F037, F038, K107, K109, K110, K111, K112, K117, K118, K123, K124, K125, K126, K131, K136, U328, U353, and U359 are prohibited from underground injection.

(b) The requirements of paragraph (a) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in subpart D of part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension has been granted under § 148.4 of this part.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

3. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

4. In § 260.10 a definition for "containment building" is added in alphabetical order and the definition of "pile" is revised to read as follows:

§ 260.10 Definitions.

* * * * *

Containment building means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of subpart DD of parts 264 or 265 of this chapter.

* * * * *

Pile means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

5. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

6. In § 261.3 paragraphs (a)(2)(iii) and (c)(2)(ii)(C) are revised and paragraph (e) is added to read as follows:

§ 261.3 Definition of hazardous waste.

* * * * *

(a) * * *

(2) * * *

(iii) It is a mixture of a solid waste and a hazardous waste that is listed in subpart D of this part solely because it exhibits one or more of the characteristics of hazardous waste identified in subpart C of this part, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in subpart C of this part, or unless the solid waste is excluded from regulation under § 261.4(b)(7) and the resultant mixture no longer exhibits any characteristic of hazardous waste identified in subpart C of this part for which the hazardous waste listed in subpart D of this part was listed. (However, such mixtures are still subject to the requirements of part 268 of this chapter, even if they no

[46] The Listing RIA provided a range of $53 to $102 million. The revised range shown reflects the following two changes: (a) subtraction of baseline Subtitle C landfill costs, and (b) conversion of the 1989 dollars used in the Listing RIA to 1991 dollars.

longer exhibit a characteristic at the point of land disposal.)

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(C) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in 40 CFR 260.10 (6), (7), and (12)), that are disposed in Subtitle D units, provided that these residues meet the generic exclusion levels identified below for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues must be collected and analyzed quarterly and/or when the process or operation generating the waste changes.

Constituent	Maximum for any single composite sample TCLP (mg/l)
Generic exclusion levels for K061 and K062 nonwastewater HTMR residues	
Antimony	0.063
Arsenic	0.055
Barium	6.3
Beryllium	0.0063
Cadmium	0.032
Chromium (total)	0.33
Lead	0.095
Mercury	0.009
Nickel	0.63
Selenium	0.16
Silver	0.30
Thallium	0.013
Vanadium	0.23
Zinc	44.0
Generic exclusion levels for F006 nonwastewater HTMR residues	
Antimony	0.063
Arsenic	0.055
Barium	6.3
Beryllium	0.0063
Cadmium	0.032
Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.095
Mercury	0.009
Nickel	0.63
Selenium	0.16
Silver	0.30
Thallium	0.013
Vanadium	0.23
Zinc	44.0

A one-time notification and certification must be placed in the facility's files for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to subtitle D units; however, the one-time notification and certification must be updated if the process or operation generating the waste changes and/or if the Subtitle D unit receiving the waste changes. The notification must include the following information: (*1*) The name and address of the Subtitle D unit receiving the waste shipments; (*2*) the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and (*3*) the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristics of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

* * * * *

(e) Notwithstanding paragraphs (a) through (d) of this section and provided the debris as defined in part 268 of this chapter does not exhibit a characteristic identified at subpart C of this part, the following materials are not subject to regulation under 40 CFR parts 260, 261 to 266, 268, or 270:

(1) Contaminated debris as defined in part 268 that has been treated using one of the required extraction or destruction technologies specified in table 2 of § 268.45 of this chapter; or

(2) Debris as defined in part 268 that the Regional Administrator, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

7. Appendix VIII of part 261 is amended by adding the following inorganic compound in alphabetical order to read as follows:

APPENDIX VIII.—HAZARDOUS CONSTITUENTS

Common name	Chemical abstracts name	Chemical abstracts no.	Hazardous waste no.
*	*	*	*
Vanadium.	Same	7440-62-2	
*	*	*	*

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

8. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937.

9. In § 262.34 paragraphs (a)(3) through (a)(4) are redesignated as (a)(4) through (a)(5) and a new paragraph (a)(3) is added to read as follows:

§ 262.34 Accumulation time.

(a) * * *

(3) The waste is placed in containment buildings and the generator complies with subpart DD of 40 CFR part 265 and maintains the following records at the facility:

(i) A description of procedures that will be followed to ensure that all wastes are removed from the containment building at least once every 90 days; and

(ii) Documentation of each waste removal, including the quantity of waste removed from the containment building and the date and time of removal.

In addition, such a generator is exempt from all the requirements in subparts G and H of 40 CFR part 265, except for §§ 265.111 and 265.114.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

10. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

11. Subpart DD is added to read as follows:

Subpart DD—Containment Buildings

§ 264.1100 Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste that contains no or only very small quantities of free liquids in units designed and operated under § 264.1101 of this subpart.

§ 264.1101 Design and operating standards.

(a) The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, e.g., precipitation, wind, and to prevent run-on or infiltration of precipitation.

(b) The floor and walls of the unit, including the secondary containment

system, if required under paragraph (d)(1) of this section, must be designed and constructed of man-made materials of sufficient strength and thickness to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed, climatic conditions, and the stresses of daily operation, including the movement of heavy equipment within the unit. The unit must be designed so that it has sufficient structural strength to prevent collapse or other failure.

(c) Incompatible hazardous wastes or treatment reagents must not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(d) The owner or operator must use controls and practices to ensure containment of the hazardous waste within the unit and at a minimum, must:

(1) For a containment building that is used to store hazardous wastes containing very small quantities of free liquids or to treat hazardous wastes when the treatment involves liquids:

(i) Ensure that any surface that will be in contact with liquid is constructed of a material or otherwise sealed or coated so that it will prevent the migration of liquid into or out of the supporting structure;

(ii) Provide a liquid collection system to prevent the accumulation of liquid on the floor of the containment building; and

(iii) Provide a secondary containment system that prevents any migration of hazardous waste or liquid out of the system to the soil, ground water, or surface water at any time during the use of the unit and is capable of detecting and collecting accumulated hazardous wastes and liquids at the earliest practicable time. Liquids must be collected and removed at the earliest practicable time that protects human health and the environment to minimize the hydraulic head on the containment system.

(2) Maintain the level of the stored/treated hazardous waste within the walls of the unit intended to come in contact with the hazardous waste so that the height of any wall is not exceeded.

(3) Take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste.

(4) Take measures to control fugitive dust emissions by maintaining a negative pressure within the unit and a particulate collection system. This system must function effectively at all times, including when vehicles and personnel are entering and exiting the unit.

(e) Liquid residuals from debris treatment in a containment building that are to be land disposed must be treated to meet F039 treatment standards.

(f) Inspect and record in the facility's operating log, at least once each operating day, data gathered from monitoring equipment and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

§§ 264.1102-264.1110 [Reserved]

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

12. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

13. Subpart DD is added to read as follows:

Subpart DD—Containment Buildings

§ 265.1100 Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste that contains no or only very small quantities of free liquids in units designed and operated under § 265.1101 of this subpart.

§ 265.1101 Design and operating standards.

(a) The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, e.g., precipitation, wind and to prevent run-on or infiltration of precipitation.

(b) The floor and walls of the unit, including the secondary containment system, if required under paragraph (d)(1) of this section, must be designed and constructed of man-made materials of sufficient strength and thickness to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed, climatic conditions, and the stresses of daily operation, including the movement of heavy equipment within the unit. The unit must be designed so that it has sufficient structural strength to prevent collapse or other failure.

(c) Incompatible hazardous wastes or treatment reagents must not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(d) The owner or operator must use controls and practices to ensure containment of the hazardous waste within the unit and, at a minimum, must:

(1) For a containment building that is used to store hazardous wastes containing very small quantities of free liquids or to treat hazardous wastes when the treatment involves liquids:

(i) Ensure that any surface that will be in contact with liquid is constructed of a material or otherwise sealed or coated so that it will prevent the migration of liquid into or out of the supporting structure:

(ii) Provide a liquid collection system to prevent the accumulation of liquid on the floor of the containment building; and

(iii) Provide a secondary containment system that prevents any migration of hazardous waste or liquid out of the system to the soil, ground water, or surface water at any time during the use of the unit and is capable of detecting and collecting accumulated hazardous waste and liquids at the earliest practicable time. Liquids must be collected and removed at the earliest practicable time that protects human health and the environment to minimize the hydraulic head on the containment system.

(2) Maintain the level of the stored/treated hazardous waste within the walls of the unit intended to come in contact with the hazardous waste so that the height of any wall is not exceeded.

(3) Take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste.

(4) Take measures to control fugitive dust emissions by maintaining a negative pressure within the unit and a particulate collection system. This system must function effectively at all times, including when vehicles and personnel are entering and exiting the unit.

(e) Liquid residuals from debris treatment in a containment building that are to be land disposed must be treated to meet F039 standards.

(f) Inspect and record in the facility's operating log, at least once each operating day, data gathered from monitoring equipment and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

§§ 265.1102-265.1110 [Reserved]

PART 268—LAND DISPOSAL RESTRICTIONS

14. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

15. In § 268.2 paragraph (g) is revised and paragraph (h) added to read as follows:

§ 268.2 Definitions applicable in this part.

* * * * *

(g) Debris means solid material that:

(1) Has been originally manufactured or processed, except for solids that are listed wastes or can be identified as being residuals from treatment of wastes and/or wastewaters, or air pollution control devices; or

(2) Is plant or animal matter; or

(3) Is natural geologic material exceeding a 9.5 mm sieve size including gravel, cobbles, and boulders (sizes as classified by the U.S. Soil Conservation Service), or is an inseparable mixture of such materials with soil, liquid, sludge, or other solid waste materials (i.e., inseparable by simple mechanical removal processes).

(h) Contaminated Debris means debris that contains a hazardous waste listed in subpart D of part 261 that is subject to the land disposal restrictions of this part, or that exhibits a characteristic of hazardous waste identified in subpart C of part 261 that is subject to the land disposal restrictions of this part.

* * * * *

16. In § 268.7 paragraph (a) is revised and paragraph (d) is added to read as follows:

§ 268.7 Waste analysis.

(a) Except as specified in §§ 268.32, 268.40(d), or 268.43 of this part, the generator must test his waste, or test an extract developed using the test method described in appendix I of part 261, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this part.

* * * * *

(d) For contaminated debris that is no longer considered hazardous, a one-time notification and certification must be placed in the facility's files for each combination of the debris and contaminant categories; however, the one-time notification and certification must be updated if the facility receiving the waste changes.

(1) The notification must include the following information:

(i) The name and address of the Subtitle D facility receiving the waste shipment:

(ii) A description of the waste as initially generated, including applicable EPA Hazardous Waste Numbers and treatability groups;

(iii) The treatment standards applicable to the waste at the point of generation.

(2) The certification must be signed by an authorized representative and must state the language found in § 268.7(b)(5).

17. In § 268.9 paragraph (d) is revised to read as follows:

§ 268.9 Special rules regarding wastes that exhibit a characteristic.

* * * * *

(d) Wastes that exhibit a characteristic are also subject to § 268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the facility's files; however, the one-time notification and certification must be updated if the process or operation generating the waste changes and/or if the subtitle D facility receiving the waste changes.

(1) The notification must include the following information:

(i) The name and address of the subtitle D facility receiving the waste shipment;

(ii) A description of the waste as initially generated, including the applicable EPA Hazardous Waste Number(s) and treatability group(s);

(iii) The treatment standards applicable to the waste at the point of generation.

(2) The certification must be signed by an authorized representative and must state the language found in § 268.7(b)(5).

18. In subpart C § 268.36 is added to read as follows:

§ 268.36 Waste specific prohibitions—newly listed wastes.

(a) Effective (insert effective date), the following wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Numbers F037 and F038 (that is not generated in a surface impoundment); the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Numbers K107, K108, K109, K110, K111, K112, K117, K118, K123, K124, K125, K126, K131, K132, and K136; and the wastes specified in 40 CFR 261.33 as EPA Hazardous Waste numbers U328, U353, and U359 are prohibited from land disposal.

(b) Effective (insert date two years from effective date), the wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Numbers F037 and F038 that are generated in surface impoundments are prohibited from land disposal.

(c) Effective (insert date two years from effective date), radioactive wastes that are mixed with hazardous wastes specified in 40 CFR 261.31 and EPA Hazardous Waste Numbers F037 and F038; the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Numbers K107, K108, K109, K110, K111, K112, K117, K118, K123, K124, K125, K126, K131, K132, and K136; or the wastes specified in 40 CFR 261.33(f) as EPA Hazardous Waste Numbers U328, U353, and U359 are prohibited from land disposal.

(d) Effective (insert date two years from effective date), debris contaminated with hazardous wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Numbers F037 and F038; the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Numbers K107, K108, K109, K110, K111, K112, K117, K118, K123, K124, K125, K126, K131, K132, and K136; or the wastes specified in 40 CFR 261.33(f) as EPA Hazardous Waste Numbers U328, U353, and U359; and which is not contaminated with any other waste already subject to a prohibition are prohibited from land disposal.

(e) Between (insert effective date) and (insert date two years from effective date), the wastes included in paragraphs (b), (c), and (d) of this section may be disposed of in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2), except that F037 and F038 are wastes generated in a surface impoundment. Such impoundments must comply with the requirements relating to removal under § 268.4(a)(2)(ii).

(f) The requirements of paragraphs (a), (b), (c), and (d) of this section do not apply if:

(1) The wastes meet the applicable standards specified in Subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable alternate standards established pursuant to a petition granted under § 268.44;

(4) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to the wastes covered by the extension.

(g) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in § 268.41 and 268.43, the initial generator must test a

representative sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable subpart D levels, the waste is prohibited from land disposal, and all requirements of part 268 are applicable, except as otherwise specified.

19. In § 268.40 paragraph (b) is revised and paragraph (d) is added to read as follows:

§ 268.40 Applicability of treatment standards

* * * * *

(b) A restricted waste for which a treatment technology is specified under § 268.42(a) or contaminated debris for which a treatment technology is specified under § 268.45 may be land disposed after it is treated using that specified technology or an equivalent treatment method approved by the Administrator under the procedures set forth in § 268.42(b).

* * * * *

(d) If a treatment standard has been established in §§ 268.41 through 268.43 for a hazardous waste that is itself contaminated debris, the waste is subject to those standards rather than the standards for contaminated debris under § 268.45.

20. In § 268.41(a) Table CCWE is amended by removing the entries for F001–F005 and K061 (Low Zinc Subcategory—less than 15% total zinc), revising the entry for K061 High Zinc Subcategory, and by adding entries for F037 and F038 to read as follows:

§ 268.41 Treatment standards expressed as concentrations in waste extract.

(a) * * *

TABLE CCWE.—CONSTITUENT CONCENTRATIONS IN WASTE EXTRACT

Waste Code	See also	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Wastewater concentration (mg/l)	Non-wastewater concentration (mg/l)
*	*	*	*	*	
F037	Table CCW in 268.43	Chromium (Total)	7440-47-32	NA	1 7
		Nickel	7440-02-0	NA	0.20
F038	Table CCW in 268.43	Chromium (Total)	7440-47-32	NA	1 7
		Nickel	7440-02-0	NA	0.20
*	*	*	*	*	
K061	Table CCW in 268.43	Antimony	7440-36-0	NA	2.1
		Arsenic	7440-38-2	NA	0.055
		Barium	7440-39-3	NA	7.6
		Beryllium	7440-41-7	NA	0.014
		Cadmium	7440-43-9	NA	0.19
		Chromium (Total)	7440-47-32	NA	0.33
		Lead	7439-92-1	NA	0.37
		Mercury	7439-97-6	NA	0.009
		Nickel	7440-02-0	NA	5
		Selenium	7782-49-2	NA	0.16
		Silver	7440-22-4	NA	0.3
		Thallium		NA	0.078
		Vanadium	7440-62-2	NA	0.23
		Zinc	7440-66-6	NA	5.3
*	*	*	*	*	

NA=Not applicable.

21. In § 268.42 paragraphs (b) and (d) are revised to read as follows:

§ 268.42 Treatment standards expressed as specified technologies.

* * * * *

(b) Any person may submit an application to the Administrator demonstrating that an alternative treatment method can achieve a measure of performance equivalent to that achieved by methods specified in paragraphs (a), (c), and (d) of this section for wastes or specified in § 268.45 for contaminated debris. The applicant must submit information demonstrating that his treatment method is in compliance with federal, state, and local requirements and is protective of human health and the environment. On the basis of such information and any other available information, the Administrator may approve the use of the alternative treatment method if he finds that the alternative treatment method provides a measure of performance equivalent to that achieved by methods specified in paragraphs (a), (c), and (d) of this section for wastes or in § 268.45 for contaminated debris. Any approval must be stated in writing and may contain such provisions and conditions as the Administrator deems appropriate. The person to whom such approval is issued must comply with all limitations contained in such a determination.

* * * * *

(d) Radioactive hazardous mixed wastes with treatment standards specified in table 3 of this section are not subject to any treatment standards specified in §§ 268.41 or 268.43, or table 2 of this section. Radioactive hazardous mixed wastes not subject to treatment standards in table 3 of this section remain subject to all applicable treatment standards specified in §§ 268.41, 268.43, and table 2 of this section. Contaminated debris containing radioactive waste is not subject to the treatment standards specified in table 3 of this section but is subject to the treatment standards specified in § 268.45.

22. In § 268.42(a)(2) table 2 is amended by adding entries for K107, K108, K109, K110, K111, K112, K123, K124, K125, K126, U328, U353, and U359 in alphanumerical order to read as follows:

§ 268.42 Treatment standards expressed as specified technologies.

* * * * *

TABLE 2.—TECHNOLOGY-BASED STANDARDS BY RCRA WASTE CODE

Waste code	See also	Waste descriptions and/or treatment subcategory	CAS No. for regulated hazardous constituents	Technology code	
				Wastewaters	Nonwastewaters
*	*	*	*	*	*
K107		Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.	NA	INCIN; or CHOXD fb CARBN	INCIN
K108		Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.	NA	INCIN; or CHOXD fb CARBN	INCIN
K109		Spent filler cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.	NA	INCIN; or CHOXD fb CARBN	INCIN
K110		Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.	NA	INCIN; or CHOXD fb CARBN	INCIN
K111		Product wastewaters from the production of dinitrotoluene via nitration of toluene.	NA	INCIN; or CHOXD fb CARBN	INCIN
K112		Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	INCIN; or CHOXD fb CARBN	INCIN
*	*	*	*	*	*
K123		Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.	NA	INCIN; or CHOXD fb (BIODG or CARBN).	INCIN
K124		Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.	NA	INCIN; or CHOXD fb (BIODG or CARBN).	INCIN
K125		Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts.	NA	INCIN; or CHOXD fb (BIODG or CARBN).	INCIN
K126		Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylene bisdithiocarbamic acid and its salts.	NA	INCIN; or CHOXD fb (BIODG or CARBN).	INCIN
*	*	*	*	*	*
U328		2-methyl-benzenamine	95-53-4	CHOXD fb (BIODG or CARBN)	INCIN; or Thermal Destruction
U353		4-methyl-benzenamine	106-49-0	CHOXD fb (BIODG or CARBN)	INCIN; or Thermal Destruction
U359		2-ethoxy-ethanol	110-80-5	INCIN; or CHOXD fb (BIODG or CARBN).	INCIN

NA—Not applicable.

* * * * *

23. In § 268.43(a) Table CCW is amended by revising the entries for F001–F005, K015, K016, K018, K019, K020, K023, K024, K028, K030, K043, K048, K049, K050, K051, K052, K087, K093, K094, U028, U069, U088, U102, U107, and U190, by removing the entry for U042, and by adding the entries for F037, F038, K117, K118, K131, K132, and K136 in alphanumerical order to read as follows:

(a) * * *

TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
*	*	*	*	*	*		*	
F001–F005 spent solvents.	NA		Acetone	67-64-1	0.28		160	
			Benzene	71-43-2	0.070		3.7	
			n-Butyl alcohol	71-36-3	5.6		2.6	
			Carbon disulfide	75-15-0	0.014		NA	
			Carbon tetrachloride	56-23-5	0.057		5.6	
			Chlorobenzene	108-90-7	0.057		5.7	
			Cresol (m- and p-isomers)		0.77		3.2	
			o-cresol		0.11		5.6	
			Cyclohexanone	108-94-1	0.36		NA	
			o-Dichlorobenzene	95-50-1	0.088		6.2	
			Ethyl acetate	141-7-6	0.34		33	
			Ethyl benzene	100-41-4	0.057		6.0	

TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
			Ethyl ether	60-29-7	0.12		160	
			Isobutyl alcohol	78-83-1	5.6		170	
			Methanol	67-56-1	5.6		NA	
			Methylene chloride	75-9-2	0.089		33	
			Methyl ethylketone	78-93-3	0.28		36	
			Methyl isobutylketone	108-10-1	0.14		33	
			Nitrobenzene	98-95-3	0.068		14	
			Pyridine	110-86-1	0.014		16	
			Tetrachloroethylene	127-18-4	0.056		5.6	
			Toluene	108-88-3	0.08		28	
			1,1,1-Trichloroethane	71-55-6	0.054		5.6	
			1,1,2-Trichloroethane	79-00-5	0.030		7.6	(1)
			Trichloroethylene	79-01-6	0.054		5.6	
			1,1,2-Trichlor1,2,2-trifluoromethane.	76-13-1	0.057		28	
			Trichloromono-fluoromethane	75-69-4	0.02		33	
*	*	*	*	*	*	*	*	
			Xylenes (total)		0.32		28	
F037	NA	Table CCWE in 268.41.	Acenaphthene	208-96-8	0.059		NA	
			Anthracene	120-12-7	0.059		28	(1)
			Benzene	71-43-2	0.14		14	(1)
			Benzo (a) anthracene	50-32-8	0.059		20	(1)
			Benzo (a) pyrene	117-81-7	0.061		12	(1)
			Bis (2-ethylhexyl) phthalate	75-15-0	0.28		7.3	(1)
			Chrysene	218-01-9	0.059		15	(1)
			Di-n-butyl phthalate	105-67-9	0.057		3.6	(1)
			Ethylbenzene	100-41-4	0.057		14	(1)
			Fluorene	86-73-7	0.059		NA	
			Naphthalene	91-20-3	0.059		42	(1)
			Phenanthrene	85-01-8	0.059		34	(1)
			Phenol	108-95-2	0.039		3.6	(1)
			Pyrene	129-00-0	0.067		36	(1)
			Toluene	108-88-3	0.08		14	(1)
			Xylene(s)		0.32		22	(1)
			Cyanides (Total)	57-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
F038	NA	Table CCWE in 268.41.	Benzene	71-43-2	0.14		14	(1)
			Benzo(a)pyrene	50-32-8	0.061		12	(1)
			Bis (2-ethylhexyl) phthalate	117-81-7	0.28		7.3	(1)
			Chrysene	218-01-9	0.059		15	(1)
			Di-n-butyl phthalate	84-74-2	0.057		3.6	(1)
			Etylbenzene	100-41-4	0.057		14	(1)
			Fluorene	86-73-7	0.059		NA	
			Naphthalene	91-20-3	0.059		42	(1)
			Phenanthrene	85-01-8	0.059		34	(1)
			Phenol	108-95-2	0.039		3.6	(1)
			Pyrene	129-00-0	0.067		36	(1)
			Toluene	108-88-3	0.080		14	(1)
			Xylene(s)		0.32		22	(1)
			Cyanides (Total)	57-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
*	*	*	*	*	*	*	*	
K015	NA	Table CCWE in 268.41.	Anthracene	120-12-7	0.059		3.4	(1)
			Benzal Chloride	98-87-3	0.28		6.2	(1)
			Sum of Benzo(b) fluoranthene and Benzo(k) fluoranthene.	205-99-2 207-08-9	0.055		3.4	
			Phenanthrene	85-01-8	0.059		3.4	(1)
			Toluene	108-88-3	0.08		6.0	(1)
			Chromium (Total)	7440-47-32	0.32		NA	
			Nickel	7440-02-0	0.44		NA	
K016	NA		Hexachlorobenzene	118-74-1	0.055		28	(1)
			Hexachlorobutadiene	87-68-3	0.055		5.6	(1)
			Hexachlorocyclopentadiene	77-47-4	0.057		5.6	(1)
			Hexachloroethane	67-72-1	0.055		28	(1)
			Tetrachloroethene	127-18-4	0.056		6.0	(1)
*	*	*	*	*	*	*	*	

TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
K018	NA		Chloroethane	76-00-3	0.27		6.0	(1)
			Chloromethane	74-87-3	0.19		NA	
			1,1-Dichloroethane	75-34-3	0.059		6.0	(1)
			1,2-Dichloroethane	107-06-2	0.21		6.0	(1)
			Hexachlorobenzene	118-74-1	0.055		28	(1)
			Hexachlorobutadiene	87-68-3	0.055		5.6	(1)
			Pentachloroethane	76-01-7	NA		5.6	(1)
			1,1,1-Trichloroethane	71-55-6	0.054		6.0	(1)
			Hexachloroethane	67-72-1	0.055		28	(1)
K019	NA		Bis (2-chloroethyl) ether	111-44-4	0.033		5.6	(1)
			Chlorobenzene	108-90-7	0.057		6.0	(1)
			Chloroform	67-66-3	0.046		6.0	(1)
			p-Dichlorobenzene	106-46-7	0.09		NA	
			1,2-Dichloroethane	107-06-2	0.21		6.0	(1)
			Fluorene	86-73-7	0.059		NA	
			Hexachloroethane	67-72-1	0.055		28	(1)
			Naphthalene	91-20-3	0.059		5.6	(1)
			Phenanthrene	85-01-8	0.059		5.6	(1)
			1,2,4,5-Tetrachlorobenzene	95-94-3	0.055		NA	
			Tetrachloroethene	127-18-4	0.056		6.0	(1)
			1,2,4-Trichlorobenzene	120-82-1	0.055		19	(1)
			1,1,1-Trichloroethane	71-55-6	0.054		6.0	(1)
K020	NA		1,2-Dichloroethane	106-93-4	0.21		6.0	(1)
			1,1,2,2-Tetrachloroethane	79-34-6	0.057		5.6	(1)
			Tetrachloroethene	127-18-4	0.056		6.0	(1)
*	*	*	*	*	*	*		
K023	NA		Phthalic anhydride (measured as Phthalic acid).	85-44-9	0.069		28	(1)
K024	NA		Phthalic anhydride (measured as Phthalic acid).	85-44-9	0.069		28	(1)
*	*	*	*	*	*	*		
K028	NA	Table CCWE in 268.41.	1,1-Dichloroethane	75-34-3	0.059		6.0	(1)
			trans-1,2-Dichloroethane		0.054		6.0	(1)
			Hexachlorobutadiene	87-68-3	0.055		5.6	(1)
			Hexachloroethane	67-72-1	0.055		28	(1)
			Pentachloroethane	76-01-7	NA		5.6	(1)
			1,1,1,2-Tetrachloroethane	630-20-6	0.057		5.6	(1)
			1,1,2,2,-Tetrachloroethane	79-34-6	0.057		5.6	(1)
			1,1,1,-Trichloroethane	71-55-6	0.054		6.0	(1)
			1,1,2-Trichloroethane	79-00-5	0.054		6.0	(1)
			Tetrachloroethylene	127-18-4	0.056		6.0	(1)
			Cadmium	7440-43-9	6.4		NA	
			Chromium (Total)	7440-47-32	0.35		NA	
			Lead	7439-92-1	0.037		NA	
			Nickel	7440-02-0	0.47		NA	
*	*	*	*	*	*	*		
K030	NA		o-Dichlorobenzene	95-50-1	0.088		NA	
			p-Dichlorobenzene	106-46-7	0.09		NA	
			Hexachlorobutadiene	87-68-3	0.055		5.6	(1)
			Hexachloroethane	67-72-1	0.055		28	(1)
			Hexachloropropene	1888-71-7	NA		19	(1)
			Pentachlorobenzene	608-93-5	NA		28	(1)
			Pentachloroethane	76-01-7	NA		5.6	(1)
			1,2,4,5-Tetrachlorobenzene	95-94-3	0.055		14	(1)
			Tetrachloroethene	127-18-4	0.056		6.0	(1)
			1,2,4,-Trichlorobenzene	120-82-1	0.055		19	(1)
*	*	*	*	*	*	*		
K043	NA		2,4-Dichlorophenol	120-83-2	0.044		0.38	(1)
			2,6-Dichloropheno	187-65-0	0.044		0.34	(1)
			2,4,5-Trichlorophenol	95-95-4	0.18		8.2	(1)
			2,4,6-Trichlorophenol	88-06-2	0.035		7.6	(1)
			Tetrachlorophenols (Total)		NA		0.68	(1)
			Pentachlorophenol	87-86-5	0.089		1.9	(1)
			Tetrachloroethene	79-01-6	0.056		1.7	(1)
			Hexachlorodibenzo-p-dioxins		0.000063		0.001	(1)
			Hexachlorodibenzofurans		0.000063		0.001	(1)
			Pentachlorodibenzo p-dioxins		0.000063		0.001	(1)
			Pentachlorodibenzo furans		0.000063		0.001	(1)
			Tetrachlorodibenzo-p-dioxins		0.000063		0.001	(1)
			Tetrachlorodibenzofurans		0.000063		0.001	(1)
*	*	*	*	*	*	*		
K048	NA	Table CCWE, in 268.41.	Benzene	71-43-2	0.14		14	(1)
			Benzo(a)pyrene	50-32-8	0.061		12	(1)
			Bis (2-ethylhexyl) phthalate	117-81-7	0.28		7.3	(1)
			Chrysene	218-01-9	0.059		15	(1)

TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
			Di-n-butyl phthalate	84-74-2	0.057		3.6	(1)
			Ethylbenzene	100-41-4	0.057		14	(1)
			Fluorene	86-73-7	0.059		NA	(1)
			Naphthalene	91-20-3	0.059		42	(1)
			Phenanthrene	85-01-8	0.059		34	(1)
			Phenol	108-95-2	0.039		3.6	(1)
			Pyrene	129-00-0	0.067		36	(1)
			Toluene	108-88-3	0.080		14	(1)
			Xylene(s)		0.32		22	(1)
			Cyanides (Total)	57-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
K049	NA	Table CCWE in 268.41.	Anthracene	120-12-7	0.059		28	(1)
			Benzene	71-43-2	0.14		14	(1)
			Benzo(a)pyrene	117-81-7	0.061		12	(1)
			Bis (2-ethylhexyl) phthalate	75-150-0	0.28		7.3	(1)
			Carbon disulfide	75-15-0	0.014		NA	
			Chrysene	2218-01-9	0.059		15	(1)
			2,4-Dimethyl phenol	105-67-9	0.036		NA	
			Ethylbenzene	100-41-4	0.057		14	(1)
			Naphthalene	91-20-3	0.059		42	(1)
			Phenanthrene	85-01-8	0.059		34	(1)
			Phenol	108-95-2	0.039		3.6	(1)
			Pyrene	129-00-0	0.067		36	(1)
			Toluene	108-88-3	0.08		14	(1)
			Xylene(s)		0.32		22	(1)
			Cyanides (Total)	56-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
K050	NA	Table CCWE in 268.41.	Benzo (a) pyrene	50-32-8	0.061		12	(1)
			Phenol	108-95-2	0.039		3.6	(1)
			Cyanides (Total)	57-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	02		NA	
			Lead	7439-92-1	0.037		NA	
K051	NA	Table CCWE in 268.41.	Acenaphthene	83-32-9	0.059		NA	
			Anthracene	120-12-7	0.059		28	(1)
			Benzene	71-43-2	0.14		14	(1)
			Benzo (a) anthracene	50-32-8	0.059		20	(1)
			Benzo (a) pyrene	117-81-7	0.061		12	(1)
			Bis (2-ethylhexyl) phthalate	75-15-0	0.28		7.3	(1)
			Chrysene	2218-01-9	0.059		15	(1)
			Di-n-butyl phthalate	105-67-9	0.057		3.6	(1)
			Ethylbenzene	100-41-4	0.057		14	(1)
			Fluorene	86-73-7	0.059		NA	
			Naphthalene	91-20-3	0.059		42	(1)
			Phenanthrene	85-01-8	0.059		34	(1)
			Phenol	108-95-2	0.039		3.6	(1)
			Pyrene	129-00-0	0.067		36	(1)
			Tolune	108-88-3	0.08		14	(1)
			Xylene(s)		0.32		22	(1)
			Cyanides Total)	57-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
K052	NA	Table CCWE in 268.41.	Benzene	71-43-2	0.14		14	(1)
			Benzo (a) pyrene	50-32-8	0.061		12	(1)
			o-Cresol	95-48-7	0.11		6.2	(1)
			p-Cresol	106-44-5	0.77		6.2	(1)
			2,4-Dimethylphenol	105-67-9	0.036		NA	
			Ethylbenzene	100-41-4	0.057		14	(1)
			Naphthalene	91-20-3	0.059		42	(1)
			Phenanthrene	85-01-8	0.059		34	(1)
			Phenol	108-95-2	0.039		3.6	(1)
			Toluene	108-88-3	0.08		14	(1)
			Xylenes		0.32		22	(1)
			Cyanides (Total)	56-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
K087	NA	Table CCWE in 268.41.	Acenaphthalene	208-96-8	0.059		3.4	
			Benzene	71-43-2	0.14		0.071	(1)
			Chrysene	218-01-9	0.059		3.4	(1)
			Fluoranthene	206-44-0	0.068		3.4	(1)

TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
			Indeno (1,2,3-cd) pyrene	193-39-5	0.0055		3.4	(1)
			Naphthalene	91-20-3	0.059		3.4	(1)
			Phenanthrene	85-01-8	0.059		3.4	(1)
			Toluene	108-88-3	0.08		0.65	(1)
			Xylenes		0.32		0.07	(1)
			Lead	7439-92-1	0.037		NA	
K093	NA		Phthalic anhydride (measured as Phthalic acid).	85-44-9	0.069		28	(1)
K094	NA		Phthalic anhydride (measured as Phthalic acid).	85-44-9	0.069		28	(1)
*	*	*	*	*	*		*	
K117	NA		Ethylene dibromide		0.028		15	
			Methyl bromide		0.11		15	
			Chloroform		0.046		5.6	
			1,1,2-Tribromoethane		0.63		15	
K118	NA		Ethylene dibromide		0.028		15	
			Methyl bromide		0.11		15	
			Chloroform		0.046		5.6	
			1,1,2-Tribromoethane		0.63		15	
K131	NA		Methyl bromide		0.11		15	
K132	NA		Methyl bromide		0.11		15	
K136	NA		Ethylene dibromide		0.028		15	
			Methyl bromide		0.11		15	
			Chloroform		0.046		5.6	
			1,1,2-Tribromoethane		0.63		15	
*	*	*	*	*	*		*	
U028	Bis(2-ethylhexyl) phthalate.		Bis(2-ethylhexyl) phthalate	117-81-7	0.28		28	(1)
*	*	*	*	*	*		*	
U069	Di-n-butyl phthalate.		Di-n-butyl phthalate	84-74-2	0.057		28	(1)
*	*	*	*	*	*		*	
U088	Diethyl phthalate.		Diethyl phthalate	84-66-2	0.2		28	(1)
*	*	*	*	*	*		*	
U102	Dimethyl phthalate.		Dimethyl phthalate	131-11-3	0.047		28	(1)
*	*	*	*	*	*		*	
U107	Di-n-octyl phthalate.		Di-n-octyl phthalate	117-84-0	0.017		28	(1)
*	*	*	*	*	*		*	
U190	Phthalate anhydride (measured as Phthalic acid).		Phthalate anhydride (measured as Phthalic acid).	85-44-9	0.069		28	(1)

[1] Treatment standards for this organic constituent were established based upon incineration in units operated in accordance with the technical requirements of 40 CFR 264 Subpart O or Part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may certify compliance with these treatment standards according to provisions in 40 CFR Section 268.7.

Note: NA means not applicable.

* * * * *

24. In subpart D § 268.45 with tables 1 and 2 is added to read as follows:

§ 268.45 Treatment standards for contaminated debris.

(a) Treatment standards. Contaminated debris must be treated prior to land disposal as follows unless EPA determines under § 261.3(e)(2) of this chapter that the debris is no longer contaminated with hazardous waste:

(1) General. Contaminated debris that is contaminated with a "contaminant subject to treatment" defined by paragraph (b) of this section must be treated using the technology or technologies identified in appendix IX to this part 268, as specified in table 1 of this section for each contaminant category represented by a "contaminant subject to treatment". Table 2 of this section assigns each potential contaminant to a contaminant category for determining the required treatment technology. The acceptable treatment technologies for each combination of debris category and contaminant category are identified by a "YES" in table 1.

(2) Characteristic debris. Contaminated debris that exhibits the characteristic of ignitability or reactivity identified under §§ 261.21 and 261.23 of this chapter, respectively, must be treated to deactivate the ignitability or reactivity characteristic.

(3) Mixtures of debris types. If a mixture of debris types is not separated according to the debris categories identified in table 1 of this section for subsequent treatment of each category, each debris type in the mixture must be treated by technologies identified with a YES in table 1 of this section. If table 1 does not allow use of the same treatment technology for all debris categories (and contaminant categories) in the mixture, a treatment train of sequential treatment technologies must be used. If an immobilization technology is used in a treatment train, it must be the last treatment technology in the train.

(4) Mixtures of Contaminant Types. Debris that is contaminated with contaminants subject to treatment identified under paragraph (b) of this section that are assigned to two or more contaminant categories provided in table 2 of this section must be treated

for each contaminant category by a technology identified with a YES in table 1 of this section. If table 1 does not allow use of the same treatment technology for all contaminant categories (and debris categories) in the debris, a treatment train of sequential treatment technologies must be used. If an immobilization technology is used in a treatment train, it must be the last treatment technology in the train.

(5) Waste PCBs. Contaminated debris that is also a waste PCB under 40 CFR part 761 is subject to the requirements of either 40 CFR part 761 or the requirements of this section, whichever are more stringent.

(b) Contaminants subject to treatment. Contaminated debris must be treated for each "contaminant subject to treatment." Except as provided by paragraph (b)(4) of this section, the contaminants subject to treatment must be determined as follows:

(1) Toxicity characteristic debris. The contaminants subject to treatment for debris that exhibits the Toxicity Characteristic (TC) by § 261.24 of this chapter, and also would exhibit the Extraction Procedure (EP) toxicity characteristic under old § 261.24 are those constituents for which the debris exhibits the TC and EP toxicity characteristic.

(2) Debris contaminated with listed waste. The contaminants subject to treatment for debris that is contaminated with a prohibited listed hazardous waste are those constituents for which BDAT standards are established for the waste under §§ 268.41 and 268.43, and all toxic constituents on appendix VIII, part 261 of this chapter, that the owner or operator could have reason to know may contaminate the debris at detectable levels using procedures prescribed by Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846, incorporated by reference SW-846. When reasonably available, information from generators must be used to identify appendix VIII constitutents that may contaminate the debris at detectable levels; sampling and analysis is not required.

(3) Cyanide reactive debris. Contaminated debris that is reactive because of cyanide must be treated for cyanide.

(4) Generic treatment technologies. The owner or operator of a treatment facility need not make determinations regarding the presence of contaminants subject to treatment if the debris is treated with a generic treatment technology that will effectively treat all contaminants. Generic treatment technologies for particular debris categories are identified in appendix XI to this part 268.

(5) Inherently contaminated debris. (i) Debris that is fabricated from metals identified as D004–D011 and that exhibits as fabricated the toxicity characteristic under both the Toxicity Characteristic Leaching Procedure and the Extraction Procedure is considered to be inherently contaminated debris.

(ii) Inherently contaminated debris must be treated in compliance with paragraph (a)(1) of this section for other contaminants subject to treatment. Following such treatment, if the debris continues to exhibit the toxicity characteristic under both the Toxicity Characteristic Leaching Procedure and the Extraction Procedure due to its inherent content, it must be either immobilized prior to land disposal in a RCRA subtitle C facility or recycled as provided in § 261.6(a)(3)(iv) of this chapter. Inherently hazardous debris that is not contaminated with other contaminants subject to treatment may be recycled as provided in § 261.6(a)(3)(iv) of this chapter without treatment under paragraph (a)(1) of this section, or immobilized and disposed in a RCRA subtitle C facility.

(c) Requirements to ensure effective treatment. Owners and operators of contaminated debris treatment units must comply with the performance standards specified in appendix IX to this part 268, in order for the debris to be considered to meet the treatment standards of this section.

(d) Conditioned exclusion of treated debris. Contaminated debris that has been treated using one of the required extraction or destruction technologies in table 1 of this section and that does not exhibit a characteristic of hazardous waste identified under subpart C, part 261, of this chapter after treatment is not a hazardous waste. Contaminated debris contaminated with listed waste that is treated by an immobilization technology specified in table 1 is a hazardous waste and may be managed in a subtitle C facility only. Contaminated debris that exhibits a characteristic identified in 40 CFR part 261 subpart C that exhibits a characteristic after being treated by such immobilization technology is a hazardous waste and may be managed in a subtitle C facility only.

(e) Treatment residuals. (1) General requirements. Except as provided by paragraphs (e)(2) and (e)(4) of this section:

(i) Residue from the treatment of contaminated debris is subject to the F039 nonwastewater and wastewater treatment standards under § 268.43 for all contaminants subject to treatment defined by paragraph (b) of this section and for all constituents in appendix VIII, part 261 of this chapter, that are added to the debris or residue during treatment; and

(ii) Residue from the deactivation of contaminated debris that exhibits the ignitability or reactivity characteristic of §§ 261.21 or 261.23 of this chapter, respectively, must be deactivated prior to land disposal.

(2) Nontoxic debris. Residue from the deactivation of ignitable or reactive characteristic contaminated debris that is not contaminated with a contaminant subject to treatment defined by paragraph (b) of this section, must be deactivated prior to land disposal and is not subject to the F039 nonwastewater and wastewater treatment standards under § 268.43.

(3) Cyanide-reactive debris. Residue from the treatment of debris that is reactive because of cyanide must meet the F039 standards for D003 under § 268.43.

(4) Ignitable nonwastewater residue. Ignitable nonwastewater residue containing equal to or greater than 10% total organic carbon is subject to the technology-based standards for D001: "Ignitable Liquids based on 261.21(a)(1)" under § 268.42.

(5) Residue from spalling. Layers of debris removed by spalling are contaminated debris that remain subject to the treatment standards of this section.

(6) Residue from thermal destruction. Inert debris separated from the residue resulting from the thermal destruction of contaminated debris that is not contaminated with a metal contaminant subject to treatment identified by paragraph (b) of this section is excluded from regulation as hazardous waste under § 261.3(e)(1) of this chapter.

TABLE 1.—DEBRIS TREATMENT STANDARDS

Contaminant category and treatment technology [1]	Debris category					
	Metal objects	Brick, concrete, rock, pavement	Glass	Wood	Paper, cloth	Rubber, plastic
Halogenated Pesticides and Aromatics CCO1:						
Extraction (EXTRC) [2]						
Abrasive blasting	YES	YES	YES	YES	NO	NO
Acid washing	YES	YES	YES	YES	YES	YES
Electropolishing	YES	NO	NO	NO	NO	NO
Liquid phase solvent extraction	YES	YES	YES	YES	YES	YES
Scarification and grinding	NO	YES	NO	YES	NO	NO
Spalling	NO	YES	YES	NO	NO	NO
Thermal desorption	YES	YES	YES	YES	YES	YES
Vibratory finishing	YES	YES	YES	YES	NO	YES
Vapor phase solvent extraction	YES	YES	YES	YES	YES	YES
Water washing and spraying	YES	YES	YES	YES	YES	YES
Destruction (DSTRC):						
Biodegradation	YES	YES	YES	YES	YES	YES
Chemical oxidation	YES	YES	YES	NO	NO	YES
Chemical reduction	YES	YES	YES	NO	NO	YES
Photochemical treatment	YES	YES	YES	NO	NO	YES
Thermal destruction	YES	YES	YES	YES	YES	YES
Immobilization (IMMBL):						
Macroencapsulation	NO	NO	NO	NO	NO	NO
Microencapsulation	NO	NO	NO	NO	NO	NO
Sealing	YES	YES	YES	NO	NO	NO
Dioxins, Furans, and Their Precursors CCO2:						
Extraction (EXTRC):						
Abrasive blasting	YES	YES	YES	YES	NO	NO
Acid washing	YES	YES	YES	YES	YES	YES
Electropolishing	YES	NO	NO	NO	NO	NO
Liquid phase solvent extraction	YES	YES	YES	YES	YES	YES
Scarification and grinding	NO	YES	NO	YES	NO	NO
Spalling	NO	YES	YES	NO	NO	NO
Thermal desorption	YES	YES	YES	YES	YES	YES
Vibratory finishing	YES	YES	YES	YES	NO	YES
Vapor phase solvent extraction	YES	YES	YES	YES	YES	YES
Water washing and spraying	YES	YES	YES	YES	YES	YES
Destruction (DSTRC):						
Biodegradation	NO	NO	NO	NO	NO	NO
Chemical oxidation	YES	YES	YES	NO	NO	YES
Chemical reduction	YES	YES	YES	NO	NO	YES
Photochemical treatment	YES	YES	YES	NO	NO	YES
Thermal destruction	YES	YES	YES	YES	YES	YES
Immobilization (IMMBL):						
Macroencapsulation	NO	NO	NO	NO	NO	NO
Microencapsulation	NO	NO	NO	NO	NO	NO
Sealing	YES	YES	YES	NO	NO	NO
Halogenated Aliphatic Compounds CCO3:						
Extraction (EXTRC):						
Abrasive blasting	YES	YES	YES	YES	NO	NO
Acid washing	YES	YES	YES	YES	YES	YES
Electropolishing	YES	NO	NO	NO	NO	NO
Liquid phase solvent extraction	YES	YES	YES	YES	YES	YES
Scarification and grinding	NO	YES	NO	YES	NO	NO
Spalling	NO	YES	YES	NO	NO	NO
Thermal desorption	YES	YES	YES	YES	YES	YES
Vibratory finishing	YES	YES	YES	YES	NO	YES
Vapor phase solvent extraction	YES	YES	YES	YES	YES	YES
Water washing and spraying	YES	YES	YES	YES	YES	YES
Destruction (DSTRC):						
Biodegradation	YES	YES	YES	YES	YES	YES
Chemical oxidation	YES	YES	YES	NO	NO	YES
Chemical reduction	NO	NO	NO	NO	NO	NO
Photochemical treatment	NO	NO	NO	NO	NO	NO
Thermal destruction	YES	YES	YES	YES	YES	YES
Immobilization (IMMBL):						
Macroencapsulation	NO	NO	NO	NO	NO	NO
Microencapsulation	NO	NO	NO	NO	NO	NO
Sealing	YES	YES	YES	NO	NO	NO
Nitrated Aromatic and Aliphatic Compounds CCO4:						
Extraction (EXTRC):						
Abrasive blasting	YES	YES	YES	YES	NO	NO
Acid washing	YES	YES	YES	YES	YES	YES
Electropolishing	YES	NO	NO	NO	NO	NO
Liquid phase solvent extraction	YES	YES	YES	YES	YES	YES
Scarification and grinding	NO	YES	NO	YES	NO	NO
Spalling	NO	YES	YES	NO	NO	NO
Thermal desorption	YES	YES	YES	YES	YES	YES

TABLE 1.—DEBRIS TREATMENT STANDARDS—Continued

Contaminant category and treatment technology [1]	Debris category					
	Metal objects	Brick, concrete, rock, pavement	Glass	Wood	Paper, cloth	Rubber, plastic
Vibratory finishing	YES	YES	YES	YES	NO	YES
Vapor phase solvent extraction	YES	YES	YES	YES	YES	YES
Water washing and spraying	YES	YES	YES	YES	YES	YES
Destruction (DSTRC):						
(Biodegradation	YES	YES	YES	YES	YES	YES
Chemical oxidation	YES	YES	YES	NO	NO	YES
Chemical reduction	NO	NO	NO	NO	NO	NO
Photochemical treatment	NO	NO	NO	NO	NO	NO
Thermal destruction	YES	YES	YES	YES	YES	YES
Immobilization (IMMBL):						
Macroencapsulation	NO	NO	NO	NO	NO	NO
Microencapsulation	NO	NO	NO	NO	NO	NO
Sealing	YES	YES	YES	NO	NO	NO
Non-Polar Aromatics, Heterocycles, and Other Organic Compounds CC05:						
Extraction (EXTRC):						
Abrasive blasting	YES	YES	YES	YES	NO	NO
Acid washing [8]	YES	YES	YES	YES	YES	YES
Electropolishing	YES	NO	NO	NO	NO	NO
Liquid phase solvent extraction	YES	YES	YES	YES	YES	YES
Scarification and grinding	NO	YES	NO	YES	NO	NO
Spalling	NO	YES	YES	NO	NO	NO
Thermal desorption	YES	YES	YES	YES	YES	YES
Vibratory finishing	YES	YES	YES	YES	NO	YES
Vapor phase solvent extraction	YES	YES	YES	YES	YES	YES
Water washing and spraying	YES	YES	YES	YES	YES	YES
Destruction (DSTRC):						
Biodegradation	YES	YES	YES	YES	YES	YES
Chemical oxidation	YES	YES	YES	NO	NO	YES
Chemical reduction	NO	NO	NO	NO	NO	NO
Photochemical treatment	NO	NO	NO	NO	NO	NO
Thermal destruction	YES	YES	YES	YES	YES	YES
Immobilization (IMMBL):						
Macroencapsulation	NO	NO	NO	NO	NO	NO
Microencapsulation	NO	NO	NO	NO	NO	NO
Sealing	YES	YES	YES	NO	NO	NO
Polynuclear Aromatics CC06:						
Extraction (EXTRC):						
Abrasive blasting	YES	YES	YES	YES	NO	NO
Acid washing	YES	YES	YES	YES	YES	YES
Electropolishing	YES	NO	NO	NO	NO	NO
Liquid phase solvent extraction	YES	YES	YES	YES	YES	YES
Scarification and grinding	NO	YES	NO	YES	NO	NO
Spalling	NO	YES	YES	NO	NO	NO
Thermal desorption	YES	YES	YES	YES	YES	YES
Vibratory finishing	YES	YES	YES	YES	NO	YES
Vapor phase solvent extraction	YES	YES	YES	YES	YES	YES
Water washing and spraying	YES	YES	YES	YES	YES	YES
Destruction (DSTRC):						
Biodegradation	YES	YES	YES	YES	YES	YES
Chemical oxidation	YES	YES	YES	NO	NO	YES
Chemical reduction	NO	NO	NO	NO	NO	NO
Photochemical treatment	NO	NO	NO	NO	NO	NO
Thermal destruction	YES	YES	YES	YES	YES	YES
Immobilization (IMMBL):						
Macroencapsulation	NO	NO	NO	NO	NO	NO
Microencapsulation	NO	NO	NO	NO	NO	NO
Sealing	YES	YES	YES	NO	NO	NO
Other Non-Halogenated Polar Organic Compounds CC07:						
Extraction (EXTRC):						
Abrasive blasting	YES	YES	YES	YES	NO	NO
Acid washing	NO	NO	NO	NO	NO	NO
Electropolishing	YES	NO	NO	NO	NO	NO
Liquid phase solvent extraction	YES	YES	YES	YES	YES	YES
Scarification and grinding	NO	YES	NO	YES	NO	NO
Spalling	NO	YES	YES	NO	NO	NO
Thermal desorption	YES	YES	YES	YES	YES	YES
Vibratory finishing	YES	YES	YES	YES	NO	YES
Vapor phase solvent extraction	YES	YES	YES	YES	YES	YES
Water washing and spraying	YES	YES	YES	YES	YES	YES
Destruction (DSTRC):						
Biodegradation	YES	YES	YES	YES	YES	YES
Chemical oxidation	YES	YES	YES	NO	NO	YES
Chemical reduction	NO	NO	NO	NO	NO	NO
Photochemical treatment	NO	NO	NO	NO	NO	NO
Thermal destruction	YES	YES	YES	YES	YES	YES

TABLE 1.—DEBRIS TREATMENT STANDARDS—Continued

Contaminant category and treatment technology [1]	Debris category					
	Metal objects	Brick, concrete, rock, pavement	Glass	Wood	Paper, cloth	Rubber, plastic
Immobilization (IMMBL):						
Macroencapsulation	NO	NO	NO	NO	NO	NO
Microencapsulation	NO	NO	NO	NO	NO	NO
Sealing	YES	YES	YES	NO	NO	NO
Non-Volatile Metals CC08:						
Extraction (EXTRC):						
Abrasive blasting	YES	YES	YES	YES	NO	NO
Acid washing	YES	YES	YES	YES	YES	YES
Electropolishing	YES	NO	NO	NO	NO	NO
Liquid phase solvent extraction	YES	YES	YES	YES	YES	YES
Scarification and grinding	NO	YES	NO	YES	NO	NO
Spalling	NO	YES	YES	NO	NO	NO
Thermal desorption	NO	NO	NO	NO	NO	NO
Vibratory finishing	YES	YES	YES	YES	NO	YES
Vapor phase solvent extraction	NO	NO	NO	NO	NO	NO
Water washing and spraying	YES	YES	YES	YES	YES	YES
Destruction (DSTRC):						
Biodegradation	NO	NO	NO	NO	NO	NO
Chemical oxidation	NO	NO	NO	NO	NO	NO
Chemical reduction [4]	NO	NO	NO	NO	NO	NO
Photochemical treatment	NO	NO	NO	NO	NO	NO
Thermal destruction	NO	NO	NO	YES	YES	YES
Immobilization (IMMBL):						
Macroencapsulation	YES	YES	YES	NO	NO	NO
Microencapsulation	YES	YES	YES	NO	NO	NO
Sealing	YES	YES	YES	NO	NO	NO
Volatile Metals CC09:						
Extraction (EXTRC):						
Abrasive blasting	YES	YES	YES	YES	NO	NO
Acid washing [5]	YES	YES	YES	YES	YES	YES
Electropolishing	YES	NO	NO	NO	NO	NO
Liquid phase solvent extraction	YES	YES	YES	YES	YES	YES
Scarification and grinding	NO	YES	NO	YES	NO	NO
Spalling	NO	YES	YES	NO	NO	NO
Thermal desorption	NO	NO	NO	NO	NO	NO
Vibratory finishing	YES	YES	YES	YES	NO	YES
Vapor phase solvent extraction	NO	NO	NO	NO	NO	NO
Water washing and spraying	YES	YES	YES	YES	YES	YES
Destruction (DSTRC):						
Biodegradation	NO	NO	NO	NO	NO	NO
Chemical oxidation	NO	NO	NO	NO	NO	NO
Chemical reduction	NO	NO	NO	NO	NO	NO
Photochemical treatment	NO	NO	NO	NO	NO	NO
Thermal destruction	NO	NO	NO	YES	YES	YES
Immobilization (IMMBL):						
Macroencapsulation	YES	YES	YES	NO	NO	NO
Microencapsulation [6]	YES	YES	YES	NO	NO	NO
Sealing	YES	YES	YES	NO	NO	NO
Non-Metal Inorganics CC10:						
Extraction (EXTRC):						
Abrasive blasting	YES	YES	YES	YES	NO	NO
Acid washing	NO	NO	NO	NO	NO	NO
Electropolishing	YES	NO	NO	NO	NO	NO
Liquid phase solvent extraction	YES	YES	YES	YES	YES	YES
Scarification and grinding	NO	YES	NO	YES	NO	NO
Spalling	NO	YES	YES	NO	NO	NO
Thermal desorption	NO	NO	NO	NO	NO	NO
Vibratory finishing	YES	YES	YES	YES	NO	YES
Vapor phase solvent extraction	NO	NO	NO	NO	NO	NO
Water washing and spraying	YES	YES	YES	YES	YES	YES
Destruction (DSTRC):						
Biodegradation	NO	NO	NO	NO	NO	NO
Chemical oxidation	YES	YES	YES	NO	NO	YES
Chemical reduction	NO	NO	NO	NO	NO	NO
Photochemical treatment	NO	NO	NO	NO	NO	NO
Thermal destruction	YES	YES	YES	YES	YES	YES
Immobilization (IMMBL):						
Macroencapsulation	NO	NO	NO	NO	NO	NO
Microencapsulation	NO	NO	NO	NO	NO	NO
Sealing	NO	NO	NO	NO	NO	NO

Key: YES-Technology is BDAT for specific debris/contaminant combination table; NO-Technology is not BDAT for specific debris/contaminant combination.

[1] Treatment technologies are defined in Table 1 of 40 CFR 268.45. Non-wastewater, and wastewater residuals from treatment of debris are subject to numerical standards for F039.

[2] Contaminated surfaces layers that have been removed by spalling are contaminated debris and must be treated to meet the debris standard.

[3] Acid washing is BDAT for heterocycles but is not BDAT for simple, non-polar aromatics.

[4] Chemical reduction of hexavalent chromium contaminated debris is BDAT.
[5] Acid washing is not BDAT for arsenic contaminated debris.
[6] Microencapsulation is not BDAT for arsenic and mercury contaminated debris.

TABLE 2.—SPECIFIC CONSTITUENTS FOR EACH CONTAMINANT CATEGORY

Contaminant category	Description of contaminant category	
	Constituent	CAS No.
Halogenated Pesticides and Aromatics, CC01:		
Halogenated Non-Polar Aromatic Compounds:		
	Chlorinated benzenes, N.O.S.*	—
	Chlorobenzene	108-90-7
	Chlorobenzilate	510-15-6
	beta-Chloronaphthalene	91-58-7
	o-Dichlorobenzene	95-50-1
	m-Dichlorobenzene	541-73-1
	p-Dichlorobenzene	106-46-7
	Dichlorobenzene, N.O.S.*	25321-22-6
	Dichlorophenylarsine	696-28-6
	Hexachlorobenzene	118-74-1
	Hexachlorophene	70-30-4
	Chlorinated napthalene, N.O.S.*	—
	Pentachlorobenzene	608-93-5
	1,2,4,5-Tetrachlorobenzene	95-94-3
	1,2,4-Trichlorobenzene	120-82-1
	Benzal chloride	98-87-3
	p,p'-DDD	72-54-8
	p,p'-DDE	72-55-9
	p,p'-DDT	50-29-3
	Hexachlorocyclopentadiene	77-47-4
	1-(o-Chlorophenyl)thiourea	5344-82-1
	Benzotrichloride	98-07-7
	Benzyl chloride	100-44-7
	Heptachlor	76-44-8
Halogenated Phenols, Cresols, and Other Polar Aromatics:		
	Chlorinated phenol, N.O.S.*	—
	p-Chloroaniline	106-47-8
	o-Chlorophenol	95-57-8
	3,3'-Dichlorobenzidine	91-94-1
	2,4-Dichlorophenol	120-83-2
	2,6-Dichlorophenol	87-65-0
	4,4'-Methylenebis(2-chloroaniline)	101-14-4
	Pentachlorophenol	87-86-5
	2,3,4,6-Tetrachlorophenol	58-90-2
	2,4,5-Trichlorophenol	95-95-4
	2,4,6-Trichlorophenol	88-06-2
	p-Chloro-m-cresol	59-50-7
	Methoxychlor	72-43-5
	4-Bromophenyl phenyl ether	101-55-3
	Pentachloronitrobenzene	82-68-8
	3-Chloropropionitrile	542-76-7
	Acetyl chloride	75-36-5
	Allyl chloride	107-05-1
	Bromoacetone	598-31-2
	Chloral	75-87-6
	Chlorambucil	305-03-3
	Chloroacetaldehyde	107-20-0
	Chloromethyl methyl ether	107-30-2
	Chloroprene	126-99-8
	Diallate	2303-16-4
	Endosulfan	115-29-7
	Epichlorohydrin	106-89-8
	Fluoroacetamide	640-19-7
	Fluoroacetic acid, sodium salt	62-74-8
	Melphalan	148-82-3
	Methyl chlorocarbonate	79-22-1
	Methyl iodide	74-88-4
	Mustard gas	505-60-2
	Nitrogen mustard	51-75-2
	Nitrogen mustard N-oxide	126-85-2
	Nitrogen mustard, hydrochloride salt	—
	Nitrogen mustard, N-Oxide, hydro-chloride salt	—
	Propylene dichloride	78-87-5
	Uracil mustard	66-75-1
Halogenated Cyclic Aliphatics, Ethers, Esters, and Ketones:		
	Aramite	140-57-8
	Aldrin	309-00-2
	Lindane	58-89-9
	Chlordane	57-74-9
	Chloroalkyl ethers, N.O.S.*	—
	Dieldrin	60-57-1
	Endrin	72-20-8

TABLE 2.—SPECIFIC CONSTITUENTS FOR EACH CONTAMINANT CATEGORY—Continued

Contaminant category	Description of contaminant category	
	Constituent	CAS No.
	Endrin metabolites	—
	Heptachlor epoxide	1024-57-3
	Isodrin	465-73-6
	Kepone	143-50-0
	Toxaphene	8001-35-2
	2-Chloroethyl vinyl ether	110-75-8
	Bis(2-chloroethoxyl)methane	111-91-1
	Bis(2-chloroethyl)ether	111-44-4
	Bis(2-Chloroisopropyl)ether	108-60-1
	Dichloromethyl ether	542-88-1
	2-Picoline	109-06-8
	4-Aminopyridine	504-24-5
	Aflatoxins	1402-68-2
	Amitrole	61-82-5
	Benzidine	92-87-5
	Brucine	357-57-3
	Cyclophosphamide	50-18-0
	Dihydrosafrole	94-58-6
	Mitomycin C	50-07-7
	N-Nitrosonornicotine	16543-55-8
	N-Nitrosopyrrolidine	930-55-2
	N-Nitrososarcosine	13256-22-9
	Nicotine	54-11-5
	Nicotine salts	—
	O,O-Diethyl O-pyrazinyl phosphorothioate	297-97-2
	o-Toluidine	95-53-4
	o-Toluidine hydrochloride	636-21-5
	p-Toluidine	106-49-0
	Phenylthiourea	103-85-5
	Saccharin	81-07-2
	Saccharin salts	—
	Strychnine	57-24-9
	Strychnine salts	—
	Trypan blue	72-57-1
	Warfarin (<0.3%)	81-81-2
	Warfarin (>0.3%)	81-81-2
	Warfarin salts (<0.3%)	—
	Warfarin salts (>0.3%)	—
Dioxins, Furans, and Their Precursors, CC02:		
Dioxins/Furans, and Their Precursors:		
	Hexachlorodibenzo-p-dioxins	—
	Hexachlorodibenzofurans	—
	Pentachlorodibenzo-p-dioxins	—
	Pentachlorodibenzofurans	—
	Tetrachlorodibenzo-p-dioxins	—
	Tetrachlorodibenzofurans	—
	2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746-01-6
	2,4-Dichlorophenoxyacetic acid	94-75-7
	2,4, D salts and esters	—
	Silvex (2,4,5-TP)	93-72-1
	2,4,5-Trichlorophenoxyacetic acid	93-76-5
	Trichloromethanethiol	75-70-7
Halogenated Aliphatic Compounds, CC03:		
Halogenated Aliphatic Compounds:		
	Halomethanes, N.O.S.*	—
	Methyl bromide	74-83-9
	Carbon tetrachloride	56-23-5
	Chlorinated ethane, N.O.S.*	—
	Chlorinated fluorocarbons, N.O.S.*	—
	Chloroform	67-66-3
	Methyl chloride	74-87-3
	1,2-Dibromo-3-chloropropane	96-12-8
	Ethylene dibromide	106-93-4
	Methylene bromide	74-95-3
	Dichlorodifluoromethane	75-71-8
	1,1-Dichloroethane	75-34-3
	Ethylene dichloride	107-06-2
	1,1-Dichloroethylene	75-35-4
	1,2-Dichloroethylene	156-60-5
	1,3-Dichloropropene	542-75-6
	1,4-Dichloro-2-butene	764-41-0
	Dichloroethylene, N.O.S.*	—
	Dichloropropane, N.O.S.*	26638-19-7
	Dichloropropanol, N.O.S.*	26545-73-3
	Dichloropropene, N.O.S.*	26952-23-8
	Methylene chloride	75-09-2
	Tetrachloroethane, N.O.S.*	—
	1,1,1,2-Tetrachloroethane	630-20-6

TABLE 2.—SPECIFIC CONSTITUENTS FOR EACH CONTAMINANT CATEGORY—Continued

Contaminant category	Description of contaminant category	
	Constituent	CAS No.
	1,1,2,2-Tetrachloroethane	79-34-5
	Tetrachloroethene	127-18-4
	Bromoform	75-25-2
	Methyl chloroform	71-55-6
	1,1,2-Trichloroethane	79-00-5
	Trichloroethylene	79-01-6
	Trichloromonofluoromethane	75-69-4
	Trichloropropane, N.O.S.*	—
	1,2,3-Trichloropropane	96-18-4
	Vinyl chloride	75-01-4
	Hexachlorobutadiene	87-68-3
	Hexachloroethane	67-72-1
	Hexachloropropene	1888-71-7
	Pentachloroethane	76-01-7
	Tris(2,3-dibromopropyl)phosphate	126-72-7
	1,3,5-Trinitrobenzene	99-35-4
	2-Cyclohexyl-4,6-dinitrophenol	131-89-5
	2-Nitropropane	79-46-9
	Diethyl-p-nitrophenyl phosphate	311-45-5
	Dimethylcarbamoyl chloride	79-44-7
	MNNG	70-25-7
	Nitroglycerin	55-63-0
	Tetranitromethane	509-14-8
Nitrated Aromatic and Aliphatic Compounds, CC04:		
Nitrated Aromatic and Aliphatic Compounds:		
	Cyanogen	460-19-5
	Cyanogen bromide	506-68-3
	Cyanogen chloride	506-77-4
	Dinoseb	88-85-7
	4,6-Dinitro-o-cresol	534-52-1
	2,4-Dinitrophenol	51-28-5
	2,4-Dinitrotoluene	121-14-2
	2,6-Dinitrotoluene	606-20-2
	5-Nitro-o-toluidine	99-55-8
	Methyl parathion	298-00-0
	Parathion	56-38-2
	Dinitrobenzene, N.O.S.*	25154-54-5
	p-Nitroaniline	100-01-6
	Nitrobenzene	98-95-3
	p-Nitrophenol	100-02-7
	[Deleted: 2-Nitropropane]	79-46-9
	7,12-Dimethylbenz(a)anthracene	57-97-6
	Benzo[j]fluoranthene	205-82-3
	Citrus red No. 2	6358-53-8
	Dibenzo(a,h)pyrene	189-64-0
	Dibenzo(a,i)pyrene	189-55-9
	Chlornaphazin	494-03-01
	7H-Dibenzo(c,g)carbazole	194-59-2
	Benz[c]acridine	225-51-4
	Dibenz(a,h)acridine	226-36-8
	Dibenz(a,j)acridine	224-42-0
	Nitrosamines, N.O.S.*	35576-91-10
Non-Polar Aromatics, Heterocycles, and Other Organic Compounds, CC05:		
Non-Polar Aromatics, Heterocycles, and Other Organic Compounds:		
	Coal tar creosote	8007-42-2
	Toluene	108-88-3
	Isosafrole	120-58-1
	Safrole	94-59-7
	Pyridine	110-86-1
	Benzene	71-43-2
	1,1-Dimethylhydrazine	57-14-7
	1,2:3,4-Diepoxybutane	1464-53-5
	1,2-Dimethylhydrazine	540-73-8
	1,2-Propylenimine	75-55-8
	1-Acetyl-2-thiourea	591-08-2
	2-Methyllactonitrile	75-86-5
	Aldicarb	116-06-3
	alpha,alpha-Dimethylphenethylamine	122-09-8
	alpha-Naphthylthiourea	86-88-4
	4,6-Dinitro-o-cresol salts	—
	Azaserine	115-02-6
	Creosote	—
	Cresols (Cresylic acid)	1319-77-3
	Crotonaldehyde	4170-30-3
	Cycasin	14901-08-7
	Diethylstilbesterol	56-53-1

TABLE 2.—SPECIFIC CONSTITUENTS FOR EACH CONTAMINANT CATEGORY—Continued

Contaminant category	Description of contaminant category	
	Constituent	CAS No.
	Diisopropylfluorophosphate (DFP)	55-91-4
	Dimethoate	60-51-5
	Dimethyl sulfate	77-78-1
	Dithiobiuret	541-53-7
	Endothal	145-73-3
	Epinephrine	51-43-4
	Ethyl carbamate (urethane)	51-79-6
	Ethyl methanesulfonate	62-50-0
	Ethylene glycol monoethyl ether	110-80-5
	Ethylenebisdithiocarbamic acid	111-54-6
	Ethylenebisdithiocarbamic acid, salts and esters	—
	Ethyleneimine	151-56-4
	Ethylenethiourea	96-45-7
	Formaldehyde	50-00-0
	Formic acid	64-18-6
	Glycidylaldehyde	765-34-4
	Hexaethyl tetraphosphate	757-58-4
	Maleic anhydride	108-31-6
	Maleic hydrazide	123-33-1
	Malononitrile	109-77-3
	Methomyl	16752-77-5
	Methyl ethyl ketone peroxide	1338-23-4
	Methyl hydrazine	60-34-4
	Methyl isocyanate	624-83-9
	Methylthiouracil	56-04-2
	N,N'-Diethylhydrazine	1615-80-1
	N-Nitroso-N-ethylurea	759-73-9
	N-Nitroso-N-methylurea	684-93-5
	N-Nitroso-N-methylurethane	615-53-2
	N-Nitrosodiethanolamine	1116-54-7
	N-Nitrosomethylvinylamine	4549-40-0
	n-Propylamine	107-10-8
	O,O,O-Triethyl phosphorothioate	126-68-1
	O,O-Diethyl S-methyldithiophosphate	3288-58-2
	Octamethylpyrophosphoramide	152-16-9
	Paraldehyde	123-63-7
	Phenylenediamine	25265-76-3
	Propargyl alcohol	107-19-7
	Propylthiouracil	51-52-5
	Reserpine	50-55-5
	Streptozotocin	18883-66-4
	Tetraethyl pyrophosphate	107-49-3
	Tetraethyldithiopyrophosphate	3689-24-5
	Thioacetamide	62-55-5
	Thiomethanol	74-93-1
	Thiosemicarbazide	79-19-6
	Thiourea	62-56-6
	Thiram	137-26-8
	Toluene diisocyanate	26471-62-5
	2,4-Toluenediamine	95-80-7
	2,6-Toluenediamine	823-40-5
	3,4-Toluenediamine	496-72-0
	Toluenediamine	25376-45-8
	Tris(1-aziridinyl)phosphine sulfide	52-24-4
	1,3-Propane sultone	1120-71-4
	5-(Aminomethyl)-3-isoxazolol	2763-96-4
	Auramine	492-80-8
	Daunomycin	20830-81-3
	Lasiocarpine	303-34-1
	Phosgene	75-44-5
	Selenourea	630-10-4
	Thiofanox	39196-18-4
Polynuclear Aromatics, CC06:		
Polynuclear Aromatics:		
	Benz(a)anthracene	56-55-3
	Benzo(b)fluoranthene	205-99-2
	Benzo(a)pyrene	50-32-8
	Chrysene	218-01-9
	Dibenz(a,h)anthracene	53-70-3
	Dibenzo(a,e)pyrene	192-65-4
	Fluoranthene	206-44-0
	Indeno(1,2,3-cd)pyrene	193-39-5
	Methapyrilene	91-80-5
	3-Methylcholanthrene	56-49-5
	Naphthalene	91-20-3
	Dichlorophenylarsine	696-28-6
	Aluminum phosphide	20859-73-8
	Ammonium vanadate	7803-55-6

TABLE 2.—SPECIFIC CONSTITUENTS FOR EACH CONTAMINANT CATEGORY—Continued

Contaminant category	Description of contaminant category	
	Constituent	CAS No.
	Benzenearsonic acid	98-05-5
	Cacodylic acid	75-60-5
	Diethylarsine	692-42-2
	Osmium tetroxide	20816-12-0
	Tetraethyl lead	78-00-2
Other Nonhalogenated Polar Organic Compounds, CC07·		
Other Nonhalogenated Polar Organic Compounds:		
	2-Acetylaminofluorene	53-96-3
	Acrylamide	79-06-1
	4-Aminobiphenyl	92-67-1
	Allyl alcohol	107-18-6
	Aniline	62-53-3
	3,3'-Dimethoxybenzidine	119-90-4
	p-Dimethylaminoazobenzene	60-11-7
	3,3'-Dimethylbenzidine	119-93-7
	Di-n-propylnitrosamine	621-64-7
	Diphenylamine	122-39-4
	1,2-Diphenylhydrazine	122-66-7
	alpha-Naphthylamine	134-32-7
	beta-Naphthylamine	91-59-8
	N-Nitrosodi-n-butylamine	924-16-3
	N-Nitrosodiethylamine	55-18-5
	*N-Nitrosodimethylamine	62-75-9
	N-Nitrosomethylethylamine	10595-95-6
	N-Nitrosomorpholine	59-89-2
	N-Nitrosopiperidine	100-75-4
	Phenacetin	62-44-2
	2,4-Dimethylphenol	105-67-9
	Phenol	108-95-2
	Resorcinol	108-46-3
	Acrolein	107-02-8
	Carbon disulfide	75-15-0
	Ethyl methacrylate	97-63-2
	Isobutyl alcohol	78-83-1
	Ethylene oxide	75-21-8
	Thiophenol	108-98-5
	Methyl ethyl ketone	78-93-3
	Methyl methacrylate	80-62-6
	Methyl methanesulfonate	66-27-3
	Acetophenone	98-86-2
	p-Benzoquinone	106-51-4
	Bis(2-ethylhexyl)phthalate	117-81-7
	Butylbenzyl phthalate	85-68-7
	Phthalic acid esters, N.O.S.*	—
	Diethyl phthalate	84-66-2
	Dimethyl phthalate	131-11-3
	Di-n-butyl phthalate	84-74-2
	Di-n-octyl phthalate	117-84-0
	1,4-Naphthoquinone	130-15-4
	Acetonitrile	75-05-8
	Acrylonitrile	107-13-1
	Ethyl cyanide	107-12-0
	Methacrylonitrile	126-98-7
	Disulfoton	298-04-4
	Famphur	52-85-7
	Phorate	298-02-2
	Phthalic anhydride	85-44-9
	1,4-Diethyleneoxide	123-91-1
	Pronamide	23950-58-5
	Phenylmercury acetate	62-38-4
Non-Volatile Metals, CC08:		
Non-Volatile Metals:		
	Barium	7440-39-3
	Barium compounds, N.O.S.*	—
	Barium cyanide	542-62-1
	Beryllium	7440-41-7
	Beryllium compounds, N.O.S.*	—
	Calcium chromate	—
	Chromium compounds, N.O.S.*	—
	Chromium (total)	7440-47-3
	Cobalt	7440-48-4
	Copper	7440-50-8
	Copper cyanide	544-92-3
	Manganese	7439-96-5
	Nickel	7440-02-0
	Nickel compounds, N.O.S.*	—
	Silver	7440-22-4
	Silver compounds, N.O.S.*	—

TABLE 2.—SPECIFIC CONSTITUENTS FOR EACH CONTAMINANT CATEGORY—Continued

Contaminant category	Description of contaminant category	
	Constituent	CAS No.
	Carbon oxyfluoride	353-50-4
	Vanadium	7440-6-2
	Nickel carbonyl	13463-39-3
	Nickel cyanide	557-19-7
	Silver cyanide	506-64-9
	Vanadium pentoxide	1314-62-1
Volatile Metals, CC09:		
Volatile Metals:		
	Antimony	7440-36-0
	Antimony compounds, N.O.S.*	—
	Arsenic	7440-38-2
	Arsenic compounds, N.O.S.*	—
	Arsenic acid	7778-39-4
	Arsenic pentoxide	1303-28-2
	Arsenic trioxide	1327-53-3
	Bismuth	7440-69-9
	Cadmium	7440-43-9
	Cadmium compounds, N.O.S.*	—
	Lead	7439-92-1
	Lead compounds, N.O.S.*	—
	Lead acetate	301-04-2
	Lead phosphate	7446-27-7
	Lead subacetate	1335-32-6
	Mercury	7439-97-6
	Mercury compounds, N.O.S.*	—
	Mercury fulminate	628-86-4
	Selenium	7778-49-2
	Selenium compounds, N.O.S.*	—
	Selenium sulfide	7488-56-4
	Selenium dioxide	7783-00-8
	Thallium	7440-28-0
	Thallium oxide	1314-32-5
	Thallium acetate	563-68-8
	Thallium carbonate	6533-73-9
	Thallium chloride	7791-12-0
	Thallium nitrate	10102-45-1
	Thallium selenite	12039-5-0
	Thallium sulfate	7446-18-6
	Thallium compounds, N.O.S.*	—
	Zinc	7440-66-6
	Zinc cyanide	557-21-1
	Zinc phosphide	1314-84-7
Non-Metal Inorganics, CC10:		
Non-Metal Inorganics:		
	Cyanides, N.O.S.*	—
	Hydrazine	57-12-5
	Nitric Oxide	302-01-2
	Nitrogen Dioxide	10102-43-9
	Phosphine	10102-44-0
	Radionuclides	7803-51-2
	Strontium sulfide	1314-96-1
	Sodium cyanide	143-33-9
	Calcium cyanide	592-01-8
	Hydrogen cyanide	74-90-8
	Fluorine	7782-41-4
	Hydrogen fluoride	7664-39-3
	Hydrogen sulfide	7783-06-4
	Potassium cyanide	151-50-8
	Potessium silver cyanide	506-61-6

*The abbreviation N.O.S. (not otherwise specified) signifies those members of a general class not specifically listed by name in this table.

25. In subpart D, § 268.46 is added to read as follows:

§ 268.46 Alternative treatment standards based on HTMR.

(a) Table 1 identifies alternative treatment standards for F006 and K062 nonwastewaters.

TABLE 1.—ALTERNATIVE TREATMENT STANDARDS

Waste code	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Non-wastewater concentration (mg/l) TCLP
F006; See Also Table CCWE in 268.41 and Table CCW in 268.43	Antimony	7440-36-0	2.1
	Arsenic	7440-38-2	0.055
	Barium	7440-39-3	7.6
	Beryllium	7440-41-7	0.014
	Cadmium	7440-43-9	0.19
	Chromium (Total)	7440-47-32	0.33
	Cyanide (Total) (mg/kg)	57-12-5	1.8
	Lead	7439-92-1	0.37
	Mercury	7439-97-6	0.009
	Nickel	7440-02-0	5.0
	Selenium	7782-49-2	0.16
	Silver	7440-22-4	0.30
	Thallium		0.078
	Vanadium	7440-62-2	0.23
	Zinc	7440-66-6	5.3
K062; See Also Table CCWE in 268.41 and Table CCW in 268.43	Antimony	7440-36-0	2.1
	Arsenic	7440-38-2	0.055
	Barium	7440-39-3	7.6
	Beryllium	7440-41-7	0.014
	Cadmium	7440-43-9	0.19
	Chromium (Total)	7440-47-32	0.33
	Lead	7439-92-1	0.37
	Mercury	7439-97-6	0.009
	Nickel	7440-02-0	5.0
	Selenium	7782-49-2	0.16
	Silver	7440-22-4	0.30
	Thallium		0.078
	Vanadium	7440-62-2	0.23
	Zinc	7440-66-6	5.3

26. In § 268.50 paragraphs (a)(1) and (a)(2) introductory text are revised to read as follows:

§ 268.50 Prohibitions on storage of restricted wastes.

(a) * * *

(1) A generator stores such wastes in tanks, containers, containment buildings or subpart X storage units on-site solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with the requirements in § 262.34 and parts 264 and 265 of this chapter.

(2) An owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks, containers, containment buildings, or subpart X storage units solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and:

* * * * *

27. In part 268, appendices IX and X are added to read as follows:

Appendix IX Requirements for Effective Treatment

ABRASIVE BLASTING

Removal of contaminated debris surface layers using water and/or air pressure to propel a solid media (e.g., steel shot, aluminum oxide grit, plastic beads).

Debris type	Performance standard
Metal objects	White metal finish, all paint, surface coatings, rust, visible cracks and crevices, scale, corrosion, and visible staining removed
Glass	All paint, surface coatings, scale, visible cracks and crevices and visible staining removed
Brick, concrete, rock, pavement, wood.	>0.6 centimeter surface layer removed, and all paint, surface coatings, scale, and visible staining removed

Non-Applicable Debris or Application Restriction

Objects with small or narrow surfaces.

Special Safety Precautions

Abrasive blasting frequently causes heat and sparks at the debris surface. This may cause flammable debris or contaminants to ignite and explosive contaminants to explode. Use of nonsparking abrasive or water propelled abrasive may reduce the probability that ignitable and explosive debris and contaminants will ignite or explode during abrasive blasting.

ACID WASHING

Surface treatment of contaminated debris using solutions of low pH, including (1) hydrochloric; (2) sulfuric; (3) nitric; (4) hydrofluoric; (5) chromic; (6) fluoboric; (7) phosphoric; and/or (8) other acids of equivalent efficiency applied to debris surfaces using a spray or bath with sufficient residence time and agitation such that surface contaminants and contaminated surface layers are removed.

Debris type	Performance standard
Metal objects	White metal finish, all paint, surface coatings, rust, scale, corrosion, visible cracks and crevices, and visible staining removed
Glass	All paint, surface coatings, scale, and visible staining removed
Brick, concrete, rock, pavement, wood washing quality.	Remove all paint, coatings, scale, visible staining, and visible cracks and crevices
Paper, cloth, rubber, plastic, washing quality.	Remove all visible staining

Non-Applicable Debris or Application Restrictions

Objects with small or narrow surface.[a]

Special Safety Precautions

Acids may react with some debris and contaminants to form hazardous compounds. For example, acid washing of cyanide contaminated debris could result in the formation of hydrogen cyanide (HCN).

Some acids may also react violently with some debris and contaminants, depending on the concentration of the acid and the type of debris and contaminants. Debris treaters should refer to the safety precautions specified in Material Safety Data Sheets for various acids to avoid incompatible debris/contaminant combinations. For example, concentrated sulfuric acid may react violently with certain organic compounds, such as acrylonitrile.

ELECTROPOLISHING

Surface treatment of electrically conductive debris by passing electricity of sufficient current density through an electrolytic solution in which the debris has been submerged, with sufficient residence time, temperature, and agitation such that surface contaminants and contaminated surface layers are removed.

Debris type	Performance standard
Metal objects	White metal finish, all paint, coatings, rust, scale, corrosion, visible staining, and visible cracks and crevices removed

Non-Applicable Debris or Application Restriction

Metal objects that do not conduct electricity.

Special Safety Precautions

Some electrolytes employed for electropolishing may react with debris or contaminants to form toxic or hazardous compounds. For example, acidic electrolytes may react with cyanide to form toxic hydrogen cyanide (HCN) gas. Also, some electrolytes may react violently with some debris and contaminant types, depending on the electrolyte concentration and the type of debris and contaminants.

LIQUID PHASE SOLVENT EXTRACTION

Removal of hazardous contaminants from debris surfaces and surface pores by applying an organic liquid or organic liquid solution which causes the hazardous components to enter the liquid phase and be flushed away from the debris along with the organic liquid or organic liquid solution using appropriate agitation, temperature, and residence time.

[a] Applicable to Acid Spray techniques.

Debris type	Performance standard
All debris types	Treatment must be performed in accordance with the design and operating parameters below
Design and Operating Parameters	
Contaminant solubility in solvent.	Double to at least 5% by weight
Enclosure type	Fully enclosed solvent bath or fully enclosed solvent application room
Enclosure pressure	Negative
Solvent contact	All debris surfaces during entire treatment time
Solvent contact with debris surface.	> 15 minutes
Solvent extraction quality.	Removal of all paint, coatings, and visible staining

Non-Applicable Debris or Application Restriction

Solvent selection should be based on a case-by-case determination of the permeability of the debris and the nature of the contaminant.

Special Safety Precautions

Some solvents may react violently with debris or contaminants, or they may react to form toxic or corrosive compounds. For example, acidic solvents, such as acetic acid solutions, may react with cyanides to form hydrogen cyanide (HCN) gas.

SCARIFICATION AND GRINDING

Process utilizing striking piston heads or rotating grinding wheels such that contaminated surface layers are removed and dust and airborne contaminant emissions are contained in an enclosure or captured by application of a vacuum at the point of scarification or grinding.

Debris type	Performance requirement
Brick, concrete, rock, pavement, wood.	>0.6 centimeter surface layer removed, and all paint, surface coatings, scale, visible cracks and crevices, and visible staining removed.

Non-Applicable debris or Application Restriction

Objects with small or narrow surfaces.

Special Safety Precautions

Scarification and grinding may cause heat and sparks at the debris surface, which may cause ignitable or explosive debris or contaminants to ignite or explode. Equipment that employs a water spray at the point of scarification or grinding, or wetting of the debris surface prior to treatment, may reduce the probability that ignitable or explosive debris or contaminants will ignite or explode.

SPALLING

Drilling holes at appropriate locations and depth in the debris surface and applying a tool which exerts a force on the sides of those holes such that contaminated debris surface layers are removed from the debris. The surface layer that is removed is still considered to be contaminated debris and is subject to further treatment to meet the debris standard.

Debris type	Performance standard
Brick, concrete, rock, pavement, glass.	>0.6 centimeter surface layer removed, and all paint, surface coatings, scale, visible staining and visible cracks and crevices removed

Non-Applicable Debris or Application Restrictions

Objects with small or narrow surfaces.

Special Safety Considerations

Spalling may cause heat and sparks at the debris surface, which may cause ignitable or explosive debris and contaminants to ignite or explode. Wetting the debris surface prior to treatment may reduce the probability that heat and sparks will be produced by drilling and spalling.

THERMAL DESORPTION

Heating in an enclosed chamber under either oxidizing or non-oxidizing atmospheres at sufficient operating temperature and residence time such that hazardous organic compounds are vaporized and removed from the heating chamber in a gaseous exhaust stream.

Debris type	Performance standard
All debris types	Treatment must be performed in accordance with the design and operating parameters specified below
Design and operating parameters	
Heating chamber type.	Fully enclosed
Heating chamber residence time.	≥ 60 minutes
Debris feed particle size.	< 10 cm[a]
Debris temperature at heating chamber exit.	≥ 200°C

[a] Applicable only to thermal desorption of debris other than metal or glass.

Non-Applicable Debris or Application Restrictions

None.

Special Safety Precautions

Thermal desorption debris treatment requires that debris be heated, which may cause ignitable or explosive debris or contaminants to ignite or explode. Maintaining an inert, non-oxidizing atmosphere (e.g., nitrogen) in the heating chamber may reduce the probability that ignitable or explosive debris or contaminants will ignite or explode.

VIBRATORY FINISHING

Process utilizing scrubbing media, flushing fluid, oscillating energy, and residence time such that surface contaminants and contaminated surface layers are removed from debris.

Debris type	Performance standard
Metal objects	White metal finish, all paint, surface coatings, rust, scale, corrosion, visible cracks and crevices, and visible staining removed
Brick, concrete, rock, pavement, wood, rubber, plastic.	All paint, surface coatings, scale, visible cracks and crevices, and visible staining removed
Glass	All paint, surface coatings, scale, visible cracks and crevices, and visible staining removed

Non-Applicable Debris Type or Application Restriction

None.

Special Safety Considerations

Some flushing compounds may react violently with debris or contaminants, or they may react to form toxic or corrosive compounds. For example, acidic solvents, such as acetic or hydrochloric acid, may reach with cyanides to form hydrogen cyanide (HCN).

VAPOR PHASE SOLVENT EXTRACTION

Application to debris of an organic vapor which causes hazardous components to enter the vapor phase using sufficient agitation, residence time, and temperature such that hazardous contaminants are removed from debris surfaces and surface pores and are flushed away with the organic vapor.

Debris type	Performance standard
All debris types	Treatment must be performed in accordance with the design and operating parameters specified below
Design and operating parameters	
Solvent	Vapor phase
Contaminant solubility in solvent.	Soluble to at least 5% by weight
Treatment enclosure.	Fully enclosed
Solvent treatment system pressure.	Negative
Solvent temperature.	≥ Solvent boiling point at system pressure
Debris surface exposure to solvent.	All debris surfaces ≥ 60 minutes
Solvent extraction quality.	Removal of all paint, coatings, and visible staining

Non-Applicable Debris or Application Restriction

Solvent selection should be based on a case-by-case determination of the permeability of the debris and the nature of the contaminant.

Special Safety Considerations

Some solvents may react violently with debris or contaminants, or they may react to form toxic or corrosive compounds. For example, acidic solvents, may react with cyanides to form toxic hydrogen cyanide (HCN) gas.

WATER WASHING AND SPRAYING

Application of water or steam sprays or water baths of sufficient temperature, pressure, residence time, agitation, surfactants, and detergents to remove hazardous constituents from debris surfaces or to remove contaminated debris surface layers.

Water Baths

Debris type	Performance standard
All debris types	Treatment must be performed in accordance with the design and operating parameters below
Design and operating parameters	
Contaminant solubility.	Soluble to at least 5% by weight in water solution
Treatment quality	All visible staining removed

Non-Applicable Debris or Application Restrictions

None.

Special Safety Requirements

None.

High Pressure Steam Sprays

Debris type	Performance standard
All debris types	Treatment must be performed in accordance with the design and operating parameters below
Design and operating parameters	
Pump power	≥0.75 kilowatts
Boiler power	≥5 kilowatts
Pump flow rate	≥7 kilograms per hour
Treatment enclosure.	Fully enclosed chamber or vacuum nozzle
Treatment enclosure pressure.	Negative
Steam spray pressure.	≥275 kilopascals
Temperature	≥100°C
Spray pattern width.	<25 cm
Treatment rate	<140 square meters per hour per nozzle
Treatment quality	All visible staining removed

Non-Applicable Debris or Application Restrictions

Objects with small or narrow surfaces.

Special Safety Requirements

None.

High Pressure Water Sprays

Debris type	Performance standard
All debris types.	Treatment must be performed in accordance with the design and operating parameters below
Design and operating parameters	
Pump power	≥0.75 kilowatts
Pump flow rate.	≥7.5 liters per minute
Treatment enclosure.	Fully enclosed or vacuum nozzle
Treatment enclosure pressure.	Negative
Water spray pressure.	≥700 kilopascals
Spray pattern width.	<25 cm
Treatment rate.	<140 square meters per hour per nozzle
Treatment quality.	All visible staining removed

Non-Applicable Debris or Application Restrictions

Objects with small or narrow surfaces.

Special Safety Requirements

None.

BIODEGRADATION

Biodegradation of organics or non-metallic inorganics (i.e., degradable inorganics that contain elements of phosphorus, nitrogen, or sulfur) in units operated under either aerobic or anaerobic conditions such that a surrogate compound or indicator parameter has been

substantially reduced in concentration in the residuals (e.g., total organic carbon can often be used as an indicator parameter for the biodegradation of many organic constituents that cannot be directly analyzed in wastewater residues).

Debris type	Performance standard
All debris types.	Treatment must be performed in accordance with the design and operating parameters specified below

Design and operating parameters

Treatment enclosure.	Fully enclosed
Treatment enclosure pressure.	Negative
Oxygen concentration.	≥2 milligrams per liter
Moisture level...	≥2 % of saturation
Temperature.....	20–35°C
pH.....	4.5–8

Non-Applicable Debris or Application Restriction

None.

Special Safety Precautions

None.

CHEMICAL OXIDATION

Chemical or electrolytic oxidation utilizing the following oxidation reagents (or waste reagents) or combinations of reagents: (1) hypochlorite (e.g., bleach); (2) chlorine; (3) chlorine dioxide; (4) ozone or UV (ultraviolet light) assisted ozone; (5) peroxides; (6) persulfates; (7) perchlorates; (8) permanganates; and/or (9) other oxidizing reagents of equal efficiency, performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals. Chemical oxidation specifically includes what is referred to as alkaline chlorination.

Debris type	Performance standard
Metal objects, brick, concrete, rock, pavement, glass.	Treatment must be performed in accordance with the design and operating parameters specified below

Design and operating parameters

Treatment enclosure.	Fully enclosed treatment unit
Treatment enclosure pressure.	Negative
Oxidant.....	Hypochlorite, chlorine; chlorine dioxide; ozone or ultraviolet assisted ozone; peroxides; persulfates; perchlorates; or permanganates
Treatment quality.....	All visible staining removed

Non-Applicable Debris or Application Restriction

None.

Special Safety Requirements

None.

CHEMICAL REDUCTION

Chemical reaction utilizing the following reducing reagents (or waste reagents) or combination of reagents: (1) sulfur dioxide; (2) sodium, potassium, or alkali salts of sulfides, bisulfites, and metabisulfites, and polyethylene glycols (e.g., NaPEG and KPEG); (3) sodium hydrosulfide; (4) ferrous salts; and/or (5) other reducing reagents of equivalent efficiency, performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (e.g., total organic halides can often be used as an indicator parameter for reduction of many halogenated organic constituents that cannot be directly analyzed in wastewater residues). Chemical reduction is commonly used for the reduction of hexavalent chromium to the trivalent state.

Debris type	Performance standard
Metal objects, brick, concrete, rock, pavement, glass.	Treatment must be performed in accordance with the design and operating parameters specified below

Design and operating parameters

Treatment enclosure.	Fully enclosed treatment unit
Treatment enclosure pressure.	Negative
Residence time.....	≥ 2 hours
Reducing agent.....	Sulfur dioxide; sodium, potassium, or alkali salts of sulfides, bisulfates, metabisulfites, and polyethylene glycols; sodium hydroxides; or ferrous salts
Treatment quality.....	All visible staining removed

Non-Applicable Debris or Application Restriction

None.

Special Safety Requirements

None.

PHOTOCHEMICAL TREATMENT

Treatment of chlorinated organic contaminants utilizing ultraviolet (UV) light from a natural (sunlight) or artificial (UV lamp) source such that halogenated contaminants are substantially degraded on the surface of debris.

Debris type	Performance standard
All debris types.....	Treatment must be performed in accordance with the design and operating parameters specified below.

Design and operating parameters

UV lamp capacity.....	≥ 20 microwatts/square centimeter
Treatment time.....	≥ 24 hours

Non-Applicable Debris or Application Restriction

Objects with cracks, crevices, corrosion, rust, or scale.

Special Safety Requirements

None.

THERMAL DESTRUCTION

Treatment in an incinerator operated in accordance with the technical requirements of 40 CFR Part 264 Subpart O or 40 CFR Part 265 Subpart O, boilers or industrial furnaces operating under either interim status or a RCRA permit, or in other thermal treatment devices, such as pyrolysis units operating under interim status in accordance with the requirements of 40 CFR Part 265, Subpart P.

Debris type	Performance standard
All debris types.....	Performance standards for thermal destruction of hazardous wastes, including contaminated debris are contained in 40 CFR parts 260, 261, 264, 265, 266, 270 and 271

Non-Applicable Debris or Application Restriction

None.

Special Safety Requirements

None.

MACROENCAPSULATION

Application of surface coating materials such as polymeric organics (e.g., resins and plastics) or with a jacket of inert organic materials to substantially reduce surface exposure to potential leaching media. The use of a tank or container, as defined in 40 CFR 260.10, does not qualify as macroencapsulation.

Debris type	Performance standard
Metal objects, brick, concrete, rock, pavement, glass.	Treatment must be performed in accordance with the design and operating parameters listed below

Debris type	Performance standard
Design and operating parameters	
Encapsulant layer thickness.	≥0.6 cm
Encapsulation quality layer of encapsulant type.	Debris completely encapsulated in unbroken encapsulant
Encapsulant type	Non-biodegradable and impermeable to aqueous solutions and contaminants on debris

Non-Applicable Debris or Application Restriction

Wood, paper, cloth, rubber, plastic.

Special Safety Precautions

None.

MICROENCAPSULATION

Stabilization with the following reagents (or waste reagents) or combinations of reagents: (1) Portland cement; or (2) lime/pozzolans (e.g., fly ash and cement kiln dust)—this does not preclude the addition of reagents (e.g., iron salts, silicates, and clays) designed to enhance the set/cure time and/or compressive strength, or to reduce the leachability of the hazardous constituents.

Debris type	Performance standard
Metal objects, brick, rock, pavement, glass.	Treatment must be performed in accordance with the design and operating parameters below
Design and operating parameters	
Debris feed particle size.	< 10 centimeter
Curing time	≥ 7 days
Microencapsulation quality.	No free liquids present
Unconfined compressive strength of microencapsulation product.	≥ 350 kilopascals

Non-Applicable Debris or Application Restriction

None.

Special Safety Requirements

None.

SEALING

Application of an appropriate material which adheres tightly to debris surface to minimize the surface area exposed to potential leaching media. Sealing entails surface pretreatment of debris to remove contamination and to clean and roughen debris surface where appropriate. Sealing includes use of epoxy, silicone, and urethane compounds, but excludes use of paint.

Debris type	Performance standard
Metal objects, brick, concrete, rock.	Treatment must be performed in accordance with the design and operating parameters below
Design and operating parameters	
Sealant type	Epoxy, urethane, or silicone based, and non-biodegradable and impermeable to aqueous solutions or contaminants on debris
Number of coats of sealant	≥2
Sealant coat integrity	Unbroken sealant coat completely surrounding debris

Non-Applicable Debris or Application Restriction

None

Special Safety Precautions

None

VITRIFICATION

This technology uses heat generated by electrodes or direct flame to melt a mixture of glass formers and waste materials into non-asbestiform glass.

Debris type	Performance standard
All debris types	No visible debris in solid vitrification product [b]

[a] Vitrification is BDAT for contaminated asbestos debris.
[b] With the exception of debris with high melting points, such as refractory materials, which do not melt during vitrification.

Non-Applicable Debris or Application Restriction

None.

Special Safety Precautions

None.

APPENDIX X—GENERIC TREATMENT TECHNOLOGIES FOR CONTAMINATED DEBRIS [a]

Treatment technology	Debris category					
	Metal objects	Brick, concrete, rock, pavement	Glass	Wood	Paper, cloth	Rubber, plastic
Extraction:						
Abrasive blasting [b]	Yes	Yes	Yes	Yes	No	No
Scarification and grinding [b]	No	Yes	No	Yes	No	No
Spalling [b]	No	Yes	Yes	No	No	No
Vibratory finishing	Yes	Yes	Yes	Yes	No	Yes
Water washing and spraying [b,c]	Yes	Yes	Yes	Yes	No	No
Destruction:						
Thermal destruction	No	No	No	Yes	Yes	Yes

[a] Generic treatment technologies are effective on all contaminants of concern for the debris categories shown on this table.
[b] Applicable only to broad, flat surfaces. All visible cracks and crevices must be removed by surface removal technology.
[c] High pressure water sprays applicable to metal objects and glass only. Ultra-high pressure water sprays applicable to metal objects, brick, concrete, rock, pavement, glass, and wood. Water baths not applicable.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

28. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

29. In § 270.13 paragraph (n) is added to read as follows:

§ 270.13 Contents of part A of the permit application.

* * * * *

(n) For contaminated debris, a description of the debris category(ies) and contaminant category(ies) to be treated, stored, or disposed of at the facility.

30. In § 270.14 paragraph (b)(2) is revised to read as follows:

§ 270.14 Contents of part B: General requirements.

* * * * *

(b) * * *

(2) Chemical and physical analyses of the hazardous waste and contaminated debris to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with part 264 of this chapter.

* * * * *

31. In § 270.42 paragraph (e)(3)(ii)(B) is revised to read as follows:

§ 270.42 [Revised]

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(B) To allow treatment or storage in tanks or containers, or in containment buildings in accordance with 40 CFR part 268.

32. In § 270.42 Appendix I is amended by adding item 6 to section I, and by adding new section M and items underneath it to read as follows:

Appendix I to Section 270.42—Classification of Permit Modifications

Modifications	Class
* * * * *	
I. Enclosed waste piles	
* * * * *	
6. Conversion of an enclosed waste pile to a containment building unit	2
* * * * *	
M. Containment Buildings:	
1. Modification or additional of containment building units:	
a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity	3
b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity	2
2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit	2
3. Replacement of a containment building with a containment building that meets the same design standards provided: —The unit capacity is not increased —The replacement containment building meets the same conditions in the permit	1
4. Modification of a containment building management practice	2
5. Storage or treatment of different wastes in containment buildings:	
a. That require additional or different management practices	3
b. That do not require additional or different management practices	2

33. In § 270.72 paragraph (b)(6) is revised to read as follows:

§ 270.72 Changes during interim status.

* * * * *

(b) * * *

(6) Changes to treat or store, in tanks, containers, or containment buildings, hazardous wastes subject to land disposal restrictions imposed by part 268 or RCRA section 3004, provided that such changes are made solely for the purpose of complying with part 268 or RCRA section 3004.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

34. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

35. Section 271.1(j) is amended by adding the following entry to table 1 in chronological order by date of promulgation in the **Federal Register** and by adding the date of publication and the **Federal Register** page numbers to the following entry in table 2:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

Table 1.—Regulations Implementing the Hazardous and Solid Waste Amendments of 1984.

Promulgation date	Title of regulation	Federal Register reference	Effective date
* * * * *			
(Insert date of publication of final rule in the Federal Register).	Land disposal restrictions for newly listed wastes & contaminated debris & generic exclusion for K062 & F006 non-wastewaters.	(Insert Federal Register page numbers).	
* * * * *			

* * * * *

Table 2.—Self Implementing Provisions of the Hazardous and Solid Waste Amendments of 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
* * * * *			
	Prohibition on land disposal of newly listed wastes & contaminated debris.	3004(g)(6)(A)	(Insert date of publication) 56 FR (Federal Register page numbers).
* * * * *			

* * * * *

Appendix I to the Preamble: Overview of Debris Treatment Technologies

The Agency is today proposing the following eighteen specific treatment technologies for contaminants on six different categories of debris.

1. Extraction Technologies

a. Abrasive Blasting. Abrasive blasting techniques are treatment technologies designed to remove contamination by removing surface layers from debris. These technologies rely on the force of a solid object which impacts against the debris surface to remove the surface of more brittle objects. These techniques are useful for treatment of debris in which contamination has penetrated beyond the debris surface. However, these techniques do not remove contaminants which have diffused well into debris below the surface layer and would not be considered BDAT in these situations. Consequently, the appendix IX performance standards would require for porous debris such as brick, concrete, rock, pavement, and wood, that at least a 0.6 centimeter surface layer be removed, and all paint surface coatings, scale, and visible staining be removed.[47] Thus, if contamination has penetrated beyond the surface, EPA believes that compliance with the performance standard will ensure removal. The performance standard for nonporous debris would also ensure effective removal of contaminants by requiring removal of all paint, surface coatings, scale, visible cracks and crevices, and visible staining.

[47] For permeable debris where contamination may penetrate beyond 0.6 centimeters, the Agency is relying primarily on the requirement that visible staining be removed to ensure effective treatment by surface removal technologies (i.e., abrasive blasting, acid washing, scarification and grinding, spalling, and vibratory finishing). We specifically request comment on whether removal of visible staining is an adequate requirement to ensure effective treatment in all cases (i.e., data or information on situations where the contaminant may not cause visible staining).

Debris surface layers removed are considered residue subject to F039 treatment standards for nonwastewater See section V.G.3 of the preamble. The debris treated with surface removal technologies must be firmly mounted to withstand the forces associated with these techniques, which are generally applicable only to large structural surfaces, such as concrete walls, wooden floors, or steel tanks.

Abrasive blasting involves forcing an abrasive medium (e.g., steel shot, aluminum oxide grit, plastic beads) at the surface of debris at high speeds. The force of impact of the abrasive causes the debris surface to chip, flake, or erode off. The type of abrasive used varies, depending upon the thickness of the debris surface layer which must be removed and the desired smoothness of the post-abrasive blasted surface. Generally, the use of smaller and softer abrasives results in a thinner surface layer removed and a more finely finished debris surface. Commonly used abrasives include sand, typically used to remove thin layers of paint or corrosion from metal surfaces and leave a smooth finish; and steel shot, which has been used to remove concrete, leaving a rough, pitted surface.

The abrasive can be propelled with either air or water pressure, or can use a spinning wheel to hurl abrasive at debris surfaces. Abrasive can be applied with hand-held wands or can be applied in automated systems which pass debris below the abrasive spray. Rotating drums or racks may be used for treating loose debris. Abrasive blasting systems are also frequently operated in conjunction with a vacuum system to reduce dust [48] and to collect spent abrasive and the debris surface layer removed. The spent abrasive can be disposed of with the debris surface layer removed or can be separated and recycled. The debris surface layer that is removed is considered residue subject to the F039 nonwastewater LDR standards. Abrasive blasting systems are currently used in industry to remove surface layers of paint or corrosion from metal and at Superfund sites to remove layers of contaminated concrete. Abrasive blasting systems are available commercially from several manufacturers.

b. Acid Washing. This debris treatment technology uses acid to promote corrosion and removal of the surface layer of contaminated debris. Acid can either be sprayed onto a surface, or the material to be treated can be dipped into an acid bath. This method may be used to remove contaminants entrained on or near the surface of materials such as metal and wood. It may also be effective on concrete, brick, and some plastic materials. The time required for treatment depends on the acid used and the type of debris being treated. Thermal or chemical treatment of the removed material may be required to destroy or remove the contaminant before disposal. Debris surface layers removed and other treatment residues are considered residue subject to the F039 LDR treatment standards.

Various acids can be used for this technique, including hydrochloric acid (HCl), nitric acid (HNO3), sulfuric acid (H2SO4), and hydrofluoric acid (HF). Hydrochloric acid has been used to clean metal parts. Hydrofluoric acid is also commonly used to etch window glass. In addition, mixtures of hydrofluoric and nitric acid have been shown to effectively treat stainless steel contaminated with radioactive contaminants.

Acid washing is applicable mainly to metals and may be suitable to remove surface contamination from glass, wood, and some concrete materials. However, it is not effective on deeply imbedded contamination of debris, and may not meet the performance standards proposed in appendix IX in those situations. If the acid washing performance standards could not be met, another treatment technology specified by proposed table 2 of § 268.45 must be selected. Typical treatment times for this technology range from several minutes to several hours.

Debris treated by acid washing may also require washing to remove residual acid from the debris surface; this residual would also be subject to the F039 treatment standards. The acid washing process often forms insoluble metal oxides and salts in the acid washing solution that may require additional treatment, such as filtration. (Again, all residues are subject to the F039 LDR standards.)

Immersion operations usually require the acid solution to be agitated to maximize contaminant removal. The amount of contaminant that can be removed from the debris is based on the immersion time in the acid solution and on the shape and composition of the debris. Complex shapes require longer times and stronger solutions than simple objects or shapes. After acid washing, the cleaned debris is usually rinsed with a water wash to remove the acid solution. The use of acid washing immersion operations will result in the accumulation of appreciable amounts of hazardous contaminants and metals (when metal debris is treated) as a result of dissolution from the debris and from the holding racks that are recycled through the acid bath. As a result, the acid baths usually have a relatively short operational life, and when they are discharged, large amounts of hazardous materials must be treated or reclaimed. These materials also can enter the treatment facility waste stream as dragout from the acid solutions into rinse waters.

We specifically request comment and supporting data and information on whether additional performance standards are needed (see proposed appendix IX) to ensure effective treatment by addressing parameters including retention time, ratio of acid volume to debris surface area, and solubility of contaminants in acid.

c. Electropolishing. This type of debris treatment technology uses electrochemical energy to remove contamination from metallic debris. It has been used to successfully remove radiological contamination from a variety of metallic materials, including carbon steel, stainless steel, copper, aluminum, and highly-alloyed, corrosion-resistant and heat-resistant materials. A variety of contaminants can be removed including plutonium, uranium, radium, cobalt, strontium, cesium, and americium, as well as other contaminants that are baked on, ground in, or otherwise difficult to remove using more conventional procedures. The surface layer that is removed is considered residue subject to the F039 LDR treatment standards.

Electropolishing is an electrochemical process used to produce a smooth, polished surface on a variety of electrically conductive metals and alloys. The object to be treated serves as the anode in an electrolytic cell. The passage of a high-density electric current results in the anodic dissolution of the surface metal, the establishment of a concentration gradient at the anode surface, and a progressive smoothing of the surface. Any contamination that is present either on the surface or entrapped within surface scratches and other surface imperfections is removed and released into the electrolyte by the surface dissolution process. A simple water wash after electropolishing is usually sufficient to remove the residual electrolyte and leave a contamination-free surface.

Most electropolishing treatment studies have used a phosphoric acid solution as the electrolyte because of its stability, safety, and applicability to a number of alloy systems. The hygroscopic nature of phosphoric acid helps minimize airborne contamination problems, and the complexing characteristics of phosphoric acid for metal ions may be a significant factor in minimizing recontamination from the electrolyte.

In general, electropolishing is limited to treatment of electrically conductive metallic objects of fairly regular geometry and size and does not show applicability to other types of debris. Electropolishing has been used primarily as a metal finishing technique and in the removal of radioactive contamination from metal debris.

d. Liquid Phase Solvent Extraction. This method of treatment, also called solvent washing or solvent soaking, uses an organic solvent in the liquid phase to solubilize contaminants for removal. This technique can be used on many solvent-soluble contaminants and with many forms of debris. Solvents can be applied to the surface of large debris or standing buildings, or small pieces of debris can be soaked in baths of solvent. The solvent may be heated or applied at ambient temperatures. A wide variety of wash/soak/rinse cycles can be used to optimize treatment. Water washing or secondary treatment/removal (e.g., heating or vacuum removal) after treatment may be necessary to remove residual solvent from the debris. After treatment, it is sometimes possible to reuse solvent in the treatment system.

A wide variety of organic solvents are commonly used, including trichloroethylene (TCE), methylene chloride, and alcohols. The solvent used depends on the debris contaminant combination being treated and would have to be made on a case-by-case basis by the treater based on the permeability of the debris and the nature of the contaminant. In addition other chemicals may be added to the solvent to aid in treatment of residuals, or surfactants can be

[48] We note that debris treatment facilities are subject to the applicable requirements of parts 264, 265, and 266 that ensure protection of human health and the environment.

added to prevent solubilized contaminants from migrating further into the surface of porous debris.

e. Thermal Desorption. This type of debris treatment technology relies primarily upon the use of temperatures from 90 °C to 1200 °C to volatilize contaminants. Some contaminants may also degrade to simpler compounds under these temperatures. Data from treatment tests indicate that it has been used to successfully treat concrete and metal contaminated with chemicals similar to constituents of the halogenated aromatics and pesticides group and to remove volatile organics from plastic and rubber. Low temperature desorption systems can be designed to be applied to debris either in-situ or ex-situ.

In-situ low temperature desorption systems are generally employed in the treatment of intact buildings.[49] The building is sealed and insulated to contain heat and volatilized contaminants. A burner or a boiler is used to produce hot gas or steam, respectively, which is drawn through the building by an induction fan or a blower. Exhaust gases from the building are passed through a separation system or an incinerator to remove contaminants. In-situ low temperature desorption systems must be tailor-made for each debris treatment conducted.[50]

Ex-situ systems employ an oven or heating chamber Debris is placed into the oven and heated by convection using heating fuel or electric heating element, or heated by radiation using infrared radiation or microwaves. Ovens may be filled with a nitrogen atmosphere in order to prevent contaminants and debris from combusting or exploding. Volatilized contaminants can be separated from the oven's gas effluent or incinerated. The debris oven can be designed to be run on either batch or continuous mode. Ex-situ low temperature desorption systems for soil treatment are currently available commercially and may be modified to treat contaminated debris.

The primary contaminated treatment residual produced by low temperature desorption is a vapor stream contaminated with volatilized contaminants. This vapor waste stream may be passed through a separation system, such as an activated carbon filter or a packed bed scrubber, or the vapor stream may be incinerated. Residuals from the separation system or incinerator are subject to the F039 LDR treatment standards.

We note that we are not proposing in appendix X separate performance standards for low versus high temperature thermal desorption. We specifically request comment and supporting data and information on whether and how to establish performance standards for low versus high temperature desorption.

f. Scarification and Grinding. This treatment technology utilizes a device, which contains several pistons that are forced rapidly against the surface of debris, or a series of grinding wheels, which grind away debris surfaces. Scarification devices employ the force of impact to cause up to 2.54 centimeters of the debris surface to chip off. Consequently, the appendix IX performance standards would require for debris such as brick, concrete, rock, pavement, and wood, that at least a 0.6 centimeter surface layer be removed, and all paint, surface coatings, scale, visible cracks and crevices, and visible staining be removed. Thus, if contamination has penetrated beyond 2.54 centimeters of the surface layer and visible staining and/or cracks and crevices are visible after treatment, the performance standard has not been met and another treatment must be used to ensure effective treatment of the debris (or treatment by scarification and grinding must continue until the performance standard is met).

Scarification equipment can be used in conjunction with a vacuum system to collect the debris surface layer removed. The scarified surface may also require washing or vacuuming to remove residual dust. Scarification generates several waste streams, including the debris surface removed, airborne dust,[51] and possibly a wash water, which may require additional treatment and disposal. Scarification equipment may be operated by hand or mounted on a backhoe or forklift. Scarification equipment is currently used in the construction industry in the demolition or cleaning of concrete structures and to prepare concrete surfaces for coating.

Grinding systems use the force of a grinding wheel on the debris surface to leave a rough, pitted surface. Grinding equipment may be used in conjunction with a vacuum system to collect the debris surface layer removed.

The debris surface removal techniques are expected to remove surface contamination and surface layers of contaminated debris. Contaminated surface layers of debris and other treatment residuals are considered residue subject to the F039 LDR treatment standards.

g. Spalling. This technology uses a two-step process to remove the surface layer from debris. The first step involves drilling holes into the surface of the contaminated debris. The second step involves inserting the bit of a spalling tool, consisting of two metal feathers, into the holes. Hydraulic pressure is then used to force a push rod between the metal feathers, causing them to push outward against the sides of the hole. This causes up to 50 mm of the debris surface layer to fracture and crack off.

Because spalling does not react with or dissolve contaminants, but rather relies on the removal of debris layers in which the contaminant is contained, contaminants not entrained in the debris layer removed will not be effectively treated by spalling. Consequently, the appendix IX performance standards would require for contaminated brick, concrete, rock, pavement, and glass (the only applicable debris categories), that at least a 0.6 centimeter surface layer removed, and all paint, surface coatings, scale, visible staining and visible cracks and crevices removed. Thus if contamination has penetrated beyond the surface, EPA believes that compliance with the performance standard will ensure removal. Contaminated surface layers that have been removed by spalling are still considered contaminated debris, however, and must be treated to meet the debris standard. (EPA considers debris layers removed by spalling to be contaminated debris rather than residue because spalling can remove deeper layers of debris.) It should be noted that the spalling technique may produce contaminated dust that may settle on the debris.[52] The spalled debris surface must be vacuumed or washed to remove this dust, and the resulting residual dust or wash water is considered residue subject to the F039 LDR treatment standards.

h. Vapor Phase Solvent Extraction. This method of treatment uses an organic solvent in the vapor phase to solubilize contaminants for removal. This technique is similar to the process using solvent mixtures that are used for vapor degreasing in industry. Depending on the choice of solvent, this method has potential to treat many solvent-soluble contaminants and a wide range of debris types.

In this process, a solvent is vaporized and allowed to circulate inside or around the contaminated debris (in a closed chamber). The hot vapors condense on and into the surface of the contaminated material, where they solubilize contaminants and diffuse outward. The contaminant-laden liquid solvent is collected and treated prior to recycling or reusing the solvent. Complete treatment can take several hours or more.

i. Vibratory Finishing. Vibratory finishing is a debris treatment process that combines the use of mechanical energy to scrub the surface of debris with solvent washing to dissolve contaminants and flush away particulates removed by the mechanical scrubbing. Vibratory finishing takes place in a vibrating tub of small particles, or abrasives, through which flows a liquid chemical compound. The energy from the vibrating tub causes the abrasive to vibrate. The vibrating abrasive scrubs the surfaces of debris placed in the tub. A liquid chemical compound which flows through the abrasive dissolves contaminants and flushes away particulates scrubbed from the debris.

The abrasives used in vibratory finishers are usually constructed of ceramic or metal and come in a variety of shapes and sizes. Abrasive shape, size, and material determine the rate at which the debris is scrubbed and the effectiveness of the vibratory finishing process on debris from a particular debris category.

The liquid flushing compound employed in the vibratory finishing process is usually one in which the contaminant is soluble. This enhances the treatment of the debris by dissolving contaminants. The liquid compound is sprayed on top of the abrasive and debris, percolates through the abrasive

[49] A building contaminated with a prohibited waste would be subject to today's proposed rule if it is decontaminated prior to demolition. If, however, the building is decontaminated and continues to be used as a building, the building is not debris and the decontamination is not subject to today's proposed rule

[50] See footnote 8 in the preamble to today's proposed rule.

[51] See footnote 8 in the preamble to today's proposed rule.

[52] See footnote 8 in the preamble to today's proposed rule.

and debris, where it flushes away contamination and particulates scrubbed off the debris, and flows out of a drain at the bottom of the tub. Spent flushing fluid is usually recycled by passing it through a separation system which removes particulates and dissolved contaminants.

The residuals produced by vibratory finishing techniques include spent flushing compound and particulates scrubbed from the debris surface. The vibratory finishing abrasive usually does not become contaminated because it is treatment by the same scrubbing action which treats the debris. The scrubbed particulates can be removed from the flushing liquid through filtration or settling. All residuals, including the surface layer that is removed, are considered residue subject to the F039 LDR treatment standards.

j. Water Washing and Spraying. This section discusses debris treatment techniques that rely primarily on the use of water or steam. The techniques in this section have been divided into two categories: water washing and spray application techniques.

Water washing techniques rely primarily upon the solubility of contaminants in water and can be conducted by submerging, rinsing, or spraying debris with water. During submersion, the water may be circulated, or the water and/or debris may be agitated to increase the rate at which the contaminants dissolve. A water-soluble detergent is frequently added to the water to enhance contaminant solubility or mobility to remove the contaminant from the surface of the debris by breaking the surface tension.[53] For example, data indicate that benzonitrile, a non-soluble contaminant on 55-gallon drums was effectively lifted off the metal surface through the use of high pressure steam sprays. See Background Document for additional information. In addition, water may be circulated through a separation system such as a filter or distillation column to remove contaminants from the circulating water. Treatment residuals include the treated debris, wastewater, and the treatment residuals produced by any separation systems employed, such as spent filters or sludge. Residuals are subject to the F039 LDR treatment standards.

Spray application techniques rely upon several principles to remove contaminants from debris: (1) The force of impact of a pressurized stream of water or steam to physically remove contaminants; (2) the solubility of contaminants in water to dissolve contaminants; and (3) in the case of steam cleaning, the use of heat to volatilize contaminants.

Spray application techniques generally entail the use of a pump to pressurize the water or steam, a nozzle to direct the flow of the pressurized stream, and a hose or pipe to connect the nozzle to the pump. For steam cleaning systems, a boiler must be added to the system to vaporize the water Water-soluble detergents are frequently added to the water or steam to enhance contaminant removal. After application to the object to be cleaned, water may be recycled through a wastewater treatment system.

Spray technologies consist of the following processes: (1) High pressure water sprays; (2) steam sprays; and (3) ultra-high pressure water sprays.

High pressure water sprays (usually defined as pressures up to 34,000 kPa) may be used to remove surface contamination from debris. These sprays are generally effective in removing all types of contaminants from debris surfaces. However, they are usually ineffective in removing contaminants which have diffused below the surface of debris. Accordingly, the performance standards would require that all visible staining be removed in addition to design and operation under specified conditions. High pressure water sprays do not apply water to the debris surface for a sufficient time to leach contaminants that have diffused into the debris. For this reason, the use of high pressure water sprays may not meet the performance standards of appendix IX when used on debris categories that are permeable to contaminants, such as wood and paper.

Ultra-high pressure water sprays (21,000 to 241,000 kPa) may be used to remove debris surface layers. Ultra-high pressure water sprays are useful in removing surface layers from debris that is firmly mounted to withstand the force of the water stream. This technique is applicable primarily on structural surfaces, such as concrete walls or steel tanks. We do not anticipate that the performance standards for this technique can be met when used to decontaminate small objects or loose debris, such as paper, cloth, or loose wooden boards.

All pressurized spray application techniques generate a contaminated wastewater stream that must be further treated to remove or reduce contaminant levels to meet the F039 treatment standards. Steam spray techniques generally generate less wastewater than water spray techniques, but also tend to volatilize contaminants, generating an air emission or a contaminated vapor stream. Volatilized contaminants have to be separated from the vapor stream or incinerated.[54] Ultra-high pressure water spray techniques also generate a solid waste stream in the form of the debris surface layer removed which must be treated or disposed. The dislodged debris surface layer and other residuals are subject to the F039 LDR treatment standards.

2. Destruction Technologies.

a. Biodegradation. Biodegradation is a destruction technology that uses the capacity of microorganisms to degrade and transform organic hazardous compounds into compounds of reduced toxicity. Bacteria, fungi, and yeasts are the microorganisms most frequently employed to biodegrade hazardous compounds. Under aerobic conditions (in the presence of oxygen), microorganisms biodegrade organic contaminants to carbon dioxide, water, nitrate, sulfate, and cell protein. Under anaerobic conditions (in the absence of oxygen), microorganisms can biodegrade organic contaminants into methane, carbon dioxide, and cell protein. Biodegradation is applicable to contaminants which are on the surface or contained in the pores of all types of debris.

Microorganisms require nutrients, oxygen, and water to biodegrade contaminants. Two types of biotreatment systems are commonly employed to provide microorganisms with the proper environment to facilitate biodegradation of hazardous contaminants and include solid phase (biofilm) systems, and bioslurry systems.

In solid phase (biofilm) bioremediation systems, contaminated material is placed on a lined treatment bed. A layer of sand and perforated laterals may be placed on the liner, below the contaminated material, to collect leachate. The treatment bed may be covered to conserve water and capture fugitive volatile emissions. An overhead spray irrigation system is used to provide moisture and a means of distributing nutrients and microbial innoculum. Air may be provided by mixing or by pumping air through pipes buried in the material being treated. Contaminated debris may have to be homogenized and preprocessed into small pieces to provide a high surface-to-volume ratio.

Bioslurry treatment entails mixing the contaminated material with water to form a slurry. Nutrients and oxygen are added to the water, and the slurry is mixed to keep the solids in suspension. Bioslurry treatment has the advantages of providing greater process management and control, and increased contact between microorganisms and contaminants. This frequently results in faster biodegradation rates. Debris may have to be preprocessed into very small pieces, to enable it to be suspended in water. For example, contaminated plastic may be preprocessed into pellets. Bioslurry treatment would be most effective on debris which has a density similar to water.

We are concerned that the design and operating requirements for biodegradation proposed in appendix IX may not be comprehensive enough to ensure effective treatment. We therefore, specifically request data or information that would support additional operating conditions addressing retention time, microbial population acclimation period, and other parameters as appropriate.

b. Chemical Oxidation. Chemical oxidation is a treatment process used to chemically oxidize organic compounds, cyanides, and sulfides to yield carbon dioxide, water, salts, simple organic acids, and in the cases of sulfides, sulfates. Chemical oxidation has been used to treat metal debris contaminated with cyanide.

Chemical oxidation processes which treat debris involve the submersion of debris in one or more chemical baths containing chemicals which oxidize hazardous organic compounds, cyanides, and sulfides. The

[53] The proposed performance standards in appendix X, part 268 require the contaminant to be soluble to at least 5 percent by weight in a water solution. We acknowledge that detergents can effectively remove contaminants that have low solubility in water through the use of surfactants. We specifically request data and information that would support a performance standard addressing the use of surfactants for low solubility contaminants.

[54] See footnote 8 in the preamble to today's proposed rule.

principal chemical oxidants used are hypochlorite, chlorine gas, chlorine dioxide, hydrogen peroxide, ozone, and potassium permanganate. Debris is lowered into the chemical baths in wire baskets. Agitation of the wire basket or debris may be conducted to increase chemical contact with debris surfaces. Treated debris may require rinsing in order to remove residual chemicals from the debris. The spent chemical bath solution is considered residue subject to the F039 LDR treatment standards.

c. Chemical Reduction. Chemical reduction is a treatment technology which may be used to treat halogenated organic compounds and hexavalent chromium. The treatment technology dehalogenates halogenated compounds and reduces hexavalent chromium to its less toxic trivalent state.

Chemical reduction techniques include spraying foams or solutions containing reducing agents onto debris surfaces or submerging debris into solutions of reducing agents. Spray techniques require several applications and may require rinsing or steam cleaning after treatment to remove residual reducing agents from debris surfaces. Submersion techniques also require rinsing or steam cleaning after treatment to remove residual reducing agents.

Reducing agents typically used include: Sulfur dioxide; sodium, potassium or alkali salts of sulfides, bisulfides, or metabisulfides and polyethylene glycol (including NaPEG and KPEG); sodium hydrosulfide; and ferrous salts.

Debris containing hexavalent chromium which is reduced to the trivalent state requires additional treatment for trivalent chromium. Spent reducing solutions and post-treatment debris wash water are considered residue subject to the F039 LDR treatment standards.

d. Photochemical Treatment. This type of debris treatment technology uses photochemical energy in the form of ultraviolet (UV) radiation to degrade halogenated contaminants such as polychlorinated biphenyls (PCBs), and polychlorinated dibenzodioxins (PCDDs), and polychlorinated dibenzofurans (PCDFs). These compounds are quite reactive in the presence of UV radiation. The photoreduction mechanism involves the substitution of hydrogen for chlorine, leading to the formation of detoxified substances. Contaminated debris types tested include concrete, vegetation, and glass. In photochemical treatment, the source of the UV radiation is usually artificial, although tests have been performed using natural UV light in conjunction with a solvent.

In photochemical treatment, the material to be treated is exposed to UV radiation, which causes the contaminants (PCBs, PCDDs, or PCDFs) to photodegrade. The presence of a hydrogen donor molecule is thought to be necessary for treatment of PCDDs and PCDFs, but has been found to be not necessary for the treatment of PCBs. However, the presence of an organic solvent such as methanol or hexane can greatly improve the efficiency of the photodegradation.

Photochemical treatment can be used to degrade PCBs, PCDDs, and PCDFs from the surface of materials such as concrete, vegetation, and glass. Photochemical degradation will not work on deeply imbedded contaminants, because UV light cannot penetrate through these surfaces. The presence of dust and dirt will also reduce the effectiveness of this technique.

We are concerned that the proposed performance standards for photochemical treatment may not ensure effective treatment in all cases. We specifically request data or information that would support additional operating conditions addressing use of natural sunlight, presence of adequate hydrogen donor molecules, presence of dust or dirt, and penetration of contaminants below the surface layer of permeable debris types.

e. Thermal Destruction. Thermal destruction includes treatment in an incinerator operated under subpart O, parts 264 or 265, boilers or industrial furnaces operating under subpart H, part 266, or in other thermal treatment devices, such as pyrolysis units, operating under subpart P, part 265, (for interim status facilities) or subpart X, part 264.

Thermal destruction uses heat to cause contaminants to chemically react to form nonhazardous chemicals and/or to cause debris to chemically react to achieve a volume reduction of the debris. Thermal destruction units may use either an oxidizing or a nonoxidizing atmosphere. Units in which an oxidizing atmosphere is employed cause combustible debris and contaminants to oxidize (ideally) to carbon dioxide and water. Units that employ a non-oxidizing atmosphere frequently employ nitrogen. In these units, organic debris and contaminants are reacted to form carbon monoxide and methane gas.

Many incinerators require size-reduction of debris or debris agitation during incineration in order to ensure that all of the debris being treated reaches the operating temperature of the unit. Units can be run under a slightly negative pressure to prevent fugitive emissions of volatilized or incompletely combusted contaminants. Thermal destruction units must also control emissions of metals, particulate matter, acid gases, and products of incomplete combustion.

Thermal destruction units must produce wastewater from air pollution scrubbers and a solid treatment residual, the ash, which consists of the noncombustible portion of debris and contaminants. These residuals would be subject to the F039 treatment standards. Inert debris separated from residue (i.e., ash) would be treated debris excluded from subtitle C if the contaminated debris did not contain a metal contaminant subject to treatment.

3. Immobilization Technologies. EPA considers three immobilization technologies to be BDAT for contaminated debris: macroencapsulation, microencapsulation, and sealing. These technologies are not acceptable, however, for organic debris types—wood, paper and cloth, and rubber and plastic—because the organic material may degrade over time. This could result in the treated material losing its structural stability, which may cause a release of contaminated debris. Further, immobilization technologies are not appropriate for organic contaminants because the organic compounds may degrade the encapsulating coat or diffuse through the encapsulating coat provided by macroecapsulation or sealing or leach from microencapsulated debris.

a. Macroencapsulation. Macroencapsulation is a treatment technology that encases debris to provide a physical barrier that prevents contaminants from leaching from the debris. In this process, debris is placed into sealed containers entombed in concrete, or a jacket of an impermeable substance, such as polyethylene, is placed around the debris. The encapsulating material must be one which is impermeable to both water and the contaminants on the debris. Debris which is macroencapsulated may be shredded or otherwise sized before encapsulation or large pieces of debris may be encapsulated. Macroencapsulation processes must employ coatings able to withstand stresses expected to be applied to the coating in a landfill without rupturing or breaking. Macroencapsulation processes that use jacketing materials do not need to employ materials which adhere tightly to the debris surface. Jacketing materials are typically applied to debris by heating the material to slightly above its melting point to form the jacket to the shape of the debris and then allowing it to cool, or by applying a liquid monomer to the debris surface and then adding heat or a catalyst to the monomer to form an impermeable polymer. The use of a tank or container, as defined in 40 CFR 260.10, does not qualify as macroencapsulation.

b. Microencapsulation. Two types of microencapsulation processes are typically used for treatment of debris. The first involves mixing the waste with cement, lime, and fly ash, silicates, or other pozzolanic-type materials; and second involves mixing the waste with asphalt and/or plastic. In the latter process, the mixture is heated to slightly above the melting point of the plastic or asphalt, which causes the waste or debris particles to be covered with a polymeric or asphalt coating. The mixture is then cooled and allowed to set (cure) prior to disposal.

In order to obtain a uniform stabilized material, the particle size of the material being stabilized should be kept at a fairly small size (i.e., the large masses of material should be reduced in size before being stabilized). This may require shredding, crushing, or grinding of the debris.

Vendors of various microencapsulation processes have different size requirements, but the particle sizes generally range in diameter from 6.35 to 100 mm. Sizing equipment is commercially available to size most debris to meet the requirements for microencapsulation processes. Currently, shredding equipment is used to process debris-like materials such as municipal solid waste and scrap metal for volume reduction and as an initial step in recycling processes. Most shredders are equipped to reject unshreddable objects from the shredder, effectively separating them from shreddable debris. This unshreddable debris, which consists mostly of thick metal, such as

railroad rails, can be treated using an alternative technology (e.g., water washing or sealing).

We note that the proposed rule would not allow microencapsulation of debris where arsenic or mercury are contaminants subject to treatment. See note to proposed table 2, § 268.45. This is because arsenic and mercury may leach from microencapsulated debris.

c. Sealing. Sealing is a process which involves the application of a surface coating which tightly adheres to the debris surface. This surface coating must be an impermeable barrier to both water and the contaminant on the debris. Sealants are generally applied using brushes, rollers, or by dipping debris into the sealant. Several applications of sealant may be required.

Before sealants are applied, debris must be cleaned or otherwise prepared to remove gross contamination and to clean and roughen the debris surface to ensure that the sealant adheres to the debris surface. (We specifically request comment on how to develop a performance standard that ensures that the surface of the debris is properly prepared.)

Typical sealants include epoxy, silicone, and urethane resins. Sealants may be applied as solutions of water or non-polar solvents. The solvents are then allowed to evaporate, which causes the sealant to solidify and adhere to the debris surface.

Appendix II to the Preamble: Asbestos Treatment Standards

Contaminant category	Treatment technology									
	Acid washing	Liquid phase solvent extraction	Vapor phase solvent extraction	Water washing and spraying	Biodegradation	Chemical oxidation	Chemical reduction	Photochemical treatment	Macroencapsulation	Vitrification
CC01	X	X	X	X	X	X	X	X		X
CC02	X	X	X	X		X	X	X		X
CC03	X	X	X	X	X	X				X
CC04	X	X	X	X	X	X				X
CC05	X	X	X	X	X	X				X
CC06	X	X	X	X	X	X				X
CC07		X	X	X	X	X				X
CC08	X	X	X	X					X	X
CC09	X	X		X					X	X
CC10		X		X	X					X

X means the technology is acceptable for the contaminant category.

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Thursday
January 9, 1992

Part III

Department of Agriculture

Rural Electrification Administration

7 CFR Part 1710

General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans; Final Rule

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1710

RIN 0572-AA43

General and Pre-loan Policies and Procedures Common to Insured and Guaranteed Electric Loans

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR chapter XVII, by adding a new part 1710, General and Pre-loan Policies and Procedures Common to Insured and Guaranteed Electric Loans. This part consolidates, updates, clarifies and, in some instances, revises the policies and requirements contained in several existing REA Bulletins:

This part contains the provisions and requirements of the Rural Electrification Act (RE Act), as amended, and the administrative policies, requirements, and procedures of the REA electric program for applicants seeking financial assistance from REA for facilities to furnish electric service in rural areas. The primary objective of the rule is to update, consolidate, clarify, and simplify REA policies and procedures common to electric insured and guaranteed loans.

EFFECTIVE DATE: This rule is effective February 10, 1992.

FOR FURTHER INFORMATION CONTACT: Frank W. Bennett, Deputy Assistant Administrator-Electric, U.S. Department of Agriculture, Rural Electrification Administration, Room 4048-S, 14th and Independence Avenue, SW., Washington, DC 20250-1500, Telephone: (202) 382-9547.

SUPPLEMENTARY INFORMATION: This rule is issued in conformance with Executive Order 12291, Federal Regulation. This action will not: (1) Have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices to consumers, individual industries, Federal, state or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule does not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, as amended, (42 U.S.C. 4321 *et seq.* (1976)), and therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850, Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the Final Rule related notice to 7 CFR part 3015, subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The existing reporting and recordkeeping requirements contained in this rule were approved by the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), under control numbers 0572-0032 and 0572-0017. The public reporting burden is estimated to average 59 hours per response, including the time for reviewing instructions, searching existing data sources, gathering, completing and reviewing the collection of information and maintaining the data needed. The public recordkeeping burden for this collection of information is estimated to average 67 hours per response, including the time for reviewing instructions, searching existing data sources, gathering, completing and reviewing the collection of information and maintaining the data needed.

Additional reporting requirements contained in this rule have been submitted for approval to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980. They will not be effective until approved by OMB. The public reporting burden for this new collection of information is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering, completing and reviewing the collection of information and maintaining the data needed. There is no additional record keeping burden for this new collection.

Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for USDA, Room 3201, NEOB, Washington, DC 20503.

Background

REA makes loans and loan guarantees to electric systems to provide and improve electric service in rural areas. These loans are limited to the purposes authorized in the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*)

REA policies and requirements covering pre-loan activities are contained in several REA regulations and bulletins. Many of these are out of date and some contain ambiguous or redundant information. It is necessary to consolidate this information and make it available to the public by codifying and publishing it in the **Federal Register**.

This part consolidates, updates, clarifies and, in some instances, revises the policies and requirements contained in the following existing REA bulletins:

20-2 Electric Loan Policies and Application Procedures
20-5 Extensions of Payments of Principal and Interest
20-6 Loans for Generation and Transmission
20-14 Supplemental Financing for Loans Considered Under Section 4 of the Rural Electrification Act
20-20 Deferment of Principal Repayments for Investment in Supplemental Lending Institutions
20-22 Guarantee of Loans for Bulk Power Supply Facilities
20-23 Section 12 Extensions for Energy Resources Conservation Loans
60-10 Construction Work Plans, Electric Distribution Systems
86-3 Headquarters Facilities for Electric Borrowers
105-5 Financial Forecast—Electric Distribution Systems
111-3 Power Supply Surveys
112-3 Area Coverage Service
120-1 Development, Approval, and Use of Power Requirements Studies
145-1 Development, Approval, and Use of Irrigation Studies

When this rule and other related rules are published in final form, the above bulletins will be rescinded, in whole or in part, or revised. In the future, REA bulletins will be used to provide certain procedural information, illustrative examples, and other guidance to assist borrowers in complying with REA's published rules.

The primary purpose of this rule is to consolidate, clarify, update and, in some instances, revise REA general loan policies and pre-loan policies and requirements applicable to electric loans. Most of the provisions of this rule represent policies and requirements that have been in effect for some time, having been implemented through REA bulletins, mortgages, notes or loan contracts, and other agency issuances.

Some provisions are either new, or a revision of existing policies and procedures, or an explicit statement of policies and procedures that formerly were implicit.

Another purpose of this rule is to strengthen the agency's credit policies. During the past few years, a number of electric borrowers have experienced considerable financial stress. By adopting the policies outlined in this rule, the agency hopes to avoid the recurrence of these situations.

This rule sets forth general and pre-loan policies and requirements that are common to insured loans and guaranteed loans. It was published as a proposed rule at 56 FR 8234 on February 27, 1991. Pre-loan policies, requirements and procedures that are specific to guaranteed loans, including 90 percent guaranteed loans recently authorized by the Omnibus Budget Reconciliation Act of 1990, are set forth in 7 CFR part 1712, published August 27, 1991 at 56 FR 42460. Pre-loan policies, requirements and procedures specific to insured loans will be set forth in proposed 7 CFR part 1714 in the near future.

Comments

A total of 88 commentors submitted comments on the proposed rule. They included 76 borrowers, the National Rural Electric Cooperative Association, the National Rural Utilities Cooperative Finance Corporation, the American Public Power Association, four state borrowers associations and five others.

REA considered all comments received. The more significant and the most commonly made comments are addressed individually herein.

Section 1710.1 (c)

It was suggested that the portions of REA bulletins to be rescinded or revised as a result of codifying part 1710 be specifically identified. This will in effect be accomplished as REA codifies the remainder of its regulations. REA's codified rules supersede any bulletins or portions thereof that may be in conflict. Any procedures or requirements that are still relevant and are not included in REA's codified rules will be included in future bulletins. As this process proceeds outdated bulletins will be rescinded.

A technical change has been made to this paragraph by adding REA bulletin 20–23 to the list of bulletins that may contain material that is in conflict with this rule and therefore superseded by it. Bulletin 20–23 was listed in the background section of the preamble to the proposed rule, but was inadvertently left out of the list in § 1710.1(c).

Section 1710.2 Definitions and Rules of Construction

It was suggested that the definition of Administrator be modified to add, "or his or her designee." This has been done.

A technical change was also suggested in the definition of PRR with respect to its use in determining the amount of supplemental financing required of a borrower. REA has considered other criteria that more closely reflect a borrower's ability to pay market rates for supplemental financing. However, appropriation acts for the past several years have prohibited any changes in the criteria and standards used to determine supplemental financing requirements from those that existed on July 15, 1982. Therefore, no changes have been made in the criteria and standards, including the definition of PRR. It should also be mentioned that the use of 1978–1980 data in the definition of APRR stems from the legislative prohibition against changes.

It was also suggested that the formulas for DSC, TIER, and PRR needed to be modified to identify the current year column of Forms 7 and 12. REA does not believe this would be desirable since these terms are sometimes used in reference to years other than the current year.

Finally, a technical change has been made in the definition of loan guarantee by deleting specific reference to sections 306 and 314 of the RE Act. While these two are the most generic authorities, there was no intention to exclude loan guarantees made under the narrower authorities of sections 306A and 311.

Section 1710.4 Exception Authority

Some questions were raised as to whether the Administrator's authority to grant an exception to regulatory requirements applies only to requirements imposed on borrowers and lenders with a loan guaranteed by REA, or also applies to any obligations or requirements imposed on REA. It was also asked whether the exception authority could be used to impose additional or more onerous requirements on borrowers and lenders.

The exception authority applies only to borrowers and lenders participating in REA loan and guarantee programs. It does not apply to any obligations or requirements imposed on REA. The authority could not be used by REA to impose additional or more onerous requirements on borrowers or lenders. The section has been revised to clarify these points. The term "Government's interest" has also been modified to make it clear that the specific interest referred to here is the Government's "financial" interest.

One commentor suggested that the standard for granting an exception should be based on whether application of the regulatory provision would adversely affect the borrower's interests and/or the government's interests, not just the latter. REA disagrees since many regulatory provisions relate to loan feasibility and security, and may be interpreted as adversely affecting the borrower's interests in some sense. Requirements to assure loan feasibility and security, which protect the government's financial interests, may at times appear at odds with a borrower's interests, but generally these provisions cannot be waived or reduced without adversely affecting the government's interests.

Another commentor suggested that the standard for making an exception to the regulations be broadened to include the promotion of the goals and purposes of the RE Act. REA disagrees since such a standard would be too broad and too vague, and would run the risk of inconsistent benefits being offered and decisions being made on an ad hoc basis without the benefit of public comment. REA anticipates that this exception authority will be used only rarely and only when it is clearly necessary to protect the Government's financial interests.

Section 1710.6 Applicability of Certain Provisions to Completed Loan Applications

A new section has been added to make it clear that certain new or revised policies and requirements set forth in this rule will not apply to a pending loan application that has been determined by REA to be complete as of the date the rule is published in final form in the **Federal Register**. This is being done to ensure that the processing of completed loan applications will not be delayed, which could happen if borrowers with already completed applications were required to amend their applications to provide the information needed to demonstrate compliance with certain of the new policies and requirements. The specific policies and requirements that will not apply to already completed applications are identified in the new section.

Section 1710.50 Insured Loans

One commentor suggested that REA authority to grant a deferral of principal and interest payments on insured loans for up to 5 years be added to this section. That authority, since it applies

only to insured loans, will be addressed in a new proposed regulation on post-loan policies and that apply specifically to insured loans.

Section 1710.101 Types of Eligible Borrowers

One commentor suggested that "basic" be dropped from the description of the retail electric service financed by REA, and that all methods of meeting the power supply needs of distribution borrowers be recognized, not just those involving a wholesale power contract. This section has been modified to incorporate these suggestions.

One commentor suggested that, in the case of a former borrower that has paid off all of its outstanding REA loans and reapplies for a loan, that REA should finance RE Act beneficiary loads accruing from the date the former loans were paid off rather than from the date the applicant's new, completed loan application is received by REA. REA disagrees with this suggestion since the loads accruing in the suggested earlier period would have already been served by the applicant, and financing of these loads by REA would constitute refinancing, which is strictly limited under the RE Act. The policy set forth in the rule on this question has been in effect for many years.

A related question is the time frame used for defining a rural area when a former, paid-off borrower applies for a new loan. The section has been modified to make it clear that areas previously designated by REA as rural and served by facilities financed by REA will be classified as rural.

Section 1710.103 Area Coverage

Several commentors expressed concern that the proposed section was intended to make area coverage requirements more stringent and/or to prohibit assessment of contributions in aid of construction. That was not the intention. REA recognizes that consumers in certain situations impose a capital and/or operating cost on the borrower that is substantially out of proportion with the revenues that would be generated at the normal rates and minimum charges assessed the typical consumer. The section has been amended to make it clear that borrowers may continue to assess contributions in aid of construction consistent with the general policy on area coverage set forth in this section.

One commentor suggested that the requirements of paragraph (b) of this section with respect to assessing a contribution in aid of construction should not apply to seasonal consumers. REA agrees and has so revised the paragraph to make it clear that the restrictions on assessing contributions in aid of construction set forth therein do not apply to either seasonal or temporary consumers.

Section 1710.104 Service of Non-RE Act Beneficiaries

One commentor suggested that this section should explicitly permit the sale of power and energy to non-RE Act beneficiaries from REA-financed plants until the entire capacity of the plant is required by RE Act beneficiaries, and that joint power supply and joint transmission arrangements be explicitly allowed. This section does not preclude these activities, which have been authorized in the past, provided that they meet the conditions set forth. REA believes that the section correctly and comprehensively states REA's policy on use of loan funds to serve non-RE Act beneficiaries.

Section 1710.105 State Regulatory Approvals

Several commentors suggested that the section be modified to make it clear that it applies only to borrowers that are required to obtain approval from their state regulatory authority for proposed construction projects and/or the related financing. Paragraph (b) has been revised to make this clear.

It was also suggested that REA should not have the flexibility to require a borrower to obtain such state approvals before REA makes a loan, as opposed to after the loan is made but before loan funds are advanced. REA disagrees and believes that it should be able, on a case by case basis, to require that the state approvals be obtained before a loan is made when the loan requires an Environmental Impact Statement and for loans to finance generation and transmission facilities when the loan request is $25 million or more. These kinds of projects generally involve higher risk than others, and in some cases it may be prudent to obtain the state approval before the loan is made. Also, the process of obtaining state approval often produces additional information valuable in assessing the feasibility and security of the proposed loan.

One commentor asked for clarification of the provision that REA may require a borrower to obtain reaffirmation of a project and its financing from the state authority before additional loan funds are advanced, if the borrower has failed to proceed with the project in a timely manner or if there are cost overruns or other developments that threaten loan feasibility or security. Under such circumstances REA believes it would be only prudent to obtain reaffirmation from the state authority. If a state authority were not willing to reaffirm the project and its financing, serious questions would be raised as to whether the state authority would allow the borrower to collect sufficient revenues to repay the loan, and REA would have to take this into consideration in deciding whether to approve additional advances of loan funds.

Section 1710.106 Uses of Loan Funds

Several commentors requested clarification of paragraph (d) of this section, which provides that the amount lent to any one borrower in a given year may be limited to less than the total amount eligible for REA financing, taking into consideration the amount of loan funds available and the size of REA's loan application inventory. This provision is intended to apply only in years when the loan funds available are substantially less than the eligible requests for loan funds. This has occurred in the past, and in several years REA has approved insured loans equal to only one-half of borrowers' financing requests, and lent the remainder in subsequent years. The paragraph has been revised to make clear that it applies only when there is a substantial shortfall in available funds. It has also been clarified that any reduction would be on an equal proportional basis for all applicants based on the amount of funds for which the applicant is eligible, and that any amount of an eligible request not lent one year would be eligible for a loan in subsequent years, provided that a resolution is submitted to REA by the borrower's board of directors certifying that the funds are still needed to complete purposes contained in the original loan application.

There also appears to be a misconception that paragraph (d) refers to the withholding of advances of loan funds after a loan is made. That is not correct, since paragraph (d) refers specifically to loan approval.

One commentor requested clarification of the statement in paragraph (c)(3) that REA will not finance any facilities that a state regulatory authority having jurisdiction will not approve for inclusion in the borrower's rate base, or will not otherwise allow rates sufficient to repay the debt incurred for the facilities. This is meant to be a general statement of policy of what REA will not finance, in the same vein as the statements in paragraphs (c) (1) and (2) of this section. This policy is consistent with the restriction in section 4 of the RE Act that

"no loan for the construction, operation, or enlargement of any generating plant shall be made unless the consent of the State authority having jurisdiction in the premises is first obtained." REA realizes that it often may not be possible at the time of loan approval to determine that a state regulatory authority will not allow sufficient revenues to repay a loan for certain facilities. Nevertheless, as a matter of basic policy REA will not knowingly lend for such facilities and may deny a loan for certain facilities or in certain circumstances if there is substantial evidence, based on state law, past regulatory practice, or preliminary decisions or statements by the state authority about the facilities in question, that sufficient revenues will not be allowed to repay the related debt.

One commentor suggested that REA explicitly state that costs associated with the decommissioning of nuclear power plants are eligible for REA financing. REA disagrees that such costs should be eligible for REA financing since all utilities that have nuclear power plants are required to establish financial reserves to pay for decommissioning costs. It is intended that these costs be collected from the consumers that benefit from the nuclear facility during its useful life. Suggesting that future REA financing may be required for decommissioning suggests that the reserves in some cases may be too small, and that larger reserves may be needed to ensure loan feasibility. Moreover, such financing would raise issues about loan collateral since the financing would be for the dismantling of facilities rather than their construction.

One commentor suggested that financial hardship be defined and that the criteria be specified regarding those facilities that may be financed by REA under paragraph (b) of this section. REA believes that it is important that the Administrator continue to have flexibility in determining what is a financial hardship with respect to REA financing of headquarters offices, general plant equipment, and working capital. Such flexibility has worked well in the past. Since the facts relating to financial hardship vary substantially from case to case, it is difficult to spell out beforehand all the relevant factors that may need to be considered in a particular case. Nevertheless, in the near future REA will outline in a proposed rule the general factors that should be considered in determining financial hardship.

It was also suggested that the type of load management equipment eligible for REA financing be clarified. This has been done in § 1710.251(c).

Section 1710.107 Amount Lent for Acquisitions

One commentor suggested that REA should finance the purchase, rehabilitation, and integration of facilities resulting from a sale and acquisition between two REA borrowers. REA disagrees that it should finance the purchase of one borrower's facilities by another borrower. This would amount to financing the same facilities twice, if the original REA debt was paid off, or it would constitute refinancing, which is strictly limited under the RE Act. However, applications for REA financing of the rehabilitation or integration of electric facilities in the case of an acquisition of one borrower by another will be treated the same, pursuant to § 1710.106, as other applications for these purposes.

Section 1710.108 Mergers and Consolidations.

A question was raised as to whether the priority consideration to be given to a loan application after a merger or consolidation refers only to moving the application forward in the application queue. The answer is yes, and the section has been modified to make it clear that the priority consideration refers to the order of processing an application as set forth in § 1710.119.

It was suggested that REA financing in connection with mergers and consolidations not be limited to financing the integration and rehabilitation of electric facilities and the extension of electric service in rural areas, but that it also include the costs incurred in effectuating mergers or consolidations, such as legal expenses or feasibility study costs. REA disagrees since such legal and study costs ordinarily are not financed by REA unless they are directly related to the construction or procurement of new facilities and are capitalized in the cost of those facilities. Mergers and consolidations worth pursuing should result in sufficient efficiencies and cost savings to more than offset the legal expenses and study costs associated with their planning and execution. If that is not the case, and the economics of the merger or consolidation depend on obtaining REA financing for these costs, then such costs may be excessive or the benefits of the merger or consolidation may be insufficient.

Section 1710.109 Reimbursement of General Funds and Interim Financing

Several commentors said that the 24 month period allowed for reimbursement of general funds was too short, especially for generation and transmission projects. Some commentors appeared to misunderstand the meaning of the section. They seemed to think that the limitation is meant to apply to all construction and procurement costs incurred prior to the loan period, regardless of whether or not the construction and procurement is completed prior to or during the loan period. That is not the intent. The 24-month reimbursement limit will not apply to equipment and facilities whose procurement and construction is completed during the loan period. Thus if legitimate front-end costs for environmental studies, design, engineering and other necessary functions are incurred for a generation and transmission project four or five years before the start of the loan period, they could be included as part of the cost of the project to be funded and completed during the loan period. The section has been revised to make it clear that the 24 month limitation applies only to reimbursements, including replacement of interim financing, for approved expenditures incurred for equipment and facilities whose procurement and/or construction is completed before the beginning of the loan period.

One commentor requested that loan period be defined. Loan period was defined in § 1710.2 of the proposed rule and its meaning remains unchanged. As defined, the loan period commences with the date shown on page 1 of REA Form 740c, Cost Estimates and Loan Budget for Electric Borrowers. Normally, this date is 60 days or less prior to the time the completed loan application is sent to the REA Washington office.

One commentor suggested that the 24 month reimbursement period be phased in over a period of years. This has been done, and it has been made clear that the new requirement applies only to complete loan applications received after the effective date of this rule.

Some comments were received suggesting that limiting reimbursement to 24 months would result in more frequent applications and could overwhelm REA staff. REA believes that any increase in the frequency of applications will be manageable and will not delay loan processing.

Some concern was expressed that reducing the reimbursement period to 24 months will result in legitimate expenditures for facilities becoming ineligible for reimbursement due to the time required to process a loan. REA does not believe that this will become a problem because the time limit applies

only to equipment and facilities completed before the beginning of the current loan period, while other legitimate expenditures are allowed to be included in the loan for facilities completed during the current loan period. Also, virtually all loans are processed within 12 months of receiving the complete loan application.

One commentor suggested that limiting reimbursement of general funds to 24 months for equipment and facilities completed before the current loan period without placing a similar limit on loans to replace interim financing will cause borrowers to rely more on interim financing. This conclusion apparently derives from a narrower interpretation of reimbursement of general funds than commonly used by REA. As used by REA, reimbursement of general funds includes replacement of interim financing, and the section has been modified to make this clear.

Section 1710.110 Supplemental Financing

One commentor requested clarification as to whether the supplemental financing requirements of this section apply to all REA financing or only to insured loans. The requirements of this section for borrowers to obtain supplemental financing apply only to insured loans. The section has been revised to make this clear.

REA does not require supplemental financing in conjunction with an REA guaranteed loan. However, if a borrower elects to obtain supplemental financing in conjunction with a guaranteed loan, the granting of REA's loan guarantee may be conditioned on the borrower's acquisition of the supplemental financing.

One commentor suggested that the condition, "except in cases of financial hardship," be added to the provision requiring supplemental financing with insured loans to conform this section with proposed § 1710.102(b), which was published on February 20, 1991 at 56 FR 6912. This has been done.

One commentor stated that if REA will continue to require supplemental financing, a lien accommodation should be granted automatically. REA understands that a lien accommodation usually is required for borrowers to obtain supplemental financing. In the case of supplemental financing required with insured loans, a lien accommodation is routinely granted. The section has been amended to clarify that REA will consider a lien accommodation for the supplemental lender.

Some commentors suggested that REA needs to streamline the process of granting a lien accommodation to a supplemental lender or consider modifying its security arrangements to facilitate additional financing from other sources. REA is studying its loan and security documents and related questions. Many of these questions will be addressed in the Agency's post-loan regulations.

Section 1710.111 Refinancing

One commentor stated that REA has much broader authority to refinance borrower debt than set forth in this section. REA disagrees. The language of the RE Act and a long history of interpretation of REA's authority to refinance borrower debt clearly indicate that REA's authority to refinance is very limited. The most commonly occurring circumstances where such authority may be exercised are set forth in this section.

Section 1710.112 Loan Feasibility

Several commentors questioned whether the intent of this section is to raise the threshold for loan feasibility and make it more difficult for borrowers to demonstrate feasibility. That is not the intent. The purpose of this section is to establish explicit and comprehensive criteria for assessing loan feasibility and ensuring that there is reasonable assurance that the loan will be repaid. The criteria set forth have been used routinely by REA either formally or informally in assessing loan feasibility, and are not being codified so that all borrowers will know exactly what factors are considered in determining loan feasibility.

One commentor expressed concern that the criteria are inflexible and do not allow for judgment, and will thus result in some loans being denied as a result of inflexible application of the criteria by REA staff. REA disagrees since the criteria deal mainly with the forecast of financial performance and the factors that are likely to affect that performance, which necessarily involves a substantial amount of judgment. This has always been the case.

Some commentors stated that the requirement that there be a reasonable expectation that consumers will be able to pay the rates required to meet expenses and repay the loan and that borrowers will be reasonably able to compete with other utilities sets too high a standard. REA disagrees with that position, since if consumers cannot pay the rates required to meet expenses and repay the loan and if the borrower cannot compete to prevent serious load loss, then the loan would not be feasible. Section 4 of the RE Act prohibits the Administrator from making a loan unless the Administrator finds and certifies that the loan will be repaid within the time agreed.

One commenter suggested that the problem was not only competition with other utilities, but also competition with other fuels. REA agrees and has so revised the section. Also, it has been made clear that substantial load loss, not any load loss, is the concern with respect to competing with other utilities or fuels, and that substantial impairment of loan feasibility, not any impairment, is likewise the concern.

Several commentors expressed concern that references to "any" risks of load loss from large consumers or from loss of service territory would establish too high a standard. REA intended "any" to convey that there might not be any such risks, but nevertheless "any" has been deleted.

Some commentors suggested that the list of criteria for assessing loan feasibility is exhaustive and that the catchall "other factors" is not needed. REA agrees and has deleted "other factors."

One commentor suggested several procedures and information collections for assessing possible risks of loss of a borrower's service territory from annexation. REA does not believe that suggested reporting burden should be imposed routinely in the case of every loan application. However, when there is a high risk of annexation in an individual case, some of the information suggested would be obtained by REA, and the section has been so revised.

Section 1710.113 Loan Security

One commentor requested clarification of what information would be required in the case of joint projects to demonstrate that the non-REA financed system is financially sound and under capable management. This has been clarified.

One commentor expressed a concern that REA is seeking an unqualified guarantee in paragraph (d) of this section that a jointly owned project will be running continuously at planned capacity. That is not the case. What REA is seeking is adequate assurance from the borrower, in the form of contractual or other security arrangements, that the jointly owned project will be operated on an efficient and continuous basis.

Section 1710.114 TIER and DSC Requirements

Several commentors stated that raising the minimum Times Interest

Earned Ratio (TIER) from 1.0 to 1.05 for power supply borrowers that receive a loan after the effective date of this rule may pose economic hardship for those borrowers operating in financially pressed areas. REA recognizes that this could be a temporary problem in certain limited cases. Therefore a provision has been added to paragraph (b) of this section whereby the Administrator may, on a case by case basis, reduce the TIER level below 1.05 for power supply borrowers, but not below 1.0, if the Administrator determines that a 1.05 TIER require said borrowers to raise the rates they charge for power so high as to substantially reduce the kWh sales and revenues and threaten loan feasibility.

In the longer term, REA anticipates that all power supply borrowers should be able to meet this modest increase in TIER without undue effects on power costs to their member systems. Ten of the 61 power supply borrowers already are required to meet a minimum TIER of 1.05 on an annual basis. Other power supply borrowers have routinely achieved a TIER of 1.05 or greater. Over the past three years, 1987–89, 36 power supply borrowers, out of the 55 for which data were available, achieved an average TIER of at least 1.05, and 28 achieved an average TIER of greater than 1.1.

One commentor suggested that the new 1.05 TIER requirement ought to be phased in. This requirement, like all other requirements in this section, applies only to borrowers that receive a loan after the effective date of this rule. REA has no problem with the suggestion and has revised the section to phase in the requirement as follows: 1.0 in calendar year (CY) 1991, 1.03 in CY 1992, and 1.05 in CY 1993.

Several commentors expressed concerns about the requirement in paragraph (d) of this section that rates must be designed to achieve the required TIER and Debt Service Coverage (DSC) levels on an annual basis. Concerns were raised that unforeseen events such as ice storms, hurricanes or tornadoes could reduce anticipated revenues and margins in a given year and result in defaults. It was also argued that it is unnecessary or unreasonable to routinely require all borrowers to design rates so that such unforeseen events in a single year will not result in a default with respect to TIER or DSC.

In light of these concerns, paragraph (d) has been revised. The design of rates requirement has been divided into two parts: a prospective requirement and a retrospective requirement. As in the proposed rule, borrowers will be required prospectively to design and implement rates so as to meet the required TIER and DSC levels on an annual basis. However, it has been made clear that average weather conditions in the borrower's service territory may be assumed in designing rates. Average weather is interpreted as including the average occurrence of system damage and outages due to storms, but not the rare extreme outages. Retrospectively, the average TIER and DSC levels actually achieved by a borrower in the two best years out of the three most recent calendar years must meet the required levels. This is similar to the current mortgage requirement. To summarize, REA will expect borrowers to design and implement rates to meet TIER and DSC each year, but recognizes that unusual unforeseen events may prevent TIER and DSC from being met in a given year.

Concerns were also raised about the provision in paragraph (b) of this section that the Administrator, in his or her sole discretion, could raise TIER or DSC requirements to ensure loan feasibility and security and improve the credit worthiness of borrowers. The commentors felt that this authority was too broad and that general increases in TIER or DSC requirements should be made through rulemaking. Given these concerns, this provision has been dropped.

Concerns were also expressed about paragraph (e)(1) regarding TIER and DSC requirements for the advance of funds. This paragraph deals with conditions that will be imposed on the advance of funds for a new loan if the borrower has failed to achieve the required TIER and DSC levels during the calendar year or latest 12 month period immediately preceding approval of the loan, or if the borrower's average TIER or DSC for the 2 best years of the most recent 3 years was below the required level. The latter test has been used by REA for many years, but the latest calendar year or 12 month period provision was a new proposal. Some commentors felt that there was unnecessary overlap between the latest calendar year and the latest 12 month period, and that this would cause confusion as to what standard a borrower would have to meet. Given these concerns, the latest calendar year has been dropped.

Some commentors suggested that if failure to meet the TIER or DSC requirements of paragraph (e)(1) were due to unusual events beyond the borrower's control, such as unusual weather, system outage due to a storm, or regulatory delay in approving rate increases, then remedial action by the borrower should not necessarily be required. REA agrees and has revised paragraph (e)(1) to provide for a waiver under such circumstances, at the Administrator's discretion. This paragraph has also been amended to make it clear that, in addition to demonstrating that TIER and DSC will be met, it must also be demonstrated that the loan will be repaid within the time agreed.

With respect to paragraph (e)(2), some commentors expressed the view that, once a loan is approved, REA should not impose any new conditions on the advance of funds. REA disagrees since it is required by law to ensure that all loans are feasible and will be repaid. If a borrower's circumstances change after a loan is made or if new information becomes available indicating that the borrower may not achieve the required TIER and DSC levels, then REA must have the authority to withhold loan fund advances until the borrower has taken satisfactory remedial action. Paragraph (e)(2) does not provide that REA will automatically withhold loan advances until the borrower takes remedial action, only that it may do so.

One commentor asked for clarification as to whether borrowers currently subject to a blended TIER requirement because they provide both power supply and distribution functions will continue to be subject to such requirement. The answer is, Yes. Paragraph (b) has been amended to explicitly provide for a blended TIER.

Section 1710.115 Loan Maturity

A question was asked whether a deferral of loan payments under section 12 of the RE Act would extend the maturity of a loan beyond its original maturity. REA has followed a policy of not extending loan maturity for loan payment deferrals made under section 12 of the Act. That section was redesignated section 12(a) by an amendment to the Act in 1990 (104 Stat. 3979), and a new paragraph (b) was added on loan payment deferrals for rural development. The existing REA policy not to extend loan maturities will continue for deferrals made under the amended section 12(a) of the Act. Deferrals made under the new section 12(b) of the Act for rural development purposes will be addressed in forthcoming regulations.

Section 1710.116 Equity Development Plan

Several comments were received on this section. Several commentors supported the need to develop adequate equity levels; some others questioned this. Most commentors suggested that

greater specificity was needed as to what will be expected of borrowers.

Several commentors pointed out that borrowers with relatively low equity could not be expected to achieve the target levels in a short time. REA understands this and has revised the section to place the emphasis on achieving progress during a 10-year planning cycle toward meeting the equity target.

A borrower's 10-year equity development plan will be expected to show reasonable progress toward achieving the equity target without raising power costs or retail rates for electricity unreasonably, placing an unreasonable burden on rate payers, or substantially reducing the borrower's ability to compete with neighboring utilities or other power sources. The amount of progress to be made during each 10-year plan will be determined individually for each borrower based on the economic strength of the borrower's service territory, the inherent cost of providing service to the territory, the disparity in rates between the borrower and neighboring utilities, the intensity of competition faced by the borrower from neighboring utilities and other energy sources, and the relative amount of new capital investment required to serve existing or new loads. REA will determine the improvement to be made under each plan, case by case, based on these factors and the information and recommendations provided by the borrower. It is recognized that more than one 10-year cycle may be required to achieve the equity target.

Several commentors suggested that different equity levels be set for power supply borrowers than for distribution borrowers. REA agrees that equity targets ought to be different for power supply borrowers since most of them would be starting from a much lower equity level than the typical distribution borrower. About 60 percent of power supply borrowers currently have less than 10 percent equity, while nearly two-thirds of distribution borrowers have 35 percent or more equity.

The section has been revised to require power supply borrowers to make reasonable progress toward increasing their equity if it is below 20 percent of total assets. Once that level is reached, a power supply borrower would be required to either maintain equity of 20 percent or continue to increase equity, depending on the borrower's particular financial circumstances and needs.

The proposed 40 percent target for distribution borrowers has not been changed. However, a provision has been added to this section whereby the Administrator may set a lower target for individual borrowers, on a case by case basis, if the higher standard target would unreasonably increase power costs or retail rates for electricity.

Several commentors expressed concerns that raising equity too fast would cause power costs and retail rates to rise unreasonably. REA recognizes that this is a potential problem and has revised the section to make it clear that the schedule selected for increasing equity must be reasonable and not unreasonably raise power costs or retail rates or substantially reduce a borrower's ability to compete for sales.

Some commentors questioned the basis for setting 40 percent as the minimum equity target. This level for distribution borrowers is based on the experience of REA borrowers, typical industry standards, and the long established threshold in the REA mortgage for determining whether REA approval is required for borrowers to retire capital credits. Forty-eight percent of distribution borrowers already have an equity of 40 percent or more, and 31 percent have between 30 and 40 percent equity. For investor-owned utilities, where power supply and distribution typically are integrated, about one-third have an equity of 40 percent or more of total assets, and around 40 percent have between 30 and 40 percent equity. Of the municipal systems, many of which have integrated power supply and distribution systems, about three-fourths have an equity of 40 percent or more, and some 5 percent have equity of between 30 and 40 percent.

Finally, definitions of the terms "equity" and "total assets" have been added to § 1710.2. The standard definitions used traditionally by REA for these terms have been adopted.

Section 1710.119 Loan Processing Priorities

One commentor requested clarification of paragraph (b)(4) of this section, which would allow priority based on other objectives of the RE Act, while another commentor suggested that it be deleted because it was too broad. Given these concerns, the paragraph has been deleted and a new specific priority has been added, namely the correction of serious safety problems.

Section 1710.151 Required Findings for all Loans

One commentor suggested that criteria were needed in paragraph (b) of this section to determine when the Administrator may require a borrower to demonstrate that its loan remains feasible. This has been done.

One commentor questioned the proposed requirement in paragraph (d) that satisfactory evidence must be provided to REA that funds requested to replace interim financing are necessary. This phrase was included to reinforce the requirement set forth in this paragraph that the interim financing must have been used for purposes approved by REA. The intent was not to impose an additional requirement on interim financing that is not imposed on most other REA financing. The phrase has been dropped.

Some commentors questioned the requirement in paragraph (f) that borrowers located in states having jurisdiction must provide satisfactory evidence based on the information available, such as an opinion of counsel, that the state regulatory authority will not prevent the borrower from obtaining sufficient revenues to repay REA's loans with interest. The main concern was that a borrower cannot guarantee what a state regulatory authority will do about allowing facilities in the rate base or otherwise allowing sufficient revenues to repay the borrower's debt.

REA understands that a borrower cannot guarantee what actions a state regulatory authority will take. What is required in this paragraph is that the borrower provide the best evidence available at the time a loan request is being considered by REA of what the state authority is most likely to do. This can be based on state law and the rules and policies of the state authority, on precedents in other similar cases, on statements made by the state authority, on any assurances given to the borrower by the state authority, and on other relevant information and experience. Paragraph (f) has been amended to include these examples of the types of information that may be used in providing the required evidence.

Subpart E, Power Requirements Studies

Sixty-one commentors made comments about the proposed requirements for power requirements studies (PRSs). Of the 61 commentors, 39 are associated with a single large power supply borrower.

Several commentors stated that the asset level of $100 million for determining whether a power supply borrower would have to prepare and maintain a current PRS on an ongoing basis was too low. Several recommended a minimum level of $300 million, while others recommended that the requirement be dropped entirely. REA has decided to set the asset level at $300 million. Borrowers with assets of this amount or more have adequate resources to maintain PRSs on an ongoing basis. They account for over 90

percent of the combined total assets of power supply borrowers and about the same proportion of lending activity.

Several commentors felt that the requirement that this group of large power supply borrowers must revise their PRS every 3 years and update it every year is too burdensome. REA disagrees since this is too burdensome. REA disagrees since this is typical practice throughout the electric utility industry. Nevertheless, the subpart has been revised to provide borrowers greater flexibility by offering them two options: Either revise the PRS every 3 years and update each intervening year, or revise the PRS every other year, with no intervening update. These options reflect the practice currently followed by several power supply borrowers.

The rule has also been revised to reduce the burden on those borrowers that are not required to maintain a current PRS on an ongoing basis but who must, under current practice and as set forth in the proposed rule, provide a current, acceptable PRS in support of a loan application. The rule has been revised so that a PRS is required from those borrowers only if the loan exceeds the lesser of 10 percent of total utility plant or either $3 million for a distribution borrower or $25 million for a power supply borrower. This change will reduce the burden on borrowers in comparison with both current requirements and the proposed rule.

Several commentors opposed the requirement that a consumer demand survey must be conducted at least every 3 years if the power supply borrower must maintain a PRS on an ongoing basis. This requirement is consistent with typical industry practice and remains in this rule. The subpart has been amended, however, to clarify that the survey may be conducted by aggregating the surveys of individual members or by a system-wide sample, which generally requires less coordination and is less expensive.

Several commentors criticized § 1710.203(e) as giving too much discretion to REA to require a borrower to prepare a PRS if required to determine loan feasibility or if required for other purposes, including the effective administration of the electric program. The latter purpose was especially criticized as too broad and vague, and it has been deleted from the rule.

Several commentors criticized the requirement for sensitivity analyses as being too broad and open ended. Given these concerns, § 1710.203(f)(6) has been revised to limit the number of scenarios that must be analyzed to five. To further ease the burden on borrowers and allow them time to gear up to meet this requirement, it will not be put into effect until January 1, 1993. Similarly, § 1710.203 has been amended to give a borrower the option of meeting the requirements of § 1719.203(f), with respect to what must be included in PRS, or corresponding requirements of REA Bulletin 120-1, if its PRS was submitted to REA for approval prior to the effective date of this rule, or if its PRS was prepared under a PRS work plan approved by REA prior to said date.

Subpart F, Construction Work Plans and Related Studies

Several comments were received on this subpart. They are addressed below section by section.

Section 1710.250 General

A question was raised as to whether construction work plans (CWPs) must include all applicable facilities or just those for which REA financing will be sought. All facilities, regardless of the source of financing, must be included in a CWP. Paragraph (b) of this section has been revised to make this clear.

One commentor requested clarification as to whether the engineering activities required by this subpart could be performed by either outside consulting engineers or in-house engineers employed by the borrower. Either type of qualified engineer is acceptable, and the section has been revised to make this clear.

Several commentors suggested that REA should consult with the borrower before adjusting the cost on an item included in the CWP when the cost of the item is in dispute. REA agrees and has so modified paragraph (e) of this section.

One commentor requested clarification as to whether the provision in paragraph (f) of this section that REA approval is required, prior to the start of construction, also applies to amendments of a CWP to change the cost estimates. It does not. It applies only to approval of the facilities included in the CWP, any significant physical changes to those facilities, and any additions of facilities to the CWP. The paragraph has been amended to make this clear. Moreover, the public is reminded that there has been no change in 7 CFR 1721.1 as to advances of insured funds being limited to 130 percent of the project cost estimate on the approved REA Form 740c.

One commentor asked whether the costs of engineering, environmental and other studies, and the development of plans and specifications required to support the construction of facilities are eligible for REA financing. They are, subject to the limitations of § 1710.106, provided that such costs are capitalized as part of the cost of the facilities. Sections 1710.251 and 1710.252 have been revised to make this clear.

Section 1710.252 Construction Work Plans—Power Supply borrowers

Some commentors objected to the requirement that power supply borrowers must maintain a current CWP for distribution and transmission plant and for any improvements, replacements, and retirements of generation plant. One commentor stated that REA did not have the resources to review and approve such plans on a timely basis.

The requirement that power supply borrowers maintain and receive REA approval of a current CWP for distribution facilities is not new, having been required by REA for many years. The new CWP requirement for improvements, replacements and retirements of generation plant is needed to improve the coordination of planning for these investments and the financing required. REA has the right under the REA mortgage to approve borrower investments in plant, regardless of the source of financing. The agency has sufficient resources to review all CWPs on a timely basis and does not anticipate and delays in this area.

One commentor suggested that sufficient flexibility be provided to allow for amendments to the CWP to deal with unforeseeable circumstances. REA agrees that reasonable flexibility is needed to allow for amendment of a CWP as circumstances change. Paragraph (h) of § 1710.250 provides for the amendment of a CWP, and a new paragraph (g) has been added to § 1710.250 to provide greater flexibility in dealing with unforeseen events.

Section 1710.254 Alternative Sources of Power

Several commentors expressed concern about the proposed requirement that applicants for a loan to add generation capacity must solicit proposals on a national basis from independent power producers. Some commentors said the requirement was too far reaching while others said it might not be possible to transmit power produced by a distant power producer.

This requirement applies only to loans for the addition of generation capacity, which, as been clarified in § 1710.254(b) of this final rule, includes the replacement of existing capacity. It does

not apply to separate transmission facilities.

The intent of this requirement, set forth in renumbered paragraph (c)(2) of this section, is to ensure that active consideration is given to the possibility of obtaining the needed power from an independent power producer. Such producers often operate nation-wide, building facilities in various parts of the country in response to local demands. Thus the concern of having to transmit power long distances does not enter the picture. Nevertheless, the requirement has been modified by deleting the reference to solicitation on a national basis, and adding that the solicitations must be placed in at least three national newspapers or trade publications. Renumbered paragraph (c) of this section has also been modified to make it clear that consideration of alternative sources of power and energy extends to both existing and new alternative sources.

Other commentors suggested that a minimum megawatt limit be established for the requirement to solicit bids from independent power producers. REA agrees and has modified renumbered paragraph (c)(2) to establish a minimum limit of 10 megawatts for additions of new capacity and replacements of existing capacity. Also, in the case of modification of an existing unit, the solicitation requirement will not apply unless the modification increases the capacity of the existing unit by more than 10 percent.

Several commentors expressed concern that renumbered paragraph (e) of this section would place REA in the middle of negotiations between the borrower and the power supplier and would lead to inordinate delays in obtaining REA approval of construction or power-purchase contracts. REA appreciates these concerns and has modified the paragraph to minimize any such unintended results. REA does not wish to impose itself into the negotiations between the borrower and the power supplier. The intent of the first sentence of renumbered paragraph (e) is to obtain assurance that the borrower has met the requirements of renumbered paragraph (d) of this section regarding the evaluation of alternative proposals before the borrower proceeds to final negotiations on the best acceptable offers. However, REA retains its long-established policy of granting approval of long-term power contracts and similar actions only when the proposed alternative is the most economical and effective alternative.

As to the process possibly resulting in inordinate delays in obtaining REA approval of the contracts negotiated by borrowers, a sentence has been added indicating that the Administrator will approve such contracts in a timely manner if the borrower has met all applicable requirements and provided adequate evidence that the alternative selected is the most economical and effective alternative.

One commentor also objected to the requirement that all construction or power-purchase contracts either be approved in advance by the Administrator or indicate that they are not valid until approved by the Administrator. This is a long-standing REA requirement exercised through loan contracts and mortgages. It has been retained in the final rule because construction and power-purchase contracts have a major effect on a borrower's financial condition and its ability to repay its loans and provide adequate loan security.

A commentor also questioned whether REA has the authority to deny a loan for facilities on the basis that one or more other available alternatives are more cost-effective and otherwise acceptable. In fact, REA has exercised such authority since at least 1969 when REA Bulletin 20–6 was reissued. This bulletin was cited in proposed paragraph (f) of this section (renumbered paragraph (g)) as an additional requirement that must be met. To clarify this point, the requirements of REA Bulletin 20–6, with minor editorial changes, have been set forth in a new paragraph (a) of this section, and the reference to Bulletin 20–6 in renumbered paragraph (g) has been deleted.

Some commentors expressed the concern that renumbered paragraph (f) of this section, wherein REA may make independent inquiries with potential power suppliers, could result in interference in the borrower's business and undue delays in obtaining REA approval of projects. Others suggested that any information obtained by REA should be shared with the borrower.

The intent of this provision is to allow REA to become better informed about potential sources of power so that it can effectively evaluate whether a borrower has met the requirements of renumbered paragraph (c) regarding searching out alternative sources of power. It is REA's intent to make such inquiries informally from time to time to keep abreast of market developments, as well as on a case-specific basis when such information may be needed to assure that the requirements of renumbered paragraph (c) have been met. Such information will be shared with borrowers upon request, and the paragraph has been modified to provide for this, as well as to make clear that the intent is not to limit REA's inquires only to specific loan applications.

REA does not believe that this provision will result in delays in approving a borrower's request for financing. If REA suspects that a borrower has not made an adequate effort to inquire into alternative sources of power, any independent inquiry made by REA would be made in a timely manner and as early in the process as feasible.

Some commentors expressed concerns that the requirements of this section could lead to delays in obtaining capacity that might threaten system reliability. In view of these concerns, a provision has been added to this section wherein a waiver could be granted for any requirements that would cause unreasonable delays that might threaten system reliability. A waiver provision has also been added to § 1710.253.

One commentor asked whether the solicitation of proposals from independent power producers under renumbered paragraph (c)(2) is meant to be a separate process from the solicitation of proposals from other potential sources of power under renumbered paragraph (c)(1). The two solicitations may be combined, although separate solicitations would appear to be a more logical approach.

Subpart G, Long-Range Financial Forecasts

The comments received on this section are discussed below section by section.

Section 1710.300 General

One commentor suggested that the provision in paragraph (c)(12) of this section that requires the borrower to analyze its historical experience in market competitiveness was too vague and too narrow in focus and may not be necessary in all cases. REA agrees, and has revised the paragraph to require only a discussion of historical market competitiveness by all borrowers, with the proviso that further data and analysis may be required of those borrowers with a history of serious competitive problems. Also, consideration of factors affecting competitiveness has been expanded beyond rates charged for electricity.

A similar criticism was made regarding paragraph (c)(13), which required an analysis of the effects of projected increases in rates on a borrower's future competitiveness. The requirement has been modified to include other factors that may affect competitiveness as well as to recognize that the competition may be with other

fuels as well as with neighboring utilities.

One commentor objected to having to report assumptions about wage rates as provided under paragraph (c)(8). Wages are an important component of cost, and failure to take escalation in wage rates into consideration would undermine the value of the financial forecast. Individual rate schedules are not required to be reported, only the assumptions made about the average per unit cost of labor.

Section 1710.302 Financial Forecasts—Power Supply Borrowers.

Some commentors questioned the provision in paragraph (d) that REA may request projections for a period longer than 10 years if it is deemed necessary. REA understands that financial projections become more uncertain further into the future, but believes that there may be some circumstances when a projection beyond 10 years may be helpful in assessing the feasibility of a loan for generation or transmission projects.

Several commentors questioned the value of the requirement in this section and in § 1710.303 that sensitivity analyses be completed of the major assumptions used in the forecast. Concern was also expressed that the number of sensitivity analyses required may be unlimited and onerous for borrowers.

REA appreciates these concerns and has no intention of requiring more sensitivity analyses than a prudent utility or lender would require for similar financial forecasts. It would not be prudent for REA to lend millions of dollars for a project without knowing how the financial forecast is affected by changing important assumptions. In view of the concerns raised, however, both sections have been modified to make it clear that the sensitivity analyses required will be limited to a reasonable range of assumptions. In addition, the sections have been revised to limit the requirement for such sensitivity analyses to cases where the financial forecast is used in support of a loan or loan guarantee that exceeds the smaller of 10 percent of the borrower's total utility plant or the following dollar amount: $25 million for power supply borrowers, or $3 million for distribution borrowers.

Concerns were also expressed as to whether duplicative sensitivity analyses were being required by this section and § 1710.303. In response to these concerns, § 1710.303(b)(4) has been amended to make it clear that duplicative sensitivity analyses are not required.

One commentor objected to the requirement in § 1710.302(d)(4) that power supply borrowers furnish REA with all information on operating and other agreements that affect costs. The same commentor also objected to the requirement in § 1710.302(e) that power supply borrowers' financial forecasts must be coordinated in advance with REA as to major assumptions and other factors.

Both of these requirements are similar to current REA practice. To allay concerns that unlimited information about agreements could be required under paragraph (d)(4), it has been modified to require only material information determined to be necessary by REA on a case by case basis. No change has been made to paragraph (e) of this section because REA believes the requirement to coordinate in advance on major aspects of the financial projections is reasonable and necessary and will generally save borrowers time and resources by minimizing the need to revise analyses later in the process.

One commentor asked whether the need to coordinate in advance with REA applies to all financial forecasts prepared by a power supply borrower or only to financial forecasts submitted in support of a loan from REA. This and the other requirements of this section apply only to financial forecasts used in support of a loan. Paragraph (a) of this section has been modified to make this clear.

Section 1710.303 Power Cost Studies—Power Supply Borrowers

A question was raised as to whether power cost studies were intended to be separate studies or integrated with the financial forecast. These studies are usually separate, but they may be integrated with the financial forecast. Paragraph (a) of this section has been amended to make this clear.

A concern was raised that the requirement in paragraph (c) of this section to use current, REA-approved power requirements data may not be consistent with sensitivity analyses required by paragraph (b)(4) of this section that may involve power costs higher or lower than those used in the REA-approved power requirements projections. This point is well taken, and paragraph (c) has been amended to provide that alternative assumptions about future power requirements may be used in conjunction with the sensitivity analyses.

List of Subjects in 7 CFR Part 1710

Administrative practices and procedures, Electric utilities, Guaranteed loan programs, Insured loan program, Loan programs.

For the reasons given in the preamble, REA amends 7 CFR chapter XVII by adding a new part 1710 to read as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

Subpart A—General

1710.1 General statement.
1710.2 Definitions and rules of construction.
1710.3 Form revisions.
1710.4 Exception authority.
1710.5 Availability of forms.
1710.6 Applicability of certain provisions to completed loan applications.
1710.7–1710.49 [Reserved]

Subpart B—Types of Loans and Loan Guarantees

1710.50 Insured loans.
1710.51 Loan guarantees.
1710.52–1710.99 [Reserved]

Subpart C—Loan Purposes and Basic Policies.

1710.100 General.
1710.101 Types of eligible borrowers.
1710.102 Borrower eligibility for different types of loans. [Reserved]
1710.103 Area coverage.
1710.104 Service to non-RE Act beneficiaries.
1710.105 State regulatory approvals.
1710.106 Uses of loan funds.
1710.107 Amount lent for acquisitions.
1710.108 Mergers and consolidations.
1710.109 Reimbursement of general funds and interim financing.
1710.110 Supplemental financing.
1710.111 Refinancing.
1710.112 Loan feasibility.
1710.113 Loan security.
1710.114 TIER and DSC requirements.
1710.115 Loan maturity.
1710.116 Equity development plan.
1710.117 Environmental considerations.
1710.118 Energy conservation and land management.
1710.119 Loan processing priorities.
1710.120 Construction standards and contracting.
1710.121 Insurance requirements.
1710.122 Equal opportunity and nondiscrimination.
1710.123 Debarment and suspension.
1710.124 Uniform relocation act.
1710.125 Restrictions on lobbying.
1710.126 Federal debt delinquency.
1710.127 Drug free workplace.
1710.128–1710.149 [Reserved]

Subpart D—Basic Requirements for Loan Approval

1710.150 General.
1710.151 Required findings for all loans.
1710.152 Primary support documents.
1710.153 Additional requirements and procedures.
1710.154–1710.199 [Reserved]

Subpart E-Power Requirements Studies

1710.200 Purpose.
1710.201 Requirement to prepare a PRS—power supply borrowers.
1710.202 Requirements to prepare a PRS—distribution borrowers.
1710.203 Basic policies and requirements for a PRS.
1710.204 PRS work plan requirements.
1710.205 Basic criteria for REA approval of a PRS.
1710.206 Waiver of borrower requirements.
1710.207-1710.249 [Reserved]

Subpart F—Construction Work Plans and Related Studies

1710.250 General.
1710.251 Construction work plans—distribution borrowers.
1710.252 Construction work plans—power supply borrowers.
1710.253 Engineering and cost studies—addition of generation capacity.
1710.254 Alternative sources of power.
1710.255-1710.299 [Reserved]

Subpart G—Long-Range Financial Forecasts

1710.300 General.
1710.301 Financial forecasts—distribution borrowers.
1710.302 Financial forecasts—power supply borrowers.
1710.303 Power cost studies—power supply borrowers.
1710.304-1710.349 [Reserved]

Subpart H—Credit Support of Power Supply Borrowers [Reserved]

Authority: 7 U.S.C. 901-950(b); Public Law 99-591; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

Subpart A—General

§ 1710.1 General statement.

(a) This part establishes general and pre-loan policies and requirements that apply to both insured and guaranteed loans to finance the construction and improvement of electric facilities in rural areas, including generation, transmission, and distribution facilities.

(b) Additional pre-loan policies, procedures, and requirements that apply specifically to guaranteed and/or insured loans are set forth elsewhere:

(1) For guaranteed loans, in 7 CFR part 1712 and REA Bulletins 20-2, 20-22, 60-10, 86-3, 105-5, 111-3, 112-3, and 145-1, or the successors to these bulletins; and

(2) For insured loans, in 7 CFR part 1714 and REA Bulletins 20-2, 20-14, 60-10, 86-3, 105-5, 111-3, 112-3, and 145-1, or the successors to these bulletins.

(c) This part supersedes those portions of the following REA Bulletins and supplements that are in conflict.

20-2 Electric Loan Policies and Application Procedures
20-5 Extensions of Payments of Principal and Interest
20-6 Loans for Generation and Transmission
20-14 Supplemental Financing for Loans Considered Under Section 4 of the Rural Electrification Act
20-20 Deferment of Principal Repayments for Investment in Supplemental Lending Institutions
20-22 Guarantee of Loans for Bulk Power Supply Facilities
20-23 Section 12 Extensions for Energy Resources Conservation Loans
60-10 Construction Work Plans, Electric Distribution Systems
86-3 Headquarters Facilities for Electric Borrowers
105-5 Financial Forecast—Electric Distribution Systems
111-3 Power Supply Surveys
112-3 Area Coverage Service
120-1 Development, Approval, and Use of Power Requirements Studies
145-1 Development, Approval, and Use of Irrigation Studies

(d) When parts 1710, 1712, and 1714 are published in final form, the bulletins cited in paragraph (b) of this section will be rescinded, in whole or in part, or revised.

§ 1710.2 Definitions and rules of construction.

(a) *Definitions.* For the purpose of this part, the following terms shall have the following meanings:

Administrator means the Administrator of REA or his or her designee.

APRR means Average Adjusted Plant Revenue Ratio calculated as a simple average of the adjusted plant revenue ratios for 1978, 1979 and 1980 as follows:

$$APRR = \frac{A+B}{C-D}$$

where:

A=Distribution (plant), which equals Part E, Line 14(e) of REA Form 7;

B=General Plant, which equals Part E, Line 24(e) of REA Form 7;

C=Operating Revenue and Patronage Capital, which equals Part A, Line 1 of REA Form 7; and

D=Cost of Power, which equals the sum of Part A, Lines 2, 3, and 4 of REA Form 7.

Area Coverage means the provision of adequate electric service to the widest practical number of rural users in the borrower's service area during the life of the loan.

Borrower means any organization that has an outstanding loan made or guaranteed by REA for rural electrification, or that is seeking such financing.

Bulk Transmission Facilities means the transmission facilities connecting power supply facilities to the subtransmission facilities, including both the high and low voltage sides of the transformer used to connect to the subtransmission facilities, as well as related supervisory control and data acquisition systems.

Consolidation means the combination of 2 or more borrower or nonborrower organizations, pursuant to state law, into a new successor organization that takes over the assets and assumes the liabilities of those organizations.

Distribution Borrower means a borrower that sells or intends to sell electric power and energy at retail in rural areas.

Distribution Facilities means all electrical lines and related facilities beginning at the consumer's meter base, and continuing back to and including the distribution substation.

DSC means Debt Service Coverage calculated as:

$$DSC = \frac{A+B+C}{C-D}$$

where:

A=Depreciation and Amortization Expense, which equals Part A, Line 12 of REA Form 7 (distribution borrowers) or Section A, Line 20 of REA Form 12a (power supply borrowers);

B=Interest on Long-term Debt, which equals part A, Line 15 of REA Form 7 or Section A Line 22 of REA Form 12a except that Interest on Long-term debt shall be increased by ⅓ of the amount, if any, by which the rentals of Restricted Property (Part M, Line 3 of REA Form 7 or Section K, Line 4 or REA Form 12h) exceeds 2 percent of Total Margins and Equities (Part C, Line 32 of REA Form 7 or Section B, Line 33 of REA Form 12a;

C=Patronage Capital or Margins, which equals Part A, Line 27 of REA Form 7 or Section A, Line 34 or REA Form 12a; and

D = Debt Service Billed (REA + other) which equals all interest and principal billed during the calendar year plus 1/3 of the amount, if any, by which the rentals of Restricted Property (Part M, Line 3 of REA Form 7 or Section K, Line 4 of REA Form 12h) exceeds 2 percent of Total Margins and Equities (Part C, Line 32 of REA Form 7 or Section B, Line 33 of REA Form 12A).

Equity means total margins and equities, which equals Part C, Line 32 of REA Form 7 (distribution borrowers) or Section B, Line 33 of REA Form 12a (power supply borrowers).

Generation Facilities means the generating plant and related facilities, including the building containing the plant, all fuel handling facilities, and the stepup substation used to convert the generator voltage to transmission voltage, as well as related energy management (dispatching) systems.

Insured Loan means a loan made pursuant to Section 305 of the RE Act, and may include a direct loan made under Section 4 of the RE Act.

Loan means any loan made or guaranteed by REA.

Loan Contract means the agreement, as amended, supplemented, or restated from time to time, between a borrower and REA providing for loans made or guaranteed pursuant to the RE Act.

Loan Feasibility means that the borrower has the capability of repaying the loan in full as scheduled, in accordance with the terms of the mortgage, note, and loan contract.

Loan Guarantee means a loan guarantee made by REA pursuant to the RE Act.

Loan Period means the period of time during which the facilities included in a loan application will be constructed. It commences with the date shown on page 1 of REA Form 740c, Cost Estimates and Loan Budget for Electric Borrowers. The loan period is generally 2 years for distribution borrowers and, except in the case of a loan for new generating and associated transmissions facilities, 3 years for the transmission facilities and improvements or replacements of generation facilities of power supply borrowers. The loan period for new generating facilities is determined on a case by case basis.

Merger means the combining, pursuant to state law, of borrower or nonborrower organizations into an existing survivor organization that takes over the assets and assumes the liabilities of the merged organizations.

Mortgage means any and all instruments creating a lien on or security interest in the borrower's assets in connection with loans or guarantees under the RE Act.

Ordinary Replacement means replacing one or more units of plant. called "retirement units", with similar units when made necessary by normal wear and tear, damage beyond repair, or obsolescence of the facilities.

Power Requirements Study (PRS) means the thorough study of a borrower's electric loads and the factors that affect those loads in order to determine, as accurately as practicable, the borrower's future requirements for energy and capacity.

Power Supply Borrower means a borrower that sells or intends to sell electric power at wholesale to distribution or power supply borrowers pursuant to REA wholesale power contracts.

PRR means Plant Revenue Ratio calculated as:

$$PRR = \frac{A}{B-C}$$

where:

A = Total Utility Plant, which equals Part C, Line 3 of REA Form 7;

B = Operating Revenue and Patronage Capital, which equals Part A, Line 1 of REA Form 7; and

C = Cost of Power, which equals the sum of Part A, Lines 2, 3, and 4 of REA Form 7.

PRS Work Plan means the plan that sets forth the resources, methods, schedules, and milestones to be used in the preparation and maintenance of a power requirements study.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.).*

RE Act Beneficiary means a person, business, or other entity that is located in a rural area and is not receiving adequate central-station electric service, or that initially received central-station service through facilities financed by REA, or successors to such entities.

REA means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

Retirement Unit means a substantial unit of property, which when retired, with or without being replaced, is accounted for by removing its book cost from the plant account.

Rural Area means any area of the United States, its territories and possessions (including any area within the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau) not included within the boundaries of any incorporated or unincorporated city, village or borough having a population exceeding 1,500. The population figure is obtained from the most recent data available, such as from the Bureau of the Census and Rand McNally and Company. For purposes of the "rural area" definition, the character of an area is determined as of the time the initial loan for the system is made.

Subtransmission Facilities means the transmission facilities that connect the high voltage side of the distribution substation to the low voltage side of the bulk transmission or generating facilities, as well as related supervisory control and data acquisition facilities.

System Improvement means the change or addition to electric plant facilities to improve the quality of electric service or to increase the quantity of electric power available to RE Act beneficiaries.

TIER means Times Interest Earned Ratio calculated as:

$$TIER = \frac{A+B}{A}$$

where:

A = Interest on Long-Term Debt, which equals Part A, Line 15 of REA Form 7 (distribution borrowers) or Section A Line 22 of REA Form 12a (power supply borrowers), except that Interest on Long-Term debt shall be increased by ⅓ of the amount, if any, by which the rentals of Restricted Property (Part M, Line 3 of REA Form 7 or Section K, Line 4 of REA Form 12h) exceeds 2 percent of Total Margins and Equities (Part C, Line 32 of REA Form 7 or Section B, Line 33 of REA Form 12a; and

B = Patronage Capital or Margins, which equals Part A, Line 27 of REA Form 7 or Section A, Line 34 of REA Form 12a.

Total Assets means Part C, Line 25 of REA Form 7 (distribution borrowers) or Section B, Line 26 of REA Form 12a (power supply borrowers).

Total Utility Plant means Part C, Line 3 of REA Form 7 (distribution borrowers) or Section B, Line 3 of REA Form 12a (power supply borrowers).

Transmission Facilities means all electrical lines and related facilities, including certain substations, used to connect the distribution facilities to generation facilities. They include bulk transmission and subtransmission facilities.

(b) *Rules of Construction.* Unless the context otherwise indicates, "includes" and "including" are not limiting, and "or" is not exclusive. The terms defined in paragraph (a) of this part include the plural as well as the singular, and the singular as well as the plural.

§ 1710.3 Form revisions.

References in this part to REA forms or line numbers in REA forms will apply to corresponding information in future versions of the forms.

§ 1710.4 Exception authority.

Consistent with the RE Act and other applicable laws, the Administrator may waive or reduce any requirement imposed by this part or other REA regulations on an electric borrower, or a lender whose loan is guaranteed by REA, if the Administrator determines that imposition of the requirement

would adversely affect the Government's financial interest.

§ 1710.5 Availability of forms.

Information about the availability of REA forms and publications cited in this part is available from Administrative Services Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250-1500. These REA forms and publications may be reproduced.

§ 1710.6 Applicability of certain provisions to completed loan applications.

(a) Certain new or revised policies and requirements set forth in this part, which are listed in this paragraph, shall not apply to a pending loan application that has been determined by REA to be complete as of the date such policies and requirements are published in final form in the Federal Register. This exception does not apply to loan applications received after said vote, nor to incomplete applications pending as of said date. This exception applies only to the following provisions:

(1) Paragraph 1710.115(b)—with respect to limiting loan maturities to the expected useful life of the facilities financed;

(2) Section 1710.116—with respect to the requirement to develop and follow an equity development plan;

(3) Paragraph 1710.151(f)—with respect to the borrower providing satisfactory evidence that a state regulatory authority will allow the facilities to be included in the rate base or otherwise allow sufficient revenues to repay the loan;

(4) Paragraphs 1710.250(b), 1710.251(a), and 1710.252(a)—with respect to the requirement that improvements, replacements, and retirements of generation plant be included in a Construction Work Plan; and

(5) Paragraph 1710.300(d)(5)—With respect to the requirement that a borrower's financial forecast include a sensitivity analysis of a reasonable range of assumptions for each of the major variables in the forecast.

(b) Certain provisions of this part apply only to loans made on or after the effective date of this rule. These provisions are identified in the individual sections of this part.

§§ 1710.7-1710.49 [Reserved]

Subpart B—Types of Loans and Loan Guarantees

§ 1710.50 Insured loans.

REA makes insured loans under section 305 of the RE Act for the extension and improvement of electric facilities in rural areas. Generally, insured loans are made for distribution and subtransmission facilities, including ordinary replacements and warehouse and garage facilities, and in the case of financial hardship, other headquarters facilities, general plant equipment, and working capital if required for the initial operation of a distribution system. These loans are made for a term of up to 35 years, and the standard interest rate is 5 percent per annum. Under certain circumstances, as set forth in the RE Act, the interest rate may be as low as 2 percent per annum.

§ 1710.51 Loan guarantees.

REA provides financing through 100 percent loan guarantees made under sections 306 and 306A of the RE Act. REA also provides 90 percent loan guarantes under sections 311 and 314 of the RE Act to enable borrowers to secure financing from certain private lenders. The loan guarantees are made for a term of up to 35 years, and the interest rate is established at a rate agreed to by the borrower and the lender, with REA concurrence. The guarantee applies to the repayment of both principal and interest.

§§ 1710.52-1710.99 [Reserved]

Subpart C—Loan Purposes and Basic Policies

§ 1710.100 General.

The Rural Electrification Administration (REA) makes loans and loan guarantees to finance the construction of electric distribution, transmission and generation facilities, including system improvements and replacements, required to provide adequate electric service in rural areas. In some circumstances, REA may finance selected operating expenses of its borrowers. Loans made or guaranteed by the Administrator of REA will be made in conformance with the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*), and 7 CFR chapter XVII. REA provides certain technical assistance to borrowers when necessary to aid the development of rural electric service and to protect loan security.

§ 1710.101 Types of eligible borrowers.

(a) REA makes loans to corporations, states, territories, and subdivisions and agencies thereof; municipalities; people's utility districts; and cooperative, nonprofit, limited-dividend, or mutual associations that provide or propose to provide:

(1) The retail electric service needs of rural areas, or

(2) The power supply needs of distribution borrowers under the terms of power supply arrangements satisfactory to REA.

(b) In making loans, REA gives preference to states, territories, and subdivisions and agencies thereof; municipalities; people's utility districts; and cooperative, nonprofit, or limited-dividend associations. REA does not make loans to individual consumers.

(c) Former borrowers that have paid off all outstanding loans may reapply for a loan to serve RE Act beneficiary loans accruing from the time the former borrower's complete loan application is received by REA. The determination of whether an area is rural will be based on the population of the area at the time of the reapplication for a loan, if the area is not served by electric facilities financed by REA. If the area is served by electric facilities financed by REA, the original rural classification of the area will apply.

(d) Former borrowers that have prepaid all then outstanding insured and direct loans in accordance with section 306B of the RE Act must comply with the provisions of 7 CFR Part 1786 before being considered eligible to borrow additional funds from REA.

§ 1710.102 Borrower eligibility for different types of loans. [Reserved]

§ 1710.103 Area coverage.

(a) Borrowers shall make a diligent effort to extend electric service to all unserved persons within their service area who:

(1) Desire electric service; and

(2) Meet all reasonable requirements established by the borrower as a condition of service.

(b) If economically feasible and reasonable considering the cost of providing such service and/or the effects on all consumers' rates, such service shall be provided, to the maximum extent practicable, at the rates and minimum charges established in the borrower's rate schedules, without the payment by such persons, other than seasonal or temporary consumers, of a contribution in aid of construction. The loan contract shall contain provisions to this effect. A seasonal consumer is one that demands electric service only during certain seasons of the year. A temporary consumer is a seasonal or year-round consumer that demands electric service over a period of less than five years.

(c) Borrowers may assess contributions in aid of construction provided such assessments are

consistent with the policy set forth in this section.

§ 1710.104 Service to Non-RE Act beneficiaries.

(a) To the greatest extent practical, loans are limited to providing electric facilities that serve RE Act beneficiaries. When it is determined by the Administrator to be necessary in order to furnish or improve electric service in rural areas, loans may be made to finance electric facilities that will also serve consumers in nonrural areas, or consumers in rural areas who are already receiving adequate central station service.

(b) Loan funds may be approved for facilities to serve non-RE Act beneficiaries only if:

(1) The primary purpose of the loan is to furnish or improve service for RE Act beneficiaries; and

(2) The use of loan funds to serve non-RE Act beneficiaries is necessary and incidental to the primary purposes of the loan.

(c) The determination whether adequate central station service is being provided in a rural area will be made by the Administrator on a case by case basis. It will be based on current normal standards for electric service, taking factors such as the following into consideration:

(1) The continuity of service;

(2) Voltage and frequency regulation;

(3) The age and condition of the existing electric facilities;

(4) The adequacy of capacity to meet the requirements of existing consumers; and

(5) The ability of existing consumers to use modern electric appliances efficiently under the existing service.

§ 1710.105 State regulatory approvals.

(a) In states where a borrower is required to obtain approval of a project or its financing from a state regulatory authority, REA may require that such approvals be obtained, if feasible for the borrower to do so, before the following types of loans are approved by REA:

(1) Loans requiring an Environmental Impact Statement; and

(2) Loans to finance generation and transmission facilities, when the loan request for such facilities is $25 million or more.

(b) At minimum, in the case of all loans in states where state regulatory approval is required of the project or its financing, such state approvals will be required before loan funds are advanced.

(c) In case where state regulatory authority approval has been obtained, but the borrower has failed to proceed with the project in a timely manner according to the schedule contained in the borrower's project design manual, or if there are cost overruns or other developments that threaten loan feasibility or security, REA may require the borrower to obtain a reaffirmation of the project and its financing from the state authority before any additional loan funds are advanced.

§ 1710.106 Uses of loan funds.

(a) REA loan funds may be used to finance:

(1) *Distribution facilities.* (i) The construction of new distribution facilities or systems and the cost of system improvements and removals, less salvage value, needed to meet load growth requirements or improve the quality of service.

(ii) The purchase, rehabilitation and integration of existing distribution facilities and associated service territory when the acquisition is an incidental and necessary means of providing or improving service to persons in rural areas who are not receiving adequate central station service, and the borrower is unable to finance the acquisition from other sources. See § 1710.107.

(2) *Transmission and generation facilities.* (i) The construction of new transmission and generation facilities or systems and the cost of system improvements and removals, less salvage value, needed to meet load growth and improve the quality of service.

(ii) The purchase of an ownership interest in new or existing transmission or generation facilities to serve RE Act beneficiaries.

(3) *Ordinary plant replacements.* The excess of the total cost of ordinary replacements over the original cost of the facilities being replaced, unless financing of the total cost is specifically authorized by the Administrator.

(4) *Warehouse and garage facilities.* The purchase, remodeling, or construction of warehouse and garage facilities required for the operation of a borrower's system. See paragraph (b) of this section.

(5) *Interest.* The payment of interest on indebtedness incurred by a borrower to finance the construction of generation and transmission facilities during the period preceding the date such facilities are placed into service, if requested by the borrower and found necessary by REA.

(b) In cases of financial hardship, as determined by the Administrator, loans may also be made to finance the following items:

(1) The headquarters office and other headquarters facilities in addition to those cited in paragraph (a)(4) of this section;

(2) General plant equipment, including furniture, office, transportation, data processing and other work equipment; and

(3) Working capital required for the initial operation of a new system.

(c) REA will not make loans to finance the following items:

(1) Electric facilities, equipment, appliances, or wiring located inside the premises of the consumer, except certain load-management equipment;

(2) Facilities to serve consumers who are not beneficiaries of the RE Act unless those facilities are necessary and incidental to providing or improving electric service in rural areas (See § 1710.104); and

(3) Any facilities that a state regulatory authority having jurisdiction will not approve for inclusion in the borrower's rate base, or will not otherwise allow rates sufficient to repay with interest the debt incurred for the facilities.

(d) To make optimal use of available loan funds in furthering the purposes of the RE Act, the amount lent to any one borrower in a given year may be limited to less than the total amount eligible for REA financing, taking into consideration the amount of loan funds available and the size of REA's loan application inventory. Such limitation will not be imposed unless the amount authorized for lending in a given year is substantially less, as determined by the Administrator, than the amount of eligible loan funds requested. Such reductions will be made on an equal proportion basis for all applicants based on the amount of funds for which an applicant is eligible. The portion of a request for which a borrower is eligible that is not loaned in one year will be eligible for a loan in subsequent years, provided that a resolution is submitted to REA by the borrower's board of directors certifying that the funds are still needed to complete purposes contained in the original loan application.

§ 1710.107 Amount lent for acquisitions.

The maximum amount that will be lent for an acquisition is limited to the value of the property, as determined by REA. If the acquisition price exceeds this amount, the borrower shall provide the remainder without REA financial assistance.

§ 1710.108 Mergers and consolidations.

(a) REA encourages its borrowers to consider merging or consolidating with another electric borrower when such action will contribute to greater operating efficiency and financial soundness.

(b) After a merger or consolidation, REA will give priority consideration per § 1710.119 to the processing of loans for the surviving system to finance the integration and rehabilitation of electric facilities, if necessary, and the improvement or extension of electric service in rural areas. Such priority consideration will also be given in the case of a borrower that has merged or consolidated with an electric system that has not previously received REA financial assistance, if such system was serving primarily rural residents at the time of the merger or consolidation and such rural residents will continue to be served by the merged or consolidated system. REA does not make loans for costs incurred in effectuating mergers or consolidations, such as legal expenses or feasibility study costs.

§ 1710.109 Reimbursement of general funds and interim financing.

(a) Borrowers may request that a loan include funds to reimburse general funds and/or replace interim financing used to finance equipment and facilities that were included in an REA-approved construction work plan, work plan amendment or other REA-approved plan, and for which loan funds have not been provided by REA. Such reimbursement and/or replacement of interim financing may include the direct costs of procurement and construction, as well as the related cost of engineering, architectural, environmental and other studies and plans needed to support the project, when such cost is capitalized as part of the cost of the facilities.

(b) If procurement and/or construction of the equipment and facilities was completed prior to the current loan period, reimbursement, including replacement of interim financing, will be limited, except in cases of extreme financial hardship as determined by the Administrator, to the cost of procurement and construction completed during the period immediately preceding the current loan period, as specified in paragraph (c) of this section. As defined in § 1710.2, the loan period begins on the date shown on page 1 of REA Form 740c, Cost Estimates and Loan Budget for Electric Borrowers.

(c) The period immediately preceding the current loan period for which reimbursement and replacement of interim financing is authorized under paragraph (b) of this section is as follows:

(1) The number of months agreed to by REA and the borrower for complete loan applications received by REA before the effective date of this rule;

(2) 36 months for complete loan applications received on or up to one year after the effective date of this rule; or

(3) 24 months for complete loan applications received one or more years after the effective date of this rule.

(d) If the reimbursement of general funds and/or replacement of interim financing is for approved expenditures for equipment and facilities whose procurement and/or construction is completed during the current loan period, the time limits of paragraph (c) of this section do not apply.

§ 1710.110 Supplemental financing.

(a) Except in cases of financial hardship, as determined by the Administrator, applicants for an insured loan will be required to obtain a portion of their loan funds from a supplemental source without an REA guarantee, in the amounts set forth in paragraph (c) of this section. REA will consider granting a lien accommodation to the supplemental lender. REA does not require supplemental financing in conjunction with an REA guaranteed loan. However, if a borrower elects to obtain supplemental financing in conjunction with a guaranteed loan, the granting of REA's loan guarantee may be conditioned on the borrower's acquisition of the supplemental financing.

(b) The terms and conditions of supplemental financing and any security offered to the supplemental lender are subject to REA approval. Generally, supplemental loans must bear the same maturity and be amortized in the same manner as REA loans made concurrently. Borrowers may elect to repay the loans either in substantially equal periodic installments covering interest and principal, or in periodic installments that include interest and level amortization of principal.

(c) *Supplemental financing required for insured loans.*—(1) *Distribution borrowers.*

(i) Distribution borrowers that had, as of December 31, 1980, an average consumer density of 2 or fewer consumers per mile or an average adjusted plant revenue ratio (APRR), as defined in § 1710.2, of over 9.0 shall obtain supplemental financing equal to 10 percent of their loan request.

(ii) All other distribution borrowers must obtain supplemental financing based on their plant revenue ratio (PRR), as follows:

PRR	Supplemental loan percentage
9.00 and above	10
8.01—8.99	20
8.00 and below	30

(2) *Power supply borrowers.* The supplemental loan proportion required of a power supply borrower is based on the simple arithmetic mean of the supplemental loan proportions required of the borrower's distribution members.

§ 1710.111 Refinancing.

(a) REA makes loans or loan guarantees to refinance the outstanding indebtedness of borrowers in the following cases:

(1) Loans or loan guarantees to refinance long-term debt owed by borrowers to the Tennessee Valley Authority for credit extended under the terms of the Tennessee Valley Authority Act of 1933, as amended.

(2) Loan guarantees made in accordance with the provisions of section 306A of the RE Act to prepay a loan (or any loan advance thereunder) made by the Federal Financing Bank.

(b) In certain circumstances, REA may make a loan to replace interim financing obtained for the construction of facilities (See § 1710.109).

§ 1710.112 Loan feasibility.

(a) REA will make a loan only if there is reasonable assurance that the loan, together with all outstanding loans and other obligations of the borrower, will be repaid in full as scheduled, in accordance with the mortgage, notes, and loan contracts. The borrower must provide evidence satisfactory to the Administrator that the loan will be repaid in full as scheduled, and that all other obligations of the borrower will be met.

(b) Based on evidence submitted by the borrower and other information, REA will use the following criteria to evaluate loan feasibility:

(1) Projections of power requirements, rates, revenues, expenses, margins, and other factors for the present system and proposed additions are based on reasonable assumptions and adequate supporting data and analysis, including analysis of a range of assumptions for the significant variables, when required by § 1710.300(d)(5).

(2) Projected revenues from the rates proposed by the borrower are adequate to meet the required TIER and DSC

ratios based on the borrower's total costs, including the projected maximum debt service cost of the new loan.

(3) The economics of the borrower's operations and service area are such that consumers can reasonably be expected to pay the proposed rates required to cover all expenses and meet REA TIER and DSC requirements, and the borrower can reasonably compete with other utilities and other energy sources to prevent substantial loan loss while providing satisfactory service to its consumers.

(4) Risks of possible loss of substantial loads from large consumers or from load concentrations in particular industries will not substantially impair loan feasibility.

(5) Risks of loss of portions of the borrower's service territory from annexation or other causes will not substantially impair loan feasibility. If there appears to be a substantial risk, REA may require additional information from the borrower, such as a summary and analysis of the risk by the borrower; state, county or local planning reports having information on projected growth or expansion plans of local communities; annexation plans of the municipalities in question; and any other relevant information.

(6) In states where rates or investment decisions are subject to approval by state regulatory authorities, there is reasonable expectation that such approvals will be forthcoming to enable repayment of the loan in full according to its terms.

(7) The experience and performance of the system's management is acceptable.

(8) In the case of joint ventures, the borrower has sufficient management control or other contractual safeguards with respect to the construction and operation of the jointly owned facility to ensure that the borrower's interest are protected and the credit risk is minimized.

(9) The borrower has implemented adequate financial and management controls and there are and have been no significant financial or other irregularities.

§ 1710.113 Loan security.

(a) REA makes loans only if, in the judgment of the Administrator, the security therefor is reasonably adequate and the loan will be repaid according to its terms within the time agreed.

(b) REA generally requires that borrowers provide it with a first lien on all of the borrower's real and personal property, including intangible personal property and any property acquired after the date of the loan. This lien shall be in the form of a mortgage by the borrower to the Government or a deed of trust between the borrower and a trustee satisfactory to the Administrator, together with such security documents as REA may deem necessary in a particular case.

(c) When a borrower is unable by reason of preexisting encumbrances, or otherwise, to furnish a first mortgage lien on its entire system the Administrator may accept other forms of security, such as a pledge of revenues, if he or she determines such security is reasonably adequate and the form and nature thereof is otherwise acceptable.

(d) In the case of loans that include the financing of electric facilities that are operated as an integral component of a non-REA financed system (such as generation and transmission facilities co-owned with other electric utilities), the borrower shall, in addition to the mortgage lien on all of the borrower's electric facilities, furnish adequate assurance, in the form of contractual or other security arrangements, that the system will be operated on an efficient and continuous basis. Satisfactory evidence must also be provided that the non-REA financed system is financially sound and under capable management. Examples of such evidence include financial reports, annual reports, Security and Exchange Commission 10K reports if the system is required to file them, credit reports from Standard and Poor's, Moodys or other recognized sources, reports to state regulatory authorities and the Federal Energy Regulatory Commission, and evidence of a successful track record in related construction projects.

(e) Additional controls on the borrower's financial, investment and managerial activities appear in the loan contract and mortgage required by REA.

§ 1710.114 TIER and DSC requirements.

(a) *General.* TIER and DSC requirements are set forth in the borrower's mortgage, loan contract, or other contractual agreements with REA. The requirements set forth in this section apply to borrowers that receive a loan after the effective date of this rule. Nothing in this section, however, shall reduce the TIER or DSC requirements of a borrower that has contractually agreed with REA to a higher requirement.

(b) *TIER and DSC levels.* (1) The minimum TIER and DSC levels required, whether applied on an annual or average basis, are 1.50 and 1.25, respectively, for distribution borrowers, and 1.05 and 1.00, respectively, for distribution borrowers, and 1.05 and 1.00, respectively, for power supply borrowers. The 1.05 TIER for power supply borrowers shall be phased in as follows: 1.0 in calendar year (CY) 1991, 1.03 in CY 1992, and 1.05 in CY 1993 and all subsequent years. The Administrator may, on a case by case basis, reduce the TIER level below 1.05 for power supply borrowers, but not below 1.0, if the Administrator determines that a 1.05 TIER will require said borrowers to raise the rates they charge for power so high as to substantially reduce kWh sales and revenues and threaten loan feasibility.

(2) If a distribution borrower has in service or under construction a substantial amount of generation and associated transmission plant financed at a cost of capital substantially higher than the standard cost of funds under section 305 of the RE Act, then the Administrator may establish, in his or her sole discretion, a blended TIER and DSC level based on the respective shares of total utility plant represented by said generation and associated transmission plant and by distribution and other transmission plant.

(c) *Requirements for loan feasibility.* To be eligible for a loan, borrowers must demonstrate to REA that they will, on a pro forma basis, earn the TIER and DSC levels required by 1710.114(b) in each of the years included in the borrower's long-range financial forecast prepared in support of its loan application, as set forth in subpart G of this part.

(d) *Requirements for maintenance of TIER and DSC.*—(1) *Prospective requirement.* Borrowers must design and implement rates for electric power and energy and other services to provide sufficient revenue to pay all fixed and variable expenses, to provide and maintain reasonable working capital and to maintain on an annual basis the TIER and DSC levels required by paragraph (b) of this section. Rates must be designed and implemented to produce at least enough revenue to meet the requirements of this paragraph under the assumption that average weather conditions in the borrower's service territory will prevail in the future, including average system damage and outages due to weather and the related costs. Failure to design and implement rates pursuant to the requirements of this paragraph shall be an event of default upon notice provided in accordance with the terms of the borrower's mortgage.

(2) *Retrospective requirement.* The average TIER and DSC levels achieved by a borrower in the 2 best years out of the 3 most recent calendar years must meet the levels required by paragraph (b) of this section. If a borrower fails to

achieve these average levels, it must immediately notify REA in writing. Within 30 days of such notification or of the borrower being notified in writing by REA, whichever is earlier, the borrower, in consultation with REA, must provide a written plan satisfactory to REA setting forth the actions that will be taken to achieve the required TIER and DSC levels on a timely basis. Failure to develop and implement a plan satisfactory to REA shall be an event of default upon notice provided in accordance with the terms of the borrower's mortgage.

(3) As used in this section, fixed and variable expenses include, but are not limited to: All taxes, depreciation, maintenance expenses, and the cost of electric power and energy and other operating expenses of the electric system, including all obligations under the wholesale power contract, all lease payments when due, and all principal and interest payments on outstanding indebtedness when due.

(e) *Requirements for advance of funds.* (1) If a borrower applying for a loan has failed to achieve the TIER or DSC levels required by paragraph (b) of this section during the latest 12 month period immediately preceding approval of the loan, or the borrower's average TIER or average DSC for the 2 best years out of the most recent 3 calendar years was below the levels required in said paragraph (b), REA may withhold the advance of loan funds until the borrower has adopted an annual financial plan and operating budget satisfactory to REA and taken such other action as REA may require to demonstrate that the required TIER and DSC levels will be maintained in the future and that the loan will be repaid with interest within the time agreed. Such other action may include, for example, increasing system operating efficiency and reducing costs or adopting a rate design that will achieve the required TIER and DSC levels, and either placing such rates into effect or taking action to obtain regulatory authority approval of such rates. If failure to meet TIER or DSC is due to unusual events beyond the control of the borrower, such as unusual weather, system outage due to a storm or regulatory delay in approving rate increases, then the Administrator may waive the requirement that the borrower take the remedial actions set forth in this paragraph, provided that such waiver will not threaten loan feasibility.

(2) With respect to any outstanding loan made after the effective date of this rule, if based on actual or projected financial performance of the borrower, REA determines that the borrower may not achieve its required TIER or DSC levels in the current or future years, REA may withhold the advance of loan funds until the borrower has taken remedial action satisfactory to REA.

§ 1710.115 Loan maturity.

(a) REA is authorized to make loans and loan guarantees with a maturity of up to 35 years. Most of the electric facilities financed by REA have a long useful life, often approximating 35 years. Some facilities, such as load management equipment and Supervisory Control and Data Acquisition equipment, have a much shorter useful life due to obsolescence. Operating loans to finance working capital required for the initial operation of a new system are a separate class of loans and usually have a maturity of less than 10 years.

(b) Except for operating loans, loans made or guaranteed by REA generally must be repaid with interest within a period, up to 35 years, that approximates the expected useful life of the facilities financed. The expected useful life shall be based on the weighted average of the depreciation rates that the borrower proposes for the facilities financed by the loan, provided that these rates are deemed appropriate by REA. In states where the borrower must obtain state regulatory authority approval of depreciation rates for rate making purposes, the depreciation rates used for the purposes of this paragraph shall be the rates currently approved by the state authority or rates for which the borrower plans to seek state authority approval, provided that these rates are deemed appropriate by REA. In other states, if the rates proposed by the borrower are not deemed appropriate by REA, REA will base expected useful life on the depreciation rates listed in Bulletin 183-1, or its successor, revising such rates as necessary to reflect current industry practice.

(c) Borrowers may request a repayment period shorter than the expected useful life of the facilities financed.

(d) The Administrator may approve a repayment period longer than the expected useful life of the facilities financed, up to 35 years, if a longer maturity is required to ensure repayment of the loan and loan security is adequate.

(e) The maturity of a loan established pursuant to the provisions of this section shall not be extended as a result of extending loan payments under section 12(a) of the RE Act.

§ 1710.116 Equity development plan.

(a) As a condition for obtaining a loan or loan guarantee, a borrower whose total equity as a percentage of its total assets is, or is projected to be, less than the target level set forth in this section, after taking into consideration the effects on the balance sheet of a new loan, is required to prepare and follow a 10-year equity development plan acceptable to REA. The plan must be consistent with the borrower's financial forecast required by subpart G of this part.

(b) Distribution borrowers are subject to a minimum equity target of 40 percent of total assets. Distribution borrowers with equity below this level are required to develop and follow a 10-year equity development plan designed to make reasonable progress toward achieving an equity of 40 percent. More than one 10-year planning cycle may be required to reach this equity target, with the number of cycles depending mainly on the borrower's beginning equity and the factors cited in paragraph (d) of this section. The Administrator, at his or her discretion, may approve an equity target lower than 40 percent if the higher target would unreasonably increase retail rates for electricity. In making such a determination, the Administrator will take into consideration the factors set forth in paragraph (d) of this section.

(c) Power supply borrowers that have equity of less than 20 percent must develop and follow a 10-year equity development plan designed to achieve reasonable progress toward increasing equity as a percentage of total assets. Once a power supply borrower reaches 20 percent equity, which may require more than one 10-year planning cycle, it must either maintain its equity at 20 percent or continue to make progress toward increasing its equity percentage, depending on the borrower's particular financial circumstances and needs.

(d) A borrower's 10-year equity development plan shall be designed to achieve reasonable progress toward increasing equity as a percentage of total assets without raising power costs or retail rates for electricity unreasonably, placing an unreasonable burden on rate payers, or substantially reducing the borrower's ability to compete with neighboring utilities or other energy sources. Among the factors to be considered in establishing the improvement in equity to be made during the 10-year period are the economic strength of the borrower's service territory, the inherent cost of providing service to the territory, the disparity in rates between the borrower and neighboring utilities, the intensity of

competition faced by the borrower from neighboring utilities and other power sources, and the relative amount of new capital investment required to serve existing or new loads. REA will determine the improvement to be made under each plan, case by case, based on the general principles of this paragraph and the information and recommendations provided by the borrower. At a borrower's request, REA may approve an amendment to an established equity development plan if necessary to eliminate undue burdens on the borrower or its members.

§ 1710.117 Environmental considerations.

Borrowers are required to comply with 7 CFR part 1794, which sets forth applicable requirements of the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321 *et seq.*); the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508); and certain other statutes, regulations and orders. Borrowers must also comply with any other applicable Federal or state environmental laws and regulations.

§ 1710.118 Energy conservation and load management.

Borrowers are encouraged to promote the efficient use of electric energy and to promote load management in order to improve system load factors, to reduce losses, to use existing facilities more effectively, and to reduce the need for new generating facilities.

§ 1710.119 Loan processing priorities

(a) Generally loans are processed in chronological order based on the date the complete application is received in the Regional office.

(b) The Administrator may give priority to processing loans that are required to meet the following needs:

(1) To restore electric service following a major storm or other catastrophe;

(2) To bring existing electric facilities into compliance with any environmental requirements imposed by Federal or state law that were not in effect at the time the facilities were originally constructed;

(3) To finance the capital needs of borrowers that have merged or consolidated after the effective date of this regulation, provided that the merger or consolidation has been approved by REA and determined to enhance the repayment or security of REA loans. Such priority will be considered for a period up to 5 years after REA approval of the merger or consolidation; or

(4) To correct serious safety problems, other than those resulting from borrower mismanagement or negligence.

(c) The Administrator may also change the normal order of processing loan applications when it is necessary to ensure that all loan authority for the fiscal year is utilized.

§ 1710.120 Construction standards and contracting.

Borrowers shall follow all REA requirements regarding construction work plans, construction standards, approved materials, construction and related contracts, inspection procedures, and bidding procedures.

§ 1710.121 Insurance requirements.

Borrowers are required to comply with certain requirements with respect to insurance and fidelity coverage as set forth in 7 CFR part 1788.

§ 1710.122 Equal opportunity and nondiscrimination.

Borrowers are required to comply with certain regulations on nondiscrimination in program services and benefits and on equal employment opportunity as set forth in REA Bulletins 20–15 and 20–19 or their successors; 7 CFR parts 15 and 15b; and 45 CFR part 90.

§ 1710.123 Debarment and suspension.

Borrowers are required to comply with certain requirements on debarment and suspension as set forth in 7 CFR part 3017.

§ 1710.124 Uniform Relocation Act.

Borrowers are required to comply with applicable provisions of 49 CFR part 24, which sets forth the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91–646; 84 Stat. 1894), as amended by the Uniform Relocation Act Amendments of 1987 (Pub. L. 100–17; 101 Stat. 246–256) and the Intermodal Surface Transportation Efficiency Act of 1991.

§ 1710.125 Restrictions on lobbying.

Borrowers are required to comply with certain requirements with respect to restrictions on lobbying activities. See 7 CFR part 3018.

§ 1710.126 Federal debt delinquency.

(a) Prior to approval of a loan or advance of funds, a borrower must report to REA whether or not it is delinquent on any Federal debt, such as Federal income tax obligations or a loan or loan guarantee from another Federal agency. If delinquent, the reasons for the delinquency must be explained, and REA will take such explanation into consideration in deciding whether to approve the loan or advance of funds.

(b) Applicants for a loan or loan guarantee must also certify that they have been informed of the collection options the Federal government may use to collect delinquent debt.

§ 1710.127 Drug free workplace.

Borrowers are required to comply with the Drug Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D) and the Act's implementing regulations (7 CFR part 3017) when a borrower receives a Federal grant or enters into a procurement contract awarded pursuant to the provisions of the Federal Acquisition Regulation (title 48 CFR) to sell to a Federal agency property or services having a value of $25,000 or more.

§ 1710.128–1710.149 [Reserved]

Subpart D—Basic Requirements for Loan Approval

§ 1710.150 General.

The RE Act and prudent lending practice require that the Administrator make certain findings before approving an electric loan or loan guarantee. The borrower shall provide the evidence determined by the Administrator to be necessary to make these findings.

§ 1710.151 Required findings for all loans.

(a) *Area coverage.* Adequate electric service will be made available to the widest practical number of rural users in the borrower's service area during the life of the loan. See § 1710.103.

(b) *Feasibility.* The loan is feasible and it will be repaid on time according to the terms of the mortgage, note, and loan contract. At any time after the original determination of feasibility, the Administrator may require the borrower to demonstrate that the loan remains feasible if there have been, or are anticipated to be, material changes in the borrower's costs, loads, rates, rate disparity, revenues, or other relevant factors from the time that feasibility was originally determined. See § 1710.112 and subpart G of this part.

(c) *Security.* REA will have a first lien on the borrower's total system or other adequate security, and adequate financial and managerial controls will be included in loan documents. See § 1710.113.

(d) *Interim financing.* For loans that include funds to replace interim financing, there is satisfactory evidence that the interim financing was used for purposes approved by REA and that the loan meets all applicable requirements of this part.

(e) *Facilities for nonrural areas.* Whenever a borrower proposes to use loan funds for the improvement, expansion, construction, or acquisition of electric facilities for non-RE Act beneficiaries, there is satisfactory evidence that such funds are necessary and incidental to furnishing or improving electric service for RE Act beneficiaries. See § 1710.104.

(f) *Facilities to be included in rate base.* In states having jurisdiction, the borrower has provided satisfactory evidence based on the information available, such as an opinion of counsel, that the state regulatory authority will not exclude from the borrower's rate base any of the facilities included in the loan request, or otherwise prevent the borrower from charging rates sufficient to repay with interest the debt incurred for the facilities. Such evidence may be based on, but not necessarily limited to, the provisions of applicable state laws; the rules and policies of the state authority; precedents in other similar cases; statements made by the state authority; any assurances given to the borrower by the state authority; and other relevant information and experience.

§ 1710.152 Primary support documents.

The following primary support documents and studies must be prepared by the borrower for approval by REA in order to support a loan application:

(a) *Power requirements study (PRS).* This study provides the borrower and REA with an understanding of the borrower's system loads, the factors influencing those loads, and valid estimates of future loads. It provides a basis for projecting annual kWh sales and revenues, and for engineering estimates of plant additions required to accommodate the forecasted loads. The requirements for a PRS and the circumstances under which one must be submitted to REA are set forth in subpart E of this part.

(b) *Construction work plan (CWP).* The CWP shall specify and document the capital investments required to serve a borrower's planned new loads, improve service reliability and quality, and service the changing needs of existing loads. The requirements for a CWP are set forth in subpart F of this part.

(c) *Long-range financial forecasts.* REA encourages borrowers to maintain on a current basis a long-range financial forecast, which should be used by a borrower's board of directors and manager to guide the system toward its financial goals. The forecast submitted in support of a loan application shall show the projected results of future actions planned by the board of directors. The requirements for a long-range financial forecast are set forth in subpart G of this part.

(d) *Borrower's environmental report (BER).* This document is used to determine what effect the construction of the facilities included in the construction work plan will have on the environment. In developing a BER a borrower shall follow the policy and procedural requirements set forth in 7 CFR Part 1794. After reviewing the BER, REA will determine whether additional environmental studies will be required.

§ 1710.153 Additional requirements and procedures.

Additional requirements and procedures for obtaining REA financial assistance are set forth in 7 CFR part 1712 for loan guarantees, and in 7 CFR part 1714 for insured loans.

§§ 1710.154-1710.199 [Reserved]

Subpart E—Power Requirements Studies

§ 1710.200 Purpose.

This subpart sets forth the policies, procedures and criteria for the preparation, approval and use of power requirements studies (PRSs) and PRS work plans. A PRS is a thorough study of a borrower's electric loads and the factors that affect those loads in order to determine, as accurately as practicable, the borrower's future requirements for energy and capacity. The PRS of a power supply borrower includes and integrates the PRSs of its member systems.

§ 1710.201 Requirement to prepare a PRS—power supply borrowers.

(a) A power supply borrower having total assets of $300 million or more shall:

(1) Meet one of the following two requirements:

(i) Prepare and obtain REA approval of a new PRS not less frequently than every 3 years, which shall include new or revised equations and models, and annually update the PRS in the intervening years based on new data and assumptions, but not necessarily new or revised equations and models, and file the annual updates with REA; or

(ii) Prepare and obtain REA approval of a new PRS not less frequently than every 2 years, which shall include new or revised equations and models;

(2) Maintain a current PRS work plan approved by REA which shall set forth the resources, methods, schedules and milestones required for the preparation and maintenance of the PRS; and

(3) Provide a current PRS approved by REA in support of any request for REA financial assistance or for REA approval of long-term power contracts or other actions as appropriate.

(b) A power supply borrower with total assets of less than $300 million is not required to have a current, REA-approved PRS on an ongoing basis but is required to provide a current, REA-approved PRS in support of:

(1) An application for an REA loan or loan guarantee if said loan or guarantee exceeds $25 million or 10 percent of the borrower's total utility plant, whichever is smaller; and

(2) Requests for REA approval of long-term power contracts or other actions, as may be required by REA on a case by case basis.

(c) A power supply borrower that is a member of another power supply borrower that has total assets of $300 million or more is subject to the requirements of § 1710.201(a), except that such member is not required to have a separate PRS work plan. The distribution members of such a power supply borrower are also subject to the requirements of § 1710.201(a), except that such members are not required to have separate PRS work plans.

(d) At the borrower's request, REA may extend for up to 3 months the time frames set forth in § 1710.201(a)(1) if REA determines the borrower is in substantial compliance with its REA-approved work plan and significant changes in existing PRS models and assumptions are not required.

(e) For purposes of paragraphs (a)(3) and (b) of this section, the determination of whether a borrower's PRS is current will be made by REA at the time financial assistance or other REA action is requested. The borrower may be required to update the PRS to incorporate the most recently available operating data and other information.

§ 1710.202 Requirement to prepare a PRS—distribution borrowers.

(a) If a distribution borrower is a member of a power supply borrower that has total assets of $300 million or more, it must meet the requirements of § 1710.201(a), except for the requirement to prepare a work plan, which is the responsibility of the power supply borrower. Certain other distribution borrowers, as set forth in § 1710.201(c), are also subject to provisions of § 1710.201(a).

(b) All other distribution borrowers, including unaffiliated distribution systems as well as members of power supply borrowers with total assets of less than $300 million, must either:

(1) Meet the requirements of § 1710.201(a), if the distribution borrower owns generation and bulk transmission plant valued at $300 million or more, or

(2) Meet the requirements of § 1710.201(b), except that the loan threshold set forth in paragraph (b)(1) in the case of these distribution borrowers shall be $3 million and 10 percent of total utility plant.

§ 1710.203 Basic policies and requirements for a PRS.

(a) A PRS or PRS update must be completed and submitted to REA on a timely basis to enable prompt review by REA.

(b) A PRS completed more than 12 months prior to submission will not be considered by REA.

(c) Adequate coordination is required between power supply borrowers and their members in the preparation of their respective PRSs or PRS updates.

(d) To facilitate REA review of the PRS work plan and the PRS, the borrower shall make available to REA appropriate staff for consultation, and all essential documentation, data, and other relevant information, in formats acceptable to REA, that support the PRS work plan and the PRS.

(e) Notwithstanding any other provisions of this subpart, any power supply or distribution borrower may be required to prepare a new or updated PRS, or to maintain a current PRS on an ongoing basis, if required for REA to determine loan feasibility, to ensure loan security, or to consider requests submitted for approval under a borrower's loan contract or mortgage.

(f) All PRSs shall include the following information, using a format approved by REA, unless such information has already been provided to REA in the PRS work plan or other submissions:

(1) A discussion of the scope of the PRS, including the proposed uses of the information developed for planning load management and energy efficiency programs, plant investments, and financial requirements;

(2) A discussion of the borrower personnel, consultants, data, and other resources used in the preparation of the PRS;

(3) A discussion of the procedures used to collect, validate, process, and update the data used in the study;

(4) Documentation of the analysis and modeling of the borrower's electric system loads and other pertinent information used in the PRS. All relevant data, primary sensitivity analyses and other substantive procedures used to test significant assumptions and to generate the load estimates and related factors must be included in the PRS or otherwise made available to REA, and clearly identified, sourced and dated;

(5) An analysis of the borrower's past, existing, and future electric system loads of RE Act beneficiaries and others, including explanation and documentation of all substantive assumptions, primary sensitivity analyses and other substantive considerations used to prepare the estimates. Areas of analysis shall normally include, but are not limited to: developing land use patterns; potential losses of load due to annexation or other causes; prospective residential and commercial development; probable rate levels; the effects of rates and competition from neighboring utilities on loads; existing and anticipated patterns of energy usage and appliance saturation; and availability of alternative energy sources. Load management, conservation, and power marketing considerations must also be included;

(6) A discussion and analysis of alternative scenarios, which shall be required for all PRSs submitted to REA for approval after January 1, 1993. Normally, unless waived by REA under § 1710.206, the borrower shall provide a discussion and analysis of the following five scenarios:

(i) Most-probable economic assumptions, with normal weather;

(ii) Most-probable economic assumptions, with severe weather causing higher loads;

(iii) Most-probable economic assumptions, with mild weather causing lower loads;

(iv) Normal weather with more pessimistic macroeconomic assumptions causing lower loads; and

(v) Normal weather with more optimistic macroeconomic assumptions causing higher loads;

(7) Completed REA Forms 341 and 345 and 10 years data from REA Form 7 part R. Computer-generated facsimiles may be used if acceptable in form to REA. Graphs, tables, spreadsheets or other exhibits shall be included as appropriate;

(8) A discussion and documentation of the coordination activities between a power supply borrower and its REA-borrower members, as applicable, and between the borrower and REA. If a power supply borrower and any member disagree on an issue or estimate, REA will provide assistance, if requested, in attempting to resolve the disagreement;

(9) The borrower's general manager's recommendation to the board of directors on adoption of the PRS; and

(10) Approval of the PRS by the borrower's board of directors.

(g) A PRS and its essential supporting data and analysis shall be retained in the borrower's records until the next new PRS is approved by REA.

(h) Completed PRSs submitted to REA for approval prior to the effective date of this part, as well as PRSs prepared under work plans approved by REA prior to the effective date of this part, may meet the requirements of paragraph (f) of this section or corresponding requirements of REA Bulletin 120–1, at the option of the borrower. All other PRSs must meet the requirements of paragraph (f) of this section.

§ 1710.204 PRS work plan requirements.

(a) All borrowers are required to prepare and maintain a PRS on an ongoing basis are required to prepare and obtain REA approval of a PRS work plan, except for those borrowers that are members of a power supply borrower that is required to prepare a PRS work plan. The PRS work plan shall establish the resources, methods, schedules, and milestones to be used in the preparation and maintenance of the PRS.

(b) A power supply borrower's work plan shall include the member inputs and coordination mechanisms required for the preparation of its PRS as well as the PRSs of the system's members. Member concurrences in the work plan are required before the plan is submitted to REA for approval. The member systems, as well as the power supply borrower, are required to follow the work plan in preparing their respective PRS.

(c) A PRS work plan must be approved by the borrower's board of directors.

(d) A borrower may amend its work plan subject to REA approval. A new or revised work plan may be required by REA if REA concludes the existing plan will not result in a satisfactory PRS on a timely basis.

(e) In addition, a PRS work plan shall:

(1) Identify the borrower and, as applicable, member personnel that will serve as project leaders or liaisons with the authority to make decisions and commit resources within the scope of the work plan;

(2) Provide for residential consumer surveys at least every 3 years to obtain data on appliance and equipment saturation and electricity demand, when residential demand is 50 percent or more of total kWh sales. In the case of a

power supply borrower, such surveys shall be coordinated with the borrower's members. They may be based on the aggregation of member-based samples or on a system-wide sample, provided that the latter provides for relevant regional breakdowns as appropriate;

(3) Provide for all other data collection and verification, analyses, modeling, and documentation required in § 1710.203; and

(4) Provide for an ongoing REA review of the PRS.

(f) Generally, a work plan shall cover a period of 1 to 3 years.

§ 1710.205 Basic criteria for REA approval of a PRS.

REA will use the following basic criteria in deciding whether to approve a PRS:

(a) The borrower objectively analyzed all relevant factors that influence the consumption of electricity and the requirements for generation and transmission capacity;

(b) The borrower accurately analyzed power requirements stemming from RE Act beneficiaries and non-RE Act beneficiaries;

(c) The borrower developed adequate supporting data, used valid assumptions, analyzed a reasonable range of relevant alternative assumptions and scenarios, and used valid and verifiable analytical techniques and models;

(d) The borrower provided REA with adequate documentation and assistance to allow for a thorough and independent review;

(e) In the case of a power supply borrower, the preparation of the work plan and PRS was adequately coordinated with its members; and

(f) The PRS was recommended for approval by the borrower's general manager and has been approved by the borrower's board of directors.

§ 1710.206 Waiver of borrower requirements.

For good cause shown by the borrower, the Administrator may waive any of the requirements applicable to borrowers in this subpart if the Administrator determines that waiving the requirement will not significantly affect accomplishment of the objectives of this subpart and if the requirement imposes a substantial burden on the borrower. The waiver must be requested in writing by the borrower's general manager.

(Approved by the Office of Management and Budget under control number 0572-0032.)

§§ 1710.207-1710.249 [Reserved]

Subpart F—Construction Work Plans and Related Studies

§ 1710.250 General.

(a) An ongoing, integrated planning system is needed by borrowers to determine their short-term and long-term needs for plant additions, improvements, replacements, and retirements. The primary components of the system consist of long-range engineering plans, construction work plans (CWPs), CWP amendments, and special engineering and cost studies. Long range engineering plans identify plant investments required over a period of 10 years or more. CWPs specify and document plant requirements for the short-term, usually 2 to 3 years, and special engineering and cost studies are used to support CWPs and to identify and document requirements for specific items or purposes, such as load management equipment, System Control and Data Acquisition equipment, sectionalizing investments, and additions of generation capacity and associated transmission plant.

(b) Generally, all borrowers are required to maintain up-to-date long range engineering plans approved by their boards of directors and REA. Current CWPs approved by the borrower's board and REA must also be developed and maintained for distribution and transmission facilities and for improvements and replacements of generation facilities. All such distribution, transmission or generation facilities must be included in the respective CWPs regardless of the source of financing. Applications for REA financial assistance (new loans or budget reclassifications) must be supported by a current, approved CWP.

(c) A long range engineering plan specifies and supports the major system additions, improvements, replacements, and retirements needed for an orderly transition from the existing system to the system required 10 or more years in the future. The planned future system should be based on the most technically and economically sound means of serving the borrower's long-range loads in a reliable and environmentally acceptable manner, and it should ensure that planned facilities will not become obsolete prematurely.

(d) A CWP shall include investment cost estimates and supporting engineering and cost studies to demonstrate the need for each proposed facility or activity and the reasonableness of the investment projections and the engineering assumptions used in sizing the facilities. The CWP must be consistent with the borrower's long range engineering plan and both documents must be consistent with the borrower's REA-approved power requirements study.

(e) RES approval is required for all facilities included in a CWP or CWP amendment. If REA disagrees with a borrower's estimate of the cost of one or more facilities included in CWP or CWP amendment, REA may adjust the estimate after consulting with the borrower and explaining the reasons for the adjustment.

(f) Except as provided in paragraph (g) of this section, to be eligible for REA financing, the facilities, including equipment and other items, included in a CWP must be approved by REA before the start of construction. This requirement also applies to any amendments to a CWP required to add facilities to a CWP or to make significant physical changes in the facilities already included in a CWP.

(g) In the case of damage caused by storms and other natural catastrophes, a borrower may proceed with emergency repair work before a CWP or CWP amendment is prepared by the borrower and approved by REA, without loosing eligibility for REA financing of the repairs. The borrower must notify the REA regional office in writing, not later than 45 days after the natural catastrophe, of its preliminary estimates of damages and repair costs. Not later than 120 days after the natural catastrophe, the borrower must submit to REA for approval, a CWP or CWP amendment detailing the repairs.

(h) A CWP may be amended or augmented when the borrower can demonstrate the need for the changes.

(i) A borrower's CWP or special engineering studies must be supported by a Borrower's Environmental Report, and when necessary by an Environmental Analysis or Environmental Impact Statement, as set forth in 7 CFR 1794 or required by other Federal or state regulations or laws.

(j) All engineering activities required by this subpart must be performed by qualified engineers, who may be staff employees of the borrower or outside consultants.

§ 1710.251 Construction work plans—distribution borrowers.

(a) All distribution borrowers must maintain a current CWP approved by their board of directors and REA covering all new construction, improvements, replacements, and retirements of distribution and transmission plant, and improvements replacements, and retirements of any

generation plant. Construction of new generation capacity need not be included in a CWP but must be specified and supported by specific engineering and cost studies. (See § 1710.253.)

(b) A distribution borrower's CWP shall cover at least a 2-year construction period and include all facilities to be constructed, whether or not REA financial assistance will be sought or be available of certain facilities. Any REA financing provided for the facilities will be limited to a 2-year construction period.

(c) The facilities, equipment and other items included in distribution borrower's CWP may include:

(1) Line extensions required to connect consumers, improve service reliability or improve voltage conditions;

(2) Distribution tie lines to improve reliability of service and voltage regulation;

(3) Line conversions and changes required to improve existing services or provide additional capacity for new consumers;

(4) New substation facilities or additions to existing substations;

(5) Transmission and substation facilities required to support the distribution system;

(6) Distribution equipment required to serve new consumers or to provide adequate and dependable service to existing consumers, including replacement of existing plant facilities;

(7) Residential security lights;

(8) Communications equipment and meters;

(9) Headquarters facilities;

(10) Improvements, replacements, and retirements of generation facilities;

(11) Load management equipment, automatic sectionalizing facilities, and centralized System Control and Data Acquisition equipment. Load management equipment eligible for financing, including the related costs of installation, is limited to capital equipment designed to influence the time and manner of consumer use of electricity, which includes peak clipping and load shifting. To be eligible for financing, such equipment must be owned by the borrower, although it may be located inside or outside a consumer's premises; and

(12) The cost of engineering, architectural, environmental and other studies and plans needed to support the construction of facilities, when such cost is capitalized as part of the cost of the facilities.

§ 1710.252 Construction work plans—power supply borrowers.

(a) All power supply borrowers must maintain a current CWP approved by the borrower's board of directors and REA covering all new construction, improvements, replacements, and retirements of distribution and transmission plant, and improvements, replacements, and retirements of generation plant. Applications for REA financial assistance for such facilities must be supported by a current, REA-approved CWP. Construction of new generation capacity need not be included in a CWP but must be specified and supported by specific engineering and cost studies.

(b) Normally, a power supply borrower's CWP shall cover a period of 3 years. While comprehensive CWPs are desired, if there are extenuating circumstances REA may accept a single-purpose transmission or generation CWP in support of a loan application or budget reclassification.

(c) Facilities, equipment, and other items included in a power supply borrower's CWP may include:

(1) Distribution and related facilities as set forth in § 1710.251(c);

(2) Transmission facilities required to deliver the power needed to serve the existing and planned new loads of the borrower and its members, and to improve service reliability, including tie lines for improved reliability of service, line conversions, improvements and replacements, new substations and substation improvements and replacements, and Systems Control and Data Acquisition equipment, including communications, dispatching and sectionalizing equipment, and load management equipment;

(3) The borrower's proportionate share of transmission facilities required to tie together the operating systems of supporting power pools and to connect with adjacent power suppliers;

(4) Improvements and replacements of generation facilities; and

(5) The cost of engineering, architectural, environmental and other studies and plans needed to support the construction of facilities, when such cost is capitalized as part of the cost of the facilities.

(d) A CWP for transmission facilities shall normally include studies of load flows, voltage regulation, and stability characteristics to demonstrate system performance and needs.

§ 1710.253 Engineering and cost studies—addition of generation capacity.

(a) The construction or purchase of additional generation capacity and associated transmission facilities by a power supply or distribution borrower, including the replacement of existing capacity, shall be supported by comprehensive project-specific engineering and cost studies as specified by REA. The studies shall cover a period from the beginning of the project to at least 10 years after the start of commercial operation of the facilities.

(b) The studies must include comprehensive economic present-value analyses of the costs and revenues of the available self-generation, load management, energy conservation, and purchased-power options, including assessments of service reliability and financing requirements and risks. Requirements for analyzing purchased-power options are set forth in § 1710.254.

(c) Generally, studies of self-generation, load management, and energy conservation options shall include, as appropriate, analyses of:

(1) Capital and operating costs;

(2) Financing requirements and risks;

(3) System reliability;

(4) Alternative unit sizes;

(5) Alternative types of generation;

(6) Fuel alternatives;

(7) System stability;

(8) Load flows; and

(9) System dispatching.

(d) At the request of a borrower, REA, in its sole discretion, may waive specific requirements of this section if such requirements imposed a substantial burden on the borrower and if such waiver will not significantly affect the accomplishment of the objectives of this subpart.

§ 1710.254 Alternative sources of power.

(a) General. (1) REA will make loans to finance the construction of generation facilities by distribution or power supply borrowers and transmission facilities by power supply borrowers only under the following conditions if said borrowers do not already own and operate such types of facilities:

(i) Where no adequate and dependable source of power is available to meet the consumers' needs; or

(ii) Where the rates offered by other power sources would result in a higher cost of power to the consumers than the cost from facilities financed by REA, and the amount of the power cost savings that would result from the REA-financed facilities bears a significant relationship to the amount of the proposed loan.

(2) If a borrower already owns and operates the types of facilities included in a loan request, then a loan for the purposes set forth in paragraph (a)(1) of this section, as well as for the construction of transmission facilities by a distribution borrower, will be considered and evaluated by REA in terms of whether the proposed facilities constitute the most effective and

economical means of meeting the power requirements of the consumers.

(b) Loan requests for addition of generation capacity, including replacement of existing capacity, will be accepted by REA only when the applicant has satisfactorily completed the investigations of possible alternative sources of power as set forth in this section. The investigations must be coordinated in advance with REA. The capacity in question may be owned solely by the borrower or owned on an undivided ownership basis with other utilities.

(c) The applicant is required to search out and attempt to utilize capacity available from REA borrowers and other organizations before developing plans for additional generation capacity. The applicant shall:

(1) Solicit power and energy purchase proposals from all reasonable potential sources of power, such as other electric cooperatives, investor-owned utilities, municipal utility organizations, and Federal and state power authorities.

(2) Except as herein exempted, solicit proposals from independent power producers, including co-generators, to determine the terms and conditions under which these producers can supply the additional power and energy needs of the applicant, without REA financial assistance. Such solicitations shall be placed in at least three national newspapers or trade publications, and they shall meet all planning, coordination or other requirements imposed by state authorities, as well as REA's environmental requirements. The following projects are exempted from this requirement to solicit proposals:

(i) Additions to or replacements of generation capacity of less than 10 megawatts.

(ii) Modifications of existing generation units if any resulting increase in generation capacity does not exceed 10 percent of the capacity of the existing unit.

(d) The applicant will evaluate all alternative proposals on an economic, present-value basis, giving consideration to cost-effectiveness, reliability of service, the short- and long-term financial viability of the supplier, and the financial risk to the borrower and its creditors. The applicant will keep REA fully informed on these evaluations and provide supporting information and analysis as requested by REA.

(e) After evaluation of all proposals and having informed REA of the results, the applicant will be expected to negotiate final proposals with the entities submitting the best acceptable offers, if any, keeping REA fully informed. All contracts entered into shall either be approved in advance by the Administrator or contain language to the effect that the contract is not valid until approved in writing by the Administrator. The Administrator will approve such contracts in a timely manner provided that the borrower has met all applicable requirements, including REA's environmental requirements, and provided adequate evidence that the alternative selected is the most economical and effective alternative.

(f) REA may make independent inquiries with potential power suppliers as to the availability of power to meet borrowers' needs. Information developed by REA will be shared with borrowers at their request.

(g) Further details of REA requirements for financing of generation and bulk transmission facilities are set forth in 7 CFR part 1712.

(h) At the request of a borrower, REA, in its sole discretion, may waive specific requirements of paragraphs (b) through (e) of this section if such waiver is required to prevent unreasonable delays in obtaining generation capacity that could result in system reliability problems.

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§§ 1710.255-1710.299 [Reserved]

Subpart G—Long-Range Financial Forecasts

§ 1710.300 General.

(a) REA encourages borrowers to maintain a current long-range financial forecast. The forecast should be used by the board of directors and the manager to guide the system towards its financial goals.

(b) A borrower must prepare, for REA review and approval, a long-range financial forecast, approved by its board of directors, in support of its loan application. The forecast must demonstrate that the borrower's system is economically viable and that the proposed loan is financially feasible. Loan feasibility will be assessed based on the criteria set forth in § 1710.112.

(c) The financial forecast and related projections submitted in support of a loan application shall include:

(1) The projected results of future actions planned by the borrower's board of directors;

(2) The financial goals established for margins, TIER, DSC, equity, and levels of general funds to be invested in plant;

(3) A pro forma balance sheet, statement of operations, and general funds summary projected for each year during the forecast period;

(4) A full explanation of the assumptions, supporting data, and analysis used in the forecast, including the methodology used to project loads, rates, revenue, power costs, operating expenses, plant additions, and other factors having a material effect on the balance sheet and on financial ratios such as equity, TIER, and DSC;

(5) Current and projected cash flows;

(6) Projections of future borrowings and the associated interest and principal expenses required to meet the projected investment requirements of the system;

(7) Current and projected kW and kWh energy sales;

(8) Current and projected unit prices of significant variables such as retail and wholesale power prices, average labor costs, and interest;

(9) Current and projected system operating costs, including, but not limited to, wholesale power costs, depreciation expenses, labor costs, and debt service costs;

(10) Current and projected revenues from sales of electric power and energy;

(11) Current and projected non-operating income and expense;

(12) A discussion of the historical experience of the borrower, and in the case of a power supply borrower its member systems as appropriate, with respect to the borrower's market competitiveness as it relates to the rates charged for electricity, competition from other fuels, and other factors. Additional data and analysis may be required by REA on a case by case basis to assess the probable future competitiveness of those borrowers that have a history of serious competitive problems; and

(13) An analysis of the effects of major factors, such as projected increases in rates charged for electricity, on the ability of the borrower, and in the case of a power supply borrower its member systems, to compete with neighboring utilities and other energy sources.

(d) The following plans, studies and assumptions shall be used in developing the financial forecast:

(1) The REA-approved CWP;

(2) REA-approved power requirements data;

(3) The current rate schedules or new rates already approved by the board of directors;

(4) Future plant additions and operating expenses projected at anticipated future cost levels rather than in constant dollars, with the annual rate of inflation for major items specified; and

(5) A reasonable range of assumptions for each of the major variables to test the sensitivity of the results to changes in assumptions, if the financial forecast is used in support of a loan or loan guarantee that exceeds the smaller of 10 percent of the borrower's total utility plant or the following dollar amount: $25 million for power supply borrowers, or $3 million for distribution borrowers.

(e) The financial forecast shall use the accrual method, as approved by REA, for analyzing costs and revenues, and, as applicable, compare the economic results of the various alternatives on a present value basis.

(f) REA will obtain and review commercially available credit reports on applicants for a loan or loan guarantee to verify income, assets, and credit history, and to determine whether there are any outstanding delinquent Federal or other debts. Such reports will also be reviewed for parties that are or propose to be joint owners of a project with a borrower.

§ 1710.301 *Financial forecasts—distribution borrowers.*

(a) Financial forecasts prepared by distribution borrowers shall cover at least a ten-year period, unless a shorter period is authorized by other REA regulations.

(b) In addition to the requirements set forth in § 1710.300 of this part, financial forecasts prepared by distribution borrowers in support of a loan application shall:

(1) Include expenditures for any maintenance determined to be needed in the current system's operation and maintenance review and evaluation in order to comply with mortgage covenants and prudent utility practice;

(2) Fully explain the basis for the power cost projections used. Generally, the power supplier's most recent forecasted rates shall be used; and

(3) Use REA Form 325 or computer-generated equivalent reports.

§ 1710.302 Financial forecasts—power supply borrowers.

(a) The requirements of this section apply only to financial forecasts submitted by power supply borrowers in support of a loan from REA. The financial forecast prepared by power supply borrowers shall demonstrate the effects that the addition of generation, transmission and any distribution facilities will have on the power supply borrower's sales, costs, and revenues, and on the cost of power to the member distribution systems.

(b) The financial forecast shall cover a period beginning with the present and extending at least 10 years beyond the projected in-service date of proposed generation and transmission facilities.

(c) Financial forecasts prepared in support of loan applications to finance additional generation capacity shall include a power cost study as set forth in § 1710.303.

(d) In addition to the requirements set forth in § 1710.300, financial forecasts prepared by power supply borrowers shall:

(1) Identify all plans for generation and transmission capital additions and system operating expenses on a year-by-year basis, beginning with the present and running for a minimum of 10 years after initial commercial operation of the facilities. REA may request projections for a longer period of time if deemed necessary;

(2) Integrate projections of operation and maintenance expenses associated with existing plant with those of new proposed facilities to determine total costs of system operation as well as the costs of new generation and generation-related facilities;

(3) Provide an in-depth analysis of the regional markets for power if loan feasibility depends to any degree on a borrower's ability to sell surplus power while its system loads grow to meet the planned capacity of a proposed plant;

(4) If not previously submitted, furnish REA with all material information on operating agreements, ownership agreements, fuel contracts and any other special agreements that affect annual cost projections, as may be required by REA on a case by case basis; and

(5) Include sensitivity analysis as required by § 1710.300(d)(5). Examples of sensitivity analysis that might be used are:

(i) Effects of a 100 to 200 basis point increase in the financing interest rate;

(ii) Effects of a 50 percent reduction in the rate of projected RE Act beneficiary load growth;

(iii) Effects of a 10 to 20 percent increase in the projections for fuel costs;

(iv) Effects of a 20 percent or more increase in construction costs; and

(v) Effects of a 20 percent or more increase in maintenance, retrofit and decommissioning costs of nuclear power plants.

(e) The projections shall be coordinated in advance with REA so that agreement can be reached on major aspects of the economic studies. These include, but are not limited to, projections of future kW and kWh requirements, RE Act beneficiary loads, electricity prices, revenues from system and off-system power sales, the cost of prospective plant additions, interest and depreciation rates, fuel costs, cost escalation factors, the discount rate, and other factors.

(f) The projections, analysis, and supporting information must be included in a report that will provide REA with the information needed to:

(1) Understand and compare various power supply plans;

(2) Determine that the facilities to be financed will perform satisfactorily; and

(3) Determine that the overall system is economically viable and the loan is financially feasible and secure.

§ 1710.303 Power cost studies—power supply borrowers.

(a) All applications for financing of additional generation capacity and the associated bulk transmission facilities shall be supported by a power cost study to demonstrate that the proposed generation and associated transmission facilities are the most economical and effective means of meeting the borrower's power requirements. This study usually is a separate study but it may be integrated with the financial forecast required by § 1710.302.

(b) A power cost study shall include the following basic elements:

(1) A study of all reasonably available self-generation, purchased-power, load management, and energy conservation alternatives as set forth in §§ 1710.253 and 1710.254;

(2) A present-value analysis of the costs of the alternatives and their effects on total power costs, covering a period of at least 10 years beyond the projected in-service date of the facilities;

(3) A description of proposed new power-purchase contracts or revisions to existing contracts, and an analysis of the effects on power costs;

(4) Use of sensitivity analyses to determine the vulnerability of the alternatives to a reasonable range of assumptions about fuel costs, failure to achieve projected load growth, changes in operating and financing costs, and other major factors, if the financial forecast is used in support of a loan or loan guarantee that exceeds the smaller of $25 million or 10 percent of the borrower's total utility plant. Individual sensitivity analyses need not be duplicated if they have been included in other materials submitted to REA; and

(5) Assessment of the financial risks of the various alternatives, especially as between capital-intensive and non-capital-intensive alternatives, under the range of assumptions set forth in paragraph (b)(4) of this section.

(c) Power cost studies must use current, REA-approved power requirements data, and all major assumptions are subject to REA

approval. Alternative assumptions about projected power requirements may be used, however, in conjunction with the sensitivity analyses required by paragraph (b)(4) of this section.

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§§ 1710.304-1710.349 [Reserved]

Subpart H—Credit Support of Power Supply Borrowers [Reserved]

Dated: October 31, 1991.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

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Reader Aids

Federal Register

Vol. 57, No. 6

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INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-172 2
173-328 3
329-516 6
517-600 7
601-754 8
755-1068 9

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Presidential Determinations:

No. 92-9 of December 16, 1991 329

Executive Orders:

12514 (Revoked by EO 12787) 517

12787 517

5 CFR

2636 601

Proposed Rules:

831 118
838 118
841 118
842 118
843 118

7 CFR

301 519
319 331
321 331
354 755
458 173
905 334
907 336
1001 173
1004 173
1124 173
1530 175
1710 1044
1866 774
1951 774
1965 774

Proposed Rules:

319 ..... 217, 846
925 219
1007 220
1001 ..... 15, 383
1002 383
1004 ..... 15, 383
1005 383
1007 383
1011 383
1012 383
1013 383
1030 383
1032 383
1033 383
1036 383
1040 383
1044 383
1046 383
1049 383
1050 383
1064 383
1068 383
1075 383
1076 383
1079 383
1093 383
1096 383
1097 383
1098 383
1099 383
1106 ..... 221, 383
1108 383
1124 ..... 15, 383
1126 383
1131 383
1134 383
1135 383
1137 383
1138 383
1139 383

8 CFR

214 749

9 CFR

82 776
130 755

10 CFR

600 1

Proposed Rules:

11 222
19 222
20 222
21 222
25 222
26 222
30 222
31 222
32 222
33 222
34 222
35 222
39 222
40 222
50 ..... 222, 537
52 ..... 222, 537
53 222
54 222
55 222
60 222
61 222
70 222
71 222
72 222
73 222
74 222
75 222
95 222
110 222
140 222
150 222
170 847
171 847
455 432
820 855
830 855
835 855

12 CFR
201 ... 176
208 ... 6
225 ... 6
226 ... 81, 749
747 ... 522
900 ... 749
932 ... 81

13 CFR
101 ... 524
Proposed Rules:
121 ... 541

14 CFR
21 ... 6, 338, 602
25 ... 6, 338, 602
39 ... 177-182, 605, 606, 779-792
71 ... 166, 340
75 ... 341
91 ... 328
Proposed Rules:
Ch. I ... 236, 383
39 ... 18-21, 237, 649-656, 855-857

15 CFR
770 ... 8
778 ... 8
785 ... 8
Proposed Rules:
303 ... 384

18 CFR
2 ... 794
37 ... 802
154 ... 794
157 ... 794
250 ... 9
284 ... 794
375 ... 794
380 ... 794

19 CFR
24 ... 607
101 ... 609

20 CFR
335 ... 806
401 ... 956
655 ... 182

21 CFR
177 ... 183
558 ... 524
Proposed Rules:
5 ... 239
20 ... 239
100 ... 239
101 ... 239
102 ... 239
105 ... 239
130 ... 239
333 ... 858
369 ... 858

22 CFR
41 ... 341
Proposed Rules:
514 ... 859

24 CFR
201 ... 610
Proposed Rules:
570 ... 322
577 ... 466
578 ... 466
3282 ... 241

26 CFR
1 ... 343
301 ... 12
602 ... 12
Proposed Rules:
1 ... 658, 859, 860
301 ... 658

28 CFR
Proposed Rules:
50 ... 862
80 ... 862

29 CFR
506 ... 182
510 ... 611
Proposed Rules:
1910 ... 387
1915 ... 387
1926 ... 387

30 CFR
934 ... 807
Proposed Rules:
58 ... 500
72 ... 500
206 ... 865
914 ... 543

31 CFR
550 ... 525

32 CFR
583 ... 525

33 CFR
165 ... 347

34 CFR
Proposed Rules:
81 ... 506

36 CFR
242 ... 349

38 CFR
36 ... 827
Proposed Rules:
21 ... 865

40 CFR
52 ... 351, 354
180 ... 646
261 ... 12
281 ... 186
300 ... 355
Proposed Rules:
52 ... 23, 24
148 ... 958
260 ... 958
261 ... 958
262 ... 958
264 ... 958
265 ... 958
268 ... 958
270 ... 958
271 ... 958

41 CFR
60-250 ... 498

44 CFR
64 ... 356, 358
65 ... 360, 361
67 ... 525

46 CFR
28 ... 363
Proposed Rules:
35 ... 514

47 CFR
1 ... 186
22 ... 829, 830
43 ... 646
63 ... 646
73 ... 188, 189, 831
76 ... 189
Proposed Rules:
73 ... 242, 866-868
76 ... 868

48 CFR
249 ... 533
525 ... 648
1801 ... 831
1806 ... 831
1807 ... 831
1812 ... 831
1815 ... 831
1816 ... 831
1823 ... 831
1825 ... 831
1830 ... 831
1831 ... 831
1832 ... 831
1842 ... 831
1844 ... 831
1852 ... 831
1853 ... 831

49 CFR
107 ... 364
180 ... 364
Proposed Rules:
571 ... 242, 252, 870

50 CFR
17 ... 588
100 ... 349
285 ... 365
Ch. VI ... 375
601 ... 375
605 ... 375
611 ... 534
652 ... 844
655 ... 534
672 ... 381
675 ... 381
Proposed Rules:
17 ... 35, 212, 544-548, 596, 658, 659
301 ... 390
625 ... 213
649 ... 214
675 ... 215
Proposed Rules:
23 ... 262

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 102d Congress has been completed and will be resumed when bills are enacted into public law during the second session of the 102d Congress, which convenes on January 3, 1992. A cumulative list of Public Laws for the first session was published in Part II of the **Federal Register** on January 2, 1992.